

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

Public Meeting held August 22, 2024

Commissioners Present:

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

Sang Choe

F-2023-3041321

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PPL Electric Utilities Corporation (PPL or Company) filed on February 21, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Chad L. Allensworth, issued on February 1, 2024, in the above-captioned proceeding. In the Initial Decision, the ALJ sustained, in part, and denied, in part, the Formal Complaint (Complaint) filed by Sang Choe (Mr. Choe or Complainant) on June 9, 2023. No Replies to Exceptions were filed. For the reasons set forth herein, consistent with this Opinion and Order, we shall: (1) grant PPL's

Exceptions; (2) modify the ALJ's Initial Decision; and (3) grant, in part, and deny, in part, the Complaint.

## I. Background and Procedural History

The matter before the Commission is a billing dispute and unreasonable service Complaint.<sup>1</sup> By way of background, the Complainant's Service Address is an apartment with: (1) two bedrooms; (2) a kitchen; (3) a living room; and (4) a bathroom. *See* I.D. at 4 (citing Tr. at 19-20). Two adults and one minor reside at the Service Address, containing electric appliances such as a washer, dryer, air conditioner, and dishwasher, and where the sole source of heating is electric. *See* Tr. at 17-20.

On January 5, 2023, PPL issued the Complainant an estimated bill in the amount of \$207.78 based on an estimated usage of 1,001 kilowatt hours (kWh) for electric service between November 30, 2022, and January 4, 2023.<sup>2</sup> I.D. at 5 (citing Tr. at 28; PPL Exh. 1). The Company cancelled the January 5, 2023 bill on January 17, 2023, and, on January 19, 2023, issued Mr. Choe a new bill in the amount of \$369.26, reflecting the Complainant's actual usage of 1,842 kWh. PPL Exh. 1.

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<sup>1</sup> The Complaint is a timely appeal from a decision issued by the Commission's Bureau of Consumer Services (BCS) decision at BCS Case No. 3890359. BCS dismissed the Informal Complaint on May 25, 2023, finding PPL properly billed the Complainant. *See* Tr. at 43; PPL Exh. 3. The Complainant requested Formal Complaint forms on May 25, 2023, and filed his Complaint on June 9, 2023.

<sup>2</sup> The estimated usage equated to the Complainant's actual electric usage in the same month, from the prior year, adjusted for the number of days in the billing cycle. Specifically, the Complainant's bill issued January 4, 2022, was based on actual usage of 944 kWh for a 33-day billing period. Therefore, the Complainant's average daily usage over that billing period was approximately 28.6 kWh. The estimated bill issued January 5, 2023, was based on estimated usage of 1,001 kWh for a 35-day period, *i.e.*, the Complainant's average daily usage of 28.6 kWh during the same billing period for the prior year (2022), multiplied by 35 days. *See* Tr. at 27-28.

On February 9, 10, and 21, 2023, Mr. Choe contacted PPL, resulting in either the Complainant hanging up, the call being otherwise disconnected, or the Complainant not being satisfied. *See* PPL Exh. 2. On April 20, 2023, PPL offered to test the Complainant’s meter; however, the Complainant declined.<sup>3</sup> *Id.* Mr. Choe contacted the Company again on April 27, 2023; however, he declined any assistance from the representative. On May 2, 2023, PPL attempted to contact the Complainant to discuss the reason for the estimated bills; however, Mr. Choe did not answer, and PPL left a message. *See* Tr. at 36; PPL Exh. 2.

On June 9, 2023, the Complainant filed the instant Complaint with the Commission,<sup>4</sup> wherein he alleged that PPL incorrectly billed him for electric service based on a defective meter. Complaint at ¶¶ 5-6.

As relief, Mr. Choe requested that PPL: (1) refund the “incorrectly calculated fare;” (2) complete a detailed inspection of the meter; and (3) compensate him for “mental and physical time-wasting stress.” Complaint at ¶ 6. The Complainant attached a handwritten spreadsheet detailing his PPL bills from May 2019 through June 2023.

On July 6, 2023, in response to the Complaint, PPL filed an Answer, as well as a Preliminary Objection, properly endorsed with a Notice to Plead. In its Answer, PPL specifically denied all material allegations of the Complaint and averred, in part, as follows:

- PPL admitted that it initially issued the Complainant an estimated bill on January 5, 2023 for service between November 30, 2022 and January 4, 2023, due to the

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<sup>3</sup> According to the Complainant, maintenance at the Service Address spoke with PPL, and maintenance advised that the meter was okay. *See* Tr. at 20.

<sup>4</sup> PPL was served with a copy of the Complaint on June 16, 2023.

Company's inability to generate bills based on actual usage. PPL explained that, although customer usage data was being accurately collected, customer meter data was not transferring from the Company's meter data management system (MDMS) to its customer service system (CSS) for many customers;

