**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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| Commissioners Present:  Gladys M. Brown, Chairman, Statement  Andrew G. Place, Vice Chairman, Dissenting  John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet | Public Meeting held September 1, 2016 |
| Beth Trivelpiece | C-2015-2462644 |
| v. |  |
| PECO Energy Company |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PECO Energy Company (PECO or the Company) filed on November 18, 2015, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Conrad A. Johnson, issued on October 29, 2015, in the above-captioned proceeding. Replies to PECO’s Exceptions were filed by Beth Trivelpiece (Complainant) on November 30, 2015. For the reasons stated below, we will grant, in part, and deny, in part, PECO’s Exceptions, and adopt the Initial Decision as modified by this Opinion and Order.

**I. History of the Proceeding**

On January 14, 2015, the Complainant filed a Formal Complaint (Complaint) against PECO in which she alleged (1) that PECO was threatening to shut off, or had already shut off, her utility service; (2) that there were incorrect charges on her bill for utility service; and (3) that she was experiencing a reliability, safety, or quality problem with her utility service. The Complainant disputed an account balance of $15,988.35 and contended that PECO would not explain why her bill was so high. The Complainant questioned what she believed to be late fees relating to service she received at a previous address and alleged that PECO would not provide her with a reasonable payment arrangement. The Complainant asserted that she was very ill and needed electric service to power her medical equipment. As relief, the Complainant requested that PECO be required to provide her with an explanation of her bill and a reasonable payment arrangement.

On January 23, 2015, PECO filed an Answer to the Complaint, in which it denied the material allegations set forth therein. PECO asserted that the Complainant’s account balance was $16,687.28, which included amounts that were properly transferred from accounts for service provided to the Complainant at previous addresses. PECO also averred that $4,392.98 of the total balance was billed to the Complainant under PECO’s Customer Assistance Program (CAP), and thus, the Complainant was not entitled to a payment agreement on that amount, pursuant to 66 Pa. C.S. § 1405(c).

On June 2, 2015, a telephonic evidentiary hearing was convened before ALJ Johnson. The Complainant was represented by counsel, testified on her own behalf, and introduced two exhibits, both of which were admitted into the record. PECO was represented by counsel, presented the testimony of one witness, Renee Tarpley, and introduced ten exhibits, nine of which were admitted into the record.[[1]](#footnote-1) The hearing generated a transcript of 152 pages.

During the hearing, ALJ Johnson directed the Complainant and PECO to file memorandums of law by July 10, 2014. Tr. at 41, 144, 147. By Interim Order issued June 30, 2015, the ALJ extended the date for the filing of memorandums of law to July 17, 2015. On July 17, 2015, the Complainant filed a Main Brief and PECO filed a Memorandum of Law. In accordance with the June 30, 2015 Interim Order, the record closed on July 17, 2015.

On October 29, 2015, the Commission issued the Initial Decision of ALJ Johnson, which sustained the Complaint with regard to the allegations that there were incorrect charges on the Complainant’s bill and quality problems with the Complainant’s utility service. The Initial Decision also assessed a civil penalty of $6,000 on PECO for failure to provide reasonable service to the Complainant. I.D. at 38-39.

As previously noted, PECO filed Exceptions to the Initial Decision on November 18, 2015,[[2]](#footnote-2) and the Complainant filed Replies to PECO’s Exceptions on November 30, 2015.

**II. Discussion**

**A. Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that PECO is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by PECO. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by 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 & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to PECO. If the evidence presented by PECO is of co‑equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of PECO. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d)

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. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

ALJ Johnson made sixty-nine Findings of Fact and reached ten Conclusions of Law. I.D. at 4-16, 36-37. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that 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);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**B. Contested Issues**

**1. PECO’s Oral Motion in Limine**

Before addressing the specific contested issues in this proceeding, we will first provide an account of an oral motion in limine made by PECO’s counsel at the beginning of the June 2, 2015 hearing. By her motion, PECO’s counsel asked the ALJ to exclude the amount of $1,435.69 from that portion of the Complaint regarding the allegations of incorrect billing. PECO asserted that this amount was the outstanding balance on the Complainant’s account relating to utility service provided to her at 373 Church Street in Phoenixville, Pennsylvania, from June 2003 to June 2004. According to PECO, the Company transferred that balance to the Complainant’s new account when she moved to 229 Church Street on June 15, 2006. PECO averred that on August 14, 2006, the Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services (BCS) challenging the balance transfer, and that BCS dismissed the informal complaint on January 4, 2007. PECO argued that because the Complainant did not appeal the BCS decision and did not file a formal complaint on the matter within three years from the date of the balance transfer, she is barred from raising the matter in the instant proceeding, pursuant to 66 Pa. C.S. § 3314(a).[[3]](#footnote-3) I.D. at 16-17; Tr. at 9-12.

In his Initial Decision, the ALJ stated that although he initially granted PECO’s motion in limine and ruled that no testimony be received on the $1,435.69 amount and transfer, subsequent testimony by the Complainant led the ALJ to determine that “multiple dates of service, billing amounts at various addresses, when usage accrued, and when transfers occurred were all at issue.” I.D. at 17. Accordingly, the ALJ directed the parties “to submit memorandums of law specifically outlining what the facts are, when the billings occurred and why either side believed that they should prevail in this matter.” *Id*. (citing Tr. at 41, 144). Thus, the ALJ noted that he effectively reversed his initial ruling on PECO’s oral motion in limine, and PECO later presented testimony on the $1,435.69 amount and transfer to subsequent service addresses. I.D. at 17 (citing Tr. at 67-71.)

**2. PECO’s Processing of Complainant’s Application for Service**

**a. ALJ’s Initial Decision**

The ALJ addressed the question of whether PECO processed the Complainant’s application for service at her current address at 852 Aspen Avenue, Spring City, Pennsylvania, in a timely fashion.[[4]](#footnote-4) The ALJ summarized his understanding of the facts on this issue as follows:

On October 10, 2013, Ms. Trivelpiece applied for service at Aspen Avenue. (Tr. 70-71, 75.) Nineteen days later, on

October 29, 2013, PECO mailed her a Service Denial Notice. (Tr. [at] 81; PECO’s Exhibit 7.) The denial notice stated that a $12,121.35 balance at [the Complainant’s previous residence at] 2nd Avenue from December 2, 2008 to July 30, 2010 must be satisfied before PECO would start service in her name. The denial notice further stated she qualified for payment terms and was required to provide certain documents to get service in her name. The required documents included a completed lease or settlement statement and two forms of identification. Ms. Trivelpiece sent the required documents to PECO on November 4, 2013. Sixteen days later, on November 20, 2013, PECO initiated Ms. Trivelpiece’s service at Aspen Avenue.

I.D. at 21.

Based on his analysis of the preceding sequence of events, the ALJ found that the Complainant was without electricity for a month, and concluded that “PECO’s nineteen-day delay in responding to Ms. Trivelpiece’s application for service and sixteen-day delay in initiating service violated the reasonable service provisions of Section 1501 of the Code, 66 Pa. C.S. § 1501.” I.D. at 21. The ALJ stated that PECO provided no explanation for the delay in processing the application. *Id*. The ALJ also found that PECO’s delay in processing the Complainant’s request for service violated Sections

56.36(b)(1) and 56.37 of the Commission’s Regulations. I.D. at 21-22 (citing 52 Pa. Code §§ 56.36(b)(1)[[5]](#footnote-5) and 56.37[[6]](#footnote-6)).

**b. PECO’s Exceptions**

PECO excepts to the ALJ’s determination that it failed to timely process the Complainant’s application for service at her Aspen Avenue address, and to timely initiate service at that address. PECO argues that this issue was not part of the Complainant’s original claim against the Company and was raised for the first time at the June 2, 2015 hearing. Thus, PECO contends that the record on this issue is incomplete. Exc. at 4 (citing Tr. at 84-85). To address this situation, PECO requests that it be permitted to supplement the record by introducing, as Exhibit A to its Exceptions, its November 19, 2013 Outbound Full PAR Report in BCS Case No. 003173734.[[7]](#footnote-7) Based on record evidence and the PAR Report, PECO describes the sequence of events that it claims demonstrates that it did not delay the processing of the Complainant’s application for service at Aspen Avenue, and that it initiated utility service promptly to that address after receiving the proper documents and payment of a prior balance from the Complainant. Exc. at 6-8.

