

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

Public Meeting held February 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Florence Ackridge

C-2022-3035899

v.

Philadelphia Gas Works

OPINION AND ORDER

BEFORE THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Florence Ackridge (Ms. Ackridge or Complainant) filed on May 31, 2023, to the Initial Decision of Administrative Law Judge (ALJ) Marta Guhl, issued May 15, 2023. On October 25, 2023, the Commission received the Replies to Exceptions of the Complainant submitted by Philadelphia Gas Works (PGW, Company, or Respondent).¹

¹ Due to the failure of Florence Ackridge to provide a Certificate of Service evidencing service of her Exceptions on all the parties of record to the case, and in order to avoid prejudice to any party, pursuant to 52 Pa. Code § 5.535, PGW was given an

This matter is a billing dispute and formal complaint (Complaint) of Ms. Ackridge alleging excessive billing by PGW as Respondent. The Complaint arises pursuant to, *inter alia*, the provisions of the Responsible Utility Customer Protection Act, 66 Pa. C.S. §§ 1401, *et seq.*, (Act). In the Initial Decision, presiding ALJ Guhl denied the Complaint, in part. ALJ Guhl concluded that the Complainant failed to meet her burden of proof that there were incorrect charges on her utility bill for service. The Initial Decision granted the Complaint to the extent Ms. Ackridge requested a payment arrangement. ALJ Guhl concluded and so recommended that the Complainant met her burden of demonstrating that she is eligible for a Commission-issued payment arrangement under Section 1405(b) of the Act, 66 Pa. C.S. § 1405(b).

On consideration of the Exceptions and Replies, we shall deny the Exceptions of the Complainant and adopt the Initial Decision, consistent with the Opinion and Order as we find that the Complainant has not met her burden of proof of abnormal billing by PGW.

I. Background and Procedural History

In her Complaint filed October 5, 2022,² Ms. Ackridge alleged: (1) that PGW was threatening to shut off her service; and (2) that there were incorrect charges on her bill. *See*, Complaint at ¶ 4. For relief, the Complainant indicated that she wanted her bill corrected to reflect the correct amount owed, minus penalties and interest, and that she wanted to go on a payment plan for the balance. *Id.* at ¶ 5.

extension of time by Commission Secretarial Letter of May 31, 2023, until June 15, 2023, to file its Replies to Exceptions. The Commission was subsequently advised that, due to a failure of PGW to receive the May 31, 2023, Commission Secretarial Letter, a further extension of time to October 25, 2023, was provided in which to file Replies to Exceptions.

² The Complaint is an appeal of an informal decision of the Commission's Bureau of Consumer Services (BCS). *See*, Finding of Fact Nos. 22-23, *infra*.

The Complainant also referenced and attached several documents.³ We summarize the document attachments to the Complaint in order to place the dispute with PGW in complete factual context.

Attached to the Complaint was a November 10, 2021, notice issued by PGW that service to the Complainant's home (Service Address) was shut off as a 'precautionary' measure based on an undesirable condition observed at the property. The undesirable condition was noted, by hand inscription, as a "Temp repair on fuel line by heater at T fitting." *See*, Attachment to Complaint; Complainant's Exhibit (Exh.) C-1, *infra.*; *see also*, PGW Exh. 5, pg. 3 of 3, *infra.*

The next attachment to the Complaint was a letter dated May 12, 2022, from Oval Heating & Air Conditioning Co. LLC (Oval). Oval is a private contractor retained by the Complainant for service to her heater. *See*, Transcript, *infra.* This letter, in pertinent part, advised that on January 10, 2022, the Service Address was visited by agents and/or employees of Oval and it was observed that the customer was using electric heaters to heat the premises, that gas service to the premises was shut off, but the meter was not locked. The letter further stated that the next day, Oval went back to the premises to fix gas leaks and service the heater, and, thereafter, fixed the heater, put in new pipes, performed tests for gas leaks and checked that the heater was working safely. *See*, Attachment to Complaint; Complainant's Exh. C-2.

The third attachment to the Complaint is a letter dated December 15, 2021, (*December 2021 Letter*), from Ms. Ackridge addressed to "To Whom This May Concern." In this letter, the Complainant provides a narrative of her financial circumstances and need for financial assistance. This letter, in pertinent part, stated that:

³ *See*, January 12, 2023, Transcript (Tr.) of hearing at pages 18-27; 62-66, *infra.* The description of the Complaint attachments, unless noted, will conform to the presiding ALJ's acceptance of the documents into the record.