- PPL acknowledged that the January 5, 2023 estimated bill underestimated the Complainant's actual consumption during the period by 841 kWh (1,842 kWh – 1,001 kWh);
- The Company noted that the Commission's Regulations allow PPL to issue estimated bills for every other billing month. *See*, 52 Pa. Code § 56.12(2). Moreover, PPL is permitted to estimate the bills of customers in consecutive months due to equipment failure, among other things. *See*, 52 Pa. Code § 56.12(3);
- In regards to the Complainant's handwritten spreadsheet detailing his PPL bills from May 2019 through June 2023, the Company admitted that the listed kWh and bill amounts for each month are correct, except for:  
(1) August 2019; (2) September 2019; (3) August 2021; and (4) February 2023, as follows:
  - 1) PPL denied that for the August 2019 bill, the Complainant was billed \$0.00 for 542 kWh of electricity consumption. The Complainant was billed \$81.37 for the August 2019 bill, however, a credit for \$138.78 was applied toward that bill. The credit was for the Complainant's security deposit that was returned with interest.
  - 2) PPL denied that for the September 2019 bill, the Complainant was billed \$43.00 for 674 kWh of usage. The Complainant was billed \$96.41 for the September 2019 bill and the remaining \$53.41 in credit from the returned security deposit was applied to the \$96.41 bill, leaving \$43.00 due for the same.
  - 3) PPL denied that the Complainant was billed 562 kWh of actual electricity consumption for the August 2021 billing period. Rather, the Complainant was billed for

561 kWh of actual electricity consumption in August 2021.

- 4) PPL denied that for the February 2023 bill, the Complainant was billed \$677.06 for 1,527 kWh of usage. The February 2023 bill was \$307.80. That said, the amount due for February 2023 was \$677.06, which consisted of \$307.80 for the Complainant's usage of 1,527 kWh from January 4, 2023, to January 31, 2023, and \$369.26 carried over from the prior month's unpaid bill amount.
- The charges on the Complainant's account are correct as rendered.

Answer at 1-4.

Also, on July 6, 2023, as noted *supra*, PPL filed its Preliminary Objection, asserting that the Complainant's request for monetary damages in the Complaint should be dismissed, under 52 Pa. Code § 5.101(a)(2), because the Commission has no power to award damages. Preliminary Objection at 1, 4-6. Mr. Choe did not file a response to the Preliminary Objection.

By Hearing Notice dated August 9, 2023, an Initial Telephonic Hearing was scheduled for October 17, 2023. Thereafter, the ALJ issued the Parties a Prehearing Order dated August 10, 2023, informing them about the procedural rules for the hearing. Also, on August 10, 2023, the ALJ issued an Order Granting Preliminary Objections of PPL, which struck the request for damages from the complaint. I.D. at 2-3.

On October 17, 2023, ALJ Allensworth convened the telephonic evidentiary hearing, as scheduled. The Complainant appeared *pro se*, testified on his own

behalf and presented no other witnesses.<sup>5</sup> One exhibit (Choe Exhibit 1) was admitted into the record on behalf of the Complainant. PPL was represented by counsel who presented the testimony of two witnesses: Ms. Alicia Watkinson, PPL's Customer Contact Supervisor, and Ms. Tami Rolan, a Senior Customer Service Representative at PPL. PPL presented five exhibits (PPL Exhibits 1-4, 6), which were admitted into the record. The record was closed on November 2, 2023, when a transcript of the proceeding consisting of fifty-nine (59) pages was filed with the Commission. I.D. at 3.

On February 1, 2024, the Commission issued the Initial Decision of ALJ Allensworth wherein he sustained the Complaint, in part, and denied it, in part. Specifically, the ALJ denied the Complaint to the extent that it claimed PPL failed to provide reasonable service regarding a high-bill investigation. However, the ALJ sustained the Complaint to the extent that it alleged PPL over-billed the Complainant for electric service. I.D. at 1, 16-17, 23. Additionally, the ALJ imposed a civil penalty. *See* I.D. at 17-20.

As noted *supra*, PPL filed Exceptions on February 21, 2024. No Replies to Exceptions were filed.

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<sup>5</sup> The Commission contracted with an interpreter service to provide Korean to English interpretation for the hearing because Mr. Choe's primary language was Korean. Charles Kim was the interpreter for the hearing. Mr. Kim stated, under oath, that he was fluent in Korean and English and that he was certified as an interpreter by the Administrative Office of Pennsylvania Courts. There was no objection to Mr. Kim being the interpreter for the hearing. I.D. at 3; Tr. at 6-7.

## II. Discussion

### A. Legal Standards

#### 1. Burden of Proof

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the “preponderance of the evidence” standard. *Suber v. Pennsylvania Com’n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlth. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (1992) (*Lansberry*); *see also, North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlth. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 855 (Pa. 1950).

The burden of proof comprises two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward

with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Final Order entered August 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id.* It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish the legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant. The complainant then must provide some additional evidence favorable to the complainant's claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Having produced sufficient evidence to establish the legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie, Burleson; see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993). It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of

persuasion, the ultimate factfinder<sup>6</sup> may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber*).

Finally, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S. Ct. 206, 217 (1983). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

## **2. Overbilling Complaint**

Where a complainant alleges overbilling by their utility provider, the Commission utilizes the *Waldron* rule. *See Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 98 (1980) (*Waldron*). *Waldron* and its progeny hold that to establish a *prima facie* case of overbilling, the Complainant must prove, by a preponderance of the evidence: (1) that the number of occupants in the household has not changed; (2) that the potential for energy utilization was low; and (3) that the complainant’s billing history shows no prior abnormalities. *Waldron*; *see also Replogle v. Pennsylvania Electric Company*, 54 Pa. P.U.C. 528 (1980). Once the Complainant shows a *prima facie* case,

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<sup>6</sup> In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)).

the burden of proof shifts to PPL; however, the burden of persuasion never shifts and always remains with the Complainant. *Id.*

The Commonwealth Court of Pennsylvania clarified the *Waldron* rule in *Milkie*, holding:

While the rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal *direct* proof that his meter had malfunctioned.

