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

Lawrence Kingsley C-2020-3019763

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Lawrence Kingsley (Mr. Kingsley or Complainant) filed on July 5, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley, issued on June 15, 2022, in the above-captioned proceeding, which dismissed the Formal Complaint (Complaint) Mr. Kingsley filed against PPL Electric Utilities Corporation (PPL or Company) (collectively Parties) alleging improper vegetation management and billing. PPL filed Replies to Exceptions on July 15, 2022. For the reasons stated below, we deny the Complainant's Exceptions, adopt the ALJ's Initial Decision, and dismiss the Complaint, consistent with this Opinion and Order.

I. History of the Proceeding

On May 11, 2020, Mr. Kingsley filed a Complaint against PPL with the Commission. In paragraph 4 of the Complaint, Mr. Kingsley referred to a document labeled formal complaint that he attached to the Commission's standard formal complaint form (Attachment), in which Mr. Kingsley averred he was the homeowner at the address identified on the form and that "PPL contractors are overly aggressive in cutting trees deemed necessary to protect PPL wiring." Complaint, Attachment at 1. Mr. Kingsley further averred that his trees were "still stressed from the 'butchering' that they sustained the last time PPL, unannounced, undertook this work" and that PPL "habitually shirks its responsibility" to notify homeowners. *Id.*

Through further attachments to his Complaint, Mr. Kingsley noted that the last trimming occurred five years prior to 2019. *See* undated memorandum attached to the Complaint (Memorandum) and an April 25, 2019 informal complaint resolution letter from the Commission's Bureau of Consumer Services (BCS) at informal complaint case #3682784, both of which reference a 2019 informal complaint containing the same allegations of anticipated tree trimming and unannounced trimming five years prior.[1]

In his Complaint, Mr. Kingsley noted an "informal understanding" he reached with PPL that the Company would not conduct vegetation management on his property without notice to him. Complaint, Attachment at 1. Mr. Kingsley sought a ruling from the Commission "compelling PPL and its contractors to abstain from work on his property" unless he received notice with written verification from him thirty days

[1] In the BCS letter, the investigator reported that on February 28, 2019, Mr. Kingsley approached PPL's tree trimming contractor and inquired of planned trimming for his property. No trimming was done, and, as reported by BCS, none had been scheduled for his property. BCS also reported that based on its inquiries to PPL, the Company had notated Mr. Kingsley's account to assure that prior to any work being conducted, Mr. Kingsley would be notified and the trimming discussed.

in advance, and PPL agreed to the scope of the work, or, after a hearing before the Commission at which the Complainant could present photographs and expert testimony on the amount of work to be conducted, the Commission determined the amount of work that would be appropriate. Complaint, Attachment at 2. The Complainant also requested that PPL be held liable "under the threat of substantial sanctions for any violation of the conditions" he listed as well as damages and attorney fees from a court of law. *Id*.

On June 1, 2020, PPL filed an Answer to the Complaint (Answer). In response to paragraph 4 of the Complaint, PPL admitted, in part, and denied, in part, the Complainant's allegations. The Company admitted that it performs vegetation management but averred it does so in a reasonable fashion in order to provide ratepayers reliable and reasonable service. It denied any such service was unreasonable. PPL also specifically averred that it placed a notice on the Complainant's account to contact the Complainant prior to conducting any non-emergency vegetation management, but that it reserved the right to perform work consistent with its tariff. The Company denied it was obliged to obtain permission before conducting trimming of vegetation. Answer at ¶ 4.

On June 10, 2020, the Commission issued an interim order of the Chief Administrative Law Judge directing the Parties to attempt to resolve the matter themselves (Mediation Order). The Company was directed to contact the Complainant to establish a mutually convenient time for a settlement conference and to file a short report with a Commission mediator after it was held. The report was to identify the date of the conference, the participants, a statement whether the case was settled or further mediation was requested, and a statement of any partial issues resolved. If the case was not settled, it would proceed to hearing.

On October 5, 2020, Mr. Kingsley filed a document captioned "COMPLAINANT'S MEMORANDUM, DATED OCTOBER 5, 2020" (October 5, 2020 Memorandum). In this filing, the Complainant reiterated his

allegations against PPL with respect to tree trimming and also greatly expanded allegations of alleged PPL misdeeds affecting not only himself but others through alleged violations under both the state and federal law. Mr. Kingsley did this through what he characterized as allegations and argument of an alleged procedural violation by PPL because, as the Complainant argued, the Commission's "online file" did not contain evidence that PPL filed a mediation report per the Chief ALJ's Mediation Order.

On October 6, 2020, the Office of Administrative Law Judge (OALJ) issued a Telephonic Hearing Notice (Hearing Notice) establishing November 17, 2020, as the date for an initial call-in telephonic hearing. The Hearing Notice provided contact information for the ALJ, a toll-free call-in number for the hearing, and instructions on how to participate in the hearing, including information on how to request a continuance and the consequences of failing to appear. The Hearing Notice also contained a mandate, in bold type, that a copy of any document filed in the case also must be emailed to the Presiding Officer, who was the ALJ identified in the notice. On November 12, 2020, the OALJ issued a Cancellation Notice, cancelling the hearing scheduled for November 17, 2020.

Also on November 12, 2020, the ALJ issued an order per Section 5.483 of the Commission's Regulations, 52 Pa. Code § 5.483, authorizing presiding officers to regulate the course of a proceeding (November 12, 2020 Order).[2] In this Order, the ALJ addressed his concerns over the procedural posture of the case, starting with a summary of Mr. Kingsley's Complaint. Describing the relief that Mr. Kingsley had requested, that the Commission take action to enforce the informal agreement the Complainant alleged

[2] Section 5.483 provides that in discharging authority under the Public Utility Code, the presiding officer shall have authority that includes, but is not limited to, "the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding." 52 Pa. Code § 5.483. The November 12, 2020 Order would be the first of many such orders issued by the ALJ.

was made between himself and PPL regarding notice of future vegetation management, the ALJ questioned whether the Complaint had presented a justiciable issue and explained the difference between an actual violation and an anticipatory one. Specifically, the ALJ presented as an immediate question "whether the Complainant has presented an issue that can be adjudicated. Complainant's concerns, while sincere, are entirely anticipatory. The assertion that PPL plans to ignore the agreement that it reached with Complainant in mediation is Complainant's assertion, not a violation of the law." November 12, 2020 Order at 3. A violation must have occurred as the Commission is not a court of equity. The Commission "cannot modify that private agreement by imposing additional terms of compliance on either or both of the parties in anticipation of what might happen in the future." *Id.* (emphasis in original).

In the November 12, 2020 Order, the ALJ also expressed similar concerns following his review of Mr. Kingsley's October 5, 2020 Memorandum. The ALJ referred to Mr. Kingsley's allegation of a "procedural violation" by PPL in relation to the Chief ALJ's Mediation Order. The ALJ explained the import of the Mediation Order, noting that the "report" requested was of administrative value only. Acknowledging that the Complainant was proceeding *pro se*, the ALJ also provided instructions to assist him going forward. For example, the ALJ addressed the rule of hearsay evidence in an administrative proceeding, illustrating that many of Mr. Kingsley's allegations in his Complaint were based on hearsay and would not be admissible. November 12, 2020 Order at 4-5.

Finally, the ALJ addressed Mr. Kingsley's allegations related to service to others beyond himself, that Mr. Kingsley could only represent himself and not other persons or actions, the process that is due to parties from the Commission in an administrative hearing, and the scope of the Commission's jurisdiction, which did not include the ability to provide the injunctive relief Mr. Kingsley requested to address the Complainant's apprehensive anticipation of violations that had not occurred. Attempting

to define the scope of the proceeding around justiciable issues, the ALJ directed Mr. Kingsley to file an amended Complaint consistent with the discussion in the November 12, 2020 Order and provided PPL the opportunity to file an amended Answer. November 12, 2020 Order at 5-7.

On December 14, 2020, Mr. Kingsley filed an amended Formal Complaint. In this version, he added an allegation that PPL refused to adjust the billing at his address where there were two accounts, only one of which he contended he owed. Mr. Kingsley presented a calculation of $1,946.85, a proxy of PPL's alleged overcharge that he claimed should be refunded, which, with interest and penalties, he claimed would support a refund in excess of $2,000.00. December 14, 2020 amended Complaint at 3-4.[3] By Secretarial Letter dated December 15, 2020, the Commission served a copy of the amended Complaint on PPL.

On January 4, 2021, PPL filed its second Answer. In this document, the Company denied it withheld any document filed under the Chief ALJ's Mediation Order and affirmed that any updates it provided the mediator reporting on the status of settlement discussions had been provided to the Complainant. PPL also again denied Mr. Kingsley's averments regarding the Company's vegetation management, and it denied the Company had improperly billed or overcharged the Complainant or failed to

[3] The ALJ acknowledged that unless noted otherwise, his use of the term "Complaint" included all amended Complaints. I.D. at 8, n.6. Mr. Kingsley filed his first amended Complaint on December 14, 2020, a "corrected version" on January 5, 2021, and a further amended Complaint on June 10, 2021. Aside from Mr. Kingsley's addition of a count alleging a billing overcharge in the December 2020 amended version, the substance of all versions was substantially similar in all material ways. PPL filed an additional Answer and New Matter on January 4, 2021, raising waiver, estoppel, and the statute of limitations, and an additional Answer to the Complainant's last amended Complaint on June 30, 2021. PPL's Answers, as well, were substantially similar in all material ways. Following the ALJ's protocol for his references to "Complaint," unless context indicated otherwise, our use herein of "Complaint" and "Answer" is in its broadest sense and includes all versions of those pleadings.

properly retain records. In New Matter, PPL also raised the doctrines of waiver and estoppel and invoked the statute of limitations. January 4, 2021 Answer at 1-4.