**c. Complainant’s Replies to PECO’s Exceptions**

In her Replies to PECO’s Exceptions, the Complainant objects to PECO’s attempt to introduce its PAR Report as new evidence, stating that “[t]his obliterates Ms. Trivelpiece’s due process rights, and should not be considered as a proper legal exception.” R. Exc. at 1. The Complainant contends that PECO made many mistakes in its record and states that “there is no reason to believe the PAR report is any different.” *Id*. The Complainant further argues that there is no reason for a remand of this proceeding because PECO was fully aware of the issues raised in the Complaint and “should not have a second opportunity to meet their burden of proof.” *Id*.

**d. Disposition**

As PECO asserts, the alleged delay in its processing of the Complainant’s application for service at Aspen Avenue was not raised as an issue in the January 14, 2015 Complaint, and was not raised during the subsequent mediation process or in telephone calls between counsel for PECO and the Complainant. Tr. at 84. Moreover, it is clear from the record that neither party was fully prepared to litigate the issue at the June 2, 2015 hearing. In fact, the Complainant’s counsel initially appeared to deny that the Complainant was raising an issue regarding a delay in the start of her service, but as noted above, the ALJ subsequently concluded that the Complainant offered no stipulation that an alleged delay in PECO’s commencement of service was not an issue. *Id*. at 85-86. Accordingly, PECO faxed an additional exhibit to the ALJ and the Complainant’s attorney and attempted to address the matter through the testimony of its witness. *Id*. at 87-93.

We find that that the issue of whether PECO processed the Complainant’s application for service in a timely fashion was not properly before the ALJ for disposition in this proceeding. Section 5.92(a) of our Regulations, 52 Pa. Code § 5.92(a), provides that “[w]hen the parties introduce issues at a hearing not raised by the pleadings whether by express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings.” However, if the ALJ wished to permit the evaluation of this issue as an amendment to the pleadings under 52 Pa. Code § 5.92(a), he would have been required to permit PECO a reasonable opportunity to respond to the allegations. PECO was not afforded this opportunity, even though PECO properly requested it. Accordingly, where the due process rights of a party have not been accommodated, the Complaint has not been properly amended to include this issue. Therefore, an analysis of this issue cannot be used as a basis for either a finding that PECO’s service was unreasonable within the meaning of the Code, or to support a civil penalty. Consequently, we will grant PECO’s Exception on this issue to the extent it contends that the Company was not provided with proper notice that the issue would be addressed in this proceeding, and we will reverse the ALJ’s determination that PECO violated the reasonable service provisions of Section 1501 of the Code and of Sections 56.36(b)(1) and 56.37 of the Commission’s Regulations. Because we are finding that this issue was not properly before the ALJ for disposition, we need not act on PECO’s request that we take official notice of, and rely upon, the extra-record document attached to its Exceptions as Exhibit A.

**3. Complainant’s Outstanding Balance from Prior Addresses**

**a. ALJ’s Initial Decision**

The ALJ also addressed the question of whether PECO acted properly in requiring the Complainant to enter into a payment agreement to satisfy her outstanding balance of $12,121.35 relating to service from prior addresses, as a condition for establishing service at her current Aspen Avenue address. In this regard, the ALJ noted that Section 56.35(a) of the Commission’s Regulations provides as follows:

A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

I.D. at 22-23 (citing 52 Pa. Code § 56.35(a)). The ALJ asserted that conditioning a payment arrangement upon an account balance that is more than four years old contravenes this regulation. I.D. at 23.

The ALJ stated that according to the evidence, the Complainant lived at multiple addresses before receiving service at her Aspen Avenue address on November 20, 2013. The ALJ noted that each time the Complainant moved from one address to another, PECO transferred the final balance from her prior address to the account for her new address, beginning with the balance from her earliest address at 373 Church Street, where she received service from June 2003 to June 2004. I.D. at 23. The ALJ explained that as a condition of furnishing service to the Complainant at her current Aspen Avenue address, PECO required her to accept responsibility for all of the transferred balances dating back to June 16, 2004, as part of a payment arrangement granted to the Complainant when service was established at Aspen Avenue.[[8]](#footnote-8) *Id*. (citing Tr. at 70-71, 91-92, 96-99). However, the ALJ found that by conditioning the provision of service at Aspen Avenue on the payment of a cumulative balance that had accrued from a date that was more than four years prior to November 20, 2013, PECO was in violation of Section 56.35 of the Commission’s Regulations. I.D. at 23-24.

The ALJ rejected PECO’s argument that it was in compliance with Section 56.35 because each balance transfer from a prior address to a new address was made within a four-year period. *See* Tr. at 39-41; PECO Memorandum of Law at 7-8. According to the ALJ, the date of transfer is not the determining factor. Rather, the ALJ asserted that it is the date the balance “accrued” that determines whether the amount in question falls within the four-year time frame established in Section 56.35. Thus, the ALJ concluded that PECO was prohibited from transferring those balances that accrued four years prior to November 20, 2009. I.D. at 24-25 (citing *Michelle A. Mangel v. Duquesne Light* *Company,* Docket No. C‑00970563 (Opinion and Order entered September 18, 1998) at 11 (in which the Commission determined that a portion of the complainant’s balance that had been transferred from a prior address and was over four years old should not be part of a payment arrangement, pursuant to 52 Pa. Code § 56.35)).

In addition, the ALJ found that the Commission’s ruling in *Mangel* was to be distinguished from its ruling in *Debra Brown v. PECO Energy Company,* Docket No. C-2009-2097007 (Order entered January 29, 2010) (*Brown*)). The ALJ noted that in *Brown*, the Commission determined that PECO did not violate Section 56.35 by transferring the complainant’s balance from prior accounts that were older than four years because PECO did not require the Complainant to pay this balance as a condition of establishing a new account for service to the Complainant. I.D. at 25-26 (citing *Brown* at 7-9). The ALJ concluded that because PECO required the Complainant in the instant proceeding to pay an account balance that included charges that were outside the four-year limitation period as a condition of establishing new service, *Mangel* controls the resolution of the Section 56.35 issue in this proceeding. I.D. at 26.

Based upon the Commission’s holding in *Mangel*, the ALJ found that PECO improperly conditioned the establishment of utility service to the Complainant at her Aspen Avenue address on the acceptance of a payment agreement involving a past-due balance that included an estimated $8,929.69 that had accrued between June 2003 and November 19, 2009, which was more than four years before the November 20, 2013 date on which PECO began providing service to the Complainant at Aspen Avenue.[[9]](#footnote-9) The ALJ also found that PECO improperly added a $1,477.60 late charge to the amount transferred to the Aspen Avenue account, which was based upon amounts that had accrued more than four years prior to the establishment of service, in violation of 52 Pa. Code § 56.35.[[10]](#footnote-10) I.D. at 26-27. The ALJ determined that because the precise amount of the past-due balance that PECO had wrongly transferred could not be determined from the record, PECO must recalculate the Complainant’s balance minus any charges predating November 20, 2009. *Id*. at 27.

**b. PECO’s Exceptions**

PECO excepts to the ALJ’s finding that the Company violated 52 Pa. Code § 56.35 and 66 Pa. C.S. § 1501 by holding the Complainant responsible for charges that accumulated more than four years prior to her request for service at Aspen Avenue. PECO disagrees with the ALJ’s determination that a customer’s account balance accrues on the date or month in which service was originally billed, and no later. PECO argues that as long as a final balance from a prior address is transferred to a new address within four years, the requirements of 52 Pa. Code § 56.35 are satisfied, regardless of when the amounts comprising that balance were originally billed. Exc. at 10. PECO further explains its position as follows:

In PECO’s view, when Ms. Trivelpiece accepted liability for account balances accrued at Address 1 as a condition of continuing to receive service at Address 1, or as a condition of receiving service at Address 2, those balances “accrued” on the new account as of the date of the payment agreement. Further, for each month that Ms. Trivelpiece took service in reliance upon a payment agreement, the entire outstanding balance of the payment agreement account accrued to that account in each such month because service in that month was dependent upon Ms. Trivelpiece keeping the terms of the payment agreement, including her continued acceptance of her obligation to pay the full amount covered by the payment agreement.

