PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held September 15, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Florence R. Parker Chailla C-2021-3024417

v.

Metropolitan Edison Company
Choice Energy LLC d/b/a/ 4 Choice Energy LLC

OPINION AND ORDER

BEFORE THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Florence R. Parker Chailla (Ms. Chailla or Complainant) filed on November 15, 2021, to the Initial Decision of Administrative Law Judge (ALJ) John M. Coogan issued October 27, 2021, regarding her Formal Complaint (Complaint) in the above-captioned proceeding. The Complaint concerns, alleged, improper charges to Ms. Chailla based on an agreement between the Complainant and Choice Energy, LLC d/b/a/ 4 Choice Energy, LLC (Choice Energy), an electric generation service provider. Replies to the Exceptions of Ms. Chailla were

received from Choice Energy and Metropolitan Edison Company (MetEd) on November 24, 2021, and November 29, 2021, respectively.

On November 29, 2021, the Commission also received a pleading submittal from Ms. Chailla styled, "EXCEPTIONS – REVISIONS – TO INITIAL DECISION Before John M. Coogan, ALJ." The November 29, 2021, submission contains, *inter alia*, additional legal argument concerning the merits of the Complaint, *infra*. Ms. Chailla is not represented by an attorney in this matter, but appearing, *pro se*.[1] The Commission has a policy of affording *pro se* complainants a liberal construction of pleadings. Also, the Commission is not bound by a party's styling or characterization of a pleading. Rather, the Commission may review the pleading to ascertain its substance. Notwithstanding, for reasons explained below, we conclude that the November 29, 2021, submittal is improper and operates to the prejudice of the respondent parties to this matter. We will not consider the November 29, 2021, submittal by Ms. Chailla in our deliberations on the merits of her Complaint.[2]

In the Initial Decision, ALJ Coogan concluded that Ms. Chailla did not meet her burden of proof regarding her Complaint allegations. The ALJ, therefore,

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[1] Ms. Chailla is authorized as a contact representative on the electric service account (Service Address) with MetEd, which account is in the name of her husband, Optatus Chailla. *See* Finding of Fact No. 5; 8, *infra*. The record further indicates that Ms. Chailla has a Juris Doctorate (law degree) from Seton Hall University. However, there is no indication that Ms. Chailla is licensed to practice law in Pennsylvania or any other jurisdiction. *See* July 22, 2021, Transcript (Tr.) at 50-51.

[2] The Commission's docket further indicates that by letter of April 29, 2022, Ms. Chailla mailed an inquiry to the Commission Chairperson regarding her Complaint. The letter raised *ex parte* concerns because it was directed to the Chairperson at such time as a disposition on the merits was pending. The Commission, through its Secretary, referred the letter to the Commission's Law Bureau which responded to the inquiry of Ms. Chailla by correspondence of May 27, 2022. The April 29, 2022, letter of Ms. Chailla was preceded by a document filed April 26, 2022, by Ms. Chailla styled "Second Revisions to Exceptions . . ." The April 26, 2022, submittal also will not be considered.

recommended that the Complaint be denied. On consideration of the Initial Decision, the Exceptions, Replies to Exceptions and on review of the record, we do not find merit to the Complaint allegations under the facts. At all times material to the Complaint, Choice Energy and MetEd acted consistent with applicable Commission Regulations and Commission Orders regarding competitive choice for electric generation service. We, hereby, adopt the Initial Decision of ALJ Coogan consistent with the discussion in this Opinion and Order which shall clarify the applicability of the subject MetEd tariff[3] to disputed charges between the electric generation service provider and electric generation service customer upon dissolution of the electric generation service agreement and MetEd's purchase of accounts receivable.

Background

On March 4, 2021, Ms. Chailla filed the instant Complaint with the Commission naming MetEd and Choice Energy as party respondents (collectively Respondent Parties).[4] MetEd is an Electric Distribution Company (EDC) and Choice Energy is an Electric Generation Supplier (EGS) pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, *et seq*. (Competition Act); 66 Pa. C.S. § 2803. The Complaint was assigned Docket No. C-2021-3024417.

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[3] MetEd Exhibit (Exh.) #9, *infra*.

[4] *See* I.D., n. 1: "Choice Energy, LLC is incorporated in the state of Iowa, and is incorporated and doing business in the Commonwealth of Pennsylvania as 4 Choice Energy, LLC. Choice Energy, LLC is a licensed electric generation supplier in Pennsylvania. *See* Pa. P.U.C. Docket No. A-2012-2337893. Although Ms. Chailla did not name Met-Ed as a respondent in her complaint, her complaint did concern matters involving Met-Ed, and Met-Ed asserted itself as a respondent in this proceeding in its answer and new matter filed on March 23, 2021."

In the Complaint, Ms. Chailla indicated that the utility is either threatening to shut off her service or has already shut off her service. She also claimed that there were incorrect charges on her bill. For relief, the Complainant requested as follows:

> The elimination of the 4Choice Energy bill is necessary and proper. That organization did not provide the 10-day time to consider and make a clear headed decision before it began billing in complete disregard of my consumer rights had under the Pennsylvania Unfair Trade Practices Act.

See Complaint at ¶ 5.

Appended to the Complaint of Ms. Chailla was a one-page letter dated March 4, 2021, followed by eleven pages of documentary attachments to support the Complainant's allegations.

Ms. Chailla essentially complains that she was improperly enrolled as an EGS customer with Choice Energy as she did not, *inter alia*, receive timely notice of her right to rescind an EGS agreement with Choice Energy. She further complains that MetEd did not properly handle her request to cancel the EGS agreement and discontinue EGS service from Choice Energy. *See* I.D. at 10, *infra*. The Complainant objects, *inter alia*, that MetEd continued to bill the Complainant for EGS charges associated with the aborted EGS contract for several months after she and Choice Energy mutually agreed to end the contractual relationship.

The March 4, 2021, letter attached to the Complaint of Ms. Chailla, in summary, raised the following issues: (1) Complainant was billed twice by MetEd and 4 Choice [Choice Energy] for the same period; (2) that pursuant to "[d]iscussions" had with 4 Choice, it was represented to the Complainant that she would have a period of time of 7-10 days in which to make a decision regarding the change to an electric generation supplier (EGS); (3) that the Complainant received a letter on January 21, 2021, dated

January 14, 2021, which she alleges unilaterally changed terms and conditions for EGS service; and (4) that, according to a March 16, 2021, bill, 4Choice [Choice Energy] began its billing of the Complainant. Ms. Chailla complains that the bill (submitted by MetEd) included language that she interpreted as threatening her with termination of service. Also, the bill showed prices for kilowatt hour (kWh) of electric generation which did not comport with her expectations of savings that she would achieve based on the use of the EGS services of Choice Energy. *See* March 4, 2021, letter attached to Complaint.

A separate document, marked as Exhibit A, was also attached to the Complaint. This document was a copy of a letter issued by MetEd dated January 14, 2021, which advised the Complainant that MetEd, as EDC, received notice of the decision to use Choice Energy as the Complainant's EGS company, effective January 15, 2021. The letter further advised the Complainant that she could "drop" the EGS supplier at any time.

On March 23, 2021, MetEd filed an Answer and New Matter to the Complaint. On March 24, 2021, Choice Energy filed an Answer to Ms. Chailla's Complaint.

On March 27, 2021, Ms. Chailla filed a Motion for Protective Order. On May 3, 2021, Ms. Chailla filed a Motion for Summary Judgment.[5]

[5] It has been noted that the Complainant is appearing, *pro se*. The Motion for Summary Judgment cited as its basis, "Rule 56," which is not a reference to the Commission's Rules of Practice, 52 Pa. Code Chapter 5, Formal Proceedings, but, ostensibly, to the Federal Rules of Civil Procedure addressing motions for summary judgment. The Commission's docket further indicate that Ms. Chailla filed a "Rebuttal to Respondent's Reply to Summary Judgment Motion." This filing, submitted May 20, 2021, is a non-permitted pleading under Commission Rules of Practice. 52 Pa. Code § 5.1. Additionally, the Respondent Parties have noted other incorrect references and citations of authority in the motion practice of Ms. Chailla, including the Complainant's erroneous citation to the regulations of the Civil Service Commission,

On May 19, 2021, ALJ Coogan issued an order granting an amended Motion for Admission *Pro Hac Vice*, thereby admitting John Coyle, Esquire *pro hac vice*, to appear as attorney on behalf of Choice Energy. I.D. at 2. Also on May 19, 2021, Choice Energy filed an opposition to Ms. Chailla's Motion for Summary Judgment.

On May 24, 2021, MetEd filed an Answer to Ms. Chailla's Motion for Summary Judgment and also an Answer to Ms. Chailla's Motion for Protective Order.

