

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

Public Meeting held February 22, 2024

Commissioners Present:

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

Michael Hillman

C-2023-3038204

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Michael Hillman (Mr. Hillman or Complainant) on October 10, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued on September 27, 2023, in the above-captioned matter. PECO Energy Company (PECO or the Company) did not file Reply Exceptions in this matter. Upon consideration of the Exceptions, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order.

I. History of Proceeding

On February 2, 2023, Mr. Hillman filed a Formal Complaint (Complaint) against PECO, an appeal from a decision of the Bureau of Consumer Services (BCS) Informal Complaint No. 3882294. In the Complaint, Mr. Hillman indicated that: (1) PECO was threatening or had already terminated his service; (2) that he had been billed incorrect amounts; and (3) that PECO had failed to provide reliable, safe, or quality utility service based upon an ongoing foreign load issue at the residence. Complaint at 2.

Specifically, Mr. Hillman explained that his PECO service was terminated on May 12, 2021, and that a PECO representative informed him via phone on May 14, 2021, that termination included his electric and gas service through PECO. Complaint at 2. The Complainant contacted PECO on December 9, 2022, to inform PECO he no longer resided at the address and to discontinue billing him for service. *Id.* Finally, the Complainant stated his belief, based on the representation that both gas and electric service had been terminated, that gas was still being provided to the residence because of a foreign load that was not properly resolved by PECO. *Id.*

On March 1, 2023, PECO filed an Answer to Complaint (Answer).¹ In the Answer, PECO denied all material allegations and conclusions of law in the Complaint. PECO noted that service began at the address in April of 2019 and electric service was terminated at the address on June 15, 2021, for a lack of payment. Answer at 1-2. PECO also offered that during the December 9, 2022, phone call, Mr. Hillman requested clarification on why he was still receiving usage bills for gas service. *Id.* at 2. At this time, PECO informed Mr. Hillman the gas services were active, and he remained

¹ Mr. Hillman's Formal Complaint, while filed with the Commission on February 2, 2023, was not, per the Commission's case management system, served on PECO until February 9, 2023. Therefore, PECO's filing was timely and filed within the twenty (20) day period required by 52 Pa. Code § 5.61 (a).

responsible for the usage and bills. *Id.* Disconnection of the gas service was completed, effective December 15, 2022. *Id.* PECO asks the Commission to find the bills and balance correct and to dismiss this matter as it is without merit. *Id.*

On March 2, 2023, both a Call-In Telephonic Hearing Order and Pre-Hearing Order were issued by ALJ Heep, setting a call-in hearing for April 27, 2023. Call-In Telephonic Hearing Order at 1.

The Call-In Hearing commenced as scheduled on April 27, 2023, however, it was abandoned based on communication issues and the Complainant's desire to offer additional statements. An In-Person Evidentiary Hearing Notice and Pre-Hearing Order were issued post-hearing on April 27, 2023, setting an in-person hearing for May 30, 2023.

On May 8, 2023, the Complainant submitted a document entitled "Argument." This two-page typewritten document raised issues involving Mr. Hillman's desire to make a statement of facts, Commission procedures, and stated a belief the facts of this matter were "beyond the PUC's Jurisdiction." Argument at 1-2. This document also referenced the Complainant's Formal Complaint against Aqua Pennsylvania, Inc.²

An In-Person hearing was held on May 30, 2023. Mr. Hillman appeared *pro se*, introduced the testimony of one witness, and presented three exhibits. I.D. at 3. PECO presented the testimony of two witnesses and submitted nine exhibits. *Id.*

On June 9, 2023, the Complainant filed a document entitled "Motion to the Court to Reopen for Purposes of Admitting Evidence" (*Evidence Motion*). The *Evidence*

² See, *Michael Hillman v. Aqua Pennsylvania, Inc.*, Docket No. C-2023-3038201 (Formal Complaint filed February 9, 2023).

Motion requested the Commission admit additional exhibits into the record of this proceeding. *Evidence Motion* at 1. PECO did not object to the admission of the exhibits, however, it did request additional information regarding certain exhibits. I.D. at 3. Upon filing of the additional information, the ALJ issued an Order on July 24, 2023, entering the additional exhibits into the record. *Id.*

The Initial Decision of ALJ Heep, as noted *supra*, was issued on September 27, 2023. The Initial Decision dismissed certain of Mr. Hillman's claims, holding the Complainant failed to meet his evidentiary burden and establish a continuing foreign load at the apartment, a failure to provide notice of termination, and did not show PECO discriminated against him. I.D. at 1. However, the ALJ found sufficient evidence was offered that PECO had delivered unreasonable customer service in providing incorrect information to Mr. Hillman and imposed a \$300 civil penalty. *Id.*

On October 10, 2023, the Complainant filed a Motion/Petition to Reopen. (*October Motion*). The *October Motion* requested the Commission reopen the record in this proceeding to allow for entry of additional evidence that was not available at the May 30, 2023, in-person hearing. *October Motion* at 1.

On October 16, 2023, the Complainant filed Exceptions to the Initial Decision. The Exceptions included several attached exhibits.