*Id*.

In support of its position, PECO points to the Commission’s decision in *Daniel Vermeychuk v. PECO Energy Company*, Docket No. C-2013-2388323 (Order entered November 5, 2013) (*Vermeychuk*). PECO asserts that in *Vermeychuk*, as in the instant proceeding, PECO transferred balances that had accumulated over many years at many addresses to the complainant’s current account, and that a significant portion of those balances accumulated more than four years prior to the transfer.[[11]](#footnote-11) PECO notes that the Commission held that the complainant in *Vermeychuk* was responsible for the older transferred balances.[[12]](#footnote-12) PECO argues that when that holding is applied to the Complainant’s situation in the instant proceeding, it is clear that the Complainant should be held responsible for her cumulative transferred balances.[[13]](#footnote-13) Exc. at 2, 11-12.

PECO contends that the Commission should not rely on *Mangel*, as the ALJ did, in deciding this issue. PECO asserts that all of the events in *Mangel* occurred prior to the 2004 passage of the Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401, *et seq*. (Chapter 14). PECO avers that at the time of *Mangel*, 52 Pa. Code § 56.35 contained language allowing the Commission to adjust a customer’s outstanding arrearage if it determined that the customer did not have the ability to pay. According to PECO, the Commission used this provision to remove the account balance in question from the customer’s arrearage in *Mangel*. Exc. at 12-13. However, PECO argues that Commission Regulations no longer contain the language relied upon in *Mangel*, and thus, that case “should not be understood as providing positive guidance on how the Commission should approach transfer balances in 2015, under a Chapter 14 regime.” Exc. at 13-14.

Finally, PECO contends that the approach toward the treatment of transfer balances suggested in the Initial Decision would be bad policy. According to PECO:

[T]he I.D. would allow Ms. Trivelpiece to escape payment of approximately $12,000 in utility charges for service that she used, for which she previously agreed she had liability, for which the period for her to challenge her responsibility for the charges has statutorily expired, and which were transferred to her account within four years of her last service (and, indeed, within four years of her last payment agreement). She would receive this largesse simply because, for a period of years, she moved to an address where she was not the customer of record. And the charges for that service would be passed on to PECO’s other customers as part of its uncollectible expense.

Exc. at 14.

**c. Complainant’s Replies to PECO’s Exceptions**

In her Replies to PECO’s Exceptions, the Complainant argues that when she entered into payment agreements as a requirement for receiving new service from PECO, she did not know that she was affirming old debt or waiving her right to contest past charges. The Complainant contends that PECO had the “upper hand” in those agreements since she needed electric service. R. Exc. at 1-2. According to the Complainant, “[i]n entering into such contract of adhesion, without any intelligent waiver, PECO violates the Unfair Trade Practices and Consumer Protection Law.” *Id*. at 2 (citing 73 P.S. § 201-2 (4)(xxi)).

The Complainant asserts that “she was never given any information as to what any past bills were and in fact, when she finally was given a past bill, she raised the issue in her complaint, that in one instance she was charged when she clearly lived at a different residence.” R. Exc. at 2. The Complainant also contends that PECO is attempting to collect on past-due balances that are over four years old through a termination process, when its remedy should be through Commonwealth Court. According to the Complainant, PECO’s reliance on *Vermeychuk* is misplaced. *Id*.

**d. Disposition**

Based on our review of the record evidence, we agree with the ALJ that PECO violated 52 Pa. Code § 56.35 in requiring the Complainant to enter into a payment agreement to satisfy an outstanding balance that included amounts that had accrued more than four years prior to the date of the Complainant’s request for service at Aspen Avenue.[[14]](#footnote-14)

PECO contends that when an account balance is transferred from one address to another and the Complainant accepts liability for that balance, the clock is reset on the four-year limitation set forth in Section 56.35, and the date of the transfer becomes the new accrual date for the entire balance, regardless of when the amounts comprising that balance originally accrued. Thus, PECO argues that as long as each new balance transfer occurs within four years of the previous transfer, the requirements of Section 56.35 are met, and the Company may lawfully require the Complainant to enter into a payment agreement based on the entire balance, which may include amounts originally billed over four years prior to the date of the most recent transfer, as a condition of furnishing new service to the Complainant. However, we do not view the act of transferring a customer’s total balance from a prior account to a new account at a different address as changing the original accrual date of any of the individual component amounts of that total balance. Thus, we conclude that amounts originally billed more than four years prior to a request for new service must not be included in any payment arrangement required as a condition for establishing that service, in accordance with Section 56.35. PECO’s imposition of such a condition on the Complainant when she requested new service at Aspen Avenue was, therefore, improper, and a violation of Section 56.35.

However, our determination that PECO violated 52 Pa. Code § 56.35 does not excuse the Complainant from her obligation to pay that part of her total balance that accrued four years prior to the beginning of her utility service at Aspen Avenue. As we pointed out in *Brown*, Section 56.35 does not prohibit a utility from holding a customer responsible for a total account balance that includes amounts that are over four years old. Rather, it prohibits a utility from requiring an applicant for new service to pay any outstanding balance that accrued longer than four years prior to the request for service, as a condition of furnishing that service to the applicant. *See Brown* at 9. Thus, even though we have determined that PECO improperly conditioned the establishment of service at Aspen Avenue upon the payment of amounts that had accrued four years prior to the Complainant’s request for service there, we must still hold the Complainant ultimately responsible for her total balance, regardless of when that balance accrued.[[15]](#footnote-15) We find nothing on the record to indicate that the amounts comprising the Complainant’s total account balance—either those that had been previously transferred from prior accounts or those that accumulated at her current address—were not properly calculated or billed to the Complainant. Moreover, we agree with PECO that the Complainant is time-barred by the statute of limitations in Section 3314(a) of the Code from challenging those account balances that accumulated at prior addresses and subsequently were transferred to new accounts more than three years prior to the filing of the Complaint on January 14, 2015.[[16]](#footnote-16) Thus, we see no reason to require PECO to recalculate the Complainant’s balance to exclude charges that predated November 20, 2009, as the ALJ directed. I.D. at 27. Accordingly, we find that the Complainant is responsible for her total account balance, which was $16,128.37 at the time of the June 2, 2015 hearing. Tr. at 139.

Consistent with the above discussion, we will adopt the Initial Decision with regard to its finding that PECO violated 52 Pa. Code § 56.35, but will reverse the Initial Decision to the extent it determined that the Complainant is not ultimately responsible for her total accumulated balance. Accordingly, we will grant, in part, and deny, in part, PECO’s Exceptions on this issue.

**4. PECO’s Service Denial Notice**

**a. ALJ’s Initial Decision**

As noted above, when the Complainant applied for utility service at her Aspen Avenue address, PECO sent her a Service Denial Notice dated October 29, 2013, which, *inter alia*, indicated that she had an outstanding balance of $12,121.35 from her prior, 2nd Avenue address. PECO Exh. 7. However, the ALJ found PECO’s October 29, 2013 Service Denial Notice to be defective because the $12,121.35 balance referenced therein did not accrue at the 2nd Avenue address in less than two years as indicated in the Notice, but was a compilation of balance transfers from multiple addresses. I.D. at 22 (citing PECO Exh. 7; Finding of Fact 60, Table 3). The ALJ asserted that PECO failed to detail these various addresses and related final balances in its Service Denial Notice, whereby the Complainant could have challenged the balances as being outside the four-year limitation period specified in 52 Pa. Code § 56.35(a). Thus, the ALJ concluded that the Company violated Section 56.36(b)(1)[[17]](#footnote-17) of the Commission’s Regulations and the reasonable service provisions of Section 1501 of the Code. I.D. at 22.

**b. PECO’s Exceptions**

PECO takes issue with the ALJ’s finding that the October 29, 2013 Service Denial Notice was defective. PECO reiterates that the amount of the balance stated in the Notice was accurate and did not exceed the four-year limitation period for the reasons discussed above. Exc. at 15. PECO also disagrees with the ALJ that the Complainant was unable to challenge the balances with respect to the four-year limitation period. PECO asserts that the Complainant was aware that her total balance included final balances from prior addresses that had been transferred to her current account and that the Service Denial Notice “hid nothing from her about the genesis or nature of those balances.” *Id*. at 15-16.

