

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

Public Meeting held April 4, 2024

Commissioners Present:

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

Peter Mordeczko

F-2023-3041207

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Peter Mordeczko (Complainant or Mr. Mordeczko) on January 8, 2024. The Exceptions were filed in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Arlene Ashton, which was issued on December 20, 2023. Philadelphia Gas Works (Respondent or PGW) filed Reply Exceptions on January 19, 2024. For the reasons stated below, we shall deny the Exceptions of the Complainant and adopt the ALJ's Initial Decision.

I. History of Proceeding

On May 31, 2023, the Complainant filed a Formal Complaint (Complaint) against PGW with the Commission. In the Complaint, the Complainant indicated that the utility had shut off his service without proper notice and requested that the Commission establish a new payment plan.¹ Complaint at 1-2. In addition, through an Attachment to the Complaint form, Mr. Mordeczko indicated that he had difficulty accessing his account because PGW requires his social security number to access his account. Complaint Attachment at 1. By way of background, the Complainant also averred, *inter alia*, that he: (1) did receive a termination of service notice on his front door² although he alleges that PGW did not “knock on his door” nor attempt to contact him by phone; (2) requested that the PUC initialize another payment plan as the Complainant's income situation has changed since the last payment plan was established and there is no regulation that requires him to disclose his income for a payment plan; and (3) alleged that there is no requirement in the Commission’s regulations that requires him to provide his social security number to PGW to access his account but, he does have a pass code of his choice that is used for access. Complaint Attachment at 2-5.

¹ This Complaint arises from an appeal of Bureau of Consumer Services’ (BCS) determination on December 6, 2022, in BCS Case No. 3865830, which awarded the Complainant a payment arrangement. PGW Exh. 7, I.D. at 4. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

We note that the Commission-issued payment arrangement was established by BCS without the Complainant disclosing his income. *Id.* We further note that PGW’s Exhibit 8 indicates that the Complainant requested a second payment arrangement from the Commission (No. 3903086) on April 20, 2023 because his service was terminated on April 19, 2023.

² The Complaint and accompanying documentation provided by the parties indicate that the Complainant’s address and the Service Address are located at 2635 East Schiller Street. *See*, I.D. at 2, fn. 3, Complaint at 1, PGW Exhibit 1.

On June 29, 2023, Respondent filed an Answer which admitted, in part, and denied, in part, various material allegations in the Complaint. In its Answer, PGW averred, *inter alia*, that it issued a termination notice for natural gas service at the service address and attempted to contact the Complainant via telephone. Answer at 1. On April 19, 2023, PGW terminated the gas service at the service address for nonpayment. PGW also admits that the Complainant seeks a payment agreement for the outstanding balance incurred for gas service at the service address and indicates that PGW records demonstrate that the Complainant has an unsatisfied PUC-issued payment agreement on his account. Answer at 1-2.

By Hearing Notice dated July 11, 2023 (Hearing Notice), an Initial Call-In Telephonic Hearing was scheduled for September 12, 2023, at 10:00 a.m., and the matter was assigned to ALJ Arlene Ashton. The Hearing Notice was electronically served on the Complainant. On August 3, 2023, ALJ Ashton issued a Prehearing Order for Telephone Hearing which was served on the parties of record on August 10, 2023.

On September 12, 2023, at 10:00 a.m., the telephonic hearing was held as scheduled. The Complainant appeared, *pro se*, and testified on his own behalf. The Complainant offered two exhibits for entry into the record, one at the hearing and a second as a late-filed exhibit. Both exhibits were identified by the Complainant during the hearing and the Respondent did not object to the entry of the Complainant's exhibits.

PGW was present at the hearing and represented by counsel. The Respondent presented the testimony of one witness, Jessica Glace, a manager in PGW's Customer Review Unit. Respondent proposed eight exhibits at the time of the hearing. The Complainant did not object to the entry of the proposed exhibits into the record and

all of the Respondent's proposed exhibits were entered into the record as late-filed exhibits.³ I.D. at 2.