On June 2, 2021, Ms. Chailla filed a Motion to Strike, which was later withdrawn during the evidentiary hearing. *See* I.D. at 2; Tr. 13-14.

On June 11, 2021, ALJ Coogan issued an order, denying both the Motion for Summary Judgment and Motion for Protective Order of Ms. Chailla. The Complaint was referred to the Commission's mediation unit for mediation review. Mediation was declined and a hearing notice was issued on June 16, 2021, scheduling an evidentiary hearing for July 22, 2021.

The evidentiary hearing convened as scheduled on July 22, 2021. The Complainant appeared, *pro se* and testified. The Complainant offered thirteen exhibits, all of which were admitted into the record. (Chailla Exhibits 1-13). Choice Energy, appeared and was represented by John D. Coyle, Esquire. Choice Energy presented the testimony of Moses Cheung from Choice Energy. Choice Energy offered four exhibits, all of which were admitted into the record. (Choice Energy Exhibits 1-4). Met-Ed appeared and was represented by Margaret A. Morris, Esquire. MetEd presented the testimony of Nora Arnold, a Supervisor of Supplier Services with MetEd, and Laurie Parker, an Advanced Customer Services Compliance Specialist in the Pennsylvania

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4 Pa. Code § 105.14a, in support of a request for a subpoena in connection with a Motion for Protective Order.

Compliance Department with MetEd. MetEd offered nine exhibits, all of which were admitted into the record. (Met-Ed Exhibits 1-9). I.D. at 3.

The record closed on September 7, 2021, upon receipt of the hearing transcript. The record consists of a 177-page transcript and twenty-six exhibits. I.D. at 3.

On October 27, 2021, the Initial Decision of ALJ Coogan was issued. Presiding ALJ Coogan recommended that the Complaint be dismissed. He concluded that Ms. Chailla did not meet her burden of proof that Choice Energy or MetEd committed a violation of the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et seq*., Commission Regulations addressing the responsibilities of the EDC or an EGS regarding customer service[6], or Commission Order. Exceptions and Replies to Exceptions were filed as noted.

Discussion

A. Legal Standards[7]

Ms. Chailla is the Complainant in this proceeding. As the Complainant, Ms. Chailla is the proponent of a rule or order from the Commission. Therefore, Ms. Chailla has the burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a).[8]

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility - in this case also the EGS - is

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6 *See* 52 Pa. Code Chapter 54, *et seq*.; *also* Subpart F, Chapter 111.

7 *See* I.D. at 9-10.

8 66 Pa. C.S. § 332(a); "**(a) Burden of proof.--**Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."

responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. den*., 529 Pa. 654, 602 A.2d 863 (1992). That is, Ms. Chailla must meet her evidentiary burden of proof by presenting evidence more convincing, by even the smallest amount, than that presented by the other parties herein, MetEd and Choice Energy. *Se-Ling Hosiery v. Marqulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof comprises two distinct burdens: (1) the burden of production and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id*. It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *Id*. If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson)*.

The party with the burden of proof and initial burden of production, must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production, as noted, may shift back and forth during a proceeding, the burden of persuasion never shifts; the burden of persuasion always remains on a complainant as the party seeking affirmative relief from the Commission. *Milkie*; *Burleson*. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *Moore.* In determining whether a complainant has met the burden of persuasion, the ultimate factfinder, which by statute is the Commission, may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber v. Pa. Comm'n on Crime and Delinquency,* 885 A.2d 678 (Pa. Cmwlth. 2005), *app. denied*, 586 Pa. 776, 895 A.2d 1264 (2006) (*Suber*)[9]; *also* 66 Pa. C.S. § 335(a).

Finally, we advise the Parties that any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Commw., Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980), *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Sup. Ct. 1960), *Murphy v. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

[9] *Suber* is cited for the proposition that even unrebutted evidence may be disbelieved.

B. ALJ's Initial Decision

ALJ Coogan reached fifty-two (52) Findings of Fact and drew twenty-two (22) Conclusions of Law. I.D. at 3-9, 17-20. We adopt said Findings of Fact and Conclusions of Law unless said findings and conclusions are expressly modified or rejected, or modified or rejected by necessary implication from our discussion in this Opinion and Order.

ALJ Coogan discussed the Complaint allegations of Ms. Chailla under the following topics: (1) Enrollment and Disenrollment with Choice Energy (I.D. at 10-14); and (2) Miscellaneous issues: (a) allegations that MetEd threatened the Complainant with service termination (I.D. at 15); (b) allegations that MetEd's electronic and paper bills did not match (I.D. at 15); (c) allegations of a violation of the Code or Commission Regulations in obtaining the Complainant's telephone number (I.D. at 15-16); and (d) allegations that sales agents failed to properly identify themselves (I.D. at 16). These topics are addressed, below.

1. Enrollment and Disenrollment with Choice Energy

ALJ Coogan concluded that Ms. Chailla's claim that she was improperly enrolled as a customer for EGS service with Choice Energy was not established by a preponderance of the evidence. *See* I.D. at 10-14.

Ms. Chailla asserted that she had not been properly enrolled as a Choice Energy EGS customer and, assuming that she was so enrolled, she was deprived of her right to cancel the EGS agreement within a three/ten day "window" due to the untimely receipt of the EGS disclosure documents and final contract/agreement. The timeliness of the Complainant's receipt of the required disclosure documents by Choice Energy upon

their delivery to the United States Postal Service (USPS) and the final terms of the EGS agreement were disputed factual issues in the proceeding.

Ms. Chailla testified that she had discussions with a sales agent for Choice Energy and that, pursuant to those discussions, the agent represented to her and she so anticipated, that she would have a period of ten (10) days rather than three (3) days in which to cancel the EGS enrollment agreement after receipt of disclosure documents. *See* Tr. 26-34.

In response to the position of the Complainant, Respondent, Choice Energy, and also the Complainant, introduced into evidence a January 5, 2021, third party verification (TPV) call recording and transcript. Pursuant to the TPV call evidence, Ms. Chailla, on being questioned, gave her oral consent to enrollment as an EGS customer with Choice Energy. Based in substantial part on the TPV evidence, ALJ Coogan reached the following Findings of Fact regarding the Complainant's position that she was not properly enrolled as an EGS customer:

* * *

> 13. Chailla Exhibit 12 is a third-party verification call recording from January 5, 2021, where Ms. Chailla enrolled with Choice Energy for electric generation service at the Service Address. Chailla Exhibit 12.

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> 15. Choice Energy Exhibit 1 is a transcript of the January 5, 2021, third-party verification call. Choice Energy Exhibit 1.

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> 18. Choice Energy Exhibit 4 is a third-party verification call recording from January 5, 2021, where Ms. Chailla

enrolled with Choice Energy for EGS service at the Service Address. Choice Energy Exhibit 4.

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29. On January 5, 2021, Complainant confirmed her enrollment with Choice Energy for electric generation service at the Service Address through a third-party verification call (January 5 TPV call). Chailla Exhibit 12; Choice Energy Exhibits 1 and 4.

* * *

31. The January 5 TPV call stated that, after the three-day right of rescission, if cancellation takes place during the contract, complainant may be charged with cost recovery in the amount of ten dollars for each remaining contract month. Chailla Exhibit 12; Choice Energy Exhibits 1 and 4.

32. The January 5 TPV call provided a phone number to call if complainant wished to cancel her contract with Choice Energy. Chailla Exhibit 12; Choice Energy Exhibits 1 and 4.

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34. In the January 6 Choice Energy welcome package, both the contract summary and disclosure statement include notice of a three-business-day right of rescission upon receipt of the disclosure statement. Choice Energy Exhibit 2.

35. Choice Energy does not have any record of Ms. Chailla's January 6 Choice Energy welcome package being returned. Tr. 86-87.

I.D. at 4-8.

On reaching the foregoing facts, including acknowledgement of the lack of evidence that the follow up EGS enrollment disclosure documents which were mailed to

the Chailla residence were returned, ALJ Coogan was persuaded that Ms. Chailla was properly enrolled as an EGS customer with Choice Energy. *See* I.D. at 11-12.

ALJ Coogan noted that there is a rebuttable presumption of the regular delivery of mail. He further observed that Ms. Chailla acknowledged that she received other mail from Choice Energy addressed to her residence (Service Address), including a $230.00 check tendered to the Complainant by Choice Energy in a good faith gesture by Choice Energy to resolve her complaint. I.D. at 12, citing Tr. 66; Choice Energy Exhibit 3.

Based on the foregoing, ALJ Coogan found that the Complainant's testimony was not sufficient to defeat the presumption that she received the disclosure documents which were mailed. Consequently, Ms. Chailla had the required three-day period of time under regulations in which to rescind the EGS agreement prior to its effectiveness. *See* 52 Pa. Code § 54.5(d).