**c. Complainant’s Replies to PECO’s Exceptions**

The Complainant did not reply to PECO’s Exception on this issue.

**d. Disposition**

We agree with the ALJ that the October 29, 2013 Service Denial Notice did not conform to the requirements of 52 Pa. Code § 56.36(b)(1), because it misrepresented the amount of the unpaid balance that the Complainant was lawfully required to pay in order to receive utility service from PECO. As we determined above, the outstanding balance of $12,121.35 identified in the Service Denial Notice included amounts that had accrued more than four years prior to the date of the Complainant’s request for service. Because PECO was prohibited by 52 Pa. Code § 56.35(a) from requiring the Complainant to satisfy that total balance before providing service to her at Aspen Avenue, the inclusion of that amount in the Service Denial Notice was improper. Accordingly, we will deny PECO’s Exceptions on this issue and adopt the findings of the Initial Decision.

**5. Investigation of High Bill Complaint**

**a. ALJ’s Initial Decision**

The ALJ also addressed the question of whether PECO properly investigated calls by the Complainant questioning why her bills were so high. In this regard, the ALJ noted that Section 56.151 of the Commission’s Regulations provides, in part, as follows:

Upon initiation of a dispute covered by this section, the utility shall:

…

(2) Investigate the matter using methods reasonable under the circumstances, which may include telephone or personal conferences, or both with the ratepayer or occupant.

…

(5) Within 30 days of the initiation of the dispute, issue its report to the complaining party. The public utility shall inform the complaining party that the report is available upon request.

(i) If the complainant is not satisfied with the dispute resolution, the utility company report must be in writing and conform to § 56.152 (relating to contents of the public utility company report). Further, in these instances the written report shall be sent to the complaining party if requested or if the public utility deems it necessary.

I.D. at 27-28 (quoting 52 Pa. Code §§ 56.151(2) and (5)(i)).

The ALJ found that from December 2013 to June 2014, the Complainant’s electric bills were inordinately high for a small, two-bedroom mobile home occupied by one adult and two minors. The ALJ stated that although the Complainant repeatedly called PECO about her bills, the Company failed to perform a meter test or conduct a consumption investigation. I.D. at 28.

According to the ALJ, the Complainant’s bill dropped significantly after an unidentified person performed an energy efficiency check and made adjustments to her electrical fixtures during the summer of 2014.[[18]](#footnote-18) I.D. at 28 (citing Tr. at 29). Specifically, the ALJ found that although the Complainant did nothing differently in her home, her electric bill dropped from $122.50 for August/September of 2014 to $69.39 for September/October of 2014, after the adjustments to her fixtures were made. I.D. at 28 (citing Tr. at 32; Table 1 from Finding of Fact No. 5).[[19]](#footnote-19) The ALJ also determined that there was a consistent drop in the Complainant’s electric consumption when comparing usage for the months of December 2013 through April 2014, with the parallel usage for the months of December 2014 through April 2015. I.D. at 28 (citing Table 1 from Finding of Fact No. 5). The ALJ asserted that “[h]ad PECO investigated Ms. Trivelpiece’s concern about her usage in December 2013, she may have been able to reduce her usage earlier than September 2014.” I.D. at 29. The ALJ concluded that because PECO did not conduct an investigation, the Company failed to comply with Section 56.151 of the Commission’s Regulations. I.D. at 29.

**b. PECO’s Exceptions**

PECO excepts to the ALJ’s determination that it was required to conduct a high bill investigation at the Complainant’s residence during the period of December 2013 to June 2014. PECO argues that no high bill or usage issue was raised in the Complaint, the subsequent mediation, or discussions with the Complainant’s counsel, and that it was not made clear at the hearing that the parties intended to litigate this issue. Moreover, PECO contends that while the Complainant provided testimony regarding numerous issues about which she called PECO, she did not testify that she called PECO to complain that her usage was too high. Exc. at 17-18. PECO argues that none of the issues raised by the Complainant in her calls to PECO should have triggered the need for PECO to perform a meter test or consumption investigation. Moreover, PECO contends that neither a meter test nor a consumption investigation would have addressed the concern raised by the Complainant in this proceeding regarding whether balances from prior addresses had been appropriately transferred. *Id*. at 18-19.

In addition, PECO avers that even if the Complainant had called about high usage during the period in question, that would not have triggered a requirement for PECO to conduct an energy efficiency investigation such as the LIURP investigation conducted in June of 2014. PECO explains that LIURP is reserved for low-income customers, and the Complainant was not verified as a low-income customer and placed on CAP until June 2014, which is when PECO conducted the LIURP investigation at the Complainant’s residence. Exc. at 19.

**c. Complainant’s Replies to PECO’s Exceptions**

In her Replies to PECO’s Exceptions, the Complainant disagrees with PECO that she did not raise a high bill and usage issue in her Complaint. The Complainant avers that she “was constantly wondering about her electric usage,” and that “PECO did nothing from December 2013 to June 2014, to investigate the problem.” R. Exc. at 2. The Complainant also states that “to argue that PECO was not aware of her income until June 2014, is clearly false, and ignores the evidence of the prior payment arrangements, and prior entrees [*sic*] into the CAP program.” *Id*.

**d. Disposition**

Upon our review of the evidence in this proceeding, we do not agree with the ALJ that PECO should have conducted a high bill/high usage investigation at the Complainant’s residence in this case. We agree with PECO that nothing in the original Complaint indicated that the Complainant was concerned about her utility usage. While the Complaint alleged that PECO would not explain why the Complainant’s bills were so high, a full reading of the Complaint makes it clear that the Complainant’s billing concerns were focused on what she believed to be late payment fees and charges relating to service from prior addresses. There is no mention in the Complaint of any metering or usage concerns.

In addition, we find nothing on the record to indicate that the Complainant raised any metering or high usage concerns during the hearing. Although the Complainant testified that her bills appeared to decrease after certain energy efficiency measures were installed at her residence, there is nothing on the record to support a finding that she was disputing the level of usage for which she was billed before those measures were installed. Rather, it appears that the Complainant’s testimony in this regard was meant to support her belief that she had been enrolled in CAP at the time of the energy efficiency evaluation, and that the energy efficiency measures were installed as part of her acceptance into that program. Tr. at 28-29, 32. Moreover, when PECO’s counsel objected to the Complainant’s testimony on the grounds of relevancy, the Complainant’s counsel responded that “I was just having her testify about her situation in the trailer and the background of her electric bill.” *Id*. at 30. There was no assertion by either the Complainant or her attorney that the Complainant had an issue with her meter readings or with the electric or gas usage recorded by PECO.

We also find no record support for the ALJ’s conclusion that from December 2013 to June 2014, the Complainant’s electric bills were inordinately high for a small, two-bedroom mobile home occupied by one adult and two minors. No evidence was provided as to what levels of electric usage or billing would represent a normal range of consumption for the Complainant’s residence and occupancy, and what levels would constitute usage that was inordinately high.

We also do not agree with the conclusion that a high bill investigation would necessarily have resulted in lower bills for the Complainant. Using account information provided by PECO for the Complainant’s utility service at her Aspen Avenue address, the ALJ determined that the Complainant’s electric usage had decreased from the August/September 2014 billing period to the September/October 2014 billing period, and from winter/spring of 2013/2014 to winter/spring of 2014/2015. I.D. at 28 (citing Tr. at 32; Table 1 from Finding of Fact No. 5). The ALJ attributed these usage and bill reductions to the energy efficiency measures installed at the Complainant’s residence in the summer of 2014, and concluded that such usage reductions could have occurred earlier if PECO had conducted the proper investigation in December 2013. I.D. at 29. However, the data on which the ALJ relied included no degree day information, nor any other indicators that would allow for an evaluation of the extent to which changes in temperature or other relevant factors may have affected the Complainant’s usage during the time periods considered in the ALJ’s analysis.

In addition, a reduction in usage due to the installation of energy efficiency measures does not signify that the recording of the Complainant’s electricity consumption before the measures were installed was inaccurate and that a high bill investigation was, therefore, warranted. It simply suggests the effectiveness of the installed measures. Moreover, contrary to the ALJ’s assumption, a typical high bill investigation would not likely result in the implementation of the types of energy efficiency measures that apparently were installed as a result of the LIURP investigation at the Complainant’s residence. Rather, a high bill investigation would determine whether the Complainant had the potential to use the amount of energy for which she was billed, based on the appliances found in the home and the Complainant’s usage habits. Thus, even if a high bill investigation had been conducted in December 2013, it would only have determined whether the Complainant’s energy consumption was in line with her usage potential, and would not necessarily have resulted in the Complainant reducing her consumption earlier than September 2014 as the ALJ asserted.

For the above-stated reasons, we conclude that a high usage/high bill investigation was neither requested nor warranted under the circumstances described. Accordingly, we find no violation of 52 Pa. Code § 56.151, and will grant PECO’s Exceptions and reverse the Initial Decision on this issue.

**6. Explanation of Charges on Bill**

**a. ALJ’s Initial Decision**

The ALJ also addressed the question of whether PECO provided the Complainant with a satisfactory explanation of certain charges that appeared on her utility bills for service at her Aspen Avenue address. Specifically, the ALJ noted that sometime after the Complainant began to receive service at that address in November 2013, she began receiving bills listing multiple charges labeled “Reinstate bad debt – GAS SERVICE,” “Reinstate bad debt – Service,” and “Reinstate bad debt – Misc. business.” I.D. at 14-15, 29 (citing Tr. at 33-34; Complainant Exh. C). According to the ALJ, the Complainant repeatedly contacted PECO for an explanation of these charges but PECO provided no explanation until after the Complaint was filed in January 2015. I.D. at 29 (citing Tr. at 34, 42, 107-108.)

The ALJ noted the testimony of PECO’s witness, Ms. Tarpley, who explained that the “reinstate bad debt” charge will appear as a line item on a customer’s bill if the customer defaults on a payment agreement or has a former balance that becomes due or is being questioned. I.D. at 29 (citing Tr. at 106). Ms. Tarpley further testified that she sent the Complainant a letter dated February 12, 2015, in which she provided an explanation of the “reinstate bad debt” charges and late payment charges that appeared on the Complainant’s bills. I.D. at 29 (citing Tr. 107-108). However, the ALJ found that the bills provided to the Complainant did not adequately explain that the bad debt referenced therein related to service at previous addresses, and therefore, did not comply with Section 56.15 of the Commission’s Regulations, which requires that billing information be clearly stated.[[20]](#footnote-20) Moreover, the ALJ found that PECO’s failure to explain the bad debt charges to the Complainant until after she filed her Complaint constituted unreasonable service, in violation of Section 1501 of the Code. I.D. at 29-30.

**b. PECO’s Exceptions**

PECO excepts to the ALJ’s finding that it violated Section 56.15 of the Commission’s Regulations and provided unreasonable service by failing to properly explain the “reinstate bad debt” charges that appeared on the Complainant’s bills. PECO disputes the ALJ’s determination that the Complainant called PECO repeatedly to question these charges and that PECO provided her no explanation until after she filed her Complaint. PECO contends that it discussed the “reinstate bad debt” charges at length with the Complainant, but the Complainant simply did not understand or agree with the explanation she received. Exc. at 20-21. PECO reiterates that these charges related to former unpaid balances on the Complainant’s account that had come due, and asserts that the record contains numerous references to discussions between PECO and the Complainant regarding these transferred balances from prior addresses. *Id*. at 21-22 (citing Tr. at 28, 34, 37, 56, 100, 140; PECO Exhs. 14 and 15). According to PECO, the Complainant admitted that these conversations occurred, but that she did not understand them. Exc. at 22 (citing Tr. at 140). PECO asserts that the record testimony “makes it impossible to reach a conclusion that PECO actually refused to speak to her about her charges for a long period of months, and therefore it is not plausible to conclude that PECO engaged in unreasonable utility service for failure to explain its ‘reinstate bad debt’ charges.” Exc. at 23.

With regard to the ALJ’s finding that PECO violated 52 Pa. Code § 56.15, PECO argues that while this regulation requires clarity in billing information, “it is not an omnibus statement regarding bill clarity.” Exc. at 23. PECO argues that none of the fourteen specific billing items enumerated in that regulation relate to a required form of language that is to be used in reporting past due amounts, and no claim can be made that PECO violated any of the those fourteen items. Moreover, PECO contends that even if an omnibus clarity requirement is read into the regulation, it would not warrant a finding that PECO violated that requirement. PECO submits that “the concept of ‘reinstate bad debt’ is not a complex concept – the customer had a prior bad debt with PECO, and it is being reinstated on the bill.” *Id*. PECO argues that bill language cannot be found to be unclear merely because a customer testifies that she does not understand it. According to PECO, “[t]hat approach would effectively give any customer a carte blanche opportunity to avoid paying their bills by the simple expedient of claiming that they do not understand why they owe them.” *Id*. at 24.

**c. Complainant’s Replies to PECO’s Exceptions**

In her Replies to PECO’s Exceptions, the Complainant disputes PECO’s contention that she was provided explanations of the charges on her bills, but did not understand or agree with them. The Complainant asserts that the Initial Decision was based on findings from the testimony and not on PECO’s “proposed scenarios.” R. Exc. at 2. According to the Complainant, PECO’s witness finally explained the charges at the hearing. In addition, the Complainant states that “[w]hat does make this a bit more complex, than Ms. Tarpley's statement, is the issue [of] interest, and reordering is not clear at all on the late payment charges incurred in reinstating the bad debt, as argued in the original memorandum.”[[21]](#footnote-21) *Id*.

**d. Disposition**

Upon our review of the record evidence on this issue, we find no evidence to conclude that PECO failed to provide a clear or timely explanation to the Complainant of the numerous “reinstate bad debt” line item charges that appeared on her bills after she moved to her Aspen Avenue address. The Complainant testified that she did not understand the meaning of these charges and was not able to obtain a satisfactory explanation from PECO after placing numerous calls to the Company and being transferred from one department to another. Tr. at 32-36, 42, 45-46,140. However, we find it difficult to reach a conclusion in favor of the Complainant on this issue, considering the fact that the Complainant did not question the charges earlier in the process despite the length of time that passed since the Company began transferring her arrearages as she moved from one address to another. The arrearage from the first address was applied to the bill for the second address on June 15, 2006. The arrearage from the second address was applied to the bill for the third address on September 2008. The arrearage from the third address was applied to the bill for the fourth address on January 27, 2009. The arrearage from the fourth address was applied to the bill for the present address on November 15, 2013. During that time, the arrearage grew to the present level of over $16,000.

We note here that Chapter 14 of the Code now contains a provision that creates an affirmative responsibility for a public utility to attempt to collect its outstanding consumer debt. A public utility also has a duty to report to the Commission annually those residential customers who have accumulated a debt in excess of $10,000 and to report the efforts being taken to collect those debts. Failure to make reasonable attempts may result in civil penalties. 66 Pa. C.S. § 1410.1(3). Therefore, the utility is in a situation where it must walk a fine line between attempting to collect excessively high accounts and becoming too zealous in its attempts and running afoul of applicable statutes and Commission Regulations, either of which can result in a civil penalty. The record here does not show that PECO has strayed from that fine line.

At some point during the nine years from the transfer of the first amount to the time of the filing of the Complaint, the Complainant either did or should have discovered what the “reinstate bad debt” line item was on her monthly bill. Even if she did not understand that debt accrued at prior addresses would be added to the account for the subsequent address, the Complainant’s lack of understanding that amounts unpaid from prior bills will continue to appear on present and future bills until they are paid cannot be attributed to PECO’s failure to explain it. PECO’s witness testified that a call to its collections department due to a termination notice would not get the caller answers regarding CAP and would need to be transferred. Tr. at 105. In addition, the witness explained that she did not understand the Complainant’s confusion until the formal Complaint was filed, and at that time, the witness attempted to address the Complainant’s concerns. *Id*. at 107-108. In the absence of evidence that the Complainant specifically asked for justification for each “reinstate bad debt” line item on her bills at some point prior to her filing of the Complaint, there is no evidence to support a finding that PECO failed to provide adequate service in the form of a clear explanation for the phrase. Rather, the record shows that PECO responded to the inquiry as soon as it was instituted on the Complaint.

We also do not agree that PECO violated 52 Pa. Code § 56.15 in this instance, as the ALJ found. As PECO notes, nothing in Section 56.15 requires a utility to use a specific label or form of language to report past due amounts, and we do not find that PECO violated any of the specific requirements set forth in the fourteen items enumerated in that regulation.

For the reasons discussed above, we will grant PECO’s Exception on this issue and reverse the Initial Decision’s finding that PECO violated 66 Pa. C.S. § 1501 by failing to provide a clear and prompt response to the Complainant’s billing questions, as well as its finding that PECO violated 52 Pa. Code § 56.15 by failing to include a clear explanation on the Complainant’s bills of the “reinstate bad debt” charges.

**7. Request for Payment Arrangement**

**a. ALJ’s Initial Decision**

The ALJ noted that the Complainant is seeking a reasonable payment arrangement in this proceeding, and stated that there is no evidence on the record to indicate that she has ever been granted a payment arrangement by the Commission. I.D. at 30. However, the ALJ asserted that when the Complainant enrolled in CAP on July 17, 2014, all of her arrearages and current charges came within the purview of CAP. *Id*. at 31. The ALJ noted that the Commission is not authorized to grant a payment arrangement for rates charged under CAP, in accordance with Section 1405(c) of the Code, which provides as follows:

(c) **Customer assistance programs**. — Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

I.D. at 31 (quoting 66 Pa. C.S. § 1405(c). Accordingly, the ALJ concluded that the Complainant’s request for a Commission-ordered payment arrangement must be denied. Nevertheless, the ALJ reiterated his determination that Commission Regulations preclude PECO from billing the Complainant for CAP charges that are more than four years old, and that the Commission is authorized to remove such charges from consideration. I.D. at 31.

**b. Exceptions and Replies**

Neither PECO nor the Complainant addressed the issue of a payment arrangement in their respective Exceptions and Replies to Exceptions.

**c. Disposition**

While we are not inclined to grant a payment arrangement to the Complainant in this instance, we do not agree with the ALJ that the Commission is unauthorized to do so because of the Complainant’s current enrollment in CAP. As we explained in *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Order entered September 12, 2013) (*Hewitt*), we retain the authority to issue a payment agreement for the non-CAP portion of a mixed arrearage, which may include amounts billed under standard rates that are not, and have never been, subject to deferral or credits under a CAP program. *Hewitt* at 10. Although the Complainant was enrolled in CAP at the time of the June 2, 2015 hearing, the record is clear that her total arrearage at that time consisted of both CAP and non-CAP amounts. Tr. at 112, 139; PECO Exh. 6. According to PECO’s witness Tarpley, the Complainant’s total arrearage as of the hearing date was $16,128.37, which included total CAP arrears of $4,338.73. Tr. at 139. Accordingly, consistent with our holding in *Hewitt*, we conclude that we have the authority to grant a payment arrangement on the amount of the total account balance that represents the non-CAP arrears.

However, as noted above, we are not inclined to grant the Complainant a payment arrangement on the non-CAP portion of her arrearage in this case. As we stated in *Hewitt*:

As a practical matter, bifurcating an arrearage, and establishing a payment arrangement only for the non-CAP portion, is not feasible in most cases. In effect, such a truncated arrangement would require the utility to place the CAP portion of the arrearage on hold, presumably indefinitely. As long as the customer adhered to the payment agreement for the non-CAP portion of the arrearage, the utility presumably would be prohibited from terminating service for non-payment of the CAP arrearage. In many instances, it is likely that the utility ultimately would be required to simply write off the CAP arrearage. This obviously would not be in the public interest, and would allow customers to utilize payment agreements for non-CAP arrearages as a tool to avoid payment of CAP bills, which already are discounted from standard rates.

*Hewitt* at 11. We further explained the problems inherent in bifurcating an arrearage as follows:

Even if bifurcating an arrearage is feasible, it may not be practical. Typically, CAP assistance is the best, most affordable payment plan for an eligible, low-income customer. If a customer cannot afford and does not pay a CAP bill, which is service provided at a discount, the customer most likely cannot afford and will not pay his or her current/budget bill plus an additional payment on an accrued balance, which is the typical structure of a payment agreement. Given the limitations in the Code in Section 1405(d) on the number of payment agreements that the Commission may issue for a customer, issuing a payment agreement where the customer will likely default is not in the customer’s best interest.

*Hewitt* at 11, n.4.

The record evidence in this proceeding indicates that the Complainant was granted two payment agreements by PECO. The first of these was established on May 26, 2010, on a total balance of $11,206.25. The second was established on November 20, 2013, on a total balance of $12,594.24. As the record shows, the Complainant ultimately did not adhere to the terms of either of these agreements. Tr. at 94-97; PECO Exh. 9. Given the Complainant’s inability to keep these previous payment agreements, and in light of our concerns expressed in *Hewitt*, we decline to establish a payment agreement for the non-CAP portion of the Complainant’s arrearage in this case.

Finally, we do not agree with the ALJ that PECO is precluded by Commission Regulations from billing the Complainant for CAP charges that are more than four years old, and that such charges must be removed from consideration. As we explained above, while the express language of 52 Pa. Code § 56.35 prohibits a utility from conditioning the furnishing of new service on the payment of amounts that are over four years old, it does not prohibit a utility from holding a customer ultimately responsible for amounts that are over four years old. Thus, PECO may continue to require the Complainant to pay all CAP and non-CAP amounts that comprise her total account balance.

**8. Civil Penalties**

**a. ALJ’s Initial Decision**

Based upon his findings regarding PECO’s conduct with respect to the issues discussed above, the ALJ found that the Complainant carried her burden of proof in establishing that PECO violated the Code and Commission Regulations, and that the Company presented no evidence to rebut the Complainant’s *prima facie* case. Therefore, the ALJ concluded that imposing penalties on PECO was warranted. I.D. at 32.

The ALJ noted that, pursuant to 66 Pa. C.S. § 3301, the Commission may impose a maximum civil penalty of $1,000 per day for each violation of the Code, Commission Regulations or Commission Orders. However, the ALJ further noted that the Commission must apply certain factors and standards when imposing a civil penalty. I.D. at 32. Those factors and standards, which apply to both litigated and settled proceedings involving violations of the Code and Commission Regulations, are enumerated in the policy statement set forth in Section 69.1201 of the Commission’s Regulations as follows:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission’s investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

I.D. at 32-34 (quoting 52 Pa. Code § 69.1201).

The ALJ summarized the ways in which he found that PECO failed to provide reasonable service to the Complainant, in violation of Section 1501 of the Code, as follows:

1) PECO failed to process Complainant’s 2013 application for service in a timely manner.

2) PECO failed to initiate Complainant’s service at Aspen Avenue in a timely manner.

3) PECO improperly included in Complainant’s [payment arrangement (PAR)] charges that had accrued more than four years ago as a condition of providing service to her.

4) PECO improperly included in Complainant’s PAR late payment charges based upon charges that that had accrued more than four years ago.

5) PECO failed to conduct a full investigation of Complainant’s high usage dispute.

6) PECO failed to provide a timely explanation of Complainant’s billing charges, i.e., reinstate bad debt service charges.

I.D. at 34. The ALJ also found that PECO violated the Commission’s Regulations concerning payment arrangements for an outstanding balance at 52 Pa. Code § 56.35, and procedures for addressing customer disputes at 52 Pa. Code § 56.151. I.D. at 34.

In light of these findings, the ALJ made the following determinations in accordance with the Commission’s factors and standards for determining civil penalties, as set forth above:

(1) PECO’s failure to provide Ms. Trivelpiece reasonable service in six different aspects, as enumerated above, is of a serious nature and warrants a higher penalty of $500.00 for each separate violation for a cumulative penalty of $3,000.00.

(2) PECO’s delay in processing Ms. Trivelpiece’s 2013 application for service resulted in Ms. Trivelpiece being without service for a month. The consequences of this delay are of a serious nature and warrant a penalty of $1,000.00.

(3) This was a litigated case. PECO’s inclusion of charges in the PAR that were more than four years old is deemed intentional in light of the fact that PECO would not have initiated service unless Ms. Trivelpiece agreed to the PAR. Accordingly, a higher penalty of $1,000.00 is warranted.

(4) There is no evidence that PECO has made efforts to modify internal practice and procedures to address the conduct at issue and prevent similar conduct in the future. Therefore, the civil penalties mentioned above are warranted.

(5) There is no evidence that other customers were affected by PECO’s violation of the Code and the Commission’s regulations. As to the duration of the violations, the evidence establishes that PECO’s delay in processing Ms. Trivelpiece’s application for service and delay in initiating service extended over a month. Additionally, PECO failed to investigate Ms. Trivelpiece’s high usage claim, and PECO failed to explain certain charges on her bill for a number of months. Therefore, a civil penalty for the duration of the violation is warranted in the amount of $1,000.00.

(6) In this case the evidence is silent on PECO’s compliance history.

(7) There is insufficient evidence to rule on PECO’s level of cooperation with the Commission’s investigation or to find that PECO acted in bad faith.

(8) The civil penalties mentioned above are necessary to deter future violations by PECO.

(9) In their respective brief and memorandum of law, the parties did not cite any prior Commission decisions concerning the issues raised in this proceeding. Accordingly a penalty for this factor is not warranted.

(10) Considering the entire record, the above penalties totaling $6,000.00 are warranted.

I.D. at 35-36.

**b. PECO’s Exceptions**

Because PECO does not agree with the ALJ that it violated any Commission Regulations or provided unreasonable service to the Complainant with regard to any of the issues addressed in this proceeding, it excepts to the civil penalties imposed by the ALJ as a result of his conclusions. Exc. at 4, 9, 15, 17, 20.

**c. Complainant’s Replies to PECO’s Exceptions**

The Complainant did not explicitly address the issue of civil penalties in its Replies to PECO’s Exceptions.

**d. Disposition**

As discussed above, we do not agree with the ALJ’s finding that PECO failed to process or initiate the Complainant’s service at her Aspen Avenue address in a timely manner, as we found that that issue was not properly before the ALJ for disposition in this proceeding. In addition, we do not agree that PECO provided inadequate service in violation of 66 Pa. C.S. § 1501 by failing to conduct a high usage investigation at the Complainant’s residence, or by failing to provide a clear and timely explanation to the Complainant of the “reinstate bad debt” charges that appeared on her bills. However, we agree with the ALJ that PECO improperly conditioned the initiation of service at Aspen Avenue on the Complainant’s acceptance of a payment agreement based upon an outstanding balance that included amounts that had accrued more than four years prior to the date of the Complainant’s request for service, in violation of 52 Pa. Code § 56.35. We also agree that the October 29, 2013 Service Denial Notice misrepresented the amount of the unpaid balance that the Complainant was lawfully required to pay in order to receive utility service from PECO, in violation of 52 Pa. Code § 56.36(b)(1). Nevertheless, we do not believe that PECO’s behavior with regard to these matters justifies the imposition of any civil penalties. Accordingly, we will eliminate the civil penalty imposed on PECO by the ALJ, in accordance with the following analysis of the violations in light of the ten factors and standards set forth in 52 Pa. Code § 69.1201.

The first criterion to consider is whether the conduct at issue was of a serious nature or whether it was less egregious, such as an administrative or technical error. 52 Pa. Code § 69.1201(c)(1). We do not find the violations committed by PECO to be serious enough to warrant the imposition of any civil penalties.

The second criterion is whether the resulting consequences of the conduct were of a serious nature, such as personal injury or property damage. 52 Pa. Code § 69.1201(c)(2). The violations committed by PECO resulted in the imposition of a payment arrangement on the Complainant that was based upon an account balance that improperly included amounts that had accrued more than four years prior to the date of the Complainant’s request for service. The violations did not result in personal injury or property damage. Also, we found no evidence to conclude that the Complainant was without utility service for a month, as the ALJ determined. Therefore, we do not find the consequences of PECO’s violations to be of a serious nature.

The third criterion is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). PECO’s actions regarding the imposition of a payment arrangement before furnishing service to the Complainant appear to have resulted from a misinterpretation of Commission Regulations, and there is no evidence that PECO intended to deliberately violate those Regulations or cause harm to the Complainant. Accordingly, we find PECO’s conduct to be negligent rather than intentional.

The fourth criterion is whether the utility made efforts to modify internal practices and procedures to address the conduct and prevent similar conduct, and the amount of time it took for the implementation of these measures. 52 Pa. Code § 69.1201(c)(4). There is no evidence that PECO made efforts to modify its practices and procedures, though it is clear in this case that PECO did not believe its current procedures were improper or inadequate.

The fifth criterion is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). As the ALJ determined, there is no evidence that other customers were affected by the violations found in this proceeding.

The sixth criterion is a consideration of the compliance history of the utility. 52 Pa. Code § 69.1201(c)(6). We agree with the ALJ that the evidence in this proceeding is silent on PECO’s compliance history.

The seventh criterion is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). We agree with the ALJ that there is no evidence in this proceeding to support a finding that PECO failed to cooperate with the Commission’s investigation or acted in bad faith.

The eighth criterion is the amount of the civil penalty necessary to deter future violations, with consideration of the size of the utility. 52 Pa. Code § 69.1201(c)(8). Because we do not agree with the ALJ regarding the scope and severity of PECO’s violations, we find that no civil penalty is necessary.

The ninth criterion involves a consideration of past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). We are not aware of past Commission decisions that have definitively addressed the specific violations considered herein.

The tenth criterion is other relevant factors. 52 Pa. Code § 69.1201(c)(10). We believe that all factors relevant to the determination of an appropriate civil penalty have been considered above.

In light of the foregoing analysis of the violations discussed above, we find that no civil penalty is warranted in this proceeding. Accordingly, we will grant PECO’s Exceptions on this matter and reverse the Initial Decision regarding the imposition of civil penalties.

**III. Conclusion**

In light of the above discussion, we shall: (1) grant, in part, and deny, in part, PECO’s Exceptions; (2) adopt the Initial Decision as modified; and (3) sustain, in part, and dismiss, in part, the Complaint; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of PECO Energy Company, filed on November 18, 2015, to the Initial Decision of Administrative Law Judge Conrad A. Johnson, are granted, in part, and denied, in part, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Conrad A. Johnson, issued on October 29, 2015, is adopted as modified by this Opinion and Order.
3. That the Formal Complaint against PECO Energy Company filed by Beth Trivelpiece on January 14, 2015, is sustained, in part, and dismissed, in part, consistent with this Opinion and Order.
4. That the proceeding at Docket No. C-2015-2462644 be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 1, 2016

ORDER ENTERED: September 22, 2016

1. The ALJ declined to admit PECO’s Exhibit 1 into evidence. Tr. at 116. In addition, the ALJ admitted only five of the nine pages comprising PECO’s Exhibit 8. Tr. at 148-149. [↑](#footnote-ref-1)
2. In accordance with the October 29, 2015 Secretarial Letter accompanying the issuance of the Initial Decision, Exceptions were due to be filed with the Commission and delivered to each party of record within twenty days of the date of the Secretarial Letter, or by November 18, 2015. We note that PECO’s Exceptions were received by the Commission’s Secretary’s Bureau on that date, and thus, were timely filed with the Commission. However, in her Replies to PECO’s Exceptions, the Complainant states that PECO did not mail its Exceptions to the Complainant’s attorney until November 19, 2015, and therefore, contends that the Exceptions should be denied as untimely sent. Attached as Exhibit A to the Complainant’s Replies to Exceptions is a copy of an envelope bearing a postmark date of November 19, 2015, which purportedly shows that PECO’s Exceptions were mailed one day late to the Complainant. While it is not our intention to question the veracity of the Complainant’s claim that the envelope shown in Exhibit A was sent by PECO, we note that neither the sender’s name nor complete address is visible in the exhibit. Moreover, consistent with 52 Pa. Code § 1.2(a), we may waive such a procedural defect when it does not affect the substantive rights of the parties. Since the Complainant’s substantive rights were not affected by a one-day delay in service, we decline to deny PECO Exceptions as untimely sent to the Complainant. [↑](#footnote-ref-2)
3. 66 Pa. C.S. § 3314(a) states:

   **(a)  General rule.—**No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. [↑](#footnote-ref-3)
4. The ALJ stated that initially it was not clear during the evidentiary hearing whether the Complainant was challenging PECO’s delay in establishing service at Aspen Avenue. The ALJ noted that at one point during the hearing, PECO’s attorney asked whether the Complainant’s attorney was stipulating that a delay in PECO’s commencement of service at that address was not an issue in this proceeding. Based on a subsequent exchange between the respective attorneys, the ALJ concluded that there was no such stipulation, and therefore, it was appropriate to address the issue in the Initial Decision. I.D. at 20 (citing Tr. at 83, 85-87, 89-92). [↑](#footnote-ref-4)
5. 52 Pa. Code § 56.36(b)(1) states, in part:

   If credit is denied, the public utility shall inform the applicant in writing of the reasons for the denial within 3 business days of the denial. [↑](#footnote-ref-5)
6. 52 Pa. Code § 56.37 states, in part:

   Once an applicant’s application for service is accepted by the public utility, the public utility shall make a bona fide attempt to provide service within 3 business days, provided that the applicant has met all regulatory requirements. [↑](#footnote-ref-6)
7. In requesting that the Commission consider this additional evidence, PECO asserts the following:

   [A]s the ultimate finder of fact in its evidentiary proceedings, the Commission has [the] authority and obligation to cause additional evidence to be received if necessary for a fair resolution of the case. If the Commission determines that it cannot consider the PECO PAR Report without admitting it into evidence, PECO respectfully requests that the Commission do one or both of the following: (1) take official and judicial notice, pursuant to 52 Pa. [Code] § 5.408, of the fact that the PECO PAR Report is ‘a report or other document on file with the Commission,’ and is therefore admitted pursuant to [52 Pa. Code] § 5.406; and (2) take official and judicial notice, pursuant to 52 Pa. [Code] § 5.408, of the fact that the PECO PAR Report is ‘a portion of the record in another proceeding before the Commission,’ and is therefore admitted pursuant to [52 Pa. Code] § 5.407. If the Commission deems it appropriate to instead remand the matter to admit the PECO PAR Report rather than admit it at this juncture, the remand should be for the limited issue of unreasonably delayed service to Ms. Trivelpiece.

   Exc. at 5 n.6. [↑](#footnote-ref-7)
8. The ALJ noted the Complainant’s position that she never agreed to the November 2013 payment arrangement because she could not have afforded the required monthly payment plus her current service amount. I.D. at 23 (citing Tr. at 33; *See also* Tr. at 44, 55-56). The ALJ also noted the response of PECO’s witness that if the Complainant had not accepted responsibility for the outstanding balance, the Company would not have connected her service at Aspen Avenue. I.D. at 23 (citing Tr. at 92). The ALJ concluded that because the Complainant received the benefits of the November 2013 payment arrangement when service was turned on, there was a tacit acceptance of the payment arrangement on the part of the Complainant. I.D. at 23. [↑](#footnote-ref-8)
9. The ALJ found that PECO transferred a total balance of $11,476.54 plus $1,477.60 in late payment charges to the Complainant’s Aspen Avenue account. I.D. at 12-13, 27, n.9. Based upon record evidence and a calculation of the average monthly accrual rate of the Complainant’s arrearage at her previous address, the ALJ estimated the portion of the total balance that had accrued four years prior to November 20, 2013, to be $8,929.69. I.D. at 27, n.9. [↑](#footnote-ref-9)
10. As set forth below, in considering the imposition of civil penalties on PECO, the ALJ determined that the Company’s conditioning of utility service on the payment of charges that had accrued more than four years prior to the request for service also constituted unreasonable service, in violation of 66 Pa. C.S. § 1501. I.D. at 34. [↑](#footnote-ref-10)
11. In addition to its reliance on *Vermeychuk*, PECO also cites the following cases in which it avers that the Commission held that the complainants were responsible for balances relating to service that had been rendered more than four years prior:

    *Tamara Briggs v. PECO Energy Company*, Docket No. C-2013-2381883 (Final Order entered April 25, 2014)

    *Sinoe Naji v. PECO Energy Company*, Docket No. C-2014-2417914 (Final Order entered September 29, 2015)

    *Pamela McDuffie v. PECO Energy Company*, Docket No. F-2015-2463651 (Final Order entered October 16, 2015)

    Exc. at 11, n.22. [↑](#footnote-ref-11)
12. PECO notes that *Vermeychuk* also held that three years after a balance transfer occurs, the customer loses the right to challenge that balance transfer. Based on the ruling in *Vermeychuk*, PECO submits that on May 26, 2013, the statute of limitations ran on the Complainant’s ability to challenge a balance transfer that occurred on May 26, 2010. Exc. 11, n.23 (citing PECO Exh. 9). [↑](#footnote-ref-12)
13. PECO asserts that “[t]he Commission’s policy in this respect is similar to the ‘acknowledgement doctrine’ in civil law, in which the promise to pay a debt acts to toll a statute of limitations on that date, allowing a collection action to continue beyond the initial statutory period.” Exc. at 12, n.24 (citing *Huntingdon Finance Corp. v. Newtown Artesian Water Co*., 442 Pa. Super. 406, 659 A.2d 1052 (1995)). [↑](#footnote-ref-13)
14. As the ALJ noted, the October 29, 2013 Service Denial Notice sent by PECO to the Complainant indicated that the outstanding balance in question was $12,121.35. PECO Exh. 7. However, the account statements provided by PECO indicate that the payment agreement established for the Complainant was based on a total balance of $12,954.24, which was the amount of the Complainant’s balance transferred to her Aspen Avenue account from her previous address. PECO Exhs. 3 and 4. (During the hearing, PECO’s attorney and witness referenced the transferred amount as $12,952.24. Tr. at 13, 39-40, 70.) [↑](#footnote-ref-14)
15. As PECO points out, we determined that the complainant in *Vermeychuk* was responsible for transferred balances that had accumulated more than four years prior to the transfer, though we note that no Section 56.35 issue was raised in that proceeding. [↑](#footnote-ref-15)
16. We note that the filing of an informal complaint tolls the statute of limitations until a decision on the informal complaint is issued.  *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa. Cmwlth. 1992). On September 15, 2014, the Complainant filed an informal complaint with BCS at Case No. 3285243, in which she disputed a balance that had been transferred to her Aspen Avenue account from her previous address. On November 21, 2014, BCS issued a decision in which it determined that PECO was within its right to transfer the balance from the prior address and that the Complainant was responsible for that balance. Tr. at 100-102; PECO Exhs. 14 and 15. Accordingly, the time period between the September 15, 2014 filing of the informal complaint and the November 21, 2014 BCS decision should not be considered in determining the three-year statute of limitations period. [↑](#footnote-ref-16)
17. 52 Pa. Code § 56.36(b)(1) provides, in part:

    If the public utility is requiring payment of an unpaid balance in accordance with § 56.35, the public utility shall specify in writing the amount of the unpaid balance, the dates during which the balance accrued and the location and customer name at which the balance accrued. [↑](#footnote-ref-17)
18. The ALJ noted the testimony of PECO’s witness that the person who conducted the consumption investigation was most likely from LIHEAP. I.D. at 28, n.10 (citing Tr. at 105). However, in its Exceptions, PECO indicates that its witness misspoke, and that the investigation was conducted as part of the Company’s Low-Income Usage Reduction Program, or LIURP. Exc. at 16, n.30. [↑](#footnote-ref-18)
19. The ALJ’s Finding of Fact No. 5 included Table 1, which shows the Complainant’s monthly utility usage and payment history at her Aspen Avenue address from November 21, 2013 to April 27, 2015. I.D. at 5-6 (citing Tr. at 29; PECO Exh. 4). [↑](#footnote-ref-19)
20. 52 Pa. Code § 56.15 enumerates fourteen specific types of information that a utility is required to state clearly on bills rendered to its customers. [↑](#footnote-ref-20)
21. By “original memorandum,” the Complainant apparently is referring to her Main Brief filed July 17, 2015, in which she appeared to raise an issue regarding the order in which PECO applied the Complainant’s payments to the various types of charges billed. Complainant Main Brief at 2-4. However, this issue was not raised in the original Complaint, was not brought up during the June 2, 2015 hearing, and was not addressed in the Initial Decision. As there was no record developed on the matter of how PECO applied payments to amounts owed, and no ruling on the matter by the ALJ, we find no basis on which to address the issue. [↑](#footnote-ref-21)