(1) gas service had been off at the Service Address since March 1, 2021, as it had been turned off by “PGS” [sic] because her heater was not working;⁴ (2) she contacted a HVAC company who charged her for work related to servicing the heater but that she did not get the heater fixed because of the cost; and (3) she talked with many people at PGW concerning her high gas bills and was dissatisfied as she maintained that the bills appeared to be based on the prior years’ usage. The Complainant stated that: (1) in prior years four other persons resided with her at the Service Address, but now, she is the only person living at the home along with a pet; (2) she has a hot water heater, an electric stove, and only uses gas for heating; (3) PGW replaced her gas meter on October 16, 2021, at her request, based on her position that the meter was not working; and (4) she received different, *i.e.*, conflicting information concerning whether her heater (heating source) was or was not broken. *See*, Attachment to Complaint; Complainant’s Exh. C-3.

The *December 2021 Letter* attached to the Complaint concludes with statements of the Complainant that she: (1) is elderly,⁵ (2) disabled; (3) with health issues; (4) had recent surgery; and (5) has had to spend nights away from her home due to lack of heat. In addition, she noted that the HVAC company she hired did not fix her heater after paying more than \$950. She further represented that she submitted a copy of her household utility bills, which she states amounts to, approximately, \$700 per month. Complainant’s Exh. C-3.

⁴ There is a factual dispute as to whether PGW turned the service off to the premises after a second, and follow-up visit on November 10, 2021, after the November 1, 2021, service shut off for safety precaution. We note that, in the same letter, Complainant Exh. C-3, the Complainant mentions the date of March 1, 2021, as the date her service was turned off, but later mentions the date November 1, 2021. *See* PGW Exh. 1, pg. 1 of 1, which is a PGW business record of service contact at the Service Address on March 17, 2021.

⁵ At the time of the hearing, January 12, 2023, *infra*, 83 years of age. Tr. at 56.

In further attachment to the Complaint, Ms. Ackridge provides a letter-notice of PGW with detailed billing/account information appended (“All Service Agreement(s) Summary Statement of Account Acct xxxxxxxx”). This letter-notice advised that the Complainant’s account would become delinquent as of May 17, 2022, and that she should contact PGW to determine her eligibility for a payment arrangement should the bill not be paid in full. The notice also provided contact information for filing an informal complaint with the Commission.

Next attached to the Complaint was a PGW letter to the Complainant dated September 13, 2021, advising her that her meter was removed for testing on August 11, 2021, that it was tested on September 10, 2021, and found to be operating within the Commission’s Regulations. *See*, Attachment to Complaint; Complainant’s Exh. C-5; *see also*, 52 Pa. Code § 52.29(f)(1).

The attachments following the September 13, 2021, PGW letter are billing statements from PGW, interspersed with a May 2, 2022, letter from PGW informing the Complainant of the results of a PGW internal investigation of her dispute. *See*, Complaint; *also* Tr. at 23-24; 66.

On October 27, 2022, PGW filed an Answer to the Complaint in which it denied the material allegations. In pertinent part, the PGW Answer included the following: (1) the Service Address is equipped with a functioning automatic meter reading (AMR) device and that the Complainant’s bills were based on actual meter readings; and (2) on November 1, 2021, the Complainant called PGW to report a gas odor and, as a result, a PGW technician visited the Service Address, determined that the house heater was inoperable and shut off the gas to the Service Address. Consequently, the technician left a hazard tag for the house heater, referring the Complainant to a contractor. Subsequently, on November 10, 2021, a PGW technician visited the Service

Address and determined that the house heater was operable and turned the gas back on. *See*, PGW Answer at ¶ 4.

The Complaint was, thereafter, assigned to the Commission's Office of Administrative Law Judge (OALJ). On November 9, 2022, a Hearing Notice was issued scheduling an initial hearing in the matter for January 12, 2023, at 10:00 a.m., and notifying the Parties that the matter was assigned to ALJ Guhl as presiding officer. ALJ Guhl issued a Prehearing Order on December 13, 2022.

A hearing was convened in this matter, telephonically, on January 12, 2023. PGW appeared, represented by Graciela Christlieb, Esquire. PGW sponsored the testimony of Ms. Jessica Glace, Customer Review Officer with PGW. The Complainant appeared, *pro se*. *See*, I.D. at 2.

