

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

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Roberta Zenmon

C-2022-3030679

v.

Pennsylvania Power Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Roberta Zenmon (Complainant or Ms. Zenmon), filed on September 7, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on August 23, 2022. Pennsylvania Power Company (Penn Power or Company) filed Replies to Exceptions on September 22, 2022. For the reasons stated below, we will adopt the Initial Decision, reopen the record, and remand this proceeding to the Office of Administrative Law Judge (OALJ), consistent with the discussion in this Opinion and Order.

## History of the Proceeding

On December 27, 2021, Ms. Zenmon filed a Formal Complaint (Complaint) with the Commission against Penn Power alleging incorrect charges from the Company for her residential electric utility service. Ms. Zenmon alleged Penn Power failed to comply with an agreement reached in a prior formal complaint proceeding at Docket No. F-2020-3023344 (2020 Formal Complaint), which allowed the Complainant to pay the utility on the first of every month. The Complainant requested a payment arrangement. Complaint at 2-3.

On February 22, 2022, Penn Power filed its Answer and New Matter (Answer), with a Notice to Plead, in which Penn Power generally denied the allegations in the Complaint. In its Answer, Penn Power denied it failed to honor the terms of the settlement agreement between the parties in the 2020 Formal Complaint proceeding. Answer at 1-3. In New Matter, Penn Power alleged a letter which the Company mailed to the Complainant on June 4, 2021 (Settlement Letter) contained the terms of the settlement agreement and should be permitted to speak for itself. Answer at 4. Penn Power noted the Commission's Regulations permit billing periods to vary from twenty-six days to thirty-five days in length, pursuant to 52 Pa. Code § 56.2. Answer at 3.

On April 27, 2022, the ALJ conducted the initial telephonic hearing as scheduled. Ms. Zenmon appeared *pro se* and testified on her own behalf. She did not offer any exhibits. Penn Power was represented at the hearing by Margaret A. Morris, Esquire, who presented one witness, Charles Howlett, a Senior Compliance Specialist. During the hearing, Penn Power presented seven exhibits which were marked Penn Power Exhibits 1 through 7 and which were all admitted into the hearing record. During the hearing, the Complainant made oral requests for the presiding officer to review and admit into the hearing record the transcript from the 2020 Formal Complaint proceeding conducted by ALJ Conrad A. Johnson on June 3, 2021. The ALJ advised the

Complainant how to request the transcript from the 2020 Formal Complaint to be admitted into the hearing record, as a late filed exhibit.

After the initial hearing concluded, Penn Power served upon the ALJ and the Complainant a letter dated May 4, 2022, which indicated Penn Power's witness, Charles Howlett, mistakenly testified that the settlement discussions in the 2020 Formal Complaint were conducted off the record. Penn Power included a copy of the transcript from the June 3, 2021, proceeding (2020 Transcript), consisting of thirty-two pages, and identified the transcript as Exhibit 8. Penn Power asked to admit the transcript to correct the witness' mistaken testimony. On May 4, 2022, the Complainant communicated to the ALJ's office that she knew Attorney Morris asked the ALJ if she could include another exhibit. The Complainant lodged an oral objection to admitting the exhibit. On May 9, 2022, the ALJ was notified the Complainant sent a letter, via Certified Mail, to the Commission's main mailing address in Harrisburg, Pennsylvania. A copy of the letter (May 3, 2022 Letter) was provided to the ALJ on May 9, 2022. In the May 3, 2022 Letter, the Complainant requested that the ALJ request the transcript from the 2020 Formal Complaint proceeding because she believed the 2020 Transcript would "contain important settlement information related to my past and current case that could be very pertinent to my current case which is part of an agreed settlement between myself and Penn Power in which we agreed on a certain date to pay my current and arrearages by the first of every month and perpetually." I.D. at 3.

On May 11, 2022, ALJ Dunderdale issued the Post-Hearing Order, pursuant to 52 Pa. Code §§ 5.403 and 5.485, and ordered the transcript from the hearing on June 3, 2020, at Docket No. F-2020-3023344 be admitted into the hearing record. The transcript of the initial hearing, consisting of 106 pages, was received in the Commission's Secretary's Bureau on May 24, 2022. On May 26, 2022, the ALJ issued the Interim Order Closing the Hearing Record.