On November 1, 2023, the Complainant filed a second Motion/Petition to Reopen. (*November Motion*). The *November Motion* raised four issues: (1) additional exhibits, not included with the Exceptions were attached; (2) factual averments that Complainant's Exhibit A from the May 30, 2023, hearing was a "fake"; (3) asking whether the Commission will "do something" about an ongoing issue between the Complainant and the Borough of Collingdale; and (4) questioning why the copy of the Initial Decision mailed to him was unsealed. *November Motion* at 1.

On December 17, 2023, the Complainant filed a Motion for In-Person Pickup.³

No responses to the *October Motion*, *Exceptions*, or *November Motion* have been filed.

II. Discussion

A. Legal Standards

1. Jurisdiction

Section 701 of the Code outlines the Commission's procedure for the review of complaints, stating in relevant part:

The Commission, or any person ... having an interest in the subject matter ... may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

66 Pa. C.S. § 701. As explained by the Commission in *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984) (*West Penn*), Section 701 of the Code provides for complaints against a public utility for anything done or not done in

³ We note that the Commission and Mr. Hillman reached an agreement that he can pick up service of his documents at the Philadelphia office of the Commission's Office of Administrative Law Judge. We further note that his right-to-know (RTK) requests were only requests to review his file and transcripts and that all of those requests were granted. The Commission has granted the Complainant with access to everything in this proceeding. Consequently, there is no need to consider this motion in this Opinion and Order as the matter is now moot.

violation of the laws administered by the Commission or Commission Regulations and Orders. *Id.*

However, for the Commission to sustain a complaint against a public utility, the utility must be found to be in violation of its duty under the Code, the Commission's Regulations, or an Order of the Commission. Without proof of such a violation, the Commission does not have authority to require any action by the public utility in relation to the customer's complaint. *See, West Penn.*

2. Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), the Complainant, the proponent of a rule or order, bears the burden of proof. 66 Pa. C.S. §332(a). To satisfy the burden of proof, the Complainant, as the party seeking relief, must establish a sufficient case that PECO is responsible for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). This 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). This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than the evidence presented by PECO. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

This Commission's decisions 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 & West Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980). "Opinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission." *Norman v Phila. Gas Works*, Docket No. C-2018-2640719 (Opinion and Order entered October 7, 2021) (*Norman*).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to PECO to present persuasive evidence rebutting that of the Complainant. If PECO's evidence is of co-equal weight, the Complainant has not satisfied their burden of proof, and must provide additional evidence to rebut that of PECO. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*). While the evidentiary burden of persuasion 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 to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

3. Foreign Load

“Foreign load” refers to a situation where a utility customer’s meter registers utility usage not exclusive to the customer’s residence or occupants. In 1993, the General Assembly amended the Public Utility Code to include 66 Pa. C.S. § 1529.1, addressing foreign load issues.⁴ Section 1529.1 provides as follows:

§ 1529.1. Duty of owners of rental property.

(a) Notice to public utility.--It is the duty of every owner of a residential building ... which contains one or more dwelling units, *not individually metered*, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) History of account.--Upon receipt of the notice provided in this section, if the ... residential building contains one or more dwelling units *not individually metered*, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. ...

⁴ Section 1529.1 was added to the Code by the enactment of Public Law 379, No. 54, on July 2, 1993, with an effective date of September 1, 1993.

(c) Failure to give notice.--Any owner of a residential ... failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa. C.S. § 1529.1 (emphasis added).

“Individually metered,” as used in Section 1529.1, is not defined by the Code or within our Regulations. *See, I-A Realty v. Pa. PUC*, 63 A.3d 480, 483 (Pa. Cmwlth. 2023) (*I-A Realty*). Despite this lack of clarity in our Code and Regulations, the Commission has consistently defined “not individually metered” in our decisions as the “utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants.” *Id.* at 483 (citations omitted).⁵

⁵ *See also, David P. Boyce v. Duquesne Light Company*, Docket No. Z-00223698 (Opinion and Order entered September 1, 1994) (*Boyce*) (foreign load existed where tenant’s meter registered electric service for the compressor for the air conditioning unit servicing three apartment units); *Elizabeth Santos v. Metropolitan Edison Company*, Docket No. C-00967757 (Opinion and Order entered August 7, 1997) (*Santos*) (foreign load existed where tenant’s meter registered electric service to a barber shop and church located in tenant’s building); *Theodore P. Del Vecchio v. PPL Electric Utilities Corp.*, Docket No. Z-01464793, 2005 WL 2277638 (Opinion and Order entered September 13, 2005) (*Del Vecchio*) (foreign load existed where tenant’s account registered electric service to well water pump and various outbuildings); *Linda Franckowiak v. PPL Electric Utilities Corp.*, Docket No. C-20054687, 2006 WL 4794383 (Order entered July 3, 2006) (*Franckowiak*) (“the existence of foreign wiring precludes a premises from being considered ‘individually metered’ for purposes of [Section 1529.1 of the Code].”); *Ronald Shank v. PPL Electric Utilities Corporation*, Docket No. C-2009-2087300 (Opinion and Order entered August 31, 2009) (*Shank*) (foreign load existed where tenant’s meter registers electric service from foreign wiring); *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (*Ace Check Cashing*), (foreign load existed where tenants’ gas meter registered gas service for hot water heater supply to separate floor of building); *Cosme v. PECO Energy Co.*, Docket No. C-2010-2171497, 2012 WL 1794917 (Final Order entered March 8, 2012) (*Cosme*) (foreign load existed where tenant’s meter registered electric service for hallway electric heater and light); *George W. Kopf, Jr. v. PECO Energy Co.*, Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013) (*Kopf*) (foreign load existed where tenant’s meter registered electric