*Milkie*, 768 A.2d at 1219-1220, citing *Burleson*, 461 A.2d at 1235 (emphasis in original).

In *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011) (*Thomas*), the Commission contemplated the types of evidence that might establish a *prima facie* case pursuant to *Waldron*:

[C]onsistent with our holding in *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), the *Waldron* Rule allows a complainant to establish a prima facie case in a "high bill" Complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a "high bill" Complaint, the Commission may consider such evidence as "the billing history of the account, any change in usage patterns (such as a

change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding.”

*Thomas* at 5 (citing *Charisse Bennett v. Peoples Natural Gas Company*, Docket No. C-2009-2122979 at 6 (Opinion and Order entered October 13, 2010) (*Bennett*)).

### **3. Adequate, Efficient, Safe and Reasonable Electric Service**

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

#### **§ 1501. Character of service and facilities**

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

66 Pa.C.S. § 1501.

Section 102 of the Code, defines “service” as:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities . . . .

66 Pa.C.S. § 102. A utility’s “service” is not merely confined to the distribution of utility service, but also includes “any and all acts” related to that function. *W. Penn Power Co. v. Pa. PUC*, 578 A.2d 75 (Pa. Cmwlth. 1990). Accordingly, a utility’s billing practices are included within the scope of reasonable service.

Finally, 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 raised 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).

## **B. ALJ’s Initial Decision**

In his Initial Decision, ALJ Allensworth made twenty-eight (28) Findings of Fact and reached thirteen (13) Conclusions of Law. I.D. at 3-7, 21-23. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As previously noted, ALJ Allensworth’s Initial Decision, after a hearing and review of the record, can be distilled into two distinct findings: (1) the Complainant met the burden of proving that PPL improperly charged the Complainant for electric

service between August 2022 and August 2023 which he did not use; however, (2) the Complainant did not meet his burden of proving PPL provided unreasonable service in regard to conducting a “high bill” investigation. I.D. at 16-17, 23.

### **1. Incorrect Charges for Service (High Billing Dispute)**

With regard to the accuracy of the bills disputed by Mr. Choe, ALJ Allensworth explained the Commission’s administrative precedent involving high billing complaints of ratepayers under the considerations outlined by *Waldron*. I.D. at 9-11.

After acknowledging the principles of *Waldron*, as clarified by the Commission in *Bennet* and *Thomas*, ALJ Allensworth reasoned, in pertinent part:

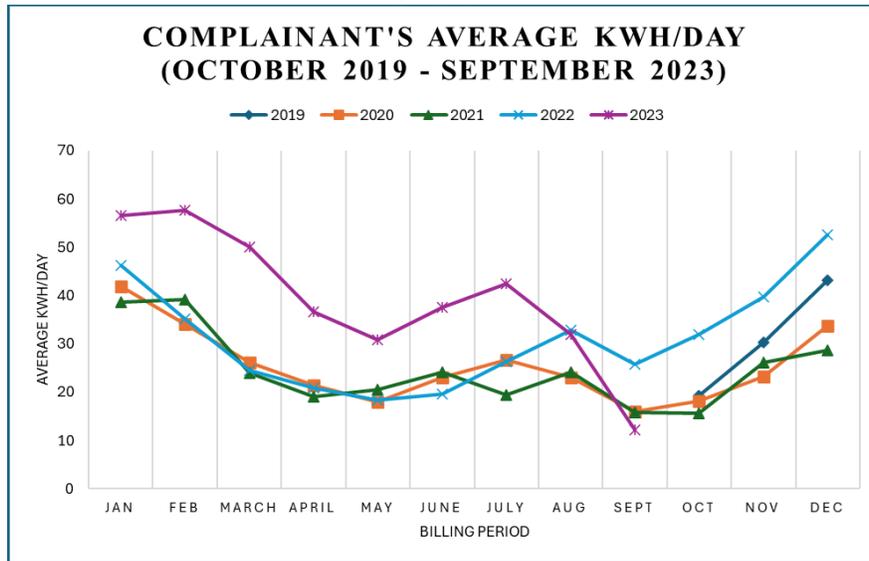
First, Mr. Choe provided uncontradicted testimony that the same three people (i.e., Mr. Choe, his wife and his minor child) have lived at the service property and that there were no changes to the service property for over five years. (Tr. [at] 17-19). Thus, Mr. Choe clearly established that there was no basis for a dramatic change in usage on these grounds.

Next, the prevailing case law focuses on the issue of billing history. *Thomas*. Mr. Choe testified that his electric bill showed a spike in kWh usage starting in August 2022 and lasting until September 2023. (Tr. [at] 14-15, 17, 19). Documentation admitted at the hearing showed that kWh use starting in August 2022 was consistently and sometimes dramatically higher compared to prior years in the same month until billing for October 2023. (PPL Exhibit 1 and Choe Exhibit 1).

I.D. at 12-13.