As introduced by the ALJ in his recitation of the history of the proceeding in his Initial Decision, with the filing of the October 5, 2020 Memorandum, Mr. Kingsley "embarked on a series of filings and requests, none of which are allowed by the Commission's procedural regulations . . . to obtain a copy of the summary report" referenced in the Chief ALJ's Mediation Order, and continued to do so despite the ALJ's repeated assurances that the report was procedural only and had no substantive effect. I.D. at 2-3. For example, the ALJ described the October 5, 2020 Memorandum as "an extended recital of Complainant's personal opinion with respect to PPL, its management, and its operations. No responsive filing to this Memorandum was required of PPL, and none was filed." I.D. at 3.

At this juncture, we pause our recitation of the history of the proceeding. Our discussion of the Complainant's October 5, 2020 Memorandum and the ALJ's responsive November 12, 2020 Order is already more detailed than our typical recitation. However, this level of detail is provided because it foreshadowed the repetitive and time-consuming process that lay ahead and that the ALJ would revisit throughout the case.

As a foundation to our proceeding further, we acknowledge the ALJ's exercise of his authority under our Regulations to control the proceeding by issuing interim orders or otherwise providing directions to the Parties, largely responding to Mr. Kingsley's repeated filings. Those orders included, but were not limited to: (1) directing Mr. Kingsley to amend his Complaint in order to focus the scope of the proceeding on PPL's actual vegetation management on, and the Company's billing for services related to, Mr. Kingsley's property (I.D. at 3-6); (2) denying, over a several month period, multiple filings, some with recognizable if not necessarily properly deployed captions and others of a miscellaneous *sui generis* unauthorized name or nature

(I.D. 3, 5, 7), and (3) rejecting additional filings the ALJ deemed improvidently filed. I.D. at 8.[4]

Having established this foundation, for the remainder of the history of the proceeding we adopt as if set forth in full herein the procedural history presented by the ALJ in his Initial Decision at pages 2 through 8.[5]

The first telephonic evidentiary hearing in the case was held on July 20, 2021. Mr. Kingsley appeared *pro se* and presented his testimony and twelve exhibits. PPL was represented by counsel who presented the testimony of one witness, a forester, and two exhibits. The record was left open pending the Parties' conduct of additional discovery and a further hearing on the billing issue raised in the Complainant's amendment to his Complaint. I.D. at 6. A second telephonic evidentiary hearing was held on March 10, 2022. Mr. Kingsley again appeared *pro se* and testified on his own behalf. PPL was again represented by counsel who presented the testimony of one

[4] Examples of the ALJ's interim orders include the following: May 6, 2021 Order denying, *inter alia*, Complainant Motions to Compel, for Sanctions, and to Strike; May 6, 2021 Post-Hearing Order compelling the Complainant to file an amended complaint in order to frame a justiciable issue; May 27, 2021 Order, *inter alia*, denying the Complainant's renewed motion to strike that was denied in the May 6, 2021 Order; June 1, 2021 Order, *inter alia*, rescinding a part of the May 27, 2021 Order addressing the filing of an amended Complaint and expressing the ALJ's understanding of proceeding leniently with *pro se* complainants but stating "[t]here are, however, limits to this indulgence particularly when the rights of the other party or the orderly resolution of a case are substantially affected." (Emphasis in original.); June 30, 2021 Order striking impertinent matter regarding the Commission's internal operating policies, procedures, and personnel from the record; July 14, 2021 Order denying with prejudice Complainant's renewed motions to compel, to strike, and for sanctions rejecting with prejudice to refile motions previously denied; and July 14, 2021 Order denying the Complainant's preliminary objection to PPL's answer to the Complainant's amended complaint as a further appeal of the prior denial of the motions to compel, to strike, and for sanctions.

[5] A detailed history through the end of 2021 is also provided in the ALJ's Order entered January 28, 2022.

witness, a customer service representative, and entered into the record an additional four exhibits. I.D. at 7. The hearings generated a transcript comprising 210 pages. The record closed on April 6, 2022.

The Commission served the ALJ's Initial Decision on the Parties on June 15, 2022. In his Initial Decision, the ALJ made forty-one Findings of Fact (FOF) and reached eight Conclusions of Law (COL). I.D. at 9-13, 20-22. The ALJ dismissed the Complaint based on his finding that the Complainant failed to prove, by a preponderance of the evidence, that PPL violated any provision of the Public Utility Code, 66 Pa. C.S. §§ 101-3316 (Code) or the Commission's Regulations. I.D. at 1, 20-22.

Mr. Kingsley filed Exceptions (Exc.) on July 5, 2022. PPL filed Replies to Exceptions (Replies) on July 15, 2022.

II. Discussion

A. Legal Standards

1. The Burden of Proof

As the party seeking affirmative relief from the Commission, Section 332(a) of the Code provides that a complainant has the burden of proof. 66 Pa. C.S. § 332(a). As our Supreme Court most recently affirmed, "[a] customer seeking affirmative relief from the PUC must prove by a preponderance of the evidence that the named utility was responsible or accountable for the problem described in the complaint and that the offense was a violation of the Code, a PUC regulation or Order, or a violation of a PUC-approved tariff." *Povacz v. Pa. PUC*, No. 34 MAP 2021 (Pa. August 16, 2022), slip opinion at 36, *citing* 66 Pa. C.S. §§ 332(a), 701. *See also*

Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992) (*Lansberry*) (footnote omitted); *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

Before the Commission, the standard by which the burden of proof is satisfied is measured by the "preponderance of the evidence." *Suber v. Pennsylvania Com'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Lansberry*. To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or stated differently, to provide evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof comprises two distinct burdens: the burden of production and 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 must also carry the burden of persuasion to be entitled to a favorable ruling. *Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it 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 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*. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220 n.7, citing, *inter alia*, 66 Pa. C.S. § 335(a). Though the ultimate arbiter of the evidence, the Commission typically will not disturb an ALJ's evidentiary rulings or findings of fact unless it is determined to be an abuse of discretion or lacking substantial evidence. *Pa. PUC et al. v. Duquesne Light Company*, Docket No. R-2021-3024750 (Order entered December 16, 2021), *Baker v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3004294 (Order entered September 23, 2020).

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1983). 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

2. Adequate, Efficient, Safe and Reasonable Electric Service and Vegetation Management

A public utility has a duty to maintain adequate, efficient, safe, and reasonable service and facilities and to make changes, alterations, and substitutions that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part, as follows:

> **§ 1501. Character of service and facilities**
>
> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

Under the Code, upon finding that the service or facilities of a public utility are "unreasonable, unsafe, inadequate, insufficient" or otherwise in violation of the Code,

the Commission shall "determine and prescribe . . . the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public." 66 Pa. C.S. § 1505.

Vegetation management is a public utility service subject to Section 1501 of the Code. *West Penn Power Co. v. Pa PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990) (*West Penn I*).

> [P]ublic utility service embraces vegetation management. The [Commission] has full authority to enforce the provisions of the [Code]. Certain acts, done while rendering utility service, fall within the ambit of the [Commission's] jurisdiction under [Section 1501 of the Code] over character of utility service. In particular, vegetation management activities by an electric utility fall within the [Code's] definition of service in [Section 102 of the Code,] 66 Pa.C.S. § 102. Utility service "is not confined to the distribution of electrical energy, but includes 'any and all acts' related to that function." [*West Penn I*, 578 A.2d at 77] (citing 66 Pa.C.S. § 102).

PECO Energy Co. v. Twp. of Upper Dublin, 922 A.2d 966, 1004-05 (Pa. Cmwlth. 2007) (footnotes and other citations omitted). The Commission must find that there has been a violation of Section 1501 in order to sustain a service complaint. *West Penn Power Company v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984).

In enacting Chapter 28 of the Code, the Pennsylvania General Assembly declared electric service to be essential to the health and well-being of Pennsylvania residents, to public safety, and to orderly economic development. 66 Pa. C.S. § 2802(9). The General Assembly also declared that the reliability of electric service depends on the conscientious inspection and maintenance of utility systems and charged the Commission with developing and enforcing regulations for the inspection and maintenance of these

facilities. 66 Pa. C.S. § 2802(20). The Commission has promulgated these Regulations, which include review and approval of electric utility vegetation management plans prior to their implementation. 52 Pa. Code § 57.198(n). Utilities are obligated to manage the vegetation in property owners' rights of way (ROW) in a manner that ensures that electricity is delivered safely and reliably to the customers they serve. The failure to properly manage vegetation can result in loss of service or, on occasion, injury or death. While the Commission "respect[s] the concerns of property owners about how public utilities manage their ROWs, the Commission is obligated to ensure that electric service is safe, reliable, and available to customers." *Charles Evans Hunnell v. West Penn Power Company*, Docket No. C-2020-3020090 (Order entered May 19, 2022), slip opinion at 26.

3. Billing

Section 1509 of the Code and Chapter 56 of the Commission's Regulations provide the framework for, *inter alia*, electric utility billing standards. In establishing service standards, Section 56.1 of our Regulations, 52 Pa. Code § 56.1, is intended to assure "adequate provision of residential public utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service while eliminating opportunities for customers capable of paying to avoid the timely payment of" bills so that timely paying customers do not subsidize "other customers' delinquencies." Every privilege and duty under the regulations "imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement." *Id*. In addition, Section 56.16, 52 Pa. Code § 56.16, requires at least seven days' advance notice to the utility and a noncustomer occupant, of a customer's desire to vacate the premises or request service discontinuance. Absent notice, a customer remains responsible for the service.

B. The ALJ's Initial Decision

As stated, the ALJ made forty-one Findings of Fact and reached eight Conclusions of Law. 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.