In *Ace Check Cashing*, the Commission explained the operation of Section 1529.1. Specifically, Subsection (a) of Section 1529.1 establishes an affirmative duty on the owner of a property to notify a utility provider if a residential building contains “one or more dwelling units, not individually metered.” If the property owner or landlord provides notice, Subsection (b) requires the utility to list the account with the foreign load in the landlord’s name and hold the landlord accountable for utility service payments related to the account.⁶ If the landlord fails to provide the required notice, Subsection (c) places an affirmative duty on the utility to proceed as if the notice had been provided. Therefore, a utility has an affirmative duty to investigate a foreign load or high bill complaint, and if the utility discovers a foreign load, the utility is required to list the account in the landlord’s name and hold the landlord responsible for payment for utility services rendered to the account. *See, Ace Check Cashing*.

The Commission’s policy in implementing Section 1529.1 is well-settled and articulated in *Ace Check Cashing* (citing *Santos*):

service to common areas in second floor hallway, basement and outside light); *I-A Realty v. PPL Electric Utilities Corp.*, Docket No. F-2010-2166554, *et al.* (Opinion and Order entered April 12, 2012), *aff’d I-A Realty v. Pa. PUC*, 63 A.3d 480 (Pa. Cmwlth. 2013) (*I-A Realty*) (foreign load existed where communal street lights in a mobile home park were connected to the electric boxes of the homes of the nearest tenants); *Gnana Chinniah v. PPL Electric Utilities Corp.*, Docket No. F-2012-2325248 (Opinion and Order entered May 9, 2013) (*Chinniah*) (foreign load existed where tenant’s meter registered electric service to a detached storage shed located in the middle of a backyard of a duplex on the boundary between the two properties).

⁶ Prior to 1993, we resolved foreign load high bill complaints by directing the utility to remove the charges attributable to the foreign load from the customer’s bill and to issue a bill for the foreign load in the property owner’s name. *See, Albright v. UGI Penn Natural Gas Co., Inc.*, Docket No. F-2009-2139408 (Final Order issued November 8, 2010) (*Albright*). Section 1529.1 changed this by mandating that the account registering foreign load be listed in the name of the property owner and that the owner be thereafter responsible for the payment of utility services rendered to such account until the foreign load is fixed.

Upon the finding of foreign load, the utility would list the account, including any arrearages, in the name of the landlord. The landlord had the responsibility to pay the utility bills until the foreign load was corrected. Once the foreign load was corrected by the landlord and verified by the utility, the utility would place the account back in the name of the tenant. However, the arrearage, if any, was to remain with the landlord. There was no *de minimis* exception, and any dispute regarding the financial responsibilities of the parties [as between landlord and tenant] was a matter to be resolved in the Court of Common Pleas and outside this Commission's jurisdiction.

Ace Check Cashing at 7-8.

Accordingly, once a foreign load is verified on a tenant's service, the utility is to list the account in the property owner's name and hold the property owner financially responsible for the current balance and any arrearages⁷ on the account. Only after the landlord corrects the foreign load, and such correction is verified by the utility, must the utility re-list the account in the name of the tenant however, the landlord remains responsible for any arrearage on the tenant's account that existed prior to when the utility verified that the foreign load was corrected. *Ace Check Cashing; Kopf*. The utility must pursue collection of any unpaid amounts on the foreign load-affected account from the landlord, and not from the tenant. *Santos*.

The intention of Section 1529.1 is to protect residential tenants from the loss of utility service because another customer has service terminated by the utility. *See, Santos*. Additionally, Section 1529.1 recognizes that the property owner is in a better

⁷ As clarified in *Glen DeHaven v. PECO Energy Company*, Docket No. C-2017-2585680 (Opinion and Order entered March 23, 2018) (*DeHaven*) and *Richard Dina v. PECO Energy Company*, Docket No. F-2017-2592410 (Opinion and Order entered March 23, 2018) (*Dina*), the utility shall transfer to the landlord only the account arrearages that accumulated at the premises/service address where the foreign load is found to exist and shall exclude any prior debts of the tenant that had been accumulated at another service address and that the utility transferred, pursuant to 52 Pa. Code § 56.35, to follow the financially-responsible tenant to the foreign load-affected premises.

position to ascertain and correct the existence of a foreign load than a tenant. *See, Albright; Ace Check Cashing.* Section 1529.1 provides an incentive for a landlord to correct the foreign load resulting from the wiring, plumbing, or piping for which the landlord is responsible. *See, Ace Check Cashing.*

4. Termination Notice

Section 1406 of the Code sets forth the procedures for termination of utility service, including acceptable bases for termination of service, notice requirements, and types of contact sufficient for notice. *See, 66 Pa. C.S. § 1406.* Our Regulations expand upon these requirements outlining the required contents of notice provided to customers. *See, 52 Pa. Code § 56.91.*

§ 1406. Termination of Service

(a) Authorized termination. -- A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to comply with the material terms of a payment arrangement.