The Complainant presented eight exhibits at the hearing which were entered into the record at the time of the hearing. *See*, Transcript.⁶ PGW offered nine exhibits at the hearing. On review of the Initial Decision and Transcript, there was an issue with the Complainant's receipt of the PGW exhibits in advance of the hearing. The PGW exhibits were delivered electronically to an email address on record as provided to PGW, but not received by the Complainant. Based on the lack of receipt of the documents, ALJ Guhl accepted the exhibits for identification and reference during the hearing but provided the Complainant an opportunity to review and raise objections to the introduction of the exhibits into the record after receipt of the documents by mail. *See*, I.D. at 2; Tr. 32-33; 40; 41-42; 52.⁷ Ms. Ackridge was advised by the ALJ that she

⁶ *See*, Complainant's Exhibits Nos. 1-8, Tr. 62-67. Objection was noted by PGW to the Oval Letter (Complainant Exh. C-2) and said objection was overruled.

⁷ *Accord Jerrod Miner Philadelphia Gas Works*, Docket No. F-2022-3035563 (Opinion and Order entered May 31, 2023) regarding service by email upon *pro se* parties.

would have until January 23, 2023, to submit any written objections to the PGW exhibits and that PGW could respond to any objections by January 28, 2023. As of the date of the Initial Decision, no objections to PGW’s hearing exhibits were noted. As such, PGW Exhibit Nos. 1-9 were entered into the record. *Id.*

The record was, thereafter, closed. On May 15, 2023, the Initial Decision of ALJ Guhl was issued. Exceptions were filed to the Initial Decision on May 31, 2023, as noted.

II. Discussion

A. Legal Standards

Section 332(a) of the Public Utility Code (Code) provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility 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, 602A.2d 863 (1992) (*Lansberry*). That is, a complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent utility. *Se-Ling Hosiery, Inc. v Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).⁸ Additionally, this Commission’s decision must be supported by substantial evidence in the record. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than

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

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) (*Norfolk*), *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, *i.e.*, burden of production, the burden of going forward with the evidence to rebut the evidence of the complainant shifts to the respondent utility. If the evidence presented by the respondent utility 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 respondent. *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 production 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).

In this matter, the Complainant is the proponent of a rule or order from the Commission regarding whether her bills for gas distribution utility service from PGW were correct or, otherwise, in violation of a Commission Order, Commission Regulation, or some other provision of law under which the Commission has jurisdiction and authority to administer. The Complainant, therefore, has the burden of proof.⁹

⁹ Bald assertions, personal opinions, or perceptions do not constitute evidence. *See, Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987)).

We further advise the Parties that the Commission is a creature of statute and has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication. *Twin Lakes Utilities, Inc. v. Pa. PUC*, 281 A.3d 384, 395 (Pa. Cmwlth. 2022); *appeal denied*, 293 A.3d 566 (Pa. 2023) (Table), citing *Feingold v. Bell Pennsylvania*, 477 Pa. 1, 8, 383 A.2d 791, 794 (1977).

On review of the record in this matter and on consideration of the Exceptions, *infra*, Ms. Ackridge refers to conduct of third parties relating to the servicing of her home heating unit, the handling of her gas meter, and statements which she complains, either misled her or misinformed her to her detriment in meeting her utility payment obligations to PGW. As certain of these parties referenced by the Complainant and to which these allegations are directed are not “public utilities” under the Code,¹⁰ or, otherwise, persons or companies over which the Commission may have jurisdiction or authority under the Code,¹¹ the claims against these persons and/or companies must be addressed in a forum other than the Commission. Under the Code, the Commission has primary jurisdiction over the question of whether PGW’s billing practices and bills were issued in compliance with its tariff, and other provisions of the Code, and whether Ms. Ackridge, as the Complainant, is entitled to a refund or recalculation of any amounts on her gas utility account.

Based on the foregoing, we advise the Parties that, to the extent the Complainant has raised issues as a consumer, alleging misrepresentation, fraud and/or unfair business conduct against third party, non-utilities, regarding the servicing of her gas heating unit, we conclude that relief must be sought under provisions of law other than the Code. Such relief may be sought pursuant to, *inter alia*, the Unfair Trade

¹⁰ See, 66 Pa. C.S. § 102 regarding the definition of “public utility.”

¹¹ See, 66 Pa. C.S. § 701, addressing complaints.