In his Initial Decision the ALJ determined that Mr. Kingsley presented two issues for which he sought Commission relief. First, Mr. Kingsley requested that the Commission direct PPL to notify him before the Company conducted any vegetation management on the Lancaster residential property in question. As the ALJ found, Mr. Kingsley shared both this property and a New York City apartment with Ms. Linda Schoener until her passing in March 2015. I.D. at 9, 11; FOF Nos. 5, 24.

Second, Mr. Kingsley requested the Commission direct PPL to provide him a refund of approximately $1,986, which the Complainant had calculated as the amount he paid for PPL's electric service to the property following Ms. Schoener's death in March 2015, and to have the Commission direct PPL to rebill Ms. Schoener's estate for that service. As the ALJ also found, Mr. Kingsley was appointed administrator of Ms. Schoener's estate in September 2015, at which time he also became the owner of the property. I.D. at 9, 11-12; FOF Nos. 5, 26, 27, and 28.

As to Mr. Kingsley's first allegation, improper vegetation management, the ALJ addressed the Section 1501 quality of service standards in the Code that PPL is mandated to follow. These standards require utilities to provide service that is adequate, efficient, safe, and reasonable, not perfect. I.D. at 15. With respect to vegetation management in particular, the ALJ found that a utility's management of vegetation is intended to allow for the provision of safe and reliable electric service. I.D. at 10; FOF No. 10. The ALJ found that PPL's vegetation management policy was contained in

a manual, pertinent portions of which comprised PPL Exhibit (Exh.) 12. The ALJ found that the manual is provided to PPL's vegetation management contractors who are required to adhere to its provisions. The manual is designed to conduct vegetation management on a five-year cycle in order to maintain a fifteen-foot clearance between vegetation and distribution wires. PPL confirms compliance with the manual through on-site inspections. I.D. at 10-11; FOF Nos. 9, 12, 17, 18, and 21.

In reviewing Mr. Kingsley's claim against PPL's vegetation management practices on his property, the ALJ stated that on or around March 1, 2019, Mr. Kingsley inspected his property in Lancaster and found displaced or cut vegetation, which he attributed to PPL's vegetation management practices. Mr. Kingsley claimed that vegetation control occurred in or around April 2017 but on cross examination could be no more specific. I.D. at 15, citing Tr. at 36, 70-71.

The ALJ described Mr. Kingsley's evidence in support of his claim as consisting of "various pictures of vegetation, branches, overhead distribution clearances, and other fauna[, which did] not support a finding that PPL was in any way involved in the displacement of vegetation." I.D. at 15, citing, *inter alia*, Complainant Exhs. 1-12. Further elaborating on the Complainant's pictures, the ALJ found that they showed nothing more than pictures taken by the Complainant of "foliage and ground-fall" with no evidence that the detritus was caused by PPL. I.D. at 16. On this point, he found that Mr. Kingsley's allegation that PPL was responsible for the cuttings, which PPL denied, was "entirely speculative." Accordingly, the ALJ found Mr. Kingsley's evidence to have little evidentiary value. *Id*., citing Tr. at 51, 77-78.

As to PPL's obligation to notify the Complainant when it was going to undertake vegetation management on his property, the ALJ agreed with PPL that there was no such requirement in PPL's tariff, where internal vegetation management requirements are generally found. Nonetheless, the ALJ concluded that while notice

would come from PPL's vegetation contractor, no such notice was provided because PPL conducted no vegetation management on the Complainant's property in 2017. While vegetation management was being conducted in 2019, because Mr. Kingsley spoke to PPL's contractor at that time, no vegetation management occurred on his property in 2019. I.D. at 16, citing Tr. at 73-76, 91-92, 98, 117.

The ALJ also commented on the testimony of PPL's first witness, Tyler Marino, PPL's District Forester for the Lancaster area and the person responsible for vegetation management in the Lancaster area since 2019. The ALJ found Mr. Marino, who also reviewed Company records related to vegetation management of the Complainant's property in preparation for the hearing, a credible witness. I.D. at 16, citing Tr. at 100.

The ALJ next identified PPL's Exh. 7, an excerpt from a Deed Book that provided the Company the right to maintain vegetation on Mr. Kingsley's property, and Exh. 12, excerpts from the Company's vegetation manual. The ALJ acknowledged Mr. Marino's testimony that PPL Exh. 7 afforded the Company the right to "cut down, trim and remove and keep cut down and trimmed" all trees and brush in order to maintain a fifteen-foot clearance with the Company's wires. I.D. at 17. According to the ALJ, Mr. Marino testified that on review of the Complainant's pictures of the cut vegetation on his property, he saw no trimming in excess of the fifteen-foot clearance provided for, assuming for the sake of argument it was PPL that made the clippings. I.D. at 17, citing Tr. at 88, 95-96.

Again asserting his finding that Mr. Marino's testimony was credible, and, again concluding that Mr. Kingsley's evidence established no link between the cut vegetation shown in his photos and any action by or caused by PPL, the ALJ concluded that Mr. Kingsley's assertion that PPL mismanaged the vegetation on his property was no more than mere conjecture and his opinion. I.D. at 17. The ALJ found this insufficient

for the Complainant to carry his burden of proving PPL violated a provision of the Code or any Commission Regulation. For this reason, the ALJ dismissed the vegetation management count of Mr. Kingsley's Complaint. *Id*., citing Tr. at 91-92, 95-96, 98, 117.

The ALJ then turned his attention to Mr. Kingsley's billing complaint. The ALJ described this part of the Complaint as essentially contending that PPL incorrectly required him to pay the monthly service bill for the Lancaster residence for twenty-nine months following the death of Ms. Schoener, the original account holder and with whom Mr. Kingsley shared both that residence and an apartment in New York City. According to the ALJ, Mr. Kingsley calculated that he was due a refund of approximately $1,986 because PPL should rebill Ms. Schoener's estate for the amount he paid for service to the property after Ms. Schoener's death and before he was appointed administrator of the estate. I.D. at 18, citing Tr. at 57-58, 61, 69, 131.

In addition, the ALJ addressed that Mr. Kingsley sought the refund of a security deposit that the Complainant asserted was assessed on the account and that, in the ALJ's words, Mr. Kingsley "implied was required when [he] had his name placed on the service." *Id*., citing Tr. at 133-34. As to the security deposit, the ALJ identified the testimony from PPL service representative witness Kelly Bell, whom the ALJ also found credible. As described by the ALJ, during the hearing it was established that neither Mr. Kingsley nor Ms. Schoener was ever asked by PPL to provide a deposit. I.D. at 18. According to the ALJ, upon the establishment of that fact at the hearing, "the Complainant shifted his claim for refund of a deposit based on Complainant's unsupported assertion that prior owners of the property paid a security deposit in 1950." *Id*., citing Tr. at 145-46. The ALJ quoted Mr. Kingsley's testimony that it was Mr. Kingsley's expectation, belief, and deduction, that, having received the property from her mother, who had received it from her husband after he had passed, that a deposit would have been paid. I.D. at 19, citing Tr. at 146.

The ALJ found this issue troubling. According to the ALJ, this issue was raised for the first time on May 6, 2021, before the initial evidentiary hearing, when Mr. Kingsley inquired of PPL about a security deposit. Although advised by PPL at that time that any security deposit had been waived, Mr. Kingsley continued to argue for a refund. The ALJ concluded that "[a]s there is no evidence that a security deposit was ever assessed or paid, Complainant's request for its refund will be denied and his Complaint in this respect dismissed." I.D. at 19, citing Tr. at 159-60.

Finally, the ALJ addressed Mr. Kingsley's request for a refund of payments he made to PPL for continuing to provide electric service to the Lancaster property but that Mr. Kingsley now contends should be refunded to him and rebilled to Ms. Schoener's estate. On this issue, the ALJ again referred to the testimony of PPL's customer service witness, Ms. Bell, who testified to PPL Exhs. 13, 14, and 16, account activity statements for three periods of time. PPL Exh. 13 showed current account activity for service to the Lancaster property from March 16, 2018, to February 8, 2022, with the ALJ noting that although the bills were mailed to Mr. Kingsley in New York, the statement was for service at the Lancaster property. PPL Exh. 14 was a customer contact record for the account showing that the account was placed in Mr. Kingsley's name on August 24, 2017. PPL Exh. 16 showed historic account activity for the estate of Linda Schoener from October 2015 to August 2017, when the account was placed in Mr. Kingsley's name. I.D. at 19, citing Tr. at 152-53, 157-58.

The ALJ determined that the charges from when the estate was opened in October 2015 until August 2017, when the account was placed in the Complainant's name, totaled $1,011.68. More pertinent to his resolution, however, were two salient conclusions the ALJ reached based on Ms. Bell's testimony. First, PPL will accept payment for an account from any party. Thus, payment did not have to come from the estate. Second, although Mr. Kingsley was aware how the account was being billed, he

made no contact to PPL to terminate the account while it was in the estate's name. I.D. at 19, citing Tr. at 158.

On these grounds, the ALJ concluded that the Complainant's request for a refund of what he paid while the account was in the name of Ms. Schoener's estate was without basis. According to the ALJ, PPL was entitled to the payments it received, otherwise unpaid bills become a utility expense ultimately paid by other customers. I.D. at 19-20. This includes payments Mr. Kingsley made after Ms. Schoener's death but while Mr. Kingsley was the administrator of her estate and "while he was still using the electric service provided by PPL at the residence they had shared." *Id*. at 20. The ALJ dismissed the Complaint because Mr. Kingsley failed to prove with a preponderance of evidence that PPL violated any provision of the Code or any Commission Regulation.