...

(b) Notice of termination of service. --

- (1) Prior to terminating service under subsection (a), a public utility:
 - (i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

...

§ 56.91. General notice provisions and contents of termination notice.

(a) Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

5. Customer Service Issues

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service and facilities” and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See*, 66 Pa. C.S. § 1501. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

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 and facilities shall be in conformity with the regulations and orders of the commission.

The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

6. Discrimination in Service

Under 66 Pa. C.S. § 1502, the Public Utility Code forbids discrimination in the provision of utility services, stating:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.

66 Pa. C.S. § 1502.

B. Initial Decision

In the Initial Decision, ALJ Heep made fourteen (14) Findings of Fact and reached eleven (11) Conclusions of Law. I.D. at 3-5, 15-16. The Findings of Fact and Conclusions of Law are incorporated herein by reference and adopted without comment

unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

ALJ Heep's Initial Decision, based upon a review of the facts, made the following findings: (1) the record did not contain substantial evidence establishing the presence of a foreign load at the residence, I.D. at 7-10; (2) the evidence regarding notice of termination was of "co-equal" weight and therefore, the Complainant had failed to meet their burden, I.D. at 10; (3) the Complainant failed to show PECO acted in a way that was discriminatory towards him, *Id.*; and (4) the Complainant proved that PECO failed to provide reasonable customer service when Complainant was given incorrect information about which of his PECO services were terminated due to non-payment. I.D. at 11-12. The Initial Decision considered PECO's failure to provide reasonable customer service, and, after conducting a *Rosi*⁸ analysis, imposed a civil penalty of \$300.

⁸ *Rosi v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Opinion and Order entered February 10, 2000) (*Rosi*). Now codified at 52 Pa. Code § 69.1201, which states in relevant part:

(c) The factors and standards that will be considered by the Commission include the following:

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

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

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

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent

In considering the Complainant's assertion of a continuing foreign load at the residence, the ALJ noted the Complainant failed to present any details or other evidence in support of his opinion. I.D. at 9. ALJ Heep also noted that Mr. Hillman filed actions in both state and federal courts raising the issue of foreign load with those matters having been dismissed prior to the instant matter. I.D. at 11. Considering that a central component of the Complainant's foreign load claim was his belief that both electric and gas service had been terminated at the address, the ALJ cited to the testimony of PECO witness McQuilkin that PECO did not terminate the gas service at the address because there was a broken valve. I.D. at 9. Further, the ALJ pointed to the continued gas bills sent to Mr. Hillman as evidence and an indication the gas service to the address was not terminated. I.D. at 10. The Initial Decision also noted the issue of foreign load was previously considered and dismissed by the Commission in 2020. *See, Hillman v. PECO Energy Co.*, Docket No. F-2020-3019051 (Final Order entered December 8, 2020)

similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

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

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

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

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

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

(holding that PECO properly investigated and remedied the foreign load reported by Mr. Hillman and that Mr. Hillman failed to meet his burden) (*Hillman 1*). I.D. at 8.

The Initial Decision also found that Mr. Hillman failed to establish he had not received a termination notice. I.D. at 10. The ALJ weighed the evidence presented by PECO that termination notices were left at the address and a telephone call was made advising of the risk of service termination prior to June 16, 2021, against the testimony of the Complainant and his witness, and found them to be equivalent. *Id.* The Initial Decision noted the Complainant's burden and found that Mr. Hillman could not prevail where the evidence was equivalent in persuasiveness. *See, Burlison.*

Regarding the Complainant's allegation that it was discriminatory and inhumane by PECO to terminate his utilities and to leave his residence without electricity, the Initial Decision pointed to the Complainant's failure to pay his utility bill from April 2019 through December 2022. I.D. at 10-11. Referring to *Norman*, the ALJ held that Mr. Hillman failed to provide any evidence beyond his opinion and sincere belief that PECO acted in a discriminatory manner. I.D. at 11. ALJ Heep added that, despite various actions filed by Complainant against PECO regarding foreign load and billing issues, the record did not show any PECO matters pending at the time of termination on May 12, 2021, and the Complainant could not prevail on this issue.