Practices and Consumer Protection Law (UTPCPL)¹² or the courts, for these claims. *See, Pettko v. Pa. American Water Co.*, 39 A.3d 473, 485-486 (Pa. Cmwlth. 2012); *appeal denied*, 616 Pa. 670, 51 A.3d 840 (2012) (Table).

B. ALJ's Recommendations

ALJ Guhl reached twenty-five (25) Findings of Fact and drew eight (8) Conclusions of Law. Unless expressly rejected or modified by our discussion in this Opinion and Order or modified or rejected by necessary implication from our disposition of the Exceptions to the Initial Decision, we shall adopt the Findings of Fact and Conclusions of Law of ALJ Guhl.

The Initial Decision considered the claims raised in this matter under the following issues: (1) Incorrect Charges for Service; and (2) Payment Agreement. We shall follow this format in our consideration and disposition of the Exceptions to the fullest extent possible.

C. Issues

1. Incorrect Charges for Service (High Billing Dispute)

a. Positions of the Parties

Ms. Ackridge complains that from a period, November 1, 2021, through January 12, 2022, there was no gas service at her home, the Service Address, because the

¹² 73 P.S. §§ 201-1, *et seq.*

gas was turned off. She, therefore, disputes the PGW billing for this period. *See*, Tr. at 11-12:

THE JUDGE: Okay, and that's it?

MS. ACKRIDGE: That's it.

THE JUDGE: All right. And you're saying that between November the 1st, 2021 and January the 12th, 2022, the gas was off and the house heater was not working?

MS. ACKRIDGE: Correct.

THE JUDGE: Okay.

MS. ACKRIDGE: And the gas was off.

Tr. at 11-12.

The Service Address is two stories, with four bedrooms, one and a half baths. The gas appliance(s) are a gas heater. The Complainant lives alone. Tr. at 12; Finding of Fact Nos. 3-4.

The Complainant expresses dissatisfaction and alleges poor customer service with PGW representatives. *See*, Tr. at 15-16. The Complainant is adamant that a charge of \$4,000 (approximately) for a period of months where her gas was not on is unfair. Tr. at 17-18. This position is reiterated at Tr. 49 (on cross-examination), where the testimony of the Complainant is that a PGW representative informed her of a lack of water in the gas heating unit which caused this person to shut down her gas service. The Complainant takes the position that the conclusion of this individual was incorrect and, outright, false. *Id.*

The testimony of the Complainant concerning the periods of time her gas service was off is conflicting as between PGW's business records. The Complainant, at certain times, states that the gas was off as of the date of March 1, 2021. However, PGW's testimony is that its service technician turned gas off as of the date of November 1, 2021, and service resumed on November 10, 2021. PGW Exh. 5, pg. 1 of 3 and 2 of 3.

PGW acknowledges the service visit by its technician on November 1, 2021. However, PGW disputes Ms. Ackridge's claims that a PGW service representative returned to the Service Address and turned off her service after the specific service issue noted on its warning tag—initially noted at the Service Address on November 1, 2021, was addressed, November 10, 2021. *See*, Tr. at 39. It is the testimony of PGW that no private contractor would have authority to shut the gas service off to the Complainant's Service Address. Tr. at 54.

PGW relied upon the testimony of its Customer Review Officer and business records in response to the claims of Ms. Ackridge. Customer service contacts at the Service Address are recorded as of March 17, 2021 (PGW. Exh. 1); August 11, 2021 (PGW Exh. 3, pg. 1 of 1 – meter test exchange); November 1, 2021 (PGW Exh. 5, pg. 1 of 3 – gas leak found and service shut off); and November 10, 2021 (PGW Exh. 5, pg. 2 of 3 – condition repaired, small leak found and service turned back on).

In response to the billing dispute, PGW provided Exh. 2, with particular reference to pg. 3 of 6 – “Gas Usage Analysis,” and Exh. 6, pg. 3 of 4 – “Gas Usage Analysis of Account.” Additionally, PGW relied upon Exh. 7 in response to the claims of Ms. Ackridge regarding abnormal billing. PGW Exh. 7 is the determination of the Commission's BCS in the informal complaint of Ms. Ackridge.

b. ALJ's Recommendation

On consideration of the presentation of the Parties, ALJ Guhl concluded that there were no outstanding issues regarding billing accuracy. I.D. at 13. The pertinent Findings of Fact as found by the ALJ identify the applicable time periods for this dispute as follows:

* * *

10. On March 17, 2021, a PGW technician visited the Service Address to investigate an alleged gas leak. Tr. 29-30; PGW Exh. 1.