Additional, corollary issues were raised by Ms. Chailla as part of her position that she was not properly enrolled as an EGS customer with Choice Energy and that she was not afforded sufficient time to make a reasoned decision to use EGS service. ALJ Coogan also rejected these related claims of Ms. Chailla. Ms. Chailla alleged that the switch to an EGS required a signature. This argument was rejected based on Commission Regulation at 52 Pa. Code § 111.7. Pursuant to this regulation, an EGS does not need a signature to complete a transaction involving telephone contact by an agent, so long as the transaction is subsequently verified. In the present case, the transaction completed by the Choice Energy sales agent was validated by the January 5 TPV call. I.D. at 12.

The Complainant, in a related objection, adamantly prosecuted a claim that her request to dis-enroll from EGS service was not properly handled by MetEd and

Choice Energy. The Complainant testified that Choice Energy EGS charges for EGS service continued to appear on her MetEd bills after termination of the EGS agreement. These allegations, according to the Complainant's testimony, resulted in her extreme dissatisfaction. ALJ Coogan determined that the dis-enrollment of Ms. Chailla from the EGS agreement with Choice Energy was handled within Commission Regulations and MetEd's tariff. In pertinent part, the following Findings of Fact were noted:

> 39. For the billing period December 21, 2020, to January 20, 2021, Choice Energy charges were $4.20. Tr. 125; Met-Ed Exhibit 4.
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> 40. The balance owed to both Met-Ed and Choice Energy for the billing period December 21, 2021, to January 20, 2021, was paid in full. Met-Ed Exhibit 6.
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> 41. On February 1, 2021, Ms. Chailla e-mailed First Energy, noting that the January 14 Met-Ed confirmation letter had been received, and requesting that Choice Energy be cancelled. Chailla Exhibit 2.
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> 42. Ms. Chailla's disenrollment request was forwarded to customer service on February 3, 2021, which resulted in the service address being disenrolled from Choice Energy effective that same day. Tr. 105-106, 129, 151.
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> 43. For the billing period January 21, 2021, to February 18, 2021, the Chailla account was enrolled with Choice Energy from January 21, 2021, to February 3, 2021. Tr. 125; Met-Ed Exhibit 4.

I.D. at 8.

On consideration of the position of Ms. Chailla, ALJ Coogan was persuaded that, both, Choice Energy and MetEd, acted within the scope of Commission Regulations, prior Commission Orders involving EGS and EDC responsibilities under the Competition and Act, and MetEd's applicable tariff. I.D. at 10-14.

2. Miscellaneous Issues

a. Allegations that MetEd Threatened the Complainant with Service Termination

In her Complaint, Ms. Chailla asserted that Met-Ed was either threatening to shut off her service or has already shut off her service. The basis for this allegation was directed to the January 14, 2021, Met-Ed acknowledgment and confirmation letter. The letter included a statement, ". . . residential and small commercial customers who fail to pay for generation service provided by an electric generation supplier and billed by Met-Ed may have their service terminated." I.D. at 15; Tr. 27, citing Chailla Exhibit 1.

In testimony, MetEd's witness, Ms. Parker, identified the contents and bases of the MetEd bills submitted to the Complainant as part of the consolidated billing process. Through the testimony of MetEd witness, Ms. Arnold, it was established that Choice Energy and Ms. Chailla participated in consolidated billing. Under the consolidated billing process, MetEd, as EDC, provides the customer with one bill for EGS and non-EGS service. With an EGS that employs a consolidated billing option, MetEd sends kwh usage data to Choice Energy who calculates the charges based on the consumption data and then sends that calculation back to MetEd to be placed on the bill. Tr. 102-104.

Through the testimony of Ms. Parker, it was further established that the notification to "drop" the Choice Energy EGS service was effectuated by MetEd for the Service Address within the time as provided for in Commission Regulations. Also, bills rendered to Ms. Chailla after the EDC received notice that she wanted service from Choice Energy terminated, reflected the residual balance owed by the Complainant to Choice Energy. The bills identified the amount as a prior balance owed to Choice Energy. The amounts that were included in bills submitted after the termination of the

relationship between the Complainant and Choice Energy as a result of the 'early cancellation' terms of the Choice Energy agreement continued to appear on MetEd bills as were the Complainant's kWh usage for the period of time, albeit briefly, that she was a Choice Energy customer. *See* Tr. 131-132; MetEd Exh. #6.

On consideration of the position of the Complainant, the ALJ rejected the contention of Ms. Chailla that the language in the MetEd acknowledgment and confirmation letter constituted an improper threat to terminate her service. I.D. at 15. ALJ Coogan found that the language properly fell within MetEd's EGS Coordination Tariff, which tariff provision states, in pertinent part, that the EGS election confirmation letter must include notice that a customer's service may be terminated for failure to pay for generation service provided by an EGS and billed by the EDC. *Id*., citing MetEd Exhibit 9 at Section 5.3.1(c); Tr. 123-124. Rather than demonstrate a violation of law, the ALJ concluded that MetEd's January 14 confirmation letter demonstrated that MetEd was complying with the terms of its tariff.

b. Allegations that MetEd's Electronic and Paper Bills did not Match

Ms. Chailla also objected that the electronic and paper bills submitted by MetEd did not match. ALJ Coogan also rejected this claim. He observed that Commission Regulations require a customer to receive the same information in an electronic bill as a paper bill. I.D. at 15, citing 52 Pa. Code § 56.11. The evidence in support of Ms. Chailla's claim did not show that MetEd violated Commission Regulations in this area. The ALJ adopted the response of MetEd to the position of the Complainant. MetEd explained that certain e-mails proffered by the Complainant in support of this claim, Complainant's Exhibit 9, were not electronic statements but were

an e-mail summary of charges. An e-mail advised that the customer must follow a link to access the actual electronic statements. *Id*., citing Tr. 136.

c. Allegations of a Violation of the Code or Commission Regulations in Obtaining the Complainant's Telephone Number

Ms. Chailla, in reliance on 52 Pa. Code § 54.122 regarding consumer privacy and confidentiality, expressed concern as to how the Choice Energy sales agent obtained her telephone number to solicit her. Choice Energy explained that it received Ms. Chailla's phone number by using a list of numbers from a data company that does not include Do-Not-Call numbers. ALJ Coogan accepted the rebuttal position of Choice Energy and found that Ms. Chailla did not present evidence to support a finding that Choice Energy violated the Code, the Commission's Regulations, or an outstanding Order of the Commission in obtaining Ms. Chailla's phone number. I.D. at 16.

d. Allegations that Choice Energy Sales Agents Identified Themselves as Associated with MetEd

Related to the Complainant's privacy concerns, Ms. Chailla also alleged that the Choice Energy sales agent did not initially identify themselves as being with Choice Energy, but, identified themselves as being associated with MetEd, and then later identified themselves as being affiliated with Choice Energy. I.D. at 16, citing Tr. 40-41.

There was no record of the content of the conversation with the Choice Energy sales agent prior to the TPV call other than Ms. Chailla's recollection. I.D. at 16. Choice Energy disclaimed any affiliation with MetEd and stated that its agents are employed by an entity wholly owned by the owner of Choice Energy, but, are advised to never identify themselves as being affiliated with a utility in any way. *Id*., citing Tr. 85, 88. Ms. Chailla's position on this issue was rejected. *Id*. ; Finding of Fact No. 26.

C. Complainant's Exceptions

The Complainant has filed six Exceptions to the Initial Decision.[10] We shall, to the fullest extent as able, consider the Exceptions of the Complainant which Exceptions include sub-issues and arguments.

1. Pro Se Complainant

As noted, after the time for the filing of Exceptions, Ms. Chailla submitted a document styled, "EXCEPTIONS – REVISIONS – TO INITIAL DECISION Before John M. Coogan, ALJ." The submittal was received November 29, 2021. Pursuant to Commission Regulations and administrative precedent, the Commission engages in a liberal interpretation of our Rules of Practice in recognition of participants appearing before this agency, *pro se*. *See Lawrence Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984 (Order entered July 16, 2020); 2020 WL 4207498 (Pa. P.U.C.) (*Jones v. PGW*), citing 52 Pa. Code § 1.2(a).[11]

Also, the Commission is not bound by a party's styling or characterization of a pleading. The Commission may review the pleading to ascertain its substance. *See, generally, Sentner v. Bell*, Docket No. F-00161106 (Order entered October 25, 1993); *also*, *June 11 Order*, citing *Pa. PUC v. Duquesne Light Company*, Docket No. R-2018-3000124 (Order entered June 14, 2018).

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[10] One Exception, topic heading "Threat to Terminate Language . . ." is given a duplicate Roman Numeral identification of "III."

[11] This Commission Regulation states, in pertinent part: "[t]his subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."