Finally, the Initial Decision considered the totality of customer service provided to Mr. Hillman, finding that PECO failed to provide reasonable customer service. I.D. at 11. In particular, the Initial Decision points to Mr. Hillman's testimony that he was informed by a PECO representative that both his electric and gas services were terminated and shut off, that PECO failed to inform Mr. Hillman his gas service was not terminated due to a broken gas valve, and incorrect information included on records sent to Mr. Hillman. I.D. at 11. The Initial Decision further mentioned a Utility Report submitted by PECO, that Mr. Hillman's testimony cast doubt upon. I.D. at 12. In this

report, PECO states Mr. Hillman contacted PECO on December 9, 2022, reporting a gas smell and that a PECO technician came to the address and spoke with Mr. Hillman in mid-December, however, Mr. Hillman credibly testified he had move from the address on December 5, 2022. I.D. at 12. The ALJ found that PECO did not offer substantial rebuttal evidence to this testimony, and, considering the totality and cumulative nature of the customer service issues and their nexus to the Complaint in this matter, found a violation of 66 Pa. C.S. § 1501. I.D. at 12. For this violation, the ALJ conducted a *Rosi* analysis and imposed a civil penalty of \$300. I.D. 12-14.

C. Motions/Petitions to Reopen and Exceptions

1. Motions/Petitions to Reopen Filed October 10, 2023 and November 1, 2023

On October 10, 2023, Mr. Hillman filed his first Motion/Petition to Reopen (*October Motion*) offering additional evidence to be considered in this matter. The Motion/Petition consists of one type-written page requesting the Commission reopen the record in this matter “for offering additional evidence, which was not available at the May 30, 2023, hearing.” *October Motion* at 1.

On November 1, 2023, Mr. Hillman filed a second Motion/Petition to Reopen (*November Motion*), which is substantially similar to the *October Motion*, and makes the following four (4) points: (1) he is filing updated picture exhibits which were not previously included with his Exceptions; (2) he is asserting that his Exhibit A, entered into the record on May 30, 2023, is a fake and citing to newly filed Exhibit 28 to allegedly prove this point; (3) he is asking “whether the PUC will do something” to resolve ongoing issues with Collingdale Borough, Pennsylvania; and (4) he is expressing concern regarding the condition of the envelope in which the Commission sent the Initial Decision. *November Motion* at 1.

2. Exceptions

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, recognizing that the Complainant is appearing *pro se*, we will exercise our discretion to accept the Exceptions, despite the failure to number the Exceptions and the failure to clearly identify the finding or conclusion to which exception is taken, and Motions-Petitions to Reopen as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits.

As noted previously, we shall exercise the discretion afforded to the Commission in 52 Pa. Code § 1.2 to disregard the procedurally deficient nature of the Complainant's Exceptions and shall consider the merits of the Complainant's Exceptions.

As previously noted, On October 16, 2023, Mr. Hillman timely filed his Exceptions to the Initial Decision which consists of six pages and twenty-seven Exhibits. Each of the Exhibits is new information, not previously provided to the Commission as part of the record in this proceeding.

The Exceptions refer to contested issues by page and paragraph and can be read to raise eighteen issues with the Initial Decision. These eighteen Exceptions can be further summarized into four subject areas: (1) foreign load; (2) the veracity of evidence relied upon in the Initial Decision; (3) disputes regarding the Initial Decision's finding Mr. Hillman failed to meet his burden of proof; and (4) whether the Initial Decision properly considered the *Rosi* factors in imposing a \$300 fine for unreasonable customer service.

Mr. Hillman's Exceptions No. 1-4 and No. 6 all relate to his allegations of an ongoing foreign load at the residence, raise issues dating back to 2019 and 2020, and the initial foreign load investigation in *Hillman 1*. Specifically, Mr. Hillman alleges PECO failed to properly investigate the foreign load issue at the residence and argues two of the five meters at the property are "counterfeit." Exception at 1. Based upon the allegation in Exception No. 4, Exception No. 6 offers the Complainant's opinion that the foreign load at the residence was not properly resolved. Exception at 1.

Exceptions Nos. 5, 7, and 13 reassert the veracity of evidence the Initial Decision relies upon to support a civil penalty for PECO's failure to provide reasonable customer service. Exceptions at 2-3. Exception No. 8 broadly asserts that "[t]he entire peco report is a lie. Which one? Each and every one." Exception at 2, formatting in original. Exception No. 11 clarifies the amount of experience and credentials of Mr. Hillman. *Id*

Exception 9 cites numerous Commission Codes and Regulations the Complainant believes PECO to have violated based on the evidence. Exception at 2. Exception No. 10 can be read in conjunction with Exception No. 16 as contesting the Initial Decision's finding that Mr. Hillman failed to carry the burden of proving he did not receive written notice. Exception at 2. Exceptions Nos. 14 and 15 make certain characterizations and statements based on testimony offered by PECO regarding the continuation of Mr. Hillman's gas service. *Id*. Exception No. 17 points to new evidence of mold in the apartment as supporting evidence for Mr. Hillman's assertion that PECO discriminated against him.

Exception No. 18 can be read as the Complainant's own analysis of the *Rosi* factors and as a request for a higher civil penalty of \$1000 a day for a period of seven years. Exception at 3.