The hearing transcript was filed with the Secretary of the Commission and the record closed on October 5, 2023. I.D. at 2.

On December 20, 2023, the Commission issued the Initial Decision of ALJ Ashton, in which she found the Complainant failed to: (1) sustain his burden of proof to establish that the Respondent violated any provision of the Public Utility Code (Code) or Commission rule, regulation or policy; and (2) failed to prove that he was entitled to a second Commission issued payment arrangement. I.D. at 1, 8, 10, 12. The ALJ ruled that the Complainant failed to prove that PGW terminated service without proper notice and the Respondent's customer service did not violate the Public Utility Code or Commission rule, regulation or policy. *Id.* at 8, 10. In addition, the ALJ determined that the Complainant failed to demonstrate a change in income since the December 2022 payment arrangement and accordingly, the Complainant's request for a second payment arrangement must be denied. I.D. at 12.

As noted, *supra*, the Complainant filed Exceptions on January 8, 2024. PGW filed Reply Exceptions on January 19, 2024.

³ As stated in the Initial Decision, the parties were directed to provide all exhibits to the presiding officer and the court reporter by the close of business on the day of the hearing and both parties confirmed their understanding of the instructions concerning the procedure for entry of documents into the record. I.D. at 2, fn. 2. The ALJ notes that the Complainant failed to provide his exhibits to the court reporter. *Id.* The Respondent provided its exhibits which were entered into the record including PGW Exhibit 8 (Bureau of Consumer Services Decision No. 3903086 dated April 25, 2023) which is the same document as Complainant's proposed Exhibit 2. *Id.*

II. Discussion

A. Legal Standards

At the outset, we note that any argument or Exception that we do not specifically address has been considered and will be 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).

Pursuant to Section 332(a) of the Public Utility Code, 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 PGW 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 evidence presented by PGW. *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).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to PGW to present persuasive evidence rebutting that of the Complainant. If PGW'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 PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

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).

B. Positions of the Parties

The Complaint asserts that PGW did not properly notify the Complainant of a possible termination of service at the service address. The Complainant indicates that he did not receive a termination notice from PGW, however, admits that he found a termination notice on his door at the service address. Attachment to Complaint at 1-2, Tr. 26. In addition, Mr. Mordeczko states that he did not receive any phone calls from PGW regarding termination of service and that his personal phone log shows that no calls were received by PGW. Complainant Exh. 1, Tr. 25. At the telephonic hearing, the Complainant acknowledged that a shut-off notice was placed on his door on the date of termination and clarified that his complaint related to PGW's failure to contact him prior to the date of termination. Tr. 26-27. In support of his testimony, he referred to a Data, Text and Talk log for his telephone issued by AT&T, which he had attached to the Complaint.⁴

⁴ The ALJ noted that the Complainant failed to provide his exhibits to the court reporter. I.D. at 2, fn. 2, Tr. 78. The ALJ marked the Complainant's personal cell phone log attached to the Formal Complaint as Complainant Exhibit 1 and entered it into the record. Tr. 49-50. The Respondent provided its exhibits which were entered into the record including PGW Exhibit 8 (Bureau of Consumer Services Decision No. 3903086 dated April 25, 2023) which is the same document as Complainant's proposed Exhibit 2. *Id.*

The Complainant also states that he was and is still experiencing difficulties accessing his service account because PGW allegedly requires his social security number to gain access to his account. Mr. Mordeczko alleges that there is no requirement to provide a social security number and indicates that he had set up a “Pass Code” instead of a social security number via a prior decision by the PUC. Attachment to Complaint at 1, Tr. 28. Mr. Mordeczko indicated that he created a passcode for his account enabling him to access information concerning his PGW account using his passcode when contacting a PGW customer service representative. Tr. 56. Although customers are able to create an account on PGW’s customer portal so that they may access information electronically concerning their accounts, the Complainant is unwilling to use his social security number or other private information to create an account to access PGW’s customer portal. Tr. 28-29.