Commission Regulations and long-standing Commission administrative precedent are implemented for the policy objective of affording parties, particularly complainants who appear *pro se*, the opportunity to provide this agency with the necessary facts, evidence, and information to make a record on which we may comprehensively review and fairly decide matters coming before us. *Jones v. PGW*; *see also Richard Carlock v. United Telephone Co*., 82 Pa. P.U.C. 68, 79 (1994) (*Carlock*); and *Sheri Horinka v. Pennsylvania Power Company*, Docket No. C-2017-2582842 (Order entered August 4, 2017); 2017 WL 3872519 (Pa. P.U.C.), discussing, *inter alia*, policy considerations of *Carlock* as clarified in *Wroblewski v. Pennsylvania Electric Company*, Docket No. C-2008-2058385 (Order entered May 15, 2009) (*Wroblewski*).

Unrepresented participants in Commission proceedings are, pursuant to law, however, under the same requirements as trained attorneys in certain matters. *Jones v. PGW*, citing *Jones v. Rudenstein*, 585 A.2d 520 (Pa. Super. 1991), *appeal denied*, 529 Pa. 634, 600 A.2d 954 (1991), citing, *inter alia*, *Farretta v. California*, 422 U.S. 806, 834, n. 46, 95 S.Ct. 2525, 2540, n. 46, 45 L.Ed.2d 562, 581, n. 46 (1975) for the proposition that a *pro se* litigant is not absolved of all responsibility to comply with procedural rules and opponents and the courts do not have an affirmative duty to walk him through procedural requirements or to ignore procedural requirements in order to reach the merits of *pro se* litigant's claim.

On a liberal construction of pleadings, we shall consider the Exceptions of the Complainant and reach the merits of her objections to the Initial Decision's dismissal of her claims asserted in the Complaint. This is so, notwithstanding that the Exceptions

are not in conformity with the Commission's Rules of Practice and Procedure. 52 Pa. Code § 5.533.[12]

The November 29, 2021, submittal of the Complainant raises a different consideration, however. According to our Rules of Practice, Replies to Exceptions are permitted as a final pleading in response to the Exceptions of the parties. Pursuant to 52 Pa. Code § 5.535, a party has a right to file Replies to Exceptions:

> § 5.535. Replies. (a) A party has the right to file a reply to an exception in proceedings before the Commission. Unless otherwise directed by the presiding officer or Commission, a reply shall be filed within 10 days of the date that an exception is due and be limited to 25 pages in length and in paragraph form. A reply must be concise and incorporate by reference relevant passages in previously filed briefs. A reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception.

52 Pa. Code § 5.535(a); (emphasis added).

A party further has a right to seek leave to amend a submittal previously filed with the Commission to correct errors and/or misstatements for the benefit of the accuracy of the record. We find that the November 29, 2021, submittal of the Complainant neither replies to exceptions or contentions raised by the Respondent Parties[13] to this matter nor purports to correct or amend errors and/or misstatements in the

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[12] The courts have affirmed this discretionary authority under Section 1.2(a) of our rules to disregard an error or defect of procedure which does not affect the substantive rights of the parties in order to secure the just, speedy and inexpensive determination of every action. *See*, *In re Global NAPs, South, Inc.*, Docket No. A-310771(Order entered April 29, 1999), citing *Apollo Gas Co. v. Heilman*, Docket No. C-00924405 (Order entered March 10, 1994) and *AT&T Communications of Pa. v. Pa. PUC*, 568 A.2d 1362, 1364 (Pa. Cmwlth. 1990).

[13] MetEd and Choice Energy each filed letters advising that they would not file Exceptions to the Initial Decision.

Complainant's previously filed Exceptions. The discourse contained in the Complainant's November 29, 2021, submittal is embellishment of contentions and legal arguments in support of the claims prosecuted in her Complaint (with the exclusion of one section of the document that is minimal). The Respondent Parties have not filed responsive pleadings to the November 29, 2021, document as there is no provision in the Commission's Rules of Practice to do so, save for a motion to strike.

Based on the foregoing, we will not consider the November 29, 2021, submittal in our determinations. We find that consideration of the document would operate to adversely affect the substantive rights of Choice Energy and MetEd who are the Respondent Parties in this matter.

Additionally, for reasons substantially similar to our discussion regarding the November 29, 2021, submittal, we shall not consider a submittal tendered to the Commission dated April 26, 2022.

2. Exception No. 1 – Right to Make and Enforce Contracts [Enrollment with Choice Energy]

In the Complainant's Exception No. 1, Ms. Chailla styles the topic heading, "Right to Make and Enforce Contracts." Ms. Chailla cites 42 U.S.C. § 1981 as the basis for her position in support of her arguments in opposition to the recommendation of the Initial Decision to dismiss her Complaint. On review of the legal argument of the Complainant in this area[14], we are able to discern the gravamen of the Complainant's citation to 42 U.S.C. § 1981.

Ms. Chailla makes the legal argument that the process under which the ALJ, in reliance on Commission Regulations and the evidence of the Respondent Parties,

[14] Complainant Exceptions (Exc.), "Page 1 of 21 through Page 4 of 21."

concluded that she, electronically, or telephonically, entered into an enforceable agreement/contract for the EGS service of Choice Energy is constitutionally infirm. She takes the position, *inter alia*, that, without a "hard signature," traditionally associated with the formation of a contract, it is a violation of her constitutional rights to make, enforce, and terminate a contract, to find that she entered into a binding EGS service agreement with Choice Energy. *See, e.g.*, Exc. at 4.

The essential contention of the Complainant in Exception No. 1 may be illustrated by the following excerpt from her argument, reprinted below:

> If Pennsylvania residents are not required to acknowledge or sign contracts before being enrolled by a utility for service under the laws of this jurisdiction as Mr. Chueng [sic] testified, then Pennsylvania has taken away an individual customer's rights of choice. Here the choice to voluntarily make or enter contracts does not exist in Pennsylvania. Does Pennsylvania acknowledge or sign energy contracts for the individual consumers? If Mr. Chueng's [sic] testimony about Pennsylvania's energy contracts position is as testified by Mr. Chueng [sic], that law directly voids all individual rights had under 42 U.S.C.§1981 to (1) make, (2) terminate and (3) enforce contracts.

Exc. at 3.

Based on the position that her constitutional rights or rights secured pursuant to federal law, to enter into and to enforce a contract have been impaired by the process under which the Code and Commission Regulations were applied in this proceeding, Ms. Chailla concludes as follows:

> Parker Chailla's 42 U.S.C. §1981 rights exists [sic] to make, enforce and terminate contracts is her right of choice. This jurisdiction's state laws impairs and is contrary to her U. S. Constitutional rights had under the law. Pennsylvania laws represents a State action under color of state laws. They are

> in violation of her rights to terminate contracts, to make contracts and to amend contracts at her choice.

Exc. at 4.

Ms. Chailla does cite 52 Pa. Code §111.11(c),[15] as "especially" violative of her rights under 42 U.S.C. § 1981 since the parties [Ms. Chailla and Choice Energy] mutually agreed to rescind their contract on March 22, 2021. Exc. at 4; *see*, *also* Complainant's mention of 52 Pa. Code §111.7; and 52 Pa. Code § 1.141 at Exc., p. 2.

Based on the foregoing, the Complainant concludes this Exception with the contention that the Commission Regulations are in conflict with federal law and are, thereby, 'conflict preempted' under the Supremacy Clause of the United States Constitution. *Id*.

3. Exception No. 2 – Contracting Parties 'Mutually Assented' to Rescind[16]

In Exception No. 2, the Complainant cites caselaw from jurisdictions other than Pennsylvania to argue that, based on contract law principles, she and Choice Energy terminated the EGS contract, effective March 22, 2021. Notwithstanding the termination of the contract by the principals (Complainant and Choice Energy), the Complainant vigorously objects that she continued to be billed by MetEd on behalf of Choice Energy

[15] 52 Pa. Code § 111.11(c): "There shall be a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first class postage attached shall be received by the customer 3 days after it has been properly deposited in the United States mail. If delivered in-person, the disclosure will be considered received by the customer on the date of delivery. If delivered electronically, the disclosure will be considered received by the customer on the date it was transmitted electronically."

[16] Complainant Exceptions, "Page 4 of 21 through Page 8 of 21."

for an underlying indebtedness accrued under the contract for months after the mutual rescission.

It is the Complainant's position that on March 22, 2021, the EGS contract was rescinded by mutual assent of the contracting parties. Therefore, the Complainant asserts that, as a matter of law, the "principal-agent" relationship between Choice Energy and MetEd for any obligation incurred with Choice Energy should be considered resolved and, therefore, extinguished as of March 22, 2021. *See* Exc. at page 6 of 21.