Finally, the Exceptions offer that the additional evidence submitted with the Exceptions only “recently became available.” Exception at 3. The Complainant also raises an issue with Collingdale Borough regarding inspections and rental licenses. *Id.*

III. Disposition

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

A. Jurisdiction

At the outset, we are compelled to address the Complainant’s Argument, filed on May 8, 2023, and affirm the Commission has jurisdiction over the Formal Complaint filed in this matter. Formal Complaints against utility providers are subject to the jurisdiction of the Commission pursuant to 66 Pa. C.S. § 701, cited *supra*. Further, the Formal Complaint in this matter alleges that PECO committed violations of Commission rules and regulations pertaining to foreign load (66 Pa. C.S. § 1529.1), proper notice of termination (66 Pa. C.S. § 1406 and 52 Pa. Code § 56.91), reasonable customer service (66 Pa. C.S. § 1501), and discrimination in service (66 Pa. C.S. § 1502). Therefore, the Formal Complaint is clearly within the jurisdiction of the Commission.

We further note that certain requests in the Exceptions are beyond the jurisdiction of the Commission. The Commission does not have jurisdiction to investigate Collingdale Borough and the Complainant’s claimed issues with the Borough, as the Borough is not a regulated utility subject to the Commission’s oversight.

See, 66 Pa. C.S. § 501. The Commission is also without authority to investigate or comment on any issues the Complainant may have encountered in receiving his mailed copy of the Initial Decision in this matter.

B. Motions/Petitions to Reopen

We shall deny both the *October and November Motions*. While our Regulations provide that a party may file a petition to reopen the record prior to the issuance of a final decision for the purpose of taking additional evidence, the petition must set forth clearly the facts claimed to constitute grounds for requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. *See*, 52 Pa. Code § 5.571. The record may be reopened if there is reason to believe that the facts or law require it or if the public interest requires it. 52 Pa. Code § 5.571(d). In this instance, the Complainant has not offered any evidence or arguments to show that the conditions of fact or law have changed or that it is in the public interest to reopen the record in this matter. Furthermore, we note that the exhibits offered in the petition to reopen were also offered as attachments to the Complainant's Exceptions.⁹ It is well-established that parties cannot introduce new evidence at the exceptions stage. *Application of Apollo Gas Co.*, 1994 Pa. PUC Lexis, at *8-14 (Order entered February 10, 1994). The same new evidence and arguments introduced for the first time in the Exceptions are not contained in the record and thus having concluded that no basis exists to reopen the record under Section 5.571(d), we further conclude that the extra-record evidence raised in the Exceptions, cannot be admitted into the record. *See, Apollo Gas*.

⁹ The exhibits offered by the Complainant with the Petition are nine (9) pictures, of an interior of a structure and are the same nine (9) pictures that the Complainant submitted for the first time with his Exceptions.

C. Exceptions

Turning to the contents of the Exceptions, we shall address the Complainant's assertions regarding foreign load, veracity of evidence, and the burden of proof, *seriatim*.

1. Foreign Load

Regarding the Complainant's assertions related to foreign load, we shall not revisit the totality of foreign load allegations at Complainant's residence dating back to 2019 and the Formal Complaint in *Hillman 1*. The Commission in *Hillman 1* dismissed Mr. Hillman's allegation of an ongoing foreign load and found PECO had acted properly in investigating foreign load at the residence and finding the issue had been remediated.

We note that Mr. Hillman's claim of an ongoing foreign load at the residence is based on the erroneous belief that PECO had terminated both his gas and electric service in May of 2021 – information that was indeed relayed to Mr. Hillman via a PECO representative and provides the basis for a violation of 66 Pa. C.S. § 1501. Mr. Hillman offers his opinion in Exception No. 4 that some of the meters at the property are counterfeit but offers no evidence or testimony to support this opinion.

In contrast, PECO provided the testimony of High Bill Field Foreman McQuilkin, business records, and gas bills sent to Mr. Hillman as compelling proof dispelling the notion PECO terminated both gas and electric services at the residence. This testimony and evidence within the record outweighs the opinion of Mr. Hillman. Mr. Hillman's opinion was not supported by additional details or evidence. The photographs attached to Mr. Hillman's Exceptions do not provide any further support to his opinion as they are not supported by testimony or properly part of the record. Even

considering these photographs, the Commission is unable to make any factual determinations based on unverified photographs showing wiring and meters.

As we have noted *supra*, “[o]pinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission.” *Norman* at 30. For this reason, we find the Complainant has failed to meet his burden of establishing a foreign load continues to exist at the residence, and deny Complainant’s Exceptions Nos. 1, 2, 3, 4, and 6.

2. Veracity of Evidence

Mr. Hillman raises multiple exceptions related to the veracity of evidence relied upon by ALJ Heep in the Initial Decision. We shall not address Mr. Hillman’s Exceptions Nos. 5, 7, and 13, as the Exceptions simply reassert findings made by ALJ Heep in the Initial Decision and used as support for a finding PECO failed to provide reasonable customer service and impose a civil penalty. We shall also not address Exception No. 11, as this Exception simply provides additional information regarding Mr. Hillman’s employment background and is not relevant to our analysis of this matter.