11. The PGW technician performed all checks at the Service Address, no leaks were found, and left the gas on at the residence. Tr. 30; PGW Exh. 1.

12. On August 11, 2021, a PGW technician visited the Service Address to perform meter testing. Tr. 34; PGW Exh. 3.

* * *

14. The meter tested within acceptable levels and was accurate. Tr. 35; PGW Exh. 4.

15. On November 1, 2021, a PGW technician visited the Service Address. Tr. 36; PGW Exh. 5.

16. The technician found the gas on but turned it off and issued a hazard tag because there was no water in the heating system. Tr. 37; PGW Exh. 5.

17. On November 10, 2021, a PGW technician visited the Service Address to perform a follow up inspection of the heating system. Tr. 36; PGW Exh. 5.

18. The technician found that the water issue was resolved and turned the gas back on but indicated that a repair was needed on a fitting to the house heater. Tr. 37; PGW Exh. 5.

I.D. at 3-4.

Based on the foregoing Findings of Fact, PGW representatives were in contact with the Service Address on March 17, 2021, August 11, 2021, November 1, 2021, and November 10, 2021. *See*, Finding of Fact Nos. 10; 12;15; 17. Service was shut off at the premises, November 1, 2021, and resumed, November 10, 2021. Finding of Fact No. 18.

With regard to the accuracy of the bills disputed by Ms. Ackridge, ALJ Guhl appropriately explained the Commission’s administrative precedent involving high billing complaints of ratepayers under the considerations outlined by *Waldron*.¹³

After acknowledging the principles of *Waldron* in the present case, ALJ Guhl reasoned, in pertinent part:

. . . While Ms. Ackridge testified that the house heater was not operational from November 2021 to March 2022, PGW records indicate that the Company left the gas on at its last visit to the Service Address on November 10, 2021, and that the house heater was operational. There are no other records that indicate that the Complainant's gas was turned off by

¹³ *See, Waldron v. Philadelphia Electric Co.*, 54 Pa. P.U.C. 98 (1980): “In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825 (May 1979), which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.” I.D. at 6.

PGW any time after that point. Further, PGW provided the Complainant with meter testing when she requested it in August, 2021 and the Complainant was provided with an opportunity to have another meter test performed after that but the Complainant did not avail herself of that service. Ms. Glace indicated that the Complainant's outstanding balance was due to a combination of unpaid bills and late payment charges. Tr. 46; PGW Exh. 9. Based on the above, there does not appear to be any issues with the Complainant's billing, and she has failed to meet her burden of proof in this regard.

I.D. at 8.

Based on the foregoing, the ALJ concluded that, on application of the principles established under *Waldron*, the Complainant did not sufficiently meet her burden of proof concerning the accuracy of her bills. I.D. at 8.

2. Request for Payment Arrangement

As noted, the Complainant requested the establishment of a payment arrangement as part of the relief sought in her complaint.

a. Positions of the Parties

Ms. Ackridge indicated that she desired to go on a payment plan for the balance due PGW after any corrections to the amount owed.

PGW did not contest the eligibility of Ms. Ackridge for a payment arrangement.

b. ALJ’s Recommendation

ALJ Guhl concluded that the Complainant was eligible for a Commission-issued payment arrangement. I.D. at 9-10.

D. Exceptions and Replies to Exceptions

1. Complainant’s Exceptions

The Exceptions of Ms. Ackridge do not conform to the Commission’s Rules of Practice regarding Exceptions. 52 Pa. Code § 5.533. The Commission has a policy of engaging in a liberal construction of its Rules of Practice in the case of unrepresented participants. *See*, 52 Pa. Code § 1.2(a);¹⁴ *see also*, *James Coppedge v. PECO Energy Company*, Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015); *James Coppedge v. PECO Energy Company*, Docket No. F-2009-2135893 (Opinion and Order entered August 3, 2010), wherein based on the circumstances of the proceeding, the Commission considered the complainant’s ‘Exceptions’ although the filing did not comply with 52 Pa. Code § 5.533(b).