Further, the Complainant requested a Commission-issued payment arrangement without verification of his income as Mr. Mordeczko states that there is no regulation, only guidelines, requiring a customer to disclose his income for a payment plan. Attachment to Complaint at 3, Tr. 34. Initially, the Complainant filed an Informal Complaint with the Commission requesting a payment arrangement and, at that time, Mr. Mordeczko was granted a payment arrangement although he refused to disclose his income to the Commission. *Id.* The Complainant further testified that he had sporadic income from October 2022 throughout August 2023 and noted that the Commission-issued payment arrangement was granted without disclosure of any income. I.D. at 12, Tr. 34. The Complainant indicated that he was employed at the date of the hearing but refused to disclose his current income. Tr. 24-25, 33.

PGW responded by requesting that the Commission dismiss the Complaint because it properly issued a notice to terminate natural gas service at the service address and attempted to contact the Complainant via telephone. Answer at 1, Tr. 45, PGW Exh. 3. Specifically, on March 3, 2023, PGW issued the Complainant a 10-Day Shut Off

Notice informing the Complainant that the gas service could be shut off as of April 3, 2023 and that the notice was good for 60 days. *Id.* The Respondent attempted to contact the Complainant by telephone on March 7 and 8, 2023 to inform him that his gas service would be terminated. Tr. 47-48, PGW Exh. 6. PGW submits that each call made by its telephone system to the Complainant's telephone number of record detected a response by an answering machine. Tr. 47-48. When this occurs, PGW explained that its phone system automatically disconnects for customer privacy reasons and therefore, no message is left for the customer and no usage would be recorded by the customer's telephone. Tr. 51-52. PGW terminated gas service at the service address on April 19, 2023. Tr. 46, PGW Exh. 4.

Regarding the customer's access to his account, PGW testified that it has established and operates a customer portal and customers may create an account on the portal that provides direct access to their PGW account. Tr. 57. PGW's witness, Jessica Glace, a manager in PGW's Customer Review Unit, explained that Mr. Mordeczko's issue did not relate to access to his PGW account itself but rather it concerned PGW's policy and standard procedures of providing a social security number or driver's license number for creating an account on PGW's customer portal. Tr. 57, 59-60. PGW further explained that the Complainant did not want to provide this information to create an account on PGW's customer portal so PGW developed an alternative procedure for him to establish an account on the customer portal. Tr. 57. PGW informed Mr. Mordeczko of the availability of the alternative procedure at the hearing. Tr. 7.

PGW also asserted that the Complainant seeks a payment agreement for the service provided at the service address and indicated that its records demonstrate that the Complainant has an unsatisfied PUC-issued payment agreement on his account. Answer at 1-2, Tr. 23, 53, PGW Exh. 1,7. The Respondent indicated that the Complainant made just one payment on his account in the amount of \$1,091.20 on August 9, 2021.

Tr. 43-44, PGW Exh. 1. At the time of the hearing in this matter, the Complainant's outstanding account balance was \$2,790.92. Tr. 43, PGW Exh. 1.

C. Initial Decision

The ALJ made twenty-three Findings of Fact (FOF) and reached six Conclusions of Law (COL). I.D. at 3-5, 12-13. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In addressing the termination of service without proper notice, the ALJ examined the requirements of Section 1406 of the Code which provides that notice must be made at least 10 days prior to the date of the proposed termination. Section 1406 also requires that the utility must attempt to contact the customer to provide notice of the proposed termination at least three days prior to the scheduled termination, either in person, by telephone or electronically. 66 Pa.C.S. § 1406 (b), I.D. at 6-7. The ALJ noted that the statute specifies that “[p]hone 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 [.]” 66 Pa.C.S. § 1406 (b)(1)(ii)(B), I.D. at 7.