Turning to Mr. Hillman’s Exceptions Nos. 8 and 12 which argue evidence submitted by PECO in this matter is fake or erroneous. Mr. Hillman takes umbrage with PECO Exhibits 2 and 7, specifically offering his opinion in Exception No. 8 that the entirety of Exhibit 2 is “a lie.” That said, Mr. Hillman offers no evidence to support his opinion that Exhibit 2 is fraudulent in any way.

Exception No. 12 argues Mr. Hillman’s Exhibit D, submitted after the May 30, 2023, hearing consists of testimony and information that is “fake,” based on discrepancies in dates.

As noted *supra*, the Commission cannot rely solely upon the opinion of a Party to support a finding of substantial evidence. The evidence submitted by Mr. Hillman fails to prove his argument that the documents provided by PECO are “fake.” Indeed, accepting the provided testimony as true, it shows only a typographical or clerical error in Exhibit 7 and provides no further information regarding Exhibit 2.

Accordingly, we shall deny Complainant’s Exceptions Nos. 5, 7, 8, 11, 12 and 13.

3. Burden of Proof

Mr. Hillman’s Exceptions Nos. 9, 10, 14, 15, 16, and 17 all suggest that ALJ Heep erred in weighing the evidence and in the Initial Decision’s finding Mr. Hillman did not meet his burden of proof. We will not address Exception No. 9 as it does not take exception to the Initial Decision but offers Mr. Hillman’s opinion on potential Commission Code or Regulation violations and does not point to any evidence or support for such a position.

Exceptions Nos. 10 and 16 take issue with the Initial Decision’s finding Mr. Hillman’s testimony failed to meet his burden of proof that he did not receive written notice of termination. Despite Mr. Hillman’s protestations there is no evidence supporting this finding. PECO submitted testimony and Exhibit 2 stating termination notices were left at the address and a telephone call was made advising of the risk of termination. The value of the evidence submitted by PECO is lessened by the fact it does not state the dates notice was provided, however, it is at least of equal value given Mr. Hillman’s assertion is backed only by his own testimony. For these reasons, Exceptions Nos. 10 and 16 are rejected.

Exceptions Nos. 14 and 15 question the ALJ's weighing of testimony presented by PECO witnesses. Exception No. 14 mischaracterizes the nature of the testimony given by PECO Witness Evans. Transcript at 136-161. This testimony does not purport to prove the allegation that gas was also terminated at the property. Exception No. 14 also fails to point to any Finding of Fact or law and must be rejected. Exception No. 15 questions the Initial Decision's summary of PECO Witness McQuilkin. However, a review of the hearing transcript shows the Exception mischaracterizes the testimony provided. The testimony provided by PECO Witness McQuilkin clearly stated the stove and hot water heater at the property could continue to operate if the electric service to the residence was cut but gas service remained active. Transcript at 114-15. For this reason, we reject Exception No. 15.

Exception No. 17 points to additional exhibits submitted to the Commission alongside the Exceptions and argues these exhibits prove "even more, of the Discriminating Acts." The Exhibits themselves purport to show mold and issues at the property caused by the termination of utility services. However, neither the Exception, nor the Exhibits or any other evidence point to PECO being the cause of the mold or property damage. As established *supra*, a utility may terminate service for non-payment. Here, the Complainant attempts to blame PECO for things which occurred after termination of his utilities for non-payment. Given the lack of pending actions or any other evidence PECO acted in a retaliatory manner, the Commission cannot sustain this Exception and must reject it as lacking substantial evidence.

To the extent Exceptions Nos. 9, 10, 14, 15, 16, and 17 allege the ALJ erred in weighing the evidence presented, the Exceptions are denied.

4. Civil Penalty

Exception No. 18 consists of numerous paragraphs of the Exceptions, with each addressing a *Rosi* factor considered by ALJ Heep in imposing a \$300 civil penalty for unreasonable customer service based on erroneous information conveyed to Mr. Hillman. Each shall be discussed in more detail below.

The first *Rosi* criterion is whether the violation was of a serious nature or whether it was less egregious, such as administrative or technical error. Mr. Hillman takes exception to the Initial Decision's finding the violation was administrative and resulted in incorrect information being given to the Complainant. In his Exception No. 18, Mr. Hillman attempts to argue that "additional evidence" shows the PECO representative was correct in relaying his gas and electric service were terminated. This evidence is not new or additional and was considered by ALJ Heep in the Initial Decision. We see no reason to upset the reasoning of the Initial Decision as to this factor.

The second factor considers whether the conduct is of a serious nature and resulting in property damage. Mr. Hillman contends there was significant property damage based on the unreasonable customer service provided by PECO. However, he fails to point to any evidence or proof showing PECO or their customer service practices lead to the alleged damage. As discussed *supra*, PECO is entitled to terminate Mr. Hillman's service for non-payment and cannot be held responsible for damage occurring after termination of service for which PECO had no role in causing. We decline to accept Mr. Hillman's assertions of property damage.