For ease of reference, the Complainant’s average kWh/day for each billing period from October 2019 through September 2023 is illustrated in Chart 1, as follows:

**Chart 1**

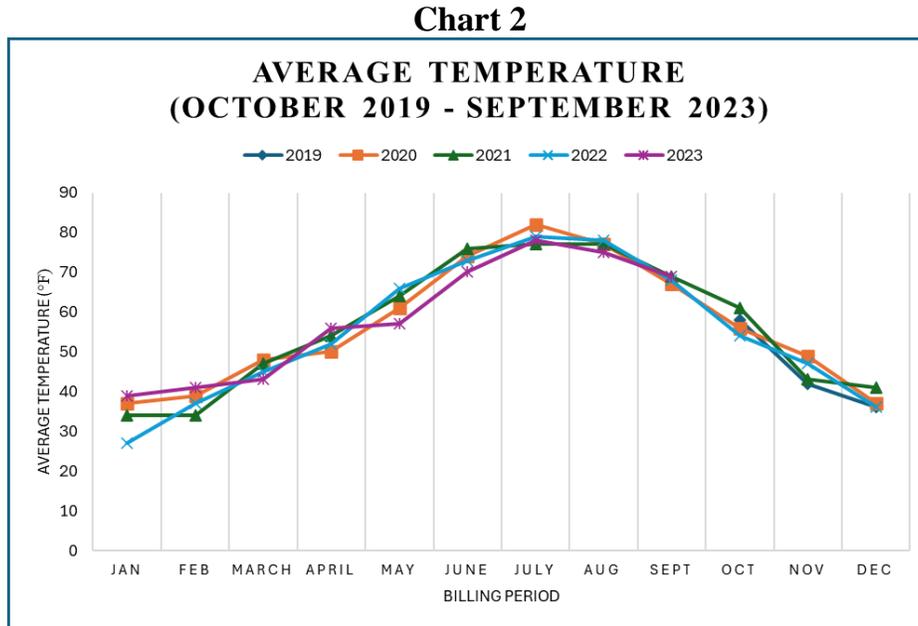


See PPL Exh. 4. The ALJ provided further reasoning, as follows:

Respondent offered minimal evidence to contradict Mr. Choe’s “high bill” claim. The only argument offered by PPL was that Mr. Choe’s kWh use increased over the last few years in general and especially during the wintertime. However, this does not explain the dramatic 69.89% average increase in kWh usage during the approximately 12-month timeframe contested by Mr. Choe. Moreover, as reflected below from PPL Exhibit 4, the temperature during the contested timeframe varied, but did not always correspond with the fluctuations in kWh usage and did not support PPL’s claim for such dramatic increases in kWh usage.

I.D. at 15.

For ease of reference, the average temperature for each billing period from October 2019 through September 2023, according to PPL, is illustrated in Chart 2, as follows:



See PPL Exh. 4.

Accordingly, the ALJ found that Mr. Choe provided sufficient evidence to show the meter was not working properly based on circumstantial evidence in accordance with *Waldron, Bennet, and Thomas*. Further, the ALJ found that PPL offered no explanation sufficient to rebut the convincing evidence presented by Mr. Choe to prove the meter readings obtained for kWh usage from approximately August 2022 to August 2023 were inaccurate. Thus, the ALJ sustained the Complaint as to the violation of 66 Pa.C.S § 1501 on the issue of PPL failing to provide Mr. Choe with an accurate bill for kWh usage. I.D. at 16.

As for relief, the ALJ directed that the Complainant receive a *credit*, not a refund, on his account for the August 2022 to August 2023 billing periods based on the

difference between the Complainant's metered usage during those billing periods and the Complainant's metered usage during the August 2021 to August 2022 billing periods. The ALJ also directed the Company to perform a meter test, to waive any fee associated with such meter test, waive any late payment charges, and provide the results of the meter test to the Complainant within sixty (60) days of the Commission's Final Order. I.D. at 20-21, 24.

## **2. Civil Penalty**

After finding a violation of 66 Pa.C.S. § 1501 regarding PPL's overbilling of the Complainant, the ALJ examined whether to impose a civil penalty against PPL. The ALJ applied the factors in our Statement of Policy under 52 Pa. Code § 69.1201 and determined that a civil penalty of \$1,200 was appropriate. I.D. at 17-20.

Under the first factor, pertaining to whether the conduct at issue was of a serious nature, the ALJ concluded that PPL does not appear to have taken any intentional act against the Complainant, such as denying him service or otherwise causing harm to Mr. Choe or his property. Therefore, the ALJ found PPL's actions qualify as an administrative error, which warranted a lower penalty. I.D. at 18.

In addressing the second factor, relating to the consequences of the conduct, the ALJ noted that the Complainant continued to pay the charged billing amounts each month as a result of the higher meter readings. The ALJ concluded that the financial damages to the Complainant were not of a serious nature, nor are there any other damages, physical or personal, alleged. Therefore, the ALJ found PPL's actions did not result in serious consequences under the second civil penalty factor. I.D. at 18-19.

Under the third factor, which considers whether the conduct at issue was intentional or negligent, the ALJ found PPL's actions to be a negligent oversight and a

misunderstanding of the effect the weather had on Mr. Choe's kWh usage, which warranted a lower penalty. I.D. at 19.

Under the fourth factor, which concerns any remedial actions taken by the Company, the ALJ stated that the billing error in this case occurred over several months and found that PPL failed to find and correct the error during that period and has not made any efforts to rectify the overall billing error regarding Mr. Choe, warranting a higher penalty. I.D. at 19.