In examining whether gas service was properly terminated in this case, the ALJ noted that Mr. Mordeczko indicated that his gas service was terminated without proper notice. Tr. 26-27. In his testimony, the Complainant acknowledged that a shut-off notice was placed on his door on the date of termination and clarified that his complaint related to PGW's failure to contact him prior to the date of termination. Tr. 27. In

support of his testimony, he referred to a Data, Text and Talk log for his telephone issued by AT&T, which he had attached to the Complaint.⁵

The ALJ noted that, in response to Mr. Mordeczko's claim that PGW failed to contact him prior to the date of termination, PGW's witness testified that PGW sent a 10-day shut off notice to the Complainant on March 3, 2023. Tr. 45-46; PGW Exh. 3. She also testified that PGW tried to reach the Complainant by telephone on March 7, 2023 at 10:03 a.m. and March 8, 2023 at 6:53 p.m. Tr. 47-48; PGW Exh. 6. In addition, PGW's witness explained the operation of its PGW's telephone system including the instance when the system detects a response by an answering machine. Tr. 47-48. In that circumstance, the PGW system disconnects automatically, leaving no message, therefore, no usage would be recorded by the customer's telephone. Tr. 48, 51-52, 67-68.

The ALJ noted that, the Complainant's testimony in this case reflects his perception of the circumstances surrounding the termination of service. However, mere opinion, without more, is insufficient to meet the Complainant's burden and bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered January 12, 2012) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). Conversely, the ALJ explains that PGW provided testimony and

⁵ See Attachment to Complaint entitled Data, Text & Talk logs dated 5/31/23. Tr. 49-50. The parties were informed that documents filed with the Commission prior to the hearing were not part of the record and were directed to send all exhibits entered into the record directly to the Court Reporter. Tr. 50, 76-78. Mr. Mordeczko acknowledged that he understood the instructions concerning the handling of exhibits to the Court Reporter. Tr. 78. At the hearing, the Complainant proposed that a certain AT&T call log identified as Complainant Exhibit 1 be entered into the record. The Respondent did not object and Complainant Exhibit 1 was entered into the record; however, Mr. Mordeczko failed to submit the AT&T log to the Court Reporter for inclusion as an Exhibit in the record.

documentary evidence that it provided the Complainant with the required statutory notice of the impending termination of service. I.D. at 8. The ALJ found that Ms. Glace's testimony and the evidence presented by PGW in support of her testimony are both credible and convincing. *Id.*

The ALJ cited subsection 1406 (b)(1)(ii)(B) of the Code which states that a utility is mandated to attempt to contact the customer by telephone prior to termination of service; actual contact with the customer is not required. 66 Pa.C.S. §1406. Therefore, the ALJ found that the Complainant failed to meet the burden of proving that PGW failed to provide proper notice of the impending termination of gas service and thus, concluded that no violation of the Code's provisions governing termination of service occurred. I.D. at 8.

Next, the ALJ examined whether PGW violated Section 1501 of the Code regarding its duty to render reasonable and reliable service in light of the Complainant's assertion that he was and is still experiencing difficulties accessing his service account because PGW requires a social security number or driver's license number to establish an account on the customer portal. I.D. at 8-10. The ALJ reviewed Section 1501 of the Code that mandates that a public utility furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. I.D. at 8, 66 Pa. C.S. §1501. Also, the ALJ noted that the Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984). Further, in *Re Metropolitan Edison Co.*, 80 Pa. P.U.C. 663, 672 (1993), the Commission stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service. 66 Pa.C.S. § 1501.

I.D. at 8-9.

Thus, the ALJ noted that the test to determine the adequacy of a utility's service and facilities is that of reasonableness. *See Thurby v. West Penn Power*, C-2011-2254048 (Order April 4, 2013) (Thurby); *Bertsch v. PPL Elec. Utils. Corp.*, C-2011-2251784 (Final Order April 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010). This is also the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities. *Thurby*.

The ALJ indicated that, in his testimony, the Complainant contended that his inability to access his PGW account dated back to 2003, when he requested that the account be put in his name. I.D. at 9, Tr. 27-30, Complaint Attachment at 1. He testified that when the account was put in his name, he "put the password on it." Tr. 28. The Complainant also indicated that he typically paid his gas bill by credit or debit card but argued that he was unable to pay his gas bill because PGW had closed its office in downtown Philadelphia and/or because he could not access his account to do so via telephone. Tr. 29, 38. Mr. Mordeczko acknowledged that he had never tried to pay his bill in cash and PGW's witness explained that its customers may pay their bills in cash at a number of retail locations. I.D. at 9, Tr. 41, 45; PGW Exh. 2.