C. Exceptions and Replies

Mr. Kingsley opens his Exceptions with the general statement that he believes the Initial Decision is not only "contrary to the evidence, but procured through egregious violations of PUC rules and standards of Pennsylvania jurisprudence." Exc. at 1. Mr. Kingsley then presents his Exceptions as a narrative, akin to a brief, commencing with a general section captioned "Nature of the Case."[6] Exc. at 2-6.

[6] Mr. Kingsley acknowledges Section 5.533 of the Commission's Regulations, which requires that "each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision." 52 Pa. Code § 5.533. However, Mr. Kingsley fails to identify any Findings of Fact, Conclusions of Law, or relevant page numbers of the Initial Decision to which exception is taken. Nonetheless, as the ALJ recognized, "[t]raditionally, the Commission has been hesitant to rule unfavorably against pro se litigants based on technical grounds. There are, however, limits to this indulgence particularly when the rights of the other party or the orderly resolution of a case are substantially affected." June 1, 2021 ALJ Order at 1 (compelling compliance with prior orders and the Commission's procedural Regulations) (emphasis in original) (citations omitted). Accordingly, we, as well, will consider and dispose of the Complainant's Exceptions as

In this section, Mr. Kingsley appears to restate or reargue most, if not all, claims or assertions he has made from the commencement of this proceeding. This includes reference to, or argument of, material beyond the scope of, or inadmissible in, the proceeding as addressed by the ALJ in his many interim orders, commencing with his November 12, 2020 Order. As this section of Mr. Kingsley's Exceptions is a summary only, and not a numbered Exception, we do not address it further. We do, however, incorporate by reference the ALJ's discussion and conclusions presented in his November 12, 2020 Order, specifically affirming that the Commission may only adjudicate actual violations that have occurred not those that may be anticipated to occur, Commission findings cannot be based on unsupported, uncorroborated hearsay, and Mr. Kingsley may only represent his interests and not those of others in his cause of action before the Commission.

Mr. Kingsley next presents numbered sections with the following captions to which PPL responds. Mr. Kingsley's Exceptions and PPL's Replies are repeated seriatim.

1. Mr. Kingsley's Exception No. 1

> (1) There is a stunning lack of evidence for the judgment in question. Under Pennsylvania jurisprudence, in comparison, all assertions in the complaint are taken as true unless the defendant can come forward with clear and convincing evidence to the contrary. PPL has not done so. Exc. at 6-8.

In this Section, Mr. Kingsley cites multiple cases for the general premise that a plaintiff's, or complainant's, averments of facts are to be accepted as true unless otherwise contradicted. With this legal premise as his beginning point, Mr. Kingsley

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filed in order to secure a just, speedy, and inexpensive determination in this proceeding. *See* 52 Pa. Code § 1.2(a), (d).

argues that PPL was "unable to offer any credible evidence in support of its defense[.]" Kingsley Exc. at 6. Mr. Kingsley contends that the Company was unable to offer credible evidence because it presented "no photographs, no affidavits, and no depositions[,]" and none of the Company's witnesses had firsthand knowledge of disputed facts. Accordingly, Mr. Kingsley concludes that PPL violated Sections 1501 and 1502 of the Code, and Section 56.1 of the Commission's Regulations. Kingsley Exc. at 6-7. Mr. Kingsley also disputes PPL's right-of-way over his property to trim vegetation, claiming that "[t]he document which PPL pretends to grant a right-of-way on this property (Exhibit 1) pertains to the township of Martic Forge, which is nowhere near the complainant's property" and lacks a property owner's signature. Kingsley Exc. at 8.

In reply, PPL asserts that the ALJ correctly found that Mr. Kingsley failed to produce any evidence to support his claim that PPL had committed any violation of the Code or Commission Regulations. PPL contends that Mr. Kingsley's evidence consisted solely of "bare assertions that PPL Electric had trimmed or removed vegetation from his property at any time, much less in 2017, a year which PPL Electric specifically denied performing any vegetation trimming at the property." PPL Replies at 2. PPL also contends that the Company proved it performed no work at the property in 2019, when a trimming contractor left at the Complainant's request without performing any work. *Id*.

In this section of its Replies, PPL also contends that Mr. Kingsley failed to establish that PPL must refund him for services provided and that he paid for and that the Company must rebill the estate of Ms. Schoener, Mr. Kingsley's deceased fiancée, for those charges. PPL argues that Mr. Kingsley acknowledges in his Exceptions that he was not required to pay the bill and could have allowed service to the property to be terminated but chose not to do so. PPL Replies at 2-3. PPL asserts that Mr. Kingsley's argument appears to place the burden of disproving the Complainant's claims on PPL, which is inconsistent with the law. Rather, Mr. Kingsley, as the Complainant, had the burden of proving his claims, and he failed to do so. PPL Replies at 3.

2. Mr. Kingsley's Exception No. 2

> (2) At the July 20, 2021 hearing PPL similarly had no credible evidence from its lone witness and top manager for vegetation management, Tyler Marino. Exc. at 8-9.

In this Exception, Mr. Kingsley argues that the testimony of Mr. Marino presented by PPL was not credible because: (1) Mr. Marino was not employed by PPL at the time Mr. Kingsley asserts PPL "attacked" his trees, therefore he lacked personal knowledge of the disputed facts; (2) PPL's computer system for tracking vegetation management was not installed at that time, therefore Mr. Marino could not say when the work occurred or whether it complied with PPL's vegetation management policy; (3) there was no record if Mr. Kingsley was notified of the intended work and PPL conducts no customer follow up to confirm notice was given; and (4) PPL has no records whether contractors adhere to PPL's tree trimming guidelines. Exc. at 8-9, citing Tr. at 100, 107, 108, 98, 105, 103, 104.

In reply, PPL contends that the Complainant's opinion as to a witness' credibility is irrelevant. More importantly, PPL contends, it is the Complainant's burden, not PPL's, to support his claim with sufficient evidence. To this point, the ALJ found Mr. Marino's testimony credible that Mr. Kingsley's photographic exhibits failed to show trimming beyond the fifteen foot clearance, and PPL conducted no vegetation management on Mr. Kingsley's property in 2017. PPL argues that determinations regarding credibility of witness testimony is within the ALJ's discretion, and Mr. Kingsley fails to present any reason to disregard Mr. Marino's testimony. PPL Replies at 3, citing Tr. at 91-92, 95-96, 98, 117.

3. Mr. Kingsley's Exception No. 3

(3) There was similar lack of evidence in the bifurcated part of the case about billing. Exc. at 9-10.

In this Exception, Mr. Kingsley contends that PPL "forced him to pay personally on behalf of the former account holder, his deceased fiancée[,]" despite that, as the Administrator of her estate, he had no personal liability to do so. Kingsley Exc. at 9. Mr. Kingsley contends he was residing in New York until the end of January 2020, and PPL "would not wait" and "threatened to leave the house without power during the dead of winter" unless he paid the bills. *Id*. Understanding that the property required power to remain properly maintained, Mr. Kingsley asserts he paid the bills, and PPL has refused to rebill the estate and await collection from the Surrogate's Court in New York. Mr. Kingsley accuses PPL of purging records for twenty-two of the twenty-nine months in dispute and refusing to accept an estimate of his billing based on past usage. He asserts that PPL's partial records show he paid $1,011.60 from October 2015 to August 2017. Kingsley Exc. at 10, citing Tr. at 157, 158.

In reply, PPL again argues that as the Complainant, Mr. Kingsley misstates which party has the burden of presenting evidence to support his claims. Nonetheless, PPL again contends that Mr. Kingsley admits in his Exceptions that he voluntarily paid for the electric service to the property between the death of his fiancée and the transfer of service to his name in order to prevent termination. As PPL states, "[p]resumably, he did this because he had an interest in preserving the property and service thereto" since the Complainant subsequently moved into the property. PPL Replies at 3. PPL concludes that because Mr. Kingsley provided no evidence demonstrating that PPL was obliged to refund his voluntary payments, the ALJ properly dismissed this count of the Complaint.

4. Mr. Kingsley's Exception No. 4

> (4) PPL's witness at the second hearing, Kelly Bell, had no personal knowledge of the original account holder's security deposit, which PPL refused to refund. Exc. at 10-11.

Similar to his assertions about PPL witness Marino, in his fourth Exception Mr. Kingsley asserts that PPL's witness Bell lacked personal knowledge to testify to PPL's security deposit policies and records because she was not employed by PPL when the account for Ms. Schoener's property, then owned by her parents, was opened in 1956, and PPL does not have the records from that time. Because PPL cannot prove that current policy allowing for waiver of a security deposit was in place in 1956, "any ambiguity in this respect should not result in PPL's unjust enrichment – retention of the security deposit." Kingsley Exc. at 10. Mr. Kingsley claims that "PPL, however, has pocketed this amount along with payment for the 29 months of service billed to the deceased account holder. The court's failure to hold PPL to a minimum standard of probity was abuse of discretion." *Id*. at 10-11.

In its Replies, PPL responds that Mr. Kingsley "once again misstates the burdens imposed on each of the parties, and in a particularly egregious manner." PPL Replies at 4. PPL casts Mr. Kinglsey's complaint regarding the security deposit as the Complainant's insistence that he is intitled to a refund when the record clearly reflects none was ever paid, "least of all by Complainant." *Id*., citing Tr. at 160. PPL asserts that the entire basis for Mr. Kingsley's claim for a "phantom security deposit" is the Complainant's "pure speculation the prior purchasers of the house, the parents of Ms. Schoener, must have paid a security deposit in the 1950's when they commenced service to the house." *Id*., citing Tr. at 145-46. Because "unsubstantiated assumptions do not approach the realm of competent evidence," PPL concludes the ALJ properly dismissed this claim. *Id*.