In addressing the fifth factor, which considers the number of customers affected and the duration of the violation, the ALJ noted that the violation involved one customer, Mr. Choe, and lasted several months, which warranted a lower penalty. *Id.*

Under the sixth factor, regarding the Company's compliance history, the ALJ noted that no evidence was presented that PPL has a poor compliance record, which warranted a lower penalty. *Id.*

Regarding the seventh factor, concerning the Company's cooperation with the Commission, the ALJ stated there was no Commission investigation in this case and, thus, this factor was inapplicable. *Id.*

The eighth factor considers the amount of the civil penalty necessary to deter future violations. Here, considering PPL's size, the limited consequences from the error, the length of time over which the error occurred, the rejected efforts of PPL and the potential for repetition, the ALJ found the civil penalty necessary to deter future conduct is \$1,200. I.D. at 19-20.

Under the ninth factor, evaluating past Commission decisions in similar situations, the ALJ cited to *Janice and Tom Risser v. PPL Electric Utilities Corporation*,

Docket No. F-2017-2612481 at 29 (Final Order entered April 27, 2018) (*Risser*) as alleged support for a civil penalty of \$100 per month, which, in this case, amounted to a civil penalty of \$1,200 (\$100 x 12 months).<sup>7</sup>

The tenth factor of other relevant factors is not applicable here.

### **3. Unreasonable Customer Service Claim**

As indicated, *supra*, the ALJ denied the Complaint as to the violation of 66 Pa.C.S. § 1501 on the issue of PPL’s failure to provide reasonable service in regard to conducting a “high bill” investigation. I.D. at 17.

The ALJ found that PPL’s witness, Ms. Watkinson, credibly testified that PPL offered to test Mr. Choe’s meter for a \$35 fee on April 20, 2023. I.D. at 16 (citing Tr. at 36). The ALJ stated that Ms. Watkinson also testified, without contradiction, that Mr. Choe declined assistance from a PPL customer representative on April 27, 2023 and that PPL called him on May 2, 2023 and left a message that Mr. Choe did not return. I.D. at 16 (citing Tr. at 36–37). Ultimately, the ALJ concluded that PPL never tested Mr. Choe’s meter. I.D. at 16.

After acknowledging the Commission’s Regulations at 52 Pa. Code § 57.22, which requires a public utility to test the accuracy of a meter upon written request of the customer upon payment of the specified fee, the ALJ found that PPL complied with this Regulation when it offered to test Mr. Choe’s meter within a reasonable timeframe after receiving his request. As such, the ALJ reasoned that the fact

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<sup>7</sup> *Risser* was made final without further Commission action through a Final Order entered April 27, 2018.

that the Complainant declined to have the test completed still satisfies PPL's requirements to provide reasonable service on that ground. I.D. at 16-17.

### **C. Exceptions and Dispositions<sup>8</sup>**

As noted, *supra*, on February 21, 2024, PPL filed Exceptions to limited portions of the Initial Decision, advancing several arguments against the findings of ALJ Allensworth related to: (1) the imposition of a civil penalty; and (2) the method of calculating the credit.

#### **1. PPL Exception No. 1**

In its Exception No. 1, PPL objects to the imposition of a civil penalty. As previously discussed, the ALJ found that *Rosi* factors Nos. 1, 2, 3, 5 and 6 outlined in our Statement of Policy under 52 Pa. Code § 69.1201 weighed in favor of a lower penalty. However, PPL contends that the ALJ erred in applying factors 4, 8, and 9 and imposing, as a result, a civil penalty of \$1,200. Exc. at 3-8.

Specifically, PPL argues that the ALJ erred in finding that penalty factor 4 weighed in favor of a higher penalty, because, according to PPL, undisputed record evidence establishes that the Company made efforts to rectify the billing issues experienced by the Complainant, as follows:

First, the record demonstrates that PPL was in contact with the Complainant throughout the disputed bill period and tried to address his concerns. On February 9, 2023, the Complainant contacted the Company to discuss the bills at issue, but ultimately hung-up on the Company. (Tr. [at] 26; PPL Electric Exhibit No. 2.) Furthermore, on April 20, 2023, the Company offered to test the Complainant's meter,

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<sup>8</sup> As previously noted, no Replies to Exceptions were filed.

consistent with its Commission-approved tariff, but the Complainant declined. (Tr. [at] 36; PPL Electric Exhibit No. 2.) Relatedly, on April 27, 2023, the Complainant once again contacted the Company to discuss the disputed bills. During that conversation, the Complainant declined any assistance from the customer service representative and requested to speak to a supervisor. (Tr. [at] 36-37; PPL Electric Exhibit No. 2.) In response, a PPL Electric supervisor attempted to contact the Complainant on May 2, 2023. (Tr. [at] 36-37; PPL Electric Exhibit No. 2.) The Complainant did not answer, and the PPL Electric supervisor left a voicemail with him which was never returned. (Tr. [at] 36-37; PPL Electric Exhibit No. 2.)

Exc. at 3-4.

Next, PPL objects to the ALJ's finding that a civil penalty is necessary to deter future violations. Exc. at 5-6. PPL reiterates that the Company undertook several efforts to investigate and address the Complainant's concerns and provide him with assistance for his bills. However, PPL explains that the Complainant declined to pursue or engage in any of the various opportunities offered by the Company. Exc. at 5.

Additionally, the Company asserts that the "potential for repetition" should not be used as an aggravating factor here, since, by the Complainant's own admission, he does not dispute the bills rendered after October 2023. Exc. at 5 (citing Tr. at 17). Further negating the ALJ's concerns regarding the opportunity for repetition, PPL reiterates that it "has changed the way the files are transferred from one system to another to prevent this specific issue from happening again," has "developed response plans that if this issue were to happen again, it could be addressed more quickly," and "is still currently evaluating existing estimation processes and ways to improve those processes." Exc. at 6 (citing Tr. at 37).

Lastly, PPL argues that the ALJ's reliance on *Risser* to support a civil penalty of \$100 per month under *Rosi* factor No. 9 is misplaced. Exc. at 6-8. PPL asserts that the present case is readily distinguishable from *Risser*, as follows:

- 1) The *Risser* complainants alleged that there were incorrect high charges on their PPL account, given that one person was in the home when the alleged billing errors occurred. However, during the rest of the time, the complainants in *Risser* had more than one occupant in the house and, in some circumstances, as many as five occupants. Exc. at 8 (citing *Risser* at 1, 17). In contrast, the record evidence in this case demonstrates that the number of household occupants at the Complainant's Service Address remained unchanged throughout the disputed billing periods. Exc. at 8 (citing Tr. at 17-18; I.D. at 4).
- 2) The *Risser* complainants made modifications to their air conditioning system to be more energy efficient and switched from electric heat to propane heat prior to the disputed bills. Exc. at 6 (citing *Risser* at 16). Here, there is no record evidence to suggest that the Complainant made modifications at the Service Address that would decrease his electric consumption before or during the disputed billing period. Indeed, the record indicates that "everything is electrical" at the Complainant's Service Address. Exc. at 7 (citing Tr. at 18).
- 3) The utility in *Risser* did not render a bill to the *Risser* complainants for two consecutive months and did not offer the *Risser* complainants an opportunity to amortize the subsequent make-up bill. Exc. at 6 (citing *Risser* at 18).
- 4) The utility in *Risser* discovered a malfunction on the manual meter dials, which reported usage below the meter's actual readings. Exc. at 6 (citing *Risser* at 18). Unlike *Risser*, there is no record evidence to suggest that PPL was not maintaining accurate meter readings throughout the disputed period; in fact, the opposite is true. Exc. at 7 (citing Tr. at 32-33).

- 5) The utility in *Risser* did not explain the reason for estimated bills to the *Risser* complainants and did not explain the reasoning for the estimated bills. Exc. at 7 (citing *Risser* at 31). Here, PPL discussed – or attempted to discuss – the reason for the estimated bills with the Complainant. Exc. at 7 (citing Tr. at 36; PPL Exh. 2).
- 6) Once the meter malfunction was suspected and/or discovered in *Risser*, the utility took several months to take corrective action. Exc. at 7 (citing *Risser* at 20). Here, the Company ultimately cancelled the single estimated bill and rebilled the Complainant within the same month that the estimated bill was rendered. Exc. at 7 (citing Tr. at 28-29).
- 7) In *Risser*, the utility did not offer the *Risser* complainants an opportunity for a payment arrangement until the formal complaint was filed. Exc. at 7 (citing *Risser* at 25). In contrast, PPL made efforts to engage the Complainant in discussions regarding a payment agreement, but those contacts were rejected or not reciprocated. Exc. at 7 (citing Tr. at 36).
- 8) In *Risser*, the complainants were “slammed” by an electric generation supplier (EGS). Exc. at 7 (citing *Risser* at 22). Here, there were no allegations of “slamming” by an EGS. Exc. at 7.
- 9) The *Risser* complainants were on a transformer rated account. Exc. at 7 (citing *Risser* at 27). In this proceeding, the Complainant is not served on a transformer rated account. Exc. at 7.

## **2. Disposition of PPL Exception No. 1**

Upon review of PPL’s Exception No. 1 and our Statement of Policy under 52 Pa. Code § 69.1201, we shall modify the Initial Decision consistent with the following discussion. We are in agreement with the ALJ that the Complainant established a *prima facie* case of overbilling, which has not been rebutted based on our review of the record,

by showing: (1) the number of occupants has not changed; (2) that his usage patterns had not changed; and (3) that his bills for the disputed period (August 2022 through July 2023) were higher than the undisputed billing period (August 2021 through August 2022). However, we agree with PPL that, under the circumstances in this proceeding, the Complainant has not met his burden of proof that PPL failed to provide adequate, efficient, safe or reasonable service as required under 66 Pa.C.S. § 1501.

With respect to whether PPL provided adequate, efficient, safe or reasonable service under the circumstances in this proceeding, we note that the aforementioned instance of estimated billing for the December 2022 billing period, as PPL's witness testified, was caused by an issue preventing the transfer of customer data from PPL's command center to its meter data management system, and not by an error with the meter recording electrical usage. Consequently, the issue has no bearing on those bills which the Complainant is disputing. *See Tr. at 27.*

Further, according to PPL, there was no evidence of meter error in recording usage, particularly throughout the disputed period. *Tr. at 32-33.* Therefore, despite the issues with data transfer which required the issuance of an estimated bill in January 2023,<sup>9</sup> PPL purportedly had access to the daily readings for Mr. Choe's meter for the billing periods in question. Notably, although the Complainant contended that billing errors began in August 2022 and lasted until September 2023, the Complainant did not dispute the accuracy of the bill rendered on October 2, 2023, or thereafter. *See Tr. at 17, 19.*

In order for the Commission to sustain a complaint brought under Section 1501 of the Code, the utility must be in violation of its duty under this section.

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<sup>9</sup> PPL ultimately cancelled the single estimated bill and rebilled the Complainant within the same month that the estimated bill was rendered. *See Tr. at 28-29.*

Without such a violation by the utility, the Commission does not have the authority, when acting on a customer's complaint, to require any action by the utility. *West Penn.* On consideration of the record, we find the concerns of Mr. Choe, regarding PPL's failure to provide reasonable service, to be unsupported by the facts. As acknowledged by the ALJ and reiterated in PPL's Exceptions, the Company undertook several efforts to investigate and address the Complainant's concerns and offered him various opportunities to: (1) enter into a payment agreement with the Company; (2) discuss why his usage may have become elevated; (3) be referred to and/or apply for assistance programs; and (4) have the Company conduct a meter test. *See* Tr. at 36-37; PPL Exh. 2. Ultimately, the Complainant declined to pursue or engage in any of the aforementioned options.

Based on the above-cited considerations we find that PPL adequately met its burden of going forward with co-equal evidence sufficient to balance the evidence introduced by the Complainant regarding whether or not PPL provided reasonable service, which the Complainant has not sufficiently rebutted. We, therefore, conclude that the Complainant has not met his burden of persuasion and burden of proof regarding inadequate service. Accordingly, we reject the ALJ's finding that PPL violated Section 1501 of the Code and shall, therefore, grant PPL's Exception No. 1, and modify the ALJ's Initial Decision accordingly. In concluding that PPL did not violate Section 1501 of the Code, we shall also reject the ALJ's determination that a civil penalty be imposed on the Company and modify the ALJ's Initial Decision accordingly.

Notwithstanding our determinations that PPL did not provide unreasonable service and a civil penalty is not warranted regarding the Complainant's allegations of over-billing, on exercise of our independent review of the record in this matter, we agree with the ALJ that the testimony and documentary evidence in the form of billing statements address our recognition of the several factors on which the Commission may permit a complainant to meet the burden of going forward with evidence to establish a case of abnormal billing under the considerations of *Waldron*. These factors, as noted,

were clarified by the Commission in *Bennet and Thomas*. Mr. Choe testified that his electric bill showed a spike in kWh usage starting in August 2022 and lasting until September 2023. Tr. at 14-15, 17, 19. Documentation admitted at the hearing showed that kWh use starting in August 2022 was consistently, and sometimes dramatically, higher as compared to prior years in the same month until billing for October 2023. *See*, PPL Exh. 1; Choe Exh. 1. As indicated by ALJ Allensworth, there was an average increase of 69.89% in the Complainant's usage for the disputed twelve-month billing period when compared to the same period in the prior year. *See* I.D. at 14. Furthermore, as is evident by Chart 1, *supra*, the contested billing periods from August 2022 through August 2023 were not consistent with the pattern of usage established by previous billing periods from October 2019 through July 2022.

Based on the foregoing, we conclude that the Complainant has met his burden of going forward with evidence of abnormal billing that has not, on this record, been addressed by PPL. Therefore, as discussed, *infra*, we will direct PPL to engage in a recalculation of the Complainant's bills for the August 2022 to August 2023 billing periods.

### **3. PPL Exception No. 2**

In its Exception No. 2, PPL argues that the ALJ's method for calculating the credit should be corrected to account for the differences in the number of billing days in each of the billing periods. Exc. at 8-11. As indicated previously, the ALJ determined that the Complainant should receive a credit for the August 2022 to August 2023 billing periods based on the difference between the Complainant's metered usage during those

billing periods and the Complainant's metered usage for the prior month and year. Specifically, the ALJ recalculated Mr. Choe's kWh usage as follows:

- August 2022 – 701 kWh;
- September 2022 – 503 kWh;
- October 2022 – 451 kWh;
- November 2022 – 786 kWh;
- December 2022 – 944 kWh;
- January 2023 – 1342 kWh;
- February 2023 – 1022 kWh;
- March 2023 – 713 kWh;
- April 2023 – 666 kWh;
- May 2023 – 552 kWh;
- June 2023 – 568 kWh; and
- July 2023 – 842 kWh.

*See* I.D. at 20-21.

PPL contends that the ALJ's recalculation of the bills fails to account for differences in the number of billing days in each of the billing periods, as illustrated by the following table:

<b>Billing Period</b>	<b>Days in Billing Period</b>	<b>Average kWh/day in Billing Period</b>	<b>Billing Period</b>	<b>Days in Billing Period</b>	<b>Average kWh/day in Billing Period</b>
August 2021	29	24.17	August 2022	29	32.89
September 2021	32	15.7	September 2022	30	25.73
October 2021	29	19.61	October 2022	31	31.9
November 2021	30	26.2	November 2022	30	39.77
December 2021	33	28.6	December 2022	35	28.6
January 2022	29	46.28	January 2023	35	56.62
February 2022	29	35.24	February 2023	27	56.56
March 2022	29	24.59	March 2023	30	57.73
April 2022	32	20.81	April 2023	29	50.03
May 2022	30	18.4	May 2023	32	36.63
June 2022	29	19.59	June 2023	30	30.77
July 2022	32	26.31	July 2023	29	37.59
August 2022	29	32.89	August 2023	32	42.41

Exc. at 9-10. Therefore, PPL submits that the credit should be calculated by multiplying the average daily usage between August 2021 and August 2022 (the undisputed billing period) by the number of billing days in each corresponding billing period between August 2022 and July 2023 (the disputed billing period), as reflected in the following table:

<b>Billing Period</b>	<b>Days in Billing Period</b>	<b>Average kWh/day in Prior Year's Billing Period</b>	<b>Total kWh to be Billed after Refund</b>
August 2022	29	24.17	700.93
September 2022	30	15.7	471
October 2022	31	19.61	607.91
November 2022	30	26.2	786
December 2022	35	28.6	1,001
January 2023	35	46.28	1,619.8
February 2023	27	35.24	951.48
March 2023	30	24.59	737.7
April 2023	29	20.81	603.49
May 2023	32	18.4	588.8
June 2023	30	19.59	587.1
July 2023	29	26.31	762.99
August 2023	32	32.89	1,052.48

See Exc. at 11.

#### **4. Disposition of PPL Exception No. 2**

As previously indicated, we agree with the ALJ that the Complainant should be reimbursed for the amounts incorrectly billed by PPL, which occurred during the Complainant's August 2022 to August 2023 billing periods.

However, we agree with PPL that the average kWh usage per day must be considered since billing months vary in length. The number of billing days in a billing

period is important for comparison purposes because, all other things being equal, a customer will use more electricity in billing cycles with more days. The average kWh usage per day in the billing period is determined by using the sum of the total kWh in that billing period, divided by the number of days in the billing period.

Furthermore, instead of *crediting* the Complainant’s account with the difference between the prior billed usage and the recalculated usage, PPL shall be directed to refund Mr. Choe an amount based on the difference between the prior billed usage and the recalculated usage as shown in the following Table 1. The issuance of a refund in this matter is consistent with the Commission’s authority set forth in 66 Pa.C.S. § 1312(a) and would serve to make the Complainant whole in a timely manner.

**Table 1: Derivation of Refund Due to the Complainant**

Billing Period	Average kWh/Day		Total kWh to be Billed After Refund	kWh Billed (Refunded Amount)	Credit (kWh)
	Days in Billing Period	in Prior Year's Billing Period			
	(A)	(B)	(C) = (A)*(B)	(D)	(E) = (C) - (D)
August 2022	29	24.17	701.0	954.0	-253.0
September 2022	30	15.72	471.6	772.0	-300.4
October 2022	31	15.55	482.1	989.0	-506.9
November 2022	30	26.20	786.0	1,193.0	-407.0
December 2022	35	28.61	1,001.2	1,842.0	-840.8
January 2023	27	46.28	1,249.4	1,527.0	-277.6
February 2023	30	35.24	1,057.2	1,732.0	-674.8
March 2023	29	24.59	713.0	1,451.0	-738.0
April 2023	32	20.81	666.0	1,172.0	-506.0
May 2023	30	18.40	552.0	923.0	-371.0
June 2023	29	19.59	568.0	1,090.0	-522.0
July 2023	32	26.31	842.0	1,357.0	-515.0
August 2023	29	32.90	954.0	927.0	27.0
<b>Total</b>			<b>10,043.6</b>	<b>15,929.0</b>	<b>-5,885.4</b>

See PPL Exh. 4.

The usage previously billed for August 2022 through August 2023 (15,929 kWh) will be subtracted from the recalculated usage for August 2022 through August 2023 (10,043.6 kWh) to derive a refund based on a credit of 5,885 kWh and the rate in effect at the time. Accordingly, we shall grant PPL's Exception No. 2 and modify the ALJ's Initial Decision.

### **III. Conclusion**

Upon review and consideration of the record in this proceeding, and in consideration of the applicable provisions of the Commission's Regulations and the Code, we shall grant PPL's Exceptions and modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of PPL Electric Utilities Corporation, filed on February 21, 2024, at Docket No. F-2023-3041321, are granted, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Chad L. Allensworth, issued on February 1, 2024, is modified, consistent with this Opinion and Order. Specifically, the Initial Decision's findings that PPL Electric Utilities Corporation was in violation of 66 Pa.C.S. § 1501 for providing unsafe, inadequate, or unreasonable service to the Service Address of Sang Choe is rejected, as is the imposition of the associated civil penalty, and modified, consistent with this Opinion and Order.

3. That the Formal Complaint of Sang Choe, filed on June 9, 2023, at the above docket, is sustained, in part, regarding the alleged overbilling by PPL Electric

Utilities Corporation, and is denied, in part, to the extent it alleged PPL Electric Utilities Corporation failed to provide reasonable service in violation of 66 Pa.C.S. § 1501.

4. That within thirty (30) days of the date of the entry of this Opinion and Order, PPL Electric Utilities Corporation shall provide a billing adjustment in the form of a refund to Sang Choe calculated by multiplying the average daily usage between August 2021 and August 2022, by the number of billing days in each corresponding billing period between August 2022 and August 2023. PPL Electric Utilities Corporation shall further submit notification of compliance with the billing adjustment to the Commission's Secretary's Bureau at this docket pursuant to 52 Pa. Code § 5.591.

5. That any late fees charged to Sang Choe related to the bills from August 2022 to August 2023 shall be waived.

6. That PPL Electric Utilities Corporation shall complete a meter test at the Service Address for accuracy in recording Sang Choe's electric usage and waive any fee associated with performing the test. PPL Electric Utilities Corporation shall, within sixty (60) days of the entry of this Opinion and Order, provide the results of the meter test conducted at Sang Choe's Service Address to Sang Choe. PPL Electric Utilities shall further submit notification of compliance to the Commission's Secretary's Bureau at this docket number after it provides Sang Choe with the results of the meter test.

7. That upon the filing of proof of the required