In addition, the ALJ also observed that PGW did not have an on-line customer portal in 2003, however, PGW has established and now operates a customer portal. I.D. at 9, Tr. 56. Customers may create an account on the portal that provides direct access to their PGW account. *Id.*, Tr. 57. Through testimony, PGW's witness clarified that Mr. Mordeczko's issue did not relate to access to his PGW account itself;

instead, it concerned PGW's policy and standard procedures for creating an account on PGW's customer portal. Tr. 57, 59-60. The ALJ noted that PGW's witness testified that the standard procedure for creating an account on PGW's customer portal requires entry of the customer's social security or driver's license number.⁶ I.D. at 10, Tr. 57. Further, PGW's witness testified that because Mr. Mordeczko was unwilling to use his social security or driver's license number to create an account on PGW's customer portal, PGW had developed an alternative procedure that would allow him to create an account on PGW's customer portal without using his social security or driver's license number. Tr. 57. The ALJ further observed that Mr. Mordeczko was informed of the availability of the alternative procedure at the hearing. The ALJ noted that the Complainant's testimony tends to support PGW's position. I.D. at 10.

The ALJ concluded that PGW's standard procedure for creating an account on its customer portal does not appear to be unreasonable. I.D. at 10. PGW's willingness to accommodate Mr. Mordeczko's sensitivity to using personal information to create an account on PGW's customer portal demonstrates that PGW has been responsive to his concerns. In light of the above, the ALJ determined that the Complainant has failed to meet his burden of proving that PGW's customer service was unreasonable or violated any provision of the Code or any Commission rule, regulation or policy. *Id.*

The ALJ further reviewed the Complainant's request for a Commission-issued payment arrangement. As noted by the ALJ and discussed at the hearing, the Complainant did not make any payments on the payment arrangement established under

⁶ The ALJ notes that the Complainant's testimony focused on his unwillingness to use his social security number to create an account. I.D. at 10. The Complainant did concede, in testimony, that he had used his driver's license to establish his identity when dealing with PGW customer service representatives in person at PGW's offices in downtown Philadelphia. Tr. 28.

BCS Determination No. 3865830 on December 6, 2022. I.D. at 11, Tr. 53, PGW Exh. 2,7. In examining the Responsible Utility Customer Protection Act at Sections 1401-1419, the ALJ noted that the law provides strict guidelines that the Commission must follow in handling customer complaints. I.D. at 11. Specifically, the ALJ observed that Section 1405 authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established by this Chapter. 66 Pa. C.S. §1405. In accordance with Section 1405(d), absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous arrangement established by a Commission order or decision. 66 Pa. C.S. §1405(d).

The ALJ noted that the Complainant, in his testimony, provided information concerning his employment history from October 2022 to August 2023. I.D. at 12, Tr. 33-34. The Complainant also confirmed that the Commission-issued payment arrangement was established without disclosure of any information of his income. Tr. 34. At the hearing, the Complainant again declined to provide his income or rate of pay, nor did he provide any information about his employment such as his employer's name or his job title. Tr. 25. The ALJ noted that the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. I.D. at 12, *see*, 66 Pa.C.S. §1405(d). The ALJ concluded that the Complainant's request for a payment arrangement must be denied because he failed to demonstrate a decrease in income since the December 2022 payment arrangement was awarded. I.D. at 12.

D. Exceptions and Reply Exceptions

The Complainant's Exceptions⁷ consist of a ten-page document in which he copies large sections of the Initial Decision into his pleading and inserts unnumbered exceptions within the prose of the Initial Decision. In his Exceptions, the Complainant argues, *inter alia*: (1) that PGW failed to properly notify the Complainant of termination at the service address; (2) that the Complainant notified both PGW and the Commission of the Complainant's income thereby making him eligible for a second "payment plan"; and (3) that both PGW and the Commission did not do outreach on behalf of the Complainant informing him of his options for a second payment plan.