Under the following Section of his Exceptions, captioned "Procedural Errors," Mr. Kingsley continues with additional enumerated contentions, switching from substantive challenges to PPL's evidence to his contentions that the ALJ "unfairly hamstrung the complainant in a number of ways[,]" Kingsley Exc. at 11. These Exceptions, and PPL Replies, are again set forth seriatum.

5. Mr. Kingsley's Exception Nos. 5(a) and 5(b)[7]

> (5)(a) The judge was unclear about filing requirements and arbitrarily rejected documents that were properly submitted to PUC. Kingsley Exc. at 11; and
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> (5)(b) Unreasonably, on July 6, 2021, Judge Buckley rejected the complainant's Preliminary Objections to PPL's Answer under mistaken impression that a copy had not been filed with PUC. Kingsley Exc. at 11-12.

In this Exception, Mr. Kingsley asserts that "[w]ithout telling the parties at first, the judge decided that documents duly filed with PUC were improperly filed unless also served on him at his personal email address." Kingsley Exc. at 11. Mr. Kingsley also complains that the ALJ unclearly referred to "exhibits" when he really meant pleadings and that the ALJ's rulings were "capricious and arbitrary" because, for example, he rejected Mr. Kingsley's "Trial Memorandum." *Id*.

Mr. Kingsley also excepts to the ALJ's rejection of a document captioned by the Complainant as "Preliminary Objections to PPL's Answer." Mr. Kingsley argues that contrary to the ALJ's apparent mistaken impression, the Complainant had correctly

[7] Mr. Kingsley's enumerated contentions contain two that are numbered "5." However, both address the ALJ's handling of some of Mr. Kingsley's filings, either his directions regarding, or his rejection of, documents. In turn, PPL responds to both arguments in its Reply No. 5. Accordingly, we have restructured Mr. Kingsley's Exception No. 5 into 5(a) and 5(b).

and timely filed the document under 56 [sic] Pa. Code § 5.101(e), and the document should have been allowed under this section or simply as a memorandum. Finally, Mr. Kingsley refers to an ALJ order dated July 14, 2021 as "rationaliz[ing] PPL's evasions and obfuscations as though PPL can do no wrong[, which] blinking of fault by PPL abdicates the court's duty to enforce Title 66 and hints at the bias seen elsewhere in this case." Kingsley Exc. at 12.

In reply to the assertions in Exception No. 5(a), PPL contends that as for Mr. Kingsley's "Trial Memorandum," the ALJ clearly and succinctly determined that the "memorandum" was neither requested nor permitted by the Commission's procedural rules and was no more than a recitation of the Complainant's argument. PPL Replies at 4, citing I.D. at 7. PPL further argues that Mr. Kingsley cites neither a rule permitting the filing nor a rule violated by the ALJ in rejecting it.

In reply to Exception No. 5(b) addressing Mr. Kingsley's "Preliminary Objections," PPL asserts that Mr. Kingsley "completely misstates the reason these 'objections' were disallowed." PPL asserts that the ALJ informed the Complainant by email of July 5, 2021 that the Preliminary Objections were not properly set forth, which Mr. Kingsley fails to refute by citing law or fact. PPL Replies at 4-5.

6. Mr. Kingsley's Exception No. 6

> (6) Judge Buckley allowed PPL to conduct *ex parte* communication [with] PUC. Kingsley Exc. at 12-13.

In this Exception, Mr. Kingsley asserts that following the unsuccessful mediation ordered by the Chief ALJ, PPL produced a report about the negotiations but refused to share it with the Complainant. Mr. Kingsley states, "[i]t likely tarnished him, and he should have been given an opportunity to reply to any calumny by PPL." Kingsley Exc. at 12. In this section, Mr. Kingsley also again asserts that the ALJ

misapprehended a facet of the case, in this instance the relationship between his 2019 informal complaint and this subsequent formal Complaint. According to Mr. Kingsley, in stating in his November 12, 2021 Order that Mr. Kingsley's efforts in this Complaint appeared to seek the Commission's unilateral modification of the agreement Mr. Kingsley achieved with PPL in mediation of the informal complaint process, namely to be notified in advance of future vegetation management to his property, the ALJ misapprehended the informal complaint. Mr. Kingsley asserts there was no mediation in the informal complaint process. *Id*. at 12-13.

PPL replies that this Exception lacks any validity. PPL asserts that Mr. Kingsley was advised multiple times by the ALJ that PPL did not possess any mediation report to or from the Chief ALJ, and even if there were one, it was not discoverable, citing the Initial Decision at 3 (any report would be internal, procedural not substantive, and not accessible). "For reasons unknown, Complainant has refused to accept this representation and continues to make demands for a report that PPL Electric never had and that was never produced." PPL Replies at 5.

7. Mr. Kingsley's Exception No. 7

> (7) Unreasonably, the judge allowed PPL to evade discovery three times. Kingsley Exc. at 13-14.

In his final Exception, Mr. Kingsley takes issue with the ALJ's discovery ruling in which he denied the Complainant's motions to compel answers because the motions lacked specificity necessary to direct a response from PPL. Presenting as examples eleven specific interrogatories and requests for documents, Mr. Kingsley asserts that the interrogatories were "sufficiently specific," and the documents sought to be compelled "simple." Kingsley Exc. at 13, 14. One example provided by Mr. Kingsley requested as follows: "If not included above, copies of all instructions or guidelines which PPL issued to contractors who conducted any work at the complainant's property

during the last ten years or whom PPL expects to conduct any work at this property in the future." *Id*. at 14.

PPL responds by calling this accusation false. PPL asserts that the ALJ allowed Mr. Kingsley to file a Motion to Compel discovery that the Complainant alleged had been improperly withheld, that Mr. Kingsley filed such a motion, and that PPL responded. PPL further responds that by Order dated January 28, 2022, the ALJ directed PPL to provide additional documentation to Mr. Kingsley, which the Company did. PPL also asserts that the ALJ also explained why Mr. Kingsley was not entitled to other information he sought. PPL contends that this Exception is based purely on Mr. Kingsley's personal feelings and opinions and should be dismissed as lacking merit. PPL Replies at 5.

The remainder of Mr. Kingsley's Exceptions appear under the heading "Conclusion," in which, in sum, Mr. Kingsley asserts the ALJ acted with bias against the Complainant and in favor of PPL. On those bases, Mr. Kingsley argues that the dismissal of his Complaint should be vacated and a new hearing with a new judge provided. Kingsley Exc. at 14-15. Finally, Mr. Kingsley appends to his Exceptions a document he labeled "EXHIBIT 1," purporting to be a "copy of [an] alleged right-of-way provided and paginated by PPL.

As Mr. Kingsley's conclusory comments are not presented as a separate numbered Exception, we will not address them further in our disposition. It is sufficient for us to note that recitation of the law "without proof of specific disqualifying acts, are tantamount to mere assertions" presenting insufficient grounds to remove an ALJ. *Mosso v. Peoples Natural Gas Co.*, 70 Pa. P.U.C. 146 (1989), 0089 WL 1646825 at 2. Further, "[t]o be disqualifying, personal bias must result in an opinion on the merits of a case not supported by the record." *Re Pennsylvania Gas and Water Company*, 1991 Pa. PUC LEXIS 155 at * 3-4 (citations omitted). As set forth below, we find the ALJ had ample

record support for his decision, and his adverse rulings, conclusions, opinions and findings are not grounds for a new hearing with a new judge nor are they evidence of bias. "Opinions are the culmination of a decision-maker's deliberative process. … [I]n order to insure that decision-makers are free to say whatever needs to be said and to conclude what needs to be concluded, opinions are not normally proper evidence in support of recusal." *Id.* at * 8 (citations omitted).

As for the attached "EXHIBIT 1" to his Exceptions, this document item is not identified as an exhibit duly offered and accepted into evidence in the proceeding, accordingly we will not consider it here. *See* 52 Pa. Code § 5.431 (after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion). However, as also discussed further below, we do consider PPL Exhibit No. 7, which bears similarity to Mr. Kingsley's "EXHIBIT 1."

D. Disposition

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); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

We address and dispose of Mr. Kinglsey's Exceptions by subject, correlating the Exceptions and Replies from the Parties' documents.

1. Mr. Kingsley's Exception Nos. 1, 2, 3, and 4 – The Parties Evidence and the Burden of Proof

In these Exceptions and Replies, the Parties address their evidence in the case and the burden of proof with respect to Mr. Kingsley's contention that PPL improperly conducted vegetation management on his property, that PPL did not prove its requisite right-of-way for vegetation management; that PPL improperly refuses to refund him the amounts he paid to maintain service at his property after the death of his fiancée, and that PPL improperly retained a security deposit he assumes was paid by the parents of his fiancée in the 1950's unless disproven.

In his first Exception, Mr. Kingsley sets forth a legal standard of review for his Complaint, contending that the facts set forth in his pleadings must be accepted as true unless shown otherwise, and he disputes the credibility and sufficiency of PPL's evidence as evaluated by the ALJ. PPL responds that in this proceeding, the burden of proving that PPL committed a violation of a statute, regulation, order or tariff under the Commission's jurisdiction and that the problem described in his pleadings was caused by PPL is squarely on Mr. Kingsley.

In this argument, Mr. Kingsley appears to recite the standards for accepting as true well-pleaded averments for purposes of preliminary disposition such as on a motion to dismiss, motion for summary judgment or judgment on the pleadings, or preliminary objections. *See, e.g.,* Kingsley Exc. at 6, and citation to *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (court must take as true allegations at the motion to dismiss stage).