In this Exception, the Complainant further expresses umbrage at the continued reflection on her monthly bill from MetEd of an amount associated with the EGS contract (the early cancellation fee) with Choice Energy. Ms. Chailla notes that Choice Energy representatives stated that the applicable early service termination fee had been "waived." As noted, despite the waiver of this fee by Choice Energy, the amount of the fee continued to appear on the MetEd bills submitted afterward. Ms. Chailla finds this objectionable and alleges that the continued reflection of the waived cancellation fee constituted harassment on the part of MetEd. Exc. at 7. Ms. Chailla attacks the Commission Regulation at 52 Pa. Code § 56.140, and Section 1303 of the Code, 66 Pa. C.S. § 1303, to complain that these provisions are, in some way, an unlawful abridgment of her rights to contract. These provisions are argued to abridge the right of Ms. Chailla to contract, to the extent the actions of MetEd, in placing the amount of the waived early cancellation fee on her bill, was authorized pursuant to the authority of these statutes and regulations. *See* Complainant Exc. at 6-7:

> Even more so, why has the PAPUC allowed Met-Ed to continue billing the Chaillas when it also knew the account was closed 2/3/21 and since Choice Energy confirmed the cancellation occurred on March 22, 2021. To a reasonable prudent person, it appeared as if PAPUC promoted unabated harassment through incorrect billing tactics of Met-Ed.

In conclusion of this Exception, Ms. Chailla extensively references and makes legal argument concerning the "agency/principal" relationship under law. Her position is that, *inter alia*, since the Parties, of which she and Choice Energy were principals, mutually agreed to cancel the contract and waive the early cancellation fee, it was improper for MetEd to continue in its role as an "agent" for Choice Energy regarding the debt amount (waived early cancellation fee) after March 22, 2021.

4. Exception No. 3 – Difference Between Electronic and Paper Bills

In her third Exception, Ms. Chailla asserts that the electronic bills and paper bills issued by MetEd are different. The Complainant notes that the paper bill is clearer, more detailed and understandable than the electronic bill. Ms. Chailla asserts that the paper bill has 11 captioned itemized parts. In contrast, the Complainant argues that the electronic bill is cursory, unclear, non-detailed and fails to provide understood information, having only four captioned, similar itemized parts for that version.

In support of her allegations, Ms. Chailla attached to her Exceptions an "Exhibit B" and "Exhibit C." Exhibit B, purportedly, are copies of paper bills and electronic bills of MetEd. These documents are submitted in order to show the distinctions between the two. *See* Exc. at 8; *also* note 2, citing 52 Pa. Code § 56.15 – "Billing information." Ms. Chailla also attached to her Exceptions an "Exhibit C," which is a bill [summary] from MetEd dated April 26, 2021, with a due date for payment of May 17, 2021, that is juxtaposed with an electronic bill [or electronic bill summary]. We note that the document has typed on it, typed text in further argument of Ms. Chailla to support her objection that the electronic and paper bills were different. This is in continuation of her position that the payment bill provides more clarity and detail.

5. Exception No. 4 – Threat to Terminate Language Was Made by MetEd

In her Exception No. 4, Ms. Chailla asserts that MetEd threatened to terminate her residential services in its January 14, 2021, acknowledgement letter. Exc. at 8-9. The Complainant cites legal decisions from jurisdictions other than Pennsylvania to argue that the language contained in an attached, "Exhibit C," attached to her Exceptions, constitutes a threat under her interpretation of the law.

6. Exception No. 5 – Enrollment - Dis-Enrollment with Choice Energy

The fifth Exception of Ms. Chailla contains at least, two, specific, objections to the Initial Decision.[17] In the first objection, Ms. Chailla attacks the probative evidentiary value of the TPV evidence validating her enrollment solicitation and consent to enroll with Choice Energy. Ms. Chailla concedes that the transcript of the recording: (1) confirms her contact on January 5, 2021, with the Choice Energy sales agent prior to confirming her enrollment with the EGS. This telephone contact was corroborated by the TPV (Choice Energy Exh. #2); and (2) that the recording indicates a three-day cancellation period was stated in the voice recording. Exc. at 9.

Notwithstanding the evidence of the TPV, the Complainant objects and engages in pejorative speculation that, because neither MetEd nor Choice Energy introduced into the record the detailed conversation had between the Choice Energy sales agent and she that occurred on January 5, 2021, deception was committed by the Respondent Parties. Ms. Chailla adds that respective counsel, in some way, engaged in *ad hominem* attacks against her. Exc. at 9. Ms. Chailla argues, essentially, that the Respondent Parties' exhibits are not complete as they do not contain the entirety of the conversation between the sales agent and the Complainant that preceded the TPV. This

[17] Complainant Exceptions, "Page 9 of 21 through Page 12 of 21."

fact, according to the Complainant's position, explains the discrepancy between her recollection as she has testified to under oath, that a ten-day period cancellation period was discussed rather than a three-day period. *Id*. The Complainant stands on her testimony that the sales agent and/or representative of Choice Energy represented to her in a telephone call prior to the resulting TPV, that a ten-day period for cancellation of the EGS enrollment contract would be given. Exc. at 9-10. The Complainant concludes her argument in her first objection with statements that we find repetitive of her prior arguments concerning enrollment. *Id*.

In the second prong of Exception No. 5, the Complainant argues against the presumption (rebuttable) of the delivery of mail addressed to the addressee with proper postage. In this objection, Ms. Chailla, *inter alia*, discusses statistics of the USPS concerning the percentage of undelivered mail. Contrary to the rebuttable presumption of the regularity of mail delivery, Ms. Chailla argues that, irrespective of either a three-day or ten-day right of rescission, her right of rescission was prevented because she did not receive timely notice of the details of the EGS agreement within either a three or ten-day window for rescission. The Complainant states that the EGS contract/disclosure summary was not received until March 22, 2021. She goes on to state that the letter was sent by Mr. Mike Needham on behalf of Choice Energy. Ms. Chailla acknowledges that the letter contained a check in the amount of the cancellation fee.[18]

The Complainant concludes by taking the position that, "[w]ithout evidence of its actual delivery, that item was not delivered to the Chailla's and that position is still maintained." Exc. at 11.

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[18] The Complainant and her husband did not negotiate the Choice Energy check. The Complainant's position to refuse to cash the check is explained as follows: "We chose not to negotiate that check because it was not a 'refund', to call it such was an error on the part of Choice Energy. We choose not to deposit that check into our personal bank account or cash it at all since it was not a "refund" intended for us since we did not pay anything to warrant a 'refund.'" Complainant's Exc. at 16.

7. Exception No. 6 – National Do Not Call Registry

In Exception No. 6, the Complainant asserts that the landline telephone number called by the Choice Energy agent was registered on the "National Do Not Call Registry" as early as December 27, 2016. The Complainant attaches certain e-mail documents in support of her argument. Exc. at 16.

Since the Complainant's landline telephone was registered with the "National Do Not Call Registry" before Choice Energy's agent called on January 5, 2021, she argues that the call was in violation of their privacy under the applicable federal regulations (the observance of which are incorporated in Commission Regulations).

D. Replies to Exceptions

1. Choice Energy

Regarding the Complainant's Exceptions Nos. 1 and 2, Choice Energy replies that there was no violation of 42 U.S.C. § 1983 [sic – 42 U.S.C. § 1981], as the Commonwealth of Pennsylvania never deprived Ms. Chailla of any right under color of law.

Choice Energy further responds that the Complainant's discussions about "rescission" are misplaced. Choice Energy maintains that there was, in fact, an agreement with Ms. Chailla to provide EGS service. Choice Energy states that it offered to provide EGS service on specific terms, Ms. Chailla accepted this offer and received written confirmation. However, notes Choice Energy, the Complainant did not cancel the agreement during the statutory rescission period. Based on the failure to cancel during this period, Ms. Chailla terminated her enrollment, but was billed by her EDC, MetEd,

for the commodity charges provided by Choice Energy for the period in which she received EGS service. The Complainant was also billed the contractual early termination fee.

Choice Energy points out that, after being contacted by Ms. Chailla, it agreed to refund the early termination fee for purposes of customer goodwill. Choice Energy, consequently, sent a check to Ms. Chailla for $230.00. The Chaillas refused to deposit this remittance.

In reply to the other contentions of Ms. Chailla in her Exceptions, Choice Energy points out that the Complainant acknowledged that she verbally agreed/acknowledged the three-day rescission in statements recorded in the TPV. This is so, notwithstanding that, at hearing, Ms. Chailla testified regarding a prior conversation with a sales agent wherein she argues that the agent informed her of a ten-day right of rescission. Choice Energy opposes any rejection of the ALJ's recommendation in the Initial Decision and asserts that the Initial Decision should be adopted.

Choice Energy argues that we should also reject Ms. Chailla's demand in her Exceptions that counsel for Choice Energy provide support for the position that a physically signed contract is not required for enrollment with an EGS. Choice Energy cites 52 Pa. Code §111.7(b) and subparts (1) through (5), to advise that these provisions authorize such enrollment.