Initially, the Complainant excepts to Findings of Fact Nos. 3 and 4 in the Initial Decision by alleging that PGW did not properly provide him with a notice of termination of service. The Complainant reiterates his testimony that he did not recall receiving such a notice and noted that "at the trial" his address was entered twice in the PGW screenshot which is why he did not receive the notice. Exc. at 2. The Complainant also submits that there is no evidence of calls by PGW in his personal cell phone call log. Exc. at 2.

⁷ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered, identify the finding of fact and conclusions 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 accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, and consider the merits. *See, e.g., Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (Order entered October 19, 1992); *William Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (Order entered March 26, 1993).

In addition, Mr. Mordeczko excepts to FOF Nos. 6 – 12 stating that he has had difficulty accessing his PGW account by phone or online and excepts to the use of a customer’s social security number to establish an online account with PGW. Exc. at 3. The Complainant states that he had a password established by the Respondent to access his account but he still had to wait on the phone for a PGW representative for up to an hour to access his account. *Id.* at 3. Also, the Complainant states that he could not access his account through PGW’s website since 2003 resulting in his frustration and placing an undue burden on him as a PGW customer. *Id.* Further, the Complainant acknowledged the alternative procedure developed by PGW to allow him to create an account on PGW’s customer portal without using his social security number, however, he submits that PGW did not reach out to him and he was only recently informed of the process. *Id.* at 3. The Complainant views this situation as an undue burden for the customer and a “severe dereliction of duty of PGW customer service.” *Id.*

Regarding the FOFs discussing the Complainant’s income, Mr. Mordeczko excepts to FOF Nos. 16-23 stating that his income was short-lived and sporadic. Exc. at 4. The Complainant also argues that he did not receive a notice of default from PGW and no proof of income is required by the Commission when requesting a new payment plan. *Id.* In addition, the Complainant submits that he was unable to access his account to make payments and paid his yearly bill in one payment after waiting over an hour to speak with a PGW customer service representative. Exc. at 4. Finally, the Complainant requests that his balance be verified and that he has not been informed how his income information can be “applied” and kept confidential by PGW or the Commission. *Id.*

Further, Mr. Mordeczko excepts to the Conclusions of Law reached in the Initial Decision. Specifically, the Complainant’s Exceptions reiterate his testimony that PGW did not provide proper notice of termination because there is no record of phone calls made by PGW in his personal cell phone logs. Exc. at 9. The Complainant alleges

that PGW has no evidence of calls to him, and “hence, PGW neglected its responsibility to contact the customer prior to service termination. *Id.* Furthermore, the Complainant excepts to the denial of a second payment arrangement by the Commission. He further requests that the Commission “immediately restore gas service to his residence, issue a payment arrangement based on his change of income, and conduct all other sanctions and action against PGW for its illegal actions.” Exc. at 9.

In its Reply to Exceptions, PGW counters that the Complainant’s exception to FOF No. 3 does not negate the finding. PGW points out that, although the Complainant does not recall receiving the notice, PGW’s evidence indicates that the notice of termination was sent to him. R. Exc. at 2. Regarding the Complainant’s Exception to FOF No. 4, PGW replies and reiterates that the calls were placed to the Complainant’s proper phone number on file and those calls were placed on March 7 and 8, 2023 as presented in the hearing. *Id.* PGW also submits that the Complainant did not provide the log of all incoming and outgoing calls and he failed to establish that the ALJ made an error of fact because no substantial evidence supports his position. R. Exc. at 3.