Preliminary disposition can be obtained through preliminary objections, motions for summary judgment, or motions for judgment on the pleadings. 52 Pa Code §§ 5.101-5.103. Generally, for purposes of preliminary disposition, the adjudicating

body accepts as true all well-pleaded averments of the non-moving party. For example, preliminary objections seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt, and any doubt must be resolved in favor of the non-moving party. Similarly, a motion for judgment on the pleadings or for summary judgment will be granted if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law. Again, the record must be examined in the light most favorable to the nonmoving party, giving the nonmoving party the benefit of all reasonable inferences and resolving all doubts against the moving party. *Roberts v. The United Telephone Co. of Pennsylvania LLC d/b/a CenturyLink*, Docket No. C-2017-2632824 (Order entered June 28, 2018), slip opinion at 4-6.

The case before us is not presented on preliminary disposition. To the contrary, the Complaint of Mr. Kingsley has been fully litigated, with due process afforded through two separate hearings at which each Party was presented opportunities to present its own evidence and cross examine the evidence of the other. As to those justiciable issues raised by Mr. Kingsley, PPL is correct that Mr. Kingsley bore the burden of proving his allegations. As addressed in more detail below, the ALJ found PPL's evidence credible, sufficient, and more convincing than the evidence from Mr. Kingsley. Upon review of the record and PPL's Replies, we agree.

In his Exception Nos. 2-4, Mr. Kingsley challenges the sufficiency of PPL's evidence, both oral and documentary, provided to refute Mr. Kingsley's assertions regarding the Company's vegetation management, its billing, and its security deposit as they related to the Complainant's property. On these issues, we again agree with the ALJ's conclusion that Mr. Kingsley failed to carry his burden of proving his claims by a preponderance of the evidence.

On the issue of PPL's management of vegetation on Mr. Kingsley's property, we agree with the ALJ's determination that Mr. Kingsley's evidence has no probative value because he failed to provide any evidence correlating what is depicted in his pictures to any activity by PPL.

Mr. Kingsley's evidence consisted of his own testimony and his exhibits. His exhibits comprised pictures he took of his property and were described by the ALJ as pictures of aerial clearance of overhead distribution wires (Exhs. 1-3), a tree in water (Exh. 4), a truncated tree and an uprooted tree (Exhs. 5, 6), and pictures of branches on the ground (Exhs. 7-12). I.D. at 6. While the ALJ accepted that the pictures were taken by the Complainant of his property, the ALJ concluded that "all they show[ed was] foliage and ground-fall" with "no causal link" between what is depicted in the pictures and PPL's vegetation management. I.D. at 16. Thus, the ALJ discounted the pictures because while they showed displaced vegetation, they were insufficient to support a finding that PPL was the cause of that displaced vegetation. I.D. at 15-16. Mr. Kingsley presents no valid reason in his Exceptions why the ALJ's conclusion on this point is in error.

The remainder of Mr. Kingsley's evidence on this issue was his own testimony, which consisted solely of his own assertions, opinions, or innuendo. While Mr. Kingsley challenges Mr. Marino's testimony because he was not employed by PPL at the time the vegetation management is alleged to have occurred, this criticism is unavailing. Mr. Marino was presented and testified in his position as the District Forester for PPL's vegetation management in the Lancaster area since 2019. Mr. Marino testified to his knowledge of the Company's vegetation management activities based on his position and his review of applicable Company records and policies. Tr. at 101.

Mr. Kingsley, on the other hand, bases his Exception on this issue on innuendo. For example, pointing to Mr. Marino's testimony that PPL's current

computerized vegetation management program was not in place in 2017, "the time of the disputed work" according to Mr. Kingsley, (Exc. at 8, citing Tr. at 92), Mr. Kingsley concludes PPL's evidence was not credible because its witness could not tell when the work occurred. However, in this same exchange, Mr. Marino testified to the Company's prior record-keeping practices, asserting that "any previous documentation was things like the sheets that were kept on our [] cloud-share folders at that time. And there was nothing that references work on this [distribution] line in 2017." Tr. at 92. This supports PPL's position, and the ALJ's corresponding finding, that PPL had not only not conducted vegetation management on Mr. Kingsley's property in 2017 but also had not done any vegetation management there since at least the 2014-15 timeframe. I.D. at 10, FOF No. 15. This testimony from PPL's witness directly responds to Mr. Kingsley's unsupported assertions and further calls into question Mr. Kingsley's testimony that the vegetation damage he avers he discovered in March 2019 was caused by PPL in 2017. Without more, Mr. Kingsley failed to carry his burden of proving that PPL provided service in violation of Section 1501 in 2017.

On this same basis, that the Company's current software program was not in place in 2017, Mr. Kingsley also argues that PPL did not prove its vegetation management contractors provided notice or adhered to Company guidelines as required. Kingsley Exc. at 8, citing Tr. at 108. However, to accept Mr. Kingsley's negative inference that absent current software records the Company cannot prove it did not conduct vegetation management on his property in 2017 ignores the scope of proper testimony provided by Mr. Marino on the subject.

Mr. Marino testified that notice is required; the Company provides a vegetation management manual with specifications to the contractors who perform the work (PPL Exh. 12); the contractors are contractually obligated to read the specifications and retain the manual on their trucks; the contractors are expected to conform their work to the specifications; and the Company performs visual inspections and crew audits of the

work (Tr. at 91-107). *See also* I.D. at 15. Mr. Kingsley's deductions that because Mr. Marino had no "personal knowledge of the disputed facts," despite Mr. Marino's personal knowledge by virtue of his employment with PPL of the Company's policies, guidelines, records, and operations, does not negate the effect of the Company's evidence. To require otherwise would distort the obligation on the Party with the burden of proof, Mr. Kingsley.

Finally, we note that Mr. Kingsley himself could not provide any evidence to support his assertion that PPL conducted improper vegetation management on his property in 2017, despite the ALJ's flagging this issue at the prehearing conference (Tr. at 18-20) and addressing it in his post-hearing instructions. As the ALJ memorialized, the "Complainant is to determine as accurately as possible the date of that action [vegetation management] by PPL and is to include the same in his further amended Complaint along with the details of that action." May 6, 2021 Post-hearing Order at 3.

Reduced to its essence, Mr. Kingsley's argument is that because PPL failed to disprove his allegations in what it failed to show, PPL has not presented evidence sufficient to defend against his claims. For example, because PPL failed to disprove through its *current* computerized documentation that the Company conducted vegetation management on his property in 2017, Mr. Kingsley concludes that his assertions that the Company did conduct improper vegetation management in 2017 are proved. However, it is not PPL's burden to prove the negative. Rather it is Mr. Kingsley's burden to affirmatively prove his assertions.

PPL provided sufficient evidence of its policies and review of *past* computerized records to refute and otherwise cast doubt on Mr. Kingsley's assertions. Indeed, Mr. Kingsley himself cannot assert with reasonable certainty that PPL conducted improper vegetation management on his property in 2017, testifying that such is his "best approximation of when the damage occurred." Tr. at 70, 117. PPL's evidence was

sufficient to shift the burden of proof back to Mr. Kingsley, a burden the ALJ determined, and we agree, Mr. Kingsley failed to meet. To find as Mr. Kingsley argues would improperly shift the burden of proof to support the averments in the underlying Complaint from Mr. Kingsley to PPL. This we cannot and will not do.

In response to Mr. Kingsley's arguments about the vegetation management right-of-way, Mr. Kingsley first argues that the vegetation management right-of-way language PPL produced affects property identified as "Mt. Nebo – Martic Forge Conversion," and he asserts that his property is not near that location. Kingsley Exc. at 8. However, on review of PPL Exh. 7,[8] the right-of-way produced by PPL, Mr. Kingsley's challenges become unavailing. Mr. Kingsley challenges the location of the property on PPL Exh. 7 at Bates number 000027,[9] the Martic Forge Conversion. However, PPL's witness Mr. Marino testified to the vegetation management language contained on the next page of PPL Exh. 7, Bates number 000028, which is a right-of-way applicable to a different property. Tr. at 84, 88. Mr. Kingsley's challenge to the right-of-way based on the "Martic Forge" location is irrelevant.

Mr. Kingsley also argues that the right-of-way is not signed by the property owners. Kingsley Exc. at 8, citing Tr. at 110-11. However, the right-of-way language relied on by PPL, otherwise described by Mr. Marino as the Company's standard vegetation management language (Tr. at 88), provides that the parties to that property "came before" the notary and "acknowledged the foregoing instrument to be their act and deed, and desired the same to be recorded as such." PPL Exh. 4 at Bates number 000028. The notary's seal is noted, and the document was signed and recorded by the recorder on

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[8] Mr. Kingsley's Exh. 1 attached to his Exceptions appears to be identical to PPL Exh. 7, except for the notation at the bottom of the page. As set forth above, we do not accept the attachment to Mr. Kingsley's Exceptions. 52 Pa. Code § 5.431. However, we do accept PPL Exh. 7, which refutes Mr. Kingsley's Exception.

[9] The "Bates" number was explained to be page numbering generated for purposes of identification of pages within exhibits. Tr. at 83.

February 23, 1950. Other than his complaint that there apparently are no property owner signatures on the document, Mr. Kingsley presented no evidence to contradict that PPL's notarized and recorded record provides a vegetation management right-of-way that the property owners intended to convey, *i.e.*, their acknowledgement before a notary that the foregoing instrument was their act and deed that they desired to be recorded. Mr. Kingsley provides no further evidence or argument before us that persuades us that PPL lacks a vegetation management right-of-way.[10]

Mr. Kingsley's Exception No. 3 must fail for the same reason. We again agree with the ALJ and PPL that, in response to the Complainant's allegation and testimony, PPL provided sufficient evidence of proper billing for service to the property Mr. Kingsley shared with Ms. Schoener, which the Complainant failed to refute. Thus, Mr. Kingsley failed to carry his burden of proving his billing allegation.