Commission Regulations and long-standing Commission administrative precedent are implemented for the policy objective of affording parties, particularly complainants who appear, *pro se*, the opportunity to provide this agency with the necessary facts, evidence, and information to make a record on which we may comprehensively review and fairly decide matters coming before us. *Jones v. PGW*, Docket No. C-2019-3007984 (Order entered July 16, 2020); 2020 WL 4207498

¹⁴ The Commission’s Regulation states, in pertinent part: “[t]his subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.”

(Pa. P.U.C.); *see also* *Richard Carlock v. United Telephone Co.*, 82 Pa. P.U.C. 68, 79 (1994) (*Carlock*); and *Sheri Horinka v. Pennsylvania Power Company*, Docket No. C- 2017-2582842 (Order entered August 4, 2017); 2017 WL 3872519 (Pa. P.U.C.), discussing, *inter alia*, policy considerations of *Carlock* as clarified in *Wroblewski v. Pennsylvania Electric Company*, Docket No. C-2008-2058385 (Order entered May 15, 2009) (*Wroblewski*).

Subject to the qualification as discussed below concerning the request of the Complainant to introduce additional documents into the evidentiary record, we shall engage in a liberal construction of the pleading and consider the Exceptions of the Complainant so as to reach the merits of her objections to the Initial Decision's dismissal of her billing dispute claims.¹⁵

As an introductory paragraph to the substance of her Exceptions, Ms. Ackridge states that the purpose of the Exceptions is to admit additional documents and evidence to sustain her burden of proof in this matter. Such a request must be denied. Even when the Commission's Rules of Practice are liberally construed to accommodate instances of *pro se* parties, we must also exercise care that due process rights and/or prejudice to either party is avoided. As an administrative agency of the Commonwealth, the Commission is required to provide due process to all parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process

¹⁵ The courts have affirmed this discretionary authority under Section 1.2(a) of our rules to disregard an error or defect of procedure which does not affect the substantive rights of the parties in order to secure the just, speedy and inexpensive determination of every action. *See, In re Global NAPs, South, Inc.*, Docket No. A-310771 (Opinion and Order entered April 29, 1999), citing *Apollo Gas Co. v. Heilman*, Docket No. C-00924405 (Opinion and Order entered March 10, 1994), and *AT&T Communications of Pa. v. Pa. PUC*, 568 A.2d 1362, 1364 (Pa. Cmwlth. 1990).

is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15.

There are established procedures that are to be followed for the Commission's consideration and receipt of additional information and/or evidence after the record in a matter has been closed. To accept information for inclusion in the record after the record has been closed in violation of due process principles of notice and opportunity to respond is improper. *See*, 52 Pa. Code § 4.31(b):

(b) After the record is closed, additional matter 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.

52 Pa. Code § 4.31(b).

The Complainant has not alleged, and neither do we find, good cause for the receipt of additional documentary evidence into the record as submitted by the Complainant. Unrepresented participants in Commission proceedings are, pursuant to law under the same requirements as trained attorneys in certain matters. *See, Jones v. PGW*, citing *Jones v. Rudenstein*, 585 A.2d 520 (Pa. Super. 1991), *appeal denied*, 529 Pa. 634, 600 A.2d 954 (1991), citing, *inter alia, Farretta v. California*, 422 U.S. 806, 834, n. 46, 95 S.Ct. 2525, 2540, n. 46, 45 L.Ed.2d 562, 581, n. 46 (1975) for the proposition that a *pro se* litigant is not absolved of all responsibility to comply with procedural rules and opponents and the courts do not have an affirmative duty to walk him through procedural requirements or to ignore procedural requirements in order to reach the merits of a *pro se* litigant's claim.

Based on the foregoing, we cannot admit additional evidence or documents for our consideration after the close of the record in this proceeding in our deliberation of

the Exceptions. The request of the Complainant that we consider the information tendered with and/or, as part of the Exceptions must be denied.

The essential argument of Ms. Ackridge raised in Exceptions is reprinted below:

Based on the supporting documents and evidence it is a preponderance of evidence that Ms. Ackridge is a victim of Elder Fraud, high billing, misrepresentation. Ms. Ackridge asked the commission to issue a subpoena to PGW to provide the photographs of Oval heating and the Heater hotline which show the meter readings and work performed and that her boiler was working but the heater did not. Documents and notes and invoices from Oval heating to show that Ms. Ackridge was overbilled \$10,000 from the Private Contractor HVAC Green Sky and Adams Mechanics . . .

See, Exceptions.