In addition, PGW, in its Reply to Exceptions, addresses the Complainant’s Exceptions to FOF Nos. 6-12 and submits that none of the Exceptions negates the Finding of Facts stated in the Initial Decision. PGW confirms that the Complainant’s own testimony indicated that he had a passcode for his account or could give other information to access his account. R. Exc. at 3. Also, PGW confirms that it did not have a customer portal in 2003 and thus, the Complainant could not access his account at that time via PGW’s website. *Id.* PGW also counters the Complainant’s Exceptions regarding access to the customer portal in clarifying that PGW does not require the use of a social security number to set up a user account in the customer portal and record evidence indicates that customers can also use other information such as a driver’s license number. R. Exc. at 4-5. PGW further states that the Complainant was given an

alternative procedure to access his account on PGW's customer portal as this was developed to accommodate Mr. Mordeczko. R. Exc. at 5.

Further, PGW, in its Reply to Exceptions, addresses the Complainant's Exceptions to FOF Nos. 16-23 pertaining to Mr. Mordeczko's proof of income and request for a second payment arrangement. PGW submits that none of the Exceptions negates the Finding of Facts stated in the Initial Decision and counters that the Complainant did receive his gas bill informing him that his budget plan had been cancelled and his bill was to be paid in full each month. R. Exc. at 6. In addition, PGW counters that the Complainant had access to his PGW account and had multiple methods to pay his monthly bills. R. Exc. at 7. Further, PGW replies that the Complainant was informed that his income information would be treated as confidential. *Id.* Therefore, PGW argues that the Complainant has not identified any error in law or fact that would support reversal of the ALJ's findings and that the Complainant failed to carry his burden of proof that PGW violated any provision of the Code or any Commission rule or regulation. R. Exc. at 8.

E. Disposition

Based upon the record in this proceeding and our review of the Parties' Exceptions and Replies, we agree with the ALJ that the Complainant did not sustain his burden of proof that PGW violated any provision of the Code or any Commission rule, regulation or policy. We also agree with the ALJ in this matter that the Complainant failed to prove that he was entitled to a second Commission-issued payment arrangement as provided for in Chapter 14 of the Code. 66 Pa. C.S. §§1401 *et seq.*

Upon review of the Complainant's Exceptions and the record in this proceeding, we agree with the ALJ that the evidence demonstrates that PGW properly notified the Complainant of possible termination of service by telephone contact and

actual notice at the service address. As required by Section 1406 of the Code, a utility must provide notice of termination of service at least 10 days prior to the date of the proposed termination. As observed by the ALJ, Section 1406 also requires that the utility attempt to contact the customer to provide notice of the proposed termination at least three days prior to the scheduled termination, either in person, by telephone or electronically. 66 Pa. C.S. § 1406 (b), I.D. at 6-7. In this case, the Complainant testified that he found a notice of termination on his door on April 19, 2023. Tr. 26. Although he claimed that he did not receive any phone calls from PGW prior to finding the notice of termination on his door, he failed to submit Complainant Exhibit 1 (personal cell phone call log) to the court reporter as directed in the September 2023 telephonic hearing. PGW produced evidence that phone calls were placed to the Complainant's telephone number listed on his account as demonstrated in PGW's Exhibit 6 at page 1-2. As the ALJ noted, the statute specifies that "[p]hone 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 [.]” 66 Pa. C.S. § 1406 (b)(1)(ii)(B), I.D. at 7.

In examining the Complainant's Exceptions, the Complainant relies on his personal cell phone call log to assert that PGW did not properly notify him by phone of possible termination of service at his residence. However, the Complainant did not provide Complainant Exhibit 1 to the court reporter as instructed by the ALJ so that it would be included in the record of this proceeding for our consideration to determine whether PGW properly notified him by phone. As stated previously, pursuant to Section 332(a) of the Code, the proponent of a rule or order, bears the burden of proof, 66 P.a. C.S. § 332(a), and must establish a sufficient case that PGW 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

evidence presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). With only the Complainant's testimony and no other evidence to consider, we must concur with the ALJ's ruling that the evidence provided by PGW in this case demonstrates that the Complainant was provided proper notice of termination of service by phone in compliance with the Code and the Commission's rules and regulations.