As the ALJ recognized and PPL argues, Mr. Kingsley chose to pay to maintain service to the Lancaster property for very practical reasons, not the least of which was his interest in the property, which he shared occupancy with Ms. Schoener prior to her death and which he now owns. Mr. Kingsley testified that he "simply paid the bills on [Ms. Schoener's] behalf because there was no alternative. Tr. at 58. Mr. Kingsley also testified that from the date of Ms. Schoener's death on March 20, 2015, until January 1, 2018, Mr. Kingsley resided at the Lancaster property on a regular basis, "for most nights." Tr. at 60. Mr. Kingsley's argument, that he could pay the bills to maintain the property but then force PPL to reimburse him and retroactively seek payment from Ms. Schoener's estate, is unreasonable and lacks support.

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[10] We also acknowledge that the Commission i*s* not the proper forum in which to interpret an easement. *Hoch v. Philadelphia- Elec. Co.*, 341 Pa. Super. 598, 606-07, 492 A.2d 27, 31-32 (1985) (jurisdiction does not lie with the Commission with regard to the interpretation of an easement).

As stated in our service and billing Regulations, the privileges and duties of utility service are to be executed in good faith, honesty, and fair dealing. This includes eliminating opportunities for customers capable of paying to avoid the timely payment of bills so that obligation does not become a utility uncollectible expense to be recovered from other customers. In this instance, Mr. Kingsley recognized the need to retain PPL's provision of electric service to the property in order to maintain the property, which, as stated, he first shared with his fiancée and now owns. Kingsley Exc. at 9; Tr. at 132, 143. Indeed, as far back as October 2013, Mr. Kingsley's name appeared on a deed for the property.[11] Tr. at 143. Moreover, as the ALJ found, despite knowing how the account was being billed, Mr. Kingsley never contacted PPL to discontinue service to the property. I.D. at 19-20; Tr. at 158. Further, PPL's billing witness testified that the Company will accept payment from any party; it does not have to come from the estate. *Id*. When an account holder dies, the Company has three choices: (1) add an estate name; (2) turn off the power; or (3) place the service in a new name. Tr. at 156. Mr. Kingsley chose to pay to maintain service to the property because it was in his interest to do so. Mr. Kingsley failed to carry his burden of proving that PPL violated any obligation to him in continuing to bill for, and accept payment from, Mr. Kingsley for continued service to the Lancaster residential property.

Finally, as to Mr. Kingsley's claim in his fourth Exception contesting the ALJ's rejection of his allegation he is owed a security deposit, it, too, must fail for the same reason. By his own admission, neither Mr. Kingsley nor Ms. Schoener's estate ever paid a security deposit. Tr. at 145-46. Indeed, Mr. Kingsley provided no evidence that a security deposit was ever paid by anyone. His claim for an unrefunded security deposit is based solely on his conjecture, which, as the ALJ found using Mr. Kingsley's own testimony, was that Mr. Kingsley "would expect" his fiancée's parents to have paid it, so

[11] As such, although the account for service from PPL was in Ms. Schoener's name, Mr. Kingsley is considered a customer. 52 Pa. Code § 56.2 (definition of customer includes an adult occupant whose name appears on the deed).

the accounting was, in his "belief" that he'd "have to rely on deduction," that Ms. Schoener's parents had paid a deposit. I.D. at 19, quoting Tr. at 146. *See also* Tr. at 133 (what Mr. Kingsley "would have expected"); at 144 (Mr. Kingsley's "guess," Mr. Kingsley "assumed," Mr. Kingsley's "assumption"); at 146 (Mr. Kingsley would "expect," Mr. Kingsley's "belief").

PPL, on the other hand, provided testimony from its witness Ms. Bell not only affirming that neither Mr. Kingsley nor the Schoener estate ever paid a security deposit but also that under Company policy a security deposit was not required for every account, but if one had been required, it would have been refunded after the account had been paid in full for ten to twelve months. Tr. at 156, 160, 161.

Mr. Kingsley summarized his argument with regard to the security deposit before the ALJ as follows: "And the fact that [PPL witness Ms. Bell] hasn't been with the Company long enough to accumulate knowledge about what took place in the past isn't proof, by any means, that something different from her knowledge didn't occur." Tr. at 181. Mr. Kingsley's effort, again, to prove his allegation by arguing a negative deduction from PPL's evidence distorts the burden of proof, which is on Mr. Kingsley. An argument that a proposition is true simply because it has not been proved false relies on a faulty construction of the burden of proof. *See Matkovich v. Verizon North LLC*, Docket No. C-2020-3022369 (Order entered August 25, 2022). Mr. Kingsley's expectations and personal guesses are not evidence.

Upon review of the complete evidentiary record, we agree with the ALJ that Mr. Kingsley did not carry his burden of proving that PPL violated any obligation under the Code, our Regulations or Orders, or its tariff, or that PPL is responsible for the problems about which he complains. Mr. Kingsley failed to refute with competent evidence other than his own assumptions, inferences or unsupported assertions that PPL engaged in unlawful vegetation management on his property, unlawfully overcharged

him for service to the premises he shared with Mr. Schoener and now owns, and failed to return a security deposit he failed to prove was ever paid, least of all by him. Mr. Kingsley's own assertions, opinions, or perceptions, no matter how honest or strong, cannot form the basis of a finding in Mr. Kingsley's favor. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987), *Rivera v. Philadelphia Gas Works,* Docket No. C-2010-2164222 (Order entered January 12, 2012). *See also* I.D. at 17. While we do not find that Mr. Kingsley proved his allegations by a preponderance of evidence, we do, as always, encourage all public utilities to continue their ongoing efforts to educate, communicate, and respond to property owners about vegetation management in public utility rights-of-way.

2. Mr. Kingsley's Exception Nos. 5, 6, and 7 – Mr. Kingsley's Allegations of ALJ Procedural Errors

The remainder of Mr. Kingsley's Exceptions are based on alleged procedural errors by the ALJ in the form, per Mr. Kingsley's contentions, of the ALJ's: (1) rejection of properly filed documents; (2) allowance of *ex parte* communications by PPL; and (3) improper denial of discovery.

We commence our review of Mr. Kingsley's allegations of ALJ error by recognizing that under both the Code and our Regulations, our presiding officers are vested with wide authority. This includes the broad authority of the ALJ to oversee and rule on the scope and admissibility of evidence in a proceeding and to otherwise regulate the course of the proceeding. *See* Section 331 of the Code, 66 Pa. C.S. § 331 (pertaining to authority of the presiding officer), affirmed in, *e.g.*, the following sections of our Regulations: Section 5.483 (pertaining to authority of presiding officer); Section 5.431 (pertaining to close of the record and treatment of extra-record matter); Section 5.403 (pertaining to control of receipt of evidence); Section 5.103 (pertaining to authority to rule on motions); Section 5.222 (pertaining to prehearing conference in non-rate

proceedings to oversee evidentiary matters for orderly conduct and disposition of the proceeding and furtherance of justice); and Section 5.223 (pertaining to authority of presiding officer at conferences). 52 Pa. Code §§ 5.483, 5.431, 5.403, 5.103, 5.222, and 5.223. In view of this authority, the ALJ below had broad discretion not only to determine the scope and admissibility of evidence as relevant to a given proceeding but also to issue decisions, including ruling on procedural matters, to control the hearing.

Commencing every order with a citation to 52 Pa. Code § 5.483, the ALJ's exercise of this authority is evident throughout his conduct of this proceeding.[12] To this point, we again recognize the Complainant's repeated filings that required the ALJ's constant exercise of discretion and control. Although most of the Complainant's filings appeared self-styled as a legitimate pleading, as the ALJ noted they were often unauthorized. Even under a liberal construction of our Regulations, where appropriate, to accommodate Mr. Kingsley's *pro se* status, we cannot find fault with the ALJ's rulings and sanction Mr. Kingsley's approach to this proceeding.

For example, in responding to a Complainant filing captioned "Motion for Declaratory Judgement," the ALJ entered the following:

> The Motion is not relevant to the substantive issues of the Complaint at this docket. The document is, in essence, Mr. Kingsley's latest request for an affirmative ruling from the presiding officer that Complainant has been correct in his ongoing arguments with the Office of the Secretary of the Commission and her staff with respect to efiling but now

[12] That section reads as follows:

> (a) The presiding officer will have the authority specified in the act, subject to this title. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.

> implies complicity on the part of PPL Electric Utilities Corporation.
>
> Nowhere in the Commission's procedural rules at Chapter 5, 52 Pa. Code, is such a pleading permitted. Further, the presiding officer does not have jurisdiction to hear or to adjudicate complaints from individuals about the internal operating policies and procedures of the Commission or with respect to Commission personnel.

ALJ June 30, 2021 Order Striking Impertinent Matter From The Record at 1.[13]

Also, as noted in our abbreviated recitation of the history of this case, the ALJ addressed early in this proceeding Mr. Kingsley's practice of filing multiple pleadings that were cumulative, repetitive, or unauthorized. For example, in one of two separate orders the ALJ issued on July 14, 2021, the ALJ denied with prejudice and ordered stricken from the record a pleading Mr. Kingsley captioned "Renewed Motion to Compel, Motion [to] Strike and Motions for Sanctions." The ALJ's stated rationale for his denial is succinctly summarized within the order itself and explains the import of the ALJ's denial of the motion with prejudice.

> Complainant's Motions, as he concedes in his cover letters to the Secretary of the Commission, are essentially re-filings of previous Motions considered and denied by the presiding officer. Even without such a concession, a review of the Motions reveals that Complainant is merely re-filing Motions basically identical to those filed and denied by Order issued May 6, 2021.
>
> As Complainant's Motions are re-filings of Motions already considered and denied, they are again denied but with prejudice. Further filings of identical Motions will be stricken.