2. PGW Reply Exceptions

In its Reply Exceptions (R. Exc.), PGW notes its objection to the request that the Commission consider any issues which are outside of the scope of the Commission's jurisdiction or, otherwise, were not raised as part of the Complaint. R. Exc. at 2.

In specific reply to the high bill allegations of the Complainant, PGW asserts the following:

The record clearly demonstrates that the Complainant's bills are correct and that they accurately reflect the usage of a heating account as well as Complainant's testimony that her house heater was not operational for a period of time during the cold months of 2021. PGW's Exhibit 9, a statement of the

Complainant's account, shows that, despite there being 335 heating degree days during the billing period for the November 19, 2021 bill and 577 heating degree days during the billing period for the December 21, 2021 bill, those bills were only \$69.35 and \$29.49 respectively given the low usage recorded on the meter (presumably due to the issues Complainant was having with her heater and the period of time the gas was shut off to the heater by PGW). Moreover, any gas related appliances and fixtures after the gas meter are the customer's responsibility to maintain. 1 As such, any increase in the Complainant's gas bill relating to the condition of her appliances is the Complainant's responsibility.

R. Exc. at 2.

E. Disposition – High Billing Dispute

Before addressing the contentions raised in the Exceptions, we advise the Parties that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).¹⁶

1. Complainant's Burden of Proof of Abnormal Billing

We find that the presiding ALJ has correctly cited the applicable principles of *Waldron*. When a complaint alleges a high-billing dispute and the principles of

¹⁶ *See also, Metropolitan Edison Co. v. Pa. PUC*, 22 A.3d 353 (Pa. Cmwlth. 2011), *appeal denied*, 615 Pa. 760, 22 A.3d 353 (2012), citing *Wheeling & Lake Erie Railway Company v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001) for the proposition that the Commission is not required to expressly consider all of the arguments set forth by the parties in its Order.

Waldron are found to apply, the Commission has concluded that a complainant may establish a *prima facie* case, *i.e.*, satisfy the initial burden of production, by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. *See, Huiping Xu v. The Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. F-2009-210569 (Order entered September 24, 2010); 2010 WL 3807778 (Pa. P.U.C.), citing *Waldron*. We would further note our holding of *Waldron* as amplified in *Kupstas v. Pa. Gas & Water Co.*, Docket No. Docket No. F-09136863 (Opinion and Order entered September 17, 1992); 1992 WL 684915 (Pa. P.U.C.), *4 – “Even though the burden of going forward can be met in many ways, once a customer demonstrates that a bill has substantially deviated from the expected usage, the logic and principles of *Waldron* can be applied.”

Upon the submission of such evidence by a complainant, the burden of going forward with evidence shifts to the utility. If a utility fails to rebut such evidence, then a complainant would prevail. If the utility has placed into the record evidence to rebut a complainant’s *prima facie* case, the burden of going forward with the evidence shifts back to the complainant.

As an initial consideration, in this dispute the Complainant takes the position that water was in the heating system and, in some manner, a PGW representative indicated otherwise. Tr. at 49. However, the record does not indicate how, if at all, this is a factor that has been shown to be relevant or material to the accuracy of the bills rendered to the Complainant. These allegations suggest a dispute regarding the adequacy of service provided by PGW.

Pursuant to Section 1501 of the Code, 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. *See*, 66 Pa. C.S. § 1501. Additionally, this section of the Code requires that “[s]uch service also shall be reasonably continuous and without unreasonable interruptions or delay.” *Id.*

We further note that, under the Code, the term, “service,” used in its broadest and most inclusive sense, “. . . includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part [the Code] to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .” 66 Pa. C.S. § 102. Therefore, the statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

However, in order for the Commission to sustain a complaint brought under Section 1501 of the Code, the utility must be in violation of its duty under this section. Without such a violation by the utility, the Commission does not have the authority, when acting on a customer’s complaint, to require any action by the utility. *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 at 949 (Pa. Cmwlth. 1984).

On consideration of the record in this matter, we find the concerns of Ms. Ackridge regarding the service contacts of PGW representatives and her gas heating unit at the Service Address to be unsupported by facts so as to find PGW accountable for the problems related to the performance of this appliance. *Patterson v. Bell Telephone Co. of Pa.*, *supra*; *Feinstein v. Philadelphia Suburban Water Co.*, *supra*. We, therefore,

conclude that Ms. Ackridge has not met her burden of proof regarding inadequate service.