In the Initial Decision, issued August 23, 2022, ALJ Dunderdale denied and dismissed, for failure to meet the burden of proof, the instant Complaint alleging Penn Power failed to comply with a settlement agreement reached in a prior formal complaint proceeding.

As previously noted, the Complainant filed Exceptions on September 7, 2022.<sup>1</sup> Penn Power filed Replies to Exceptions on September 22, 2022.

## Discussion

### Legal Standards

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more

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<sup>1</sup> We note that the Complainant sent an email to the Office of Special Assistants on September 16, 2022, which contained an attachment that the Complainant indicated she had intended to include with her Exceptions when she filed them on September 7, 2022. By email dated September 26, 2022, the Commission's Secretary provided Penn Power's counsel with a copy of the Complainant's email in order to cure an ex parte communication because Penn Power's counsel was not originally included in the Complainant's email correspondence. *See* 66 Pa. C.S. § 334(c). The Complainant submitted this material after the September 13, 2022, time frame for filing Exceptions, and Penn Power's counsel did not receive this material until after Replies to Exceptions had been filed. Even if this material had been timely filed, we could not consider it for purposes of rendering a determination herein, because the attachment to the email contains information that is not part of the record before us. *See* 52 Pa. Code § 5.431.

convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the Company. If the evidence presented by the Company is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. It is well settled that we are 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).

### **The ALJ's Initial Decision**

In the Initial Decision, the ALJ made twenty-three Findings of Fact and reached four Conclusions of Law. I.D. at 4-6 and 12. We shall adopt and incorporate

herein by reference the ALJ's Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

Initially, the ALJ explained the Parties' positions. The ALJ noted that the Complainant alleged in her formal Complaint that billing statements from Penn Power included incorrect charges for her residential electric service at a prior residence and requested a payment arrangement. According to the Complainant, Penn Power failed to comply with a payment arrangement reached in a prior formal complaint proceeding. Specifically, the Complainant contended that Penn Power agreed in the settlement to bill the Complainant on the first of each month. The ALJ provided that the Complainant clarified at the hearing she did not want to pursue the claims of incorrect charges or request a payment arrangement. The Complainant stated her allegation concerned only Penn Power's failure to comply with the prior settlement agreement wherein Penn Power would bill the Complainant on the first of each month. The Complainant does not dispute that she owes the outstanding balance of approximately \$1700, but, as relief, the Complainant requested the Commission eliminate the unpaid balance because Penn Power violated the settlement agreement. I.D. at 7, n. 4, 8.

The ALJ stated that the Complainant contended that Penn Power agreed all billing statements issued after June 2021 would require payment by the first of the month or within a few days after the start of every month. The ALJ noted that Ms. Zenmon testified that she is a disabled veteran and only receives her disability check on the first of each month. The ALJ explained that Ms. Zenmon insisted that the term in the settlement regarding billing dates was an essential element of the settlement. The Complainant asserted that Penn Power violated this essential element after June 2021 and she wanted the Commission to force Penn Power to comply with the terms of the settlement agreement, stop using a collection agency to recover the unpaid balance and remove all charges from her balance. I.D. at 9.

The ALJ provided that, at the hearing, the Complainant also alleged that Penn Power was wrong to take so many days to terminate her electric service after the Complainant notified Penn Power she was moving. *Id.*

The ALJ provided that Penn Power argued that Ms. Zenmon should have objected when she received the Settlement Letter and again after she received the Certificate of Satisfaction if the due date on future billing statements was an essential element of the settlement. According to the ALJ, Penn Power also pointed out that the Complainant violated a provision of the Settlement Letter when she failed to give at least seven days' notice of her intention to vacate the service address. *I.D.* at 9.

In considering the Parties' positions and the record in this case, the ALJ dismissed the Complaint on the basis that the Complainant did not satisfy her burden of proving that Penn Power failed to comply with the settlement agreement. In reaching her determination, the ALJ noted that she reviewed the transcript from the June 3, 2021 hearing which was admitted into this proceeding, as Penn Power Exhibit 8, as a late-filed exhibit on May 11, 2022. The ALJ found no reference to the Complainant's requirement that a settlement must include a due date of the first of each month in Penn Power Exhibit 8. The ALJ found a reference to the Complainant's request in the transcript of the prehearing conference conducted on February 11, 2021. According to the ALJ, the transcript from the prehearing conference reflected that the Complainant wanted the due date for each bill to be the first of every month. *I.D.* at 10.