The third criterion is whether the conduct was intentional or negligent. ALJ Heep found the evidence showed the conduct was negligent and suggested this supported a lower penalty. Mr. Hillman objects, arguing "all of my evidence proves the conduct to be intentional." However, the evidence was fully and properly considered by

ALJ Heep. As noted multiple times *supra*, mere opinions cannot be the basis for a finding of substantial evidence. Mr. Hillman has failed to submit substantial evidence of intentionality and PECO has submitted testimony and Exhibits supporting a finding the conduct and errors in customer service were negligent rather than intentional. We reject Mr. Hillman's Exception to the third *Rosi* criterion.

The Initial Decision, in considering the fourth criterion, notes that PECO did not undertake efforts to address the conduct and prevent similar conduct, suggesting this warranted a higher penalty. Mr. Hillman continues to suggest intentionality, stating that PECO "made no efforts to change" and submitted reports which were "lies." This Exception is rejected as it includes both unsupported opinion evidence by Mr. Hillman and does not ask the Commission to change the analysis of the Initial Decision.

Mr. Hillman states the fifth factor, the number of customers impacted, should be reconsidered and that his wife was also impacted. Additionally, Mr. Hillman argues the broken gas valve at his address impacted "the whole community." The Commission finds no reason to reevaluate this factor. Even accounting for Mr. Hillman's wife, the only residence impacted by the termination of utility services and unreasonable customer service was Mr. Hillman's. We agree with ALJ Heep this supports a lower penalty in this matter.

The sixth *Rosi* factor is the Respondent's compliance history. Mr. Hillman makes a broad comment, "it helps to view the evidence," but fails to point to any evidence or error in the Initial Decision. Therefore, we decline to upset ALJ Heep's analysis and finding this factor was not applicable in this proceeding.

Seventh, the Commission must consider whether the regulated entity cooperated with the Commission's investigation. Mr. Hillman asks, "how can the Public Utility Commission investigate these issues behind a desk," but again fails to point to any

evidentiary or procedural defect in ALJ Heep's finding this criterion was not applicable. We note that PECO participated in all proceedings in this matter, served testimony and exhibits on Mr. Hillman, and did not object to evidentiary motions made by Mr. Hillman. We decline to accept Mr. Hillman's Exception to this criterion.

Eighth, the amount of the civil penalty shall be set at the level necessary to deter future violations, with consideration given to the size of the utility. ALJ Heep found this criterion not applicable given the nature of the violation. Mr. Hillman excepts, but again offers no evidence, procedural, or other support for his argument the Initial Decision erred.

The ninth *Rosi* factor is past Commission decisions. The Initial Decision draws parallels to Commission precedent in similar cases involving foreign load and customer service issues. Noting the past decisions involved situations where unreasonable customer service resulted in the customer receiving inadequate or no service, ALJ Heep drew a distinction and noted the administrative error and unreasonable service provided by PECO did not deprive Mr. Hillman of service to support a lower penalty. Mr. Hillman objects, requesting a fine of \$1000 for a period of seven years. However, Mr. Hillman cites to no Commission precedent, does not explain why he believes this fine to be necessary or consistent with past Commission action, and fails to explain the seven-year period. The Commission rejects Mr. Hillman's Exception and adopts the analysis and finding of ALJ Heep.

The tenth criterion involves any other relevant factors. ALJ Heep found that no other factors had been suggested or considered. Mr. Hillman raises a number of factors he deems to be relevant, each related to safety. While the Commission respects that issues of safety should be considered in imposing civil penalties, Mr. Hillman's vague references to "HOUSE EXPLOSIONS, leveling homes," are not applicable here. The customer service violation for which this civil penalty was imposed related to

erroneous information provided to Mr. Hillman by PECO, not the grave safety issues suggested by Mr. Hillman. We agree with ALJ Heep that no other relevant factors existed in this case and reject the Complainant's Exception. We therefore adopt the reasoning of the Initial Decision.

Accordingly, we shall reject Mr. Hillman's Exception No. 18. We shall accept and adopt the \$300 civil penalty based upon the analysis of ALJ Heep in the Initial Decision.

IV. Conclusion

Based on the foregoing discussion and our review of the Initial Decision, Exceptions, and the record in this proceeding, we shall deny the *October Motion*, *November Motion*, and the Exceptions filed by Michael Hillman, and adopt the Initial Decision issued by ALJ Darlene Heep issued on September 27, 2023, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Michael Hillman filed on October 16, 2023, to the Initial Decision issued by Administrative Law Judge Darlene Heep at Docket No. C-2023-3038204 issued on September 27, 2023, are denied consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Darlene Heep, issued on September 27, 2023, is adopted.

3. That the Formal Complaint filed by Michael Hillman on February 2, 2023, against PECO Energy Company at Docket No. C-2023-3038204, is denied and dismissed, consistent with this Opinion and Order.

4. That the Motion/Petition to Reopen filed by Michael Hillman on October 10, 2023, is denied, consistent with this Opinion and Order.

5. That the Motion/Petition to Reopen filed by Michael Hillman on November 1, 2023, is denied, consistent with this Opinion and Order.

6. That this proceeding at Docket No. C-2023-3038204 shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 22, 2024

ORDER ENTERED: February 22, 2024