Choice Energy further replies that the arguments and references cited by the Complainant regarding the rebuttable presumption of the regularity of mail delivery support, rather than rebut, application of the presumption to the facts of this dispute.

The majority of Choice Energy's Replies to Exceptions are devoted to the allegations of Ms. Chailla that it violated the "Do Not Call" federal regulations. In

substantial part, Choice Energy attacks the veracity of the Complainant's representations and proffered documents concerning this allegation. Choice Energy, in strong language, alleges that the Complainant's statements in support of these claims are materially false. We reprint, in pertinent part, Choice Energy's response to the allegations that it violated the "Do Not Call Registry" federal regulations:

> Claimant here takes exception to the findings on page 15-16 of the Initial Decision regarding testimony from Choice about obtaining Claimant's telephone number from a list of numbers that were not on the national do-not-call list. Claimant states here—under oath and under penalty of perjury—that the number "xxx-xx-xxxx was registered on the National Do Not Call Registry as early as December 27, 2016." Claimant's support for this is the supposed email she received on December 27, 2016, indicating that she had completed the "First Step" in enrollment and that she needed to click the link below to complete the registration within 72 hours. (p.12). . . . As per Claimant's sworn statement, this was the confirmation she received after enrolling on December 27, 2016. . . . The Federal Trade Commission maintains a website portal whereby a telephone number can be checked to see if it is on the do-not-call list, and when it was enrolled. https://www.donotcall.gov/verify.html. The telephone number Plaintiff was registered with for the formal hearing was "xxx-xxx-xxxx." That telephone number was registered with the do-not-call list on December 28, 2016. (Verified Statement of John Coyle, Ex. A). . . . that was not the number called by Choice; it was (xxx) xxx-xxxx. . . . the telephone number (xxx) xxx-xxxx was enrolled in the Federal Trade Commission's do-not-call list on November 13, 2021---two days before she stated under oath that she had registered the number five years earlier. (Coyle Statement, Ex. B). . . . Accordingly, this exception must be denied.

Choice Energy R. Exc. at 4-6 (pagination supplied).

In conclusion, Choice Energy emphasizes that it provided a 'refund' of the early cancellation charges as an accommodation to the Complainant and in furtherance of customer good will.

2. MetEd

As a threshold consideration in its Replies to the Exceptions of the Complainant, MetEd moves that the Complainant's attached Exhibits "A" and "B" to the Exceptions should be stricken and not considered. MetEd points out that the opportunity to proffer exhibits was given to the Complainant prior to the hearing in this matter and the documents attached to the Exceptions were clearly available for their consideration and production at the time of the July 22, 2021, hearing. As no demonstration of the necessity to reopen the record for their consideration has been made, MetEd, in reliance on the standards of *Duick v. Pa. Gas & Water Co.*, 56 Pa. PUC 553, 558-559 (1983) (*Duick*,)[19] asserts that the Commission should not entertain the new evidence referenced in and attached to the Complainant's Exceptions. MetEd R. Exc. at 4-5.

MetEd responds to Ms. Chailla's Exceptions No. 1 and 2, together. MetEd states that the Complainant failed to articulate how 42 U.S.C. § 1983 [sic] is applicable to the present Complaint proceeding. MetEd adds, the Code specifically authorizes the Commission to supervise and regulate all public utilities doing business in Pennsylvania

[19] The standard that is consistently applied by the Commission for reviewing a petition for reconsideration, rehearing, and clarification following a final order is set forth in the Commission's Order entered in *Duick.* We also note that the Commission regulation at 52 Pa. Code § 5.571 allows a party to petition to reopen the record any time after the record is closed but before a final decision is issued. To be successful, a petition to reopen must allege material changes of fact or of law which occurred since the conclusion of the hearing. *See* 52 Pa. Code § 5.571(b) and (d); *also Trucco v. PPL Electric Utilities Corporation d/b/a PPL Utilities*, C-00004271, 2001 Pa. PUC LEXIS 104 (November 16, 2001).

and confers upon the Commission the power and authority to enforce its regulations. R. Exc. at 5, citing 66 Pa. C.S. § 501.

MetEd continues, the Code specifically sets forth the Company's obligations regarding the deregulated market for electric generation. R. Exc. at 5, citing 66 Pa. C.S. § 2807. Finally, MetEd advises that the Commission has promulgated regulations for the enrollment and de-enrollment of an account with a licensed EGS.

Based on the foregoing, MetEd replies that the Complainant has not offered any evidence that MetEd violated its obligations under the Code or Chapter 57 of the Commission Regulations, 52 Pa. Code § 57. *Id.* at 5-6.

In reply to the contention raised in the Complainant's Exception No. 3, relating to the consistency of paper vs. electronic bills, MetEd relies upon the discussion of the issue in the Initial Decision. R. Exc. at 6, quoting I.D. at 15. MetEd argues that the discussion is conclusive on the merits of the Complainant's allegation. Therefore, the Complainant offered nothing more than her opinion which ignores the fact that the email, like the envelope for the paper bill, is the vehicle to deliver the electronic bill. *Id*.

In reply to the Complainant's contention that a threat of termination of service was made in the Complainant's Exception No. 4, MetEd asserts that this argument should be rejected, out of hand. MetEd notes that 52 Pa. Code § 56.91 specifically sets forth the provisions and contents of a valid termination notice. The sentence found objectionable by the Complainant in its acknowledgement letter that is cited in support of the Complainant's position that she was subjected to threatened termination of service, is not a threat of termination. Based on the language in the acknowledgement letter, MetEd holds that the ALJ's Findings of Fact and Conclusions of Law on this issue should be adopted without modification.

E. Disposition

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

1. Commission Jurisdiction Over Ms. Chailla's Claims

The Complainant's Exceptions are legibly typed and well-presented in the articulation of the topics raised. However, as a preface to our disposition on the merits, we are compelled to advise the Complainant that the Commission is an independent administrative agency that is statutorily enabled to administer the Code, 66 Pa. C.S. §§ 101, *et seq*., and other statutes that provide express or necessarily implied authority that we may exercise under the Code.

In short, the Commission is a creature of statute. As a creature of statute, this simply means that we only have those powers which are expressly conferred by the legislature or those powers which arise by necessary implication from powers expressly conferred by our enabling legislation. *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977), *Rogoff v. Buncher Co*., 395 Pa. 477, 151 A.2d 83 (1959); *also Rovin v. Pa. PUC*, 502 A.2d 785 (Pa. Cmwlth. 1986); *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A. 2d 72 (Pa. Cmwlth. 1995); *Triple Crown Corp. v. Pa. PUC*, 94 Pa. PUC 300 (2000). The Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

In various sections of the Exceptions, Ms. Chailla appears to base her arguments for relief on federal statutes. In other areas, Ms. Chailla sets forth caselaw citations and/or court holdings from jurisdictions other than Pennsylvania. Specifically, the Complainant cites 42 U.S.C. § 1981 (Exc. at 1-4) in making argument regarding impairment of contracts; contract law interpretation (Exc. at 4-7);[20] legal requirements of what constitutes a "threat" under law (Exc. at 8-9)[21]; and a violation of rights under the "Do Not Call Registry" federal regulations (Exc. at 12-15). The Complainant further alleges that Choice Energy and/or MetEd committed violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (CPL) and the federal "Do Not Call Registry" regulations.

The regulatory authority of the Commission over EGSs derives from Chapter 28 of the Code, 66 Pa. C.S. § 2809, and the Commission's Regulations promulgated under this authority. The Commission has addressed its jurisdiction over disputes between an enrolled EDC customer and an EGS provider in several orders. *See Commonwealth of Pa., et al. v. Blue Pilot Energy, LLC,* Docket No. C-2014-2427655 (Order entered December 11, 2014) (*Blue Pilot*); *Commonwealth of Pa., et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014) (*IDT*); *also Commonwealth of Pa., et al v. Respond Power LLC*, Docket No. C-2014-2427659 (Order entered April 9, 2015) (*Respond Pet. for Interlocutory Order*).[22]

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[20] The Complainant cites several court decisions in support of the proposition that parties to a contract may, by mutual assent, modify, waive, or make new terms. None of the case law citations are dispositions within any court in the jurisdiction of the Commonwealth of Pennsylvania. We note that 66 Pa. C.S. § 1303, pertaining to adherence to tariffs, is cited at page 6 of 21, n. 1.

[21] One Pennsylvania case is cited, *Cote v. Murphy, et al*, 159 Pa. 420, 28 A. 190 (1894).

[22] *See, also Use of Fixed-Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Order entered November 14, 2014) (*Pass-Through Order*).