The ALJ noted that the proceeding on February 11, 2021 ended without a settlement and the parties agreed to participate in a hearing at a later date. The parties engaged in settlement conversations at the subsequent hearing in June 2021 and reached a settlement. The counsel for the utility followed up after the June 2021 hearing with the Settlement Letter. *Id.*

The ALJ observed that the Complainant waited five months after the first payment was due in August 2021 (and six months after settling the 2020 Formal Complaint) before filing the instant Complaint. I.D. at 10-11. The ALJ noted that during this time, Penn Power issued billing statements with due dates that were not on the first of each month. I.D. at 11.

The ALJ concluded that upon review of the evidence and the two transcripts from the 2020 Formal Complaint proceeding, the Complainant did not meet the burden of proof. I.D. at 11 (citing *Hahn v. PPL Elec. Utils. Corp.*, Docket No. C-2009-2100830 (Final Order entered August 26, 2010)). The ALJ reasoned that the Complainant did not object to the Settlement Letter or to the Certificate of Satisfaction. Additionally, the ALJ noted that the Complainant waited more than five months before complaining about the due date. Therefore, the ALJ concluded that the Complainant did not meet her burden of proving Penn Power violated a Commission Statute, Regulation or Order when it billed her after June 2021 with due dates for payments due before the first of each subsequent month. I.D. at 11.

Finally, the ALJ stated that the Complainant was incorrect in her allegations regarding Penn Power's delay in terminating service upon the Complainant's request. The ALJ noted that Penn Power was correct to delay termination until the first business day after the Complainant made the request. According to the ALJ, the issue is moot as Penn Power adjusted the termination date back to April 14, 2022 (the date the Complainant notified Penn Power she was moving) as a courtesy after it received the Complaint. *Id.*

## Exceptions, Replies and Disposition

The Complainant's Exceptions<sup>2</sup> consist of several statements: (1) that she requires a payment arrangement from Penn Power in writing; (2) that Penn Power sent the Complainant's final bill to a collection agency to collect the balance owed before the ALJ had made a decision; (3) that Penn Power agreed to a payment arrangement after she moved; and (4) that she would like the Commission's assistance to establish a payment arrangement with Penn Power. Exc. at 1-2.

In Reply to the Complainant's Exceptions, Penn Power avers that the "Exceptions simply disagree with the finding set forth in the ID." Penn Power contends that the Complainant's Exceptions should be dismissed because they fail to identify any error of law or finding of fact in the Initial Decision as required by 52 Pa. Code § 5.533(b). Penn Power additionally argues that because the Complainant is no longer a current customer, the Commission is without authority to grant the Complainant's request for a payment arrangement. In support of this argument, Penn Power states that Section 1405 of the Public Utility Code, 66 Pa. C.S. § 1405, authorizes the Commission to direct a payment arrangement for a customer or applicant of residential service. R. Exc. at 5.

Penn Power contends that the Complainant's Exception that it has "begun to collect the balance before the judge made a decision" is beyond the scope of the proceedings, was not addressed at the hearing, and should be rejected. Penn Power avers

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<sup>2</sup> We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. 52 Pa. Code § 5.533(b). Nevertheless, we will accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination in this proceeding.

that consistent with Section 5.431 of the Commission's Regulations, 52 Pa. Code § 5.431, after the record is closed, additional matters may not be relied on or accepted into the record unless permitted for good cause. R. Exc. at 5-6.

Upon review, it appears that in her Exceptions, the Complainant is requesting Penn Power's compliance with a provision of the Parties' settlement agreement that addresses a six-month payment arrangement between the Parties after the Complainant has discontinued service with Penn Power. The Settlement Letter, which is part of the record before us, addresses this issue and provides the following, in relevant part:

- If service in your name is discontinued at the Service Location, you will contact me after you receive the final bill and a 6-month PAR [payment arrangement] will be established so that the unpaid balance is not transferred to an outside collection agency.

Answer, Attachment 2 at 2.

Additionally, during the hearing, Penn Power's counsel stated that she would honor what was in the settlement agreement. Penn Power's counsel also explained the relevant settlement agreement provisions. Penn Power's counsel stated that "the Company agreed that what we would do is I would send her six coupons that would have the address, her account number and what the payment was for – you know, for the 6-month period. She would then mail that coupon, along with the check, to the address listed on the coupon." Tr. at 42. Attorney Morris explained further "it was discussed in the settlement agreement that we said we would give her a 6-month PAR established so that this way, since she couldn't pay it all at once, the unpaid balance would not be referred to an outside collection agency." Tr. at 43.