To the extent that the Complainant disagrees with the ALJ's findings in the Initial Decision as to whether PGW provided unreasonable service when Mr. Mordeczko attempted to access his customer account, we agree with the ALJ that the Complainant failed to prove that PGW provided unreasonable service resulting in a violation of the Code at Section 1501. 66 Pa. C.S. §1501. As stated previously, the Complainant established a passcode for his account in 2003 when he switched service at the residence to his name upon the passing of his father. Tr. 27-28, Exc. at 3. The passcode was used by the Complainant if he wanted to access his account to pay his bill by phone or in person. Tr. 29. As PGW developed a customer portal via their website, the Complainant grew concerned about whether PGW and, later, the Commission would keep his personal information confidential and thus, chose not to provide his social security or driver's license numbers to establish an online account on PGW's portal. Tr. 28-29, 57., Exc. at 3. The Complainant believes that his lack of access through PGW's portal prevented him from paying his outstanding balance for gas service provided to his residence. We disagree.

We are not compelled to grant the Complainant's Exceptions regarding this issue because the record demonstrates that the Complainant's refusal to establish an account on PGW's customer portal did not prevent access to his account or payment for gas service provided to his residence. According to the evidence in this case, the Complainant was notified through his bill that several methods were available to pay his outstanding balance for gas service rendered including in person at certain retail establishments or by phone and he simply needed to use the passcode he established to

gain access to his account to make payment. PGW Exh. 2. The record also demonstrates that Mr. Mordeczko attempted to access his account by phone but the wait times to reach a customer representative were long and he became frustrated. Tr. 29. However, the Complainant's refusal to establish an account on PGW's customer portal does not prove that PGW provided unreasonable service to the Complainant. Rather, the record in this matter clearly demonstrates that PGW provided various means to Mr. Mordeczko to access his account with the use of his passcode and pay any outstanding balances that had accrued.

Moreover, as stated previously, PGW's willingness to accommodate Mr. Mordeczko's sensitivity to using personal information to create an account on PGW's customer portal demonstrates that PGW has been responsive to his concerns. Tr. 7. We agree and encourage the Complainant to establish a customer account through the method developed by PGW as communicated in the telephonic hearing. Tr. 7. In doing so, the Complainant will have the ability to access his account on PGW's customer portal, to satisfy his outstanding balance and to begin the process of restoring gas service at his residence.

Further, the Complainant excepts to the ALJ's conclusion that the Complainant's request for a payment arrangement must be denied because he failed to demonstrate a decrease in income since the December 2022 payment arrangement was awarded. Exc. at 9, I.D. at 12. We agree with the ALJ that the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See*, 66 Pa. C.S. §1405(d). In accordance with Section 1405(d), absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous arrangement established by a Commission order or decision. 66 Pa. C.S. §1405(d). The record evidence in this case clearly demonstrates that the Complainant did not provide any income information to the Commission in December 2022 and defaulted on the

payment arrangement established at that time. PGW Exh. 7 at 3, PGW Exh. 8 at 3. In addition, in light of his concerns regarding the confidentiality of his personal information, the Complainant refused to provide any income information to PGW or the Commission in April 2023. PGW Exh. 7 at 3, Tr. 20, 32 and 54. Thus, we are not swayed by the Complainant's Exceptions on this issue and agree with the ALJ that the Commission is not permitted to provide a subsequent payment arrangement to the Complainant as prescribed by Section 1405(d) of the Code.

We find that the ALJ properly weighed the evidence and testimony presented to conclude that the Complainant failed to carry his burden of proof on the Complaint and, therefore, dismissal of the Complaint was appropriate.

III. Conclusion

Based on our review of the record in this proceeding, we shall deny the Exceptions of Peter Mordeczko, and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Peter Mordeczko, filed on January 8, 2024, at Docket No. F-2023-3041207, to the Initial Decision of Administrative Law Judge Arlene Ashton, issued on December 20, 2023, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Arlene Ashton, issued on December 20, 2023, is adopted.

3. That the Formal Complaint filed by Peter Mordeczko, on May 31, 2023, against Philadelphia Gas Works, at Docket No. F-2023-3041207, is dismissed, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: April 4, 2024

ORDER ENTERED: April 4, 2024