The remaining aspect of the Complaint concerns, alleged, high billing. On exercise of our independent review of the record in this matter, we do not find that the testimony and documentary evidence of the Complainant has met her burden of proof of abnormal billing by PGW.

To support her abnormal billing claim, the Complainant testified that her house heater was not operational from November 2021 to March 2022.¹⁷ However, PGW records indicate that: (a) the company left the gas on at its last visit to the Service Address on November 10, 2021, and that the house heater was operational at that time (Finding of Fact Nos. 17, 18) and (b) there are no other records indicating that the Complainant's gas was turned off by PGW any time after that point.

In reply to the position of the Complainant, PGW sponsored the testimony of its Customer Review Officer and produced its business records indicating, *inter alia*, that all meter tests performed showed that the meter was functioning properly, *i.e.*, recording usage within the Commission Regulation tolerance levels.¹⁸ Specifically, the Complainant's gas meter was removed in August 2021 and tested and found to be accurate. Finding of Fact Nos. 12-14.

PGW also responded to the position of Ms. Ackridge with Exh. No. 2, which is a June 8, 2021, letter and attachment of a "Gas Usage Analysis" covering the period October 18, 2018, to May 19, 2021, (periods that precede the disputed period).

¹⁷ The disputed billing period in this case appears to be from November 17, 2021, through March 21, 2022, at which time the Complainant alleges the house heater at the Service Address was turned off by a private contractor. Finding of Fact No. 19.

¹⁸ Ms. Ackridge refused an additional meter test. Finding of Fact No. 21.

PGW concluded that the Complainant's usage during this period was consistent, *i.e.*, not abnormal. *See*, PGW Ex. No.2, pg. 1 of 6, stating "A gas usage analysis which compares your usage with the prior historical consumption at this property was completed, and it was determined that the usage pattern is consistent." As additional evidence in support of the Initial Decision, we note the Complainant's PGW account statement that is part of PGW Exhibit 2, which shows that the disputed bill amounts from November 2021 through March 2022 are entirely consistent with the Complainant's bill amounts for those same months in prior years.

Also, PGW sponsored Exh. No. 6 in response to the claims of the Complainant. PGW Ex. No. 6 is a May 2, 2022, letter with attachment informing the Complainant of the results of a PGW high bill claim investigation. The attachment to the letter is a "Gas Usage Analysis of Account" covering the time periods, October 17, 2017, through April 20, 2022. These are time periods which encompass the service periods in dispute. PGW Exh. No. 6, pg. 3 of 4. The Complainant's meter was changed and replaced, August 11, 2021, and as a result, meter readings recorded on the Gas Usage Analysis of Account proceed from a zero reading from this date (August 8, 2021). Based on PGW's internal investigation, it was concluded: "A gas usage analysis which analyzes your consumption and takes into consideration factors such as the weather conditions was also completed and indicated that there is a consistent pattern of usage at the property." *See*, PGW Exh. No. 6, pg. 1 of 4, May 2, 2022, letter (emphasis added).

Overall, the Complainant's PGW gas bills reflect the usage of a heating account, and PGW's testimony and exhibits adequately addressed the Complainant's allegations of abnormal billing. Based on the foregoing, we conclude that the Complainant has not met her burden of proving abnormal billing by PGW.

Conclusion

On consideration of the Initial Decision and the Exceptions therefore, the Initial Decision of ALJ Marta Guhl is, hereby, adopted, consistent with the discussion in this Opinion and Order. The Exceptions of Florence Ackridge are denied, consistent with the discussion in this Opinion and Order; **THEREFORE;**

IT IS ORDERED:

1. That the Exceptions of Florence Ackridge filed to the Initial Decision of Administrative Law Judge Marta Guhl issued May 15, 2023, at Docket No. C-2022-3035899 are denied, consistent with the discussion in this Opinion and Order.
2. That the Initial Decision issued May 15, 2023, at Docket No. C-2022-3035899, is adopted, consistent with the discussion in this Opinion and Order.
3. That the Complaint of Florence Ackridge against Philadelphia Gas Works alleging incorrect billing is denied, consistent with the discussion in this Opinion and Order.
4. That the Complaint of Florence Ackridge against Philadelphia Gas Works for a Commission-issued payment arrangement is granted, consistent with the Initial Decision adopted in this matter.

5. That the Commission Secretary shall mark the above-captioned docket closed.

BY THE COMMISSION:

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 1, 2024

ORDER ENTERED: February 15, 2024