While we have some information on the record regarding the settlement agreement provisions, we cannot reach a determination on the requests in the Complainant's Exceptions in this Opinion and Order. We do not have any information in the record on whether the Parties have been following the settlement agreement provisions concerning a six-month payment arrangement after the Complainant's discontinuance of service, because the Complainant's arguments appear to be based on averments concerning Penn Power's actions after the hearing in this matter.<sup>3</sup> Because the Complainant's arguments contain new factual allegations that could not have been raised during the hearing, we find that under the circumstances in this case, it is in the public interest to reopen the record for the reception of further evidence on the matters raised in the Complainant's Exceptions. *See*, 52 Pa. Code § 5.571(d)(2); *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2019-3015173 (Order entered March 30, 2021); *Application of Trans-Allegheny Interstate Line Company*, Docket No. A-2010-2187540 (Order entered July 5, 2011).

Accordingly, we will reopen the record and remand this proceeding to the OALJ for the limited purpose of receiving evidence regarding compliance with the settlement agreement provision pertaining to a six-month payment arrangement after service has been discontinued. Specifically, the settlement agreement states that Penn Power will establish a 6-month PAR so that Complainant's unpaid balance is not referred to an outside collection agency. Answer, Attachment 2 at 2. At the conclusion of the evidentiary proceeding on remand, the ALJ shall issue a subsequent Initial Decision. By our decision in this matter, we will remand the ALJ's Initial Decision, issued on August 23, 2022, only to the extent that we recommend this matter be reopened for the

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<sup>3</sup> The issues addressed during the hearing and by the ALJ in the Initial Decision were limited to the Complainant's argument that Penn Power did not comply with the settlement agreement because the Company did not issue billing statements to the Complainant with due dates on the first of each month. During the hearing, the Complainant indicated that she did not want to pursue the claims of incorrect charges or to request a payment arrangement as set forth in her Complaint. Tr. at 16-17.

limited purpose of receiving evidence regarding compliance with the settlement agreement provisions pertaining to a six-month payment arrangement after service has been discontinued. However, we will adopt the remaining portion of the Initial Decision, as we find the ALJ's decision to be legally sound, and the Complainant's Exceptions do not contest specific findings of fact or legal conclusions in the Initial Decision.

### **Conclusion**

Upon review, we will adopt the ALJ's Initial Decision, issued on August 23, 2022, consistent with our discussion in this Opinion and Order. We will also reopen the record and remand this proceeding to the OALJ for the limited purpose of receiving evidence regarding compliance with the settlement agreement provisions pertaining to a six-month payment arrangement after service has been discontinued;<sup>4</sup>  
**THEREFORE,**

### **IT IS ORDERED:**

1. That the Exceptions of Roberta Zenmon, filed on September 7, 2022, to the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued on August 23, 2022, at this docket, are granted, in part, to the extent that we will reopen the record for the limited purpose of receipt of limited, additional evidence, consistent with this Opinion and Order.

2. That the Initial Decision of ALJ Katrina Dunderdale, issued on August 23, 2022, is adopted, consistent with this Opinion and Order.

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<sup>4</sup> See Answer, Attachment 2, Settlement Terms Letter at 2.

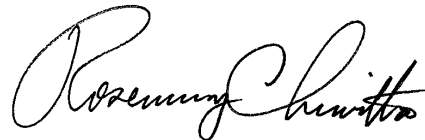
3. That the Formal Complaint filed by Roberta Zenmon on December 27, 2021, against Pennsylvania Power Company at Docket No. C-2022-3030679 is denied.

4. That this proceeding is remanded to the Office of Administrative Law Judge for the receipt of limited, additional evidence, consistent with this Opinion and Order.

5. That at the conclusion of the remanded proceeding, the presiding Administrative Law Judge shall issue a subsequent Initial Decision, consistent with this Opinion and Order.

6. That the Parties may file Exceptions and Replies to Exceptions pertaining to the subsequent Initial Decision, consistent with the provisions of 52 Pa. Code §§ 5.533 and 5.535.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022