In *Respond Pet. for Interlocutory Order*, the Commission considered and answered a material question which clarified the interrelationship of complaints against EGS suppliers when the complaints involve alleged violations of the CPL and applicable telemarketing regulations, *supra*. In our *Respond Pet. for Interlocutory Order*, we reasoned as follows:

> **Material Question #1 – Commission Authority and Jurisdiction Under the CPL and TRA**
>
> The OAG/OCA material question #1 is, as follows:
>
> > Does the Commission have authority and jurisdiction to determine whether a violation of the Unfair Trade Practices and Consumer Protection Law (CPL) and Telemarketer Registration Act (TRA) has occurred when considering whether the Commission's regulations – which require compliance with these laws – have been violated?
>
> Upon review and consideration, this question shall be answered in the negative. We agree, as we have held in *Blue Pilot*, with the reasoning and analysis of the presiding ALJs in the August 20 Order. *See Blue Pilot* at 16-18.
> Although we answer the material question in the negative and reject the exercise of direct Commission jurisdiction and authority pursuant to the CPL and the TRA, we agree with the conclusion of the presiding ALJs that the Commission has jurisdiction over alleged violations of our own Regulations, which jurisdiction includes determining whether the Commission's Regulations prohibiting deceptive and/or misleading conduct[10] and/or the Commission's telemarketing regulations[11] have been violated by an EGS. We conclude that the Commission can hear claims alleging fraudulent, deceptive, and/or misleading conduct brought against Respond under the Commission's Regulations and that the Commission can hear claims alleging improper verification of enrollment of residential customers, improper association of Respond with the EDC, and other allegations raised against

the Company under the Commission's telemarketing regulations.

[10/] The relevant regulations include 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.12(d)(1).

[11/] The relevant regulation is 52 Pa. Code § 111.10, which is applicable to residential customers only. This regulation requires EGSs to comply with the TRA, except for the registration requirement. Thus, as one example, EGSs are required under the Commission's telemarketing regulations to comply with the TRA provisions governing state/federal "Do Not Call" lists.

Respond Pet. for Interlocutory Order, at 24-25; (emphasis supplied).

Based on the foregoing, we decline the exercise of direct jurisdictional authority under the CPL and the TRA [Telemarketer Registration Act],[23] to the degree Ms. Chailla requests relief under those laws or regulations.[24] We will review the claims raised by Ms. Chailla, consistent with *Respond Pet. for Interlocutory Order*, *et al*, to

[23] *See* 52 Pa. Code § 111.10(4); "(4) Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express request to receive telephone solicitation calls. See section 5 of the act (73 P. S. § 2245), regarding unlawful acts and penalties. *See* the definition of ''Do Not Call list'' in Section 2 of the act (73 P. S. § 2242);" *also* 52 Pa. Code § 111.10(c); "(c) When an agent completes a transaction with a customer, the agent shall explain the supplier's verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement."

[24] The Commission does not have jurisdiction to enforce the Unfair Trade Practices and Consumer Protection Law. *Mid-Atlantic Power Supply Assoc. v. PECO Energy Co*., Docket No. P-00981615 (Order entered May 19, 1999).

determine whether the Complainant has established a violation of the Code, or Commission Regulations, by a preponderance of the evidence.

We finally observe that our authority over the Complainant's allegations of a violation of her rights to relief against Choice Energy are based on Commission Regulations which are, themselves, challenged by the Complainant as unlawful. Pennsylvania agencies, while not permitted to conclusively determine the scope of their jurisdiction, have the authority to make an initial determination as to the nature and extent of their jurisdiction and whether they have jurisdiction in a particular case. *See Apollo Gas Co. v. Heilman*, and citations. The allegations of the Complainant which suggest that we exercise jurisdiction and grant relief under federal laws and federal regulations will be declined. *See* 52 Pa. Code §§ 111.10- 111.14.

2. Exception No. 1 - Reference to 42 U.S.C. § 1981

In Exception No. 1, Ms. Chailla raises claims that the Commission's Regulations and the conduct that Choice Energy and MetEd engaged in pursuant to those regulations under the Competition Act are in conflict with her rights arising under federal law. The arguments of the Complainant, specifically those involving allegations of a violation of 42 U.S.C. § 1981, are misplaced in this proceeding. *See Jackson v. Metropolitan Edison Co.*, 348 F.Supp. 954 (M.D. Pa. 1972), *affirmed*, 483 F.2d 754 (3d Cir. 1973), *affirmed*, 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974) (*Jackson v. Metropolitan Edison*) for the proposition that privately owned utilities are not state actors for purposes of a constitutional analysis.[25]

[25] From our research, only one contrary conclusion has been reached under different factual circumstances by Pennsylvania courts. *See Barasch v. Pa. PUC*, 576 A.2d 79, 86-87 (Pa. Cmwlth. 1990), *affirmed* (statutory grounds) 605 A.2d 1198 (Pa. 1992), *i.e.*, "Caller ID" litigation.

We do not find merit in the position of the Complainant and shall deny her Exceptions and adopt the Initial Decision.

3. Exception No. 2 – Mutual Assent to Terminate Agreement

In this Exception Ms. Chailla makes an argument based on contractual principles, but fails to recognize the context in which both, MetEd and Choice Energy operate pursuant to the Competition Act. The Competition Act, in conjunction with the general supervisory authority of this Commission of Sections 501 and 508 of the Code, 66 Pa. C.S. §§ 501; 508, establish Commission jurisdiction and authority over the respective rights and obligations of the EGS and the EDC. Commission Regulations for the implementation of the statutory goals of the Competition Act are expressly authorized by the provisions of the Competition Act and the Code. *See Appollo v. Heilman*. We find that the actions of Choice Energy and MetEd were consistent with the authority of the Competition Act and Commission Regulations in their dealings with the Complainant. Based on the foregoing, we will deny this Exception.

4. Exception No. 3 – Paper vs. Electronic Bills

We, hereby, adopt the reasoning of presiding ALJ Coogan. We find that the arguments of the Complainant are based on summary or extracts of information provided in electronic form – for the convenience of the customer. The documents propounded by the Complainant do not demonstrates a lack of conformity with the electronic bill and paper bills. The Exception of Ms. Chailla is denied.

5. Exception No. 4 – Threats to Terminate Service

Concerning the allegations that the language in the MetEd acknowledgement letter that advised that the failure to pay EGS charges could,

potentially, result in a termination of service, constituted a threat, we shall deny this Exception.

The Complainant decided to "drop" or change her EGS provider and the MetEd letter acknowledged and confirmed this decision. We shall deny this Exception in primary reliance of our reasoning and considerations addressed in *Ronald P. Harper, Jr. v. PPL Electric Utilities Corporation*, Docket No. F-2014-2422449 (Initial Decision (ALJ Barnes) January 27, 2015) (*Harper v. PPL*); 2015 WL 664226 (Pa. P.U.C.) (Final Order March 12, 2015).

Harper v. PPL involved allegations of unreasonable service based on telephonic communications to an individual by utility representative. In this case, we observed that the key issue is whether the [telephonic] communications would have been offensive to a reasonable person, sufficient to constitute a violation of Section 1501 of the Code, 66 Pa. C.S. § 1501. *See Harper v. PPL*, citing *Pa. PUC v. Best Limousine Company, Inc., t/a Dave's Limousine Service*, A-00105095C9902 (Opinion and Order adopted July 13, 2000) (*Best Limousine*).[26]

In the present case of Ms. Chailla, we are sensitive to the subjective views she holds regarding the mention of a potential for service termination for non-payment of EGS charges to Choice Energy after her efforts to terminate the contractual relationship

[26] In the *Best Limousine* case, a racial slur was uttered by a driver of a limousine in the presence of a customer. The Commission found the act was done during the ordinary course of business for his employer, Best Limousine Company, Inc., and a reasonable listener would have been offended by the remark. Thus, the Commission found a violation of Section 1501 of the Code occurred and imposed a $250 civil penalty upon the employer.

with the company were frustrated, initially. Notwithstanding, the standard is an objective rather than subjective one. As noted in *Harper v. PPL*:

> An electric utility's "service" within this section is not limited to the distribution of electrical energy, but also includes any and all acts that relate to that function. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 578 A.2d 75, (Pa.Cmwlth. 1990). By "unreasonable service" the standard does not require perfect service to the individual subjective expectations of each and every customer. Rather, an objective "reasonable person" standard is inferred.

Harper v. PPL, I.D. at 18.

Under an objective, reasonable person standard, we do not agree with the Complainant that the language at issue constituted a threat and, hence, unreasonable service. The language was taken, almost verbatim, from Commission Regulations and the Company's tariff. Tr. 123-124. We shall deny the Exceptions of Ms. Chailla.

6. Exception No. 5 – Enrollment with Choice Energy

The objections of Ms. Chailla to the finding of ALJ Coogan, that she entered into a valid EGS agreement with Choice Energy will be denied.