[13] Our Regulations allow for Petitions for Declaratory Order or Motions for Summary Judgment. The Complainant's pleading at issue in this Order was neither.

ALJ July 14, 2021 "Order Denying With Prejudice Complainant's 'Renewed Motion To Compel, Motion [To] Strike And Motions for Sanctions'" at 1. With an understanding of this background, we address the specific allegations of error in Mr. Kingsley's Exception Nos. 5-7.

In his Exception No. 5(a) Mr. Kingsley accuses the ALJ of being unclear about filing requirements and demanding they be served on his personal email address. We disagree. As noted above, the Hearing Notice issued to the Parties included the following language containing, *inter alia*, instructions on service of documents: "**You must email the Presiding Officer with a copy of ANY document you file in this case.**" October 6, 2020 Hearing Notice at 2 (emphasis in original). The notice also provided the name and work email address of the ALJ. This conforms with our Regulation at 52 Pa. Code § 1.54, which provides that "[p]leadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned." The ALJ further addressed this issue directly with Mr. Kingsley at the prehearing conference held on May 6, 2021 (Tr. at 9-10) and in his July 6, 2021 Prehearing Order Defining the Scope of the Evidentiary Hearing and Providing Further Directions to the Parties.

Addressing Mr. Kingsley's example, that the ALJ rejected his "Trial Memorandum" for no reason "unless the purpose was to stifle dissent," we agree with PPL that the memorandum was neither requested nor permitted by the ALJ. *See, e.g.*, 52 Pa. Code § 5.502(c) (in non-rate proceeding briefing shall be filed except as provided by agreement or by direction of the presiding officer). Moreover, it, too, comprised the refiling of a repackaged document that the ALJ had previously rejected. I.D. at 8. We find no support for Mr. Kingsley's exception that the ALJ presented unclear instructions or arbitrarily rejected documents properly filed.

In his Exception No. 5(b), Mr. Kingsley excepts to the ALJ's denial of his "Preliminary Objections," asserting that the ALJ was mistaken that the objections were not filed. We agree with PPL that is an inaccurate statement that misstates the reasons the ALJ denied this filing. The ALJ found the Complainant's "Preliminary Objections" were an errant filing lacking substantive basis or procedural support. As the ALJ recognized, though titled "Preliminary Objections," in fact the filing was not a preliminary objection as allowed under 52 Pa. Code § 5.101. Rather, it was a self-styled pleading containing refiled allegations "reflective of Complainant's ongoing refusal to accept the dismissal of his Motion to Compel [Discovery]." ALJ July 14, 2021 Order Denying Preliminary Objections at 3. As the ALJ stated:

> First, under the Commission's procedural rules, there is no filing that can be made in opposition to an Answer save to move to strike the Answer which is an entirely different legal filing than a preliminary objection. As the Answer is not scandalous, libelous, or legally deficient, there is no basis to strike the Answer. Simply put, Complainant's Objection is his latest refiling of allegations against the Respondent and is also reflective of Complainant's ongoing refusal to accept the dismissal of his Motion to Compel.
>
> In Paragraph 5 of his Objections, Complainant states: "As a whole and where noted below, PPL's Answer is legally insufficient or tantamount to admission of wrongdoing inasmuch as PPL tends to rely on evasive generalities, pretentious reticence, and sweeping ipse dixits[1] which fail to come to terms with allegations in the Complaint." This is not a valid preliminary objection. This is Complainant's argument related to his discovery requests as is most of what Complainant has filed.
>
> [1] An unsupported assertion.
>
> A further point by point refutation of Complainant's Objections is unnecessary because the Objections are allegations, argument, a refusal to accept the presiding officer's evidentiary rulings, or a combination of these.

* * *

> Again, Complainant's contentions are based on his frustration with PPL in the context of the discovery process and are not valid objections under 52 Pa. Code § § 5.101. I would also note that the burden in this matter is not on PPL to prove that it did no wrong, as Paragraph 30 seems to imply. The burden in this matter is on Complainant to establish by a preponderance of the evidence that PPL violated a specific provision or provisions of the Public Utility Code or the regulations of the Commission.
>
> * * *
>
> Finally, PPL's Answer to the Amended Complaint is in conformity with the Commission's relevant procedural regulation and 52 Pa. Code § 5.61, and Complainant has failed to demonstrate otherwise.

Id. at 3-4. For these reasons, we deny Mr. Kingsley's Exception Nos. 5(a) and (b).

In his Exception No. 6, Mr. Kingsley repeats a contention that the ALJ addressed repeatedly throughout this proceeding, through and including in the Initial Decision, that PPL engaged, as now asserted to be with the ALJ's complicity, in *ex parte* communications by filing a substantive report following the Chief ALJ's Mediation Order that PPL refused to share with Mr. Kingsley. He also asserts that the ALJ misapprehended the nature of the informal complaint.

In his January 28, 2022 Order providing further guidance to the Parties regarding the conduct and scope of the second evidentiary hearing to be held on the issue of billing, the ALJ addressed the issue of the purported *ex parte* report as follows:

> On June 10, 2020, Chief Administrative Law Judge (CALJ) Charles E. Rainey, Jr. assigned this matter to the Commission's Mediation Unit. Ultimately, the Chief of the Mediation Unit filed a pro forma report with CALJ Rainey

> indicating that the matter had not been resolved, and the case was thereafter assigned to me as presiding judge.
>
> At that point, Complainant embarked on a series of efforts – none of which are contemplated let alone allowed by the Commission's procedural regulations—to obtain a copy of the summary report of the Chief of the Mediation Unit to the CALJ. Complainant repeatedly refused to accept my assurances that the report was procedural only and contained no discussion of or recommendation with respect to the relative merits of this case. This effort on Complainant's part consumed an inordinate amount of time and effort on the part of the presiding officer as will be referred to, below.

ALJ January 28, 2022 Order at 2. *See also* I.D. at 2-3. Further, as stated above, the ALJ had also addressed this issue in his November 12, 2020 Order in which he conveyed to Mr. Kingsley that the "report" referenced in the Chief ALJ's Mediation Order was of administrative value only.

> PPL has not committed a "procedural violation," as alleged by Complainant with respect to a mediation report. Complainant misunderstands the nature of the mediation report directed by Chief Administrative Law Judge (CALJ) Rainey in his Interim Order. That report is administrative in nature and is not an order or directive to be enforced. It merely informs the CALJ of the conclusion of mediation and whether a matter should be assigned to an ALJ for hearing and adjudication.

ALJ November 12, 2020 Order at 3. We concur with the statements by the ALJ and PPL on this point. Any substantive "report" of the type Mr. Kingsley demands does not exist.

We dismiss as irrelevant Mr. Kingsley's second assertion in this Exception that the ALJ misapprehended the informal complaint process. The Commission's review of a formal complaint is a *de novo* process that comes with no binding impact from any

prior informal complaint resolution. *See* ALJ May 6, 2021 Post-hearing Order at 3 n.1. Accordingly, we deny Mr. Kingsley's Exception No. 6.

Finally, as to Mr. Kingsley's Exception No. 7, challenging the ALJ's rulings on discovery, we deny that Exception as not only an inaccurate representation of the ALJ's discovery ruling but also an untimely interim appeal of a discovery order that lacks substantive basis and is improperly presented by way of exception to an initial decision.

Mr. Kingsley actively engaged in discovery, and the ALJ was called upon to resolve disputes. As PPL notes in its Replies, in his Order entered January 28, 2022, the ALJ addressed and denied the Complainant's Motion to compel answers to interrogatories and requests for admissions. The ALJ specifically referred the Parties to our rules on discovery, including both their breadth as well as their limitations. Ultimately, in weighing the Parties' pleadings on the matter, the ALJ accepted PPL's assertion that it had already provided documents that were responsive and complied with Mr. Kingsley's discovery request as far as it was required and able to do so. Except for ordering the Company to provide Mr. Kingsley a copy of PPL's Security Deposits and Credit Policy, the ALJ denied the Complainant's discovery motion.

Interlocutory review of discovery matters is authorized only under the limited conditions found, and pursuant to the procedures established, in Section 5.304 of our Regulations, 52 Pa. Code § 5.304. None of those conditions is applicable here. Even were we to assume a condition might have applied, for the sake of argument and illustration only, the time for challenging that decision has long passed. Finally, as also provided in our Regulations, "[e]xceptions may not be filed with respect to an interlocutory decision." 52 Pa. Code § 5.533(a). Thus, an exception is an improper place for Mr. Kingsley to challenge the ALJ's discovery rulings. For these reasons, we deny Mr. Kingsley's Exception No. 7.

In sum, on our review of the record in this proceeding and the Parties Exceptions and Replies, we find no reason to disturb the ALJ's factual findings and legal conclusions. Accordingly, for these reasons, we deny Mr. Kingsley's Exceptions, affirm the ALJ's Initial Decision, and dismiss Mr. Kingsley's Complaint for failure to satisfy his burden of proving that PPL violated a Commission statute, order, or regulation of the Commission.

III. Conclusion

Based upon our review of the record and the applicable law, we deny the Exceptions of the Complainant Lawrence Kingsley, affirm the Initial Decision of ALJ Dennis J. Buckley, and dismiss the Complaint of Mr. Lawrence Kingsley, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

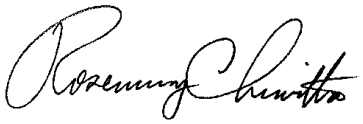
1. The Exceptions filed by Lawrence Kingsley on July 5, 2022, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Dennis J. Buckley issued on June 15, 2022, is affirmed, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Lawrence Kingsley at Docket No. C-2020-3019763 is dismissed.

4. That this case be marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 15, 2022

ORDER ENTERED: September 15, 2022