ALJ Coogan noted that the record indicates that Ms. Chailla spoke to a Choice Energy sales agent on January 5, prior to confirming her enrollment for EGS service via the January 5 TPV call which was introduced into evidence. I.D. at 11, citing Choice Energy Exhibit 2; Tr. at 87-88. However, there is no recording, written transcript, or other record of the content of Ms. Chailla's call with the Choice Energy sales agent in contradiction to the TPV evidence. Although the Complainant unequivocally and emphatically testifies that a ten-day rescission period of time was represented to her by a Choice Energy sales agent, without corroboration, we are compelled to find that the

Respondent, Choice Energy, has provided sufficient evidence to meet its burden of going forward with the evidence on the issue. The Commission is the ultimate fact finder and, although we are free to resolve all matters involving the weight and credibility of the evidence, we resolve this issue in favor of Choice Energy and adopt the recommendation of the presiding ALJ.

Finally, the Complainant's position, essentially, that the ALJ's findings that she entered into a valid EGS agreement are in violation of federal or state law must be rejected. The contention of Ms. Chailla that the absence of a final, written document with her signature, somehow prevents the formation of a valid and binding agreement for enrollment for the services of Choice Energy as an EGS is incorrect as a matter of law. The use of electronic acknowledgment and verification for valid and enforceable agreements is, at present, common and established by statute. Under Pennsylvania law, electronic signatures are equivalent to written ones. *See* 73 P.S. § 2260.303(d); *also Schrock v. Nomac Drilling LLC*, 2016 WL 1181484, at *3 (W.D. Pa. Mar. 28, 2016).[27]

The Commission Regulations for validation of an agreement are consistent with state and federal laws in the area and provide essential consumer safeguards for the exercise of informed decisions and prevention of fraud. We shall deny the Exceptions of Ms. Chailla.

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[27] We would also note *Keller v. Pfizer, Inc*., Civil No. 1:17:CV-1883 (M.D. Pa. November 8, 2018); 2018 WL 5841865, *3: "Plaintiff's argument that she should not be bound by the arbitration agreement simply because she did not sign a physical paper contract is as archaic today as the notion that James Joyce is unlawfully obscene. *See, generally* 15 U.S.C. § 7001 *et seq*. (Effective October 1, 2000) ("Electronic Signatures in Global and National Commerce Act" or the "E-Sign Act"); 73 P.S. § 2260.101 *et seq.* (Effective January 18, 2000) ("Pennsylvania's Electronic Transactions Act" or "PAETA"); *Levy–Tatum v. Navient & Sallie Mae Bank*, No. 15-3794, 2016 WL 75231, *5-6 (E.D. Pa. Jan. 7, 2016) ("The E-Sign Act simply establishes that contracts and signatures cannot be denied legal effect merely because they are in electronic form.")."

7. Exception No. 6 – Violation of Do Not Call Regulations

We are persuaded by the Replies to Exceptions of Choice Energy that no violation of the federal, "Do Not Call Registry" regulations has been established by the Complainant. The Exceptions in this regard are, hereby, denied.

8. Clarification of I.D.

The volume of pleadings and overall length of this Complaint proceeding has been unduly enlarged when the essence of the Complainant's frustration and dissatisfaction with Choice Energy and MetEd boils down to a narrow issue. The issue which appears to be at the heart of Ms. Chailla's vigorous prosecution is the contention of Ms. Chailla that after she and her husband invoked their right to cancel the EGS contract with Choice Energy, albeit it is asserted that a ten-day period was anticipated but not established by the Complainant, a representative from Choice Energy reached out to the Chaillas. The Choice Energy representative, after contact with the Complainant, and in an exercise of good faith and mutual accord, advised the Chaillas that Choice Energy would retroactively "waive" an early cancellation fee.

Notwithstanding the resolution of this dispute between Ms. Chailla and Choice Energy, an amount representing an unpaid balance to Choice Energy continued to appear on the consolidated bills submitted by MetEd. The continued appearance of this unpaid balance included the cancellation fee. The submission of this amount on the monthly, consolidated bills issued by MetEd infuriated the Chaillas and has precipitated the harsh feelings against both, the EDC and the EGS in this case.

On review of the record in this matter, we find that the Complainant was presented with the opportunity to accept the gratuitous offer by the EGS, Choice Energy, to receive a sum equal to the early cancellation fee to which the EGS was contractually

entitled. Acceptance of this amount would have made the Complainant financially indifferent to the payment of the cancellation fee, *i.e.*, make her whole. Notwithstanding, as noted, Mr. and Mrs. Chailla refused to negotiate the Choice Energy check tendered in the amount of the cancellation fee. Based on the foregoing, we find that under *Patterson v. Bell*, the Complainant has not shown, under the facts of this Complaint, that either MetEd or Choice Energy are responsible or accountable for the problem.

We would note that MetEd has purchased the accounts receivable of Choice Energy for the Service Address account. We clarify certain statements of the presiding ALJ in the Initial Decision. The following reasoning of the presiding ALJ, although not determinative of the outcome of the Complaint in this proceeding, is to be clarified:

> Ms. Chailla also alleges that, through its communications or lack thereof, Met-Ed and Choice Energy violated 52 Pa. Code §§ 56.140-141, which generally govern customer disputes and inquiries. Tr. 28, 169-170. As an initial matter, these sections only apply to public utilities, and Choice Energy is not a public utility. *See* 52 Pa. Code § 56.2. Therefore, these allegations do not apply to Choice Energy. Further, I do not find that Ms. Chailla has established that Met-Ed violated either section.

I.D. at 14.

Relatedly, MetEd, in reliance on its tariff and in its response to the Complaint's dispute, took the position that it was necessary to refuse to reverse a bill reflecting the sum that had been waived as between the Complainant and Choice Energy. MetEd took this position with knowledge that Choice Energy did not seek compensation for this charge. It was noted that Choice Energy, as an EGS, properly submitted its charges for inclusion on a February 24th bill after being dropped by the Complainant. However, the record is that after Choice Energy was "dropped" as EGS provider, it no longer had access to the Complainant's account to either bill charges or to refund/credit

charges. MetEd, in reliance upon its Supplier Coordination provisions, further took the position that it was the action of Ms. Chailla in refusing to authorize payment to MetEd for the waived early cancellation fee that was the foundation of the dispute. *See* Tr. at 165. MetEd also justified its position based on its purchase of the accounts receivable for Choice Energy.

We clarify that the purchase of accounts receivable does not insulate EGS charges which are the subject of a good faith dispute, from the dispute resolution procedures of the Commission Regulations. *See* MetEd Exh. #9:

> 12.9 Purchase of EGS Receivables ("POR") Program. The Company will purchase the account receivables, associated with EGS sales of retail electricity supply comprised of electric energy, capacity, transmission and ancillary services. . . . To the extent the Company has to provide any consumer protections other than those provided for under Chapter 14 of the Public Utility Code and Chapters 55 and 56 of the Commission's regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq., the costs will be borne by the EGSs. . . .

MetEd Exh. #9; (emphasis supplied).

Subject to the above clarification, we find that the Respondent Parties acted within the scope of Commission Regulations in this matter.

One of the major policy goals of the Competition Act is to foster competitive choice in the retail access to electric generation. 66 Pa. C.S. § 2802(3). It is unfortunate that the experience of the Complainant has resulted in the contentious proceedings in this matter.

Conclusion

In order for the Commission to sustain a complaint, a public utility must be in violation of its duty under the Public Utility Code; 66 Pa. C.S. § 101, *et seq*., the Commission's Regulations; 52 Pa. Code § 1.1, *et seq*., or an Order of the Commission. Without such a violation by the public utility, the Commission does not have the authority to require any action by the public utility when acting on a customer's complaint. *See West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984).

Based upon our review of the record in this proceeding, we shall adopt the Initial Decision of Administrative Law Judge John M. Coogan, and deny the Exceptions of Ms. Chailla, consistent with the discussion in this Opinion and Order. We do not find that the Complainant has met her burden of proof to establish the viability of her claims by a preponderance of the evidence; **THEREFORE,**

IT IS ORDERED:

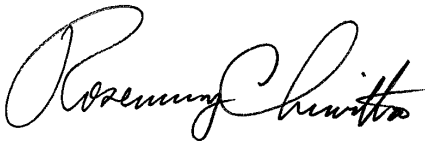
1. That the Exceptions filed by Florence R. Parker Chailla on November 15, 2021, to the Initial Decision of Administrative Law Judge John M. Coogan issued October 27, 2021, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on October 27, 2021, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaints filed by Florence R. Parker Chailla at Docket No. C-2021-3024417 is denied.

4. That the Secretary shall mark this proceeding closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 15, 2022
ORDER ENTERED: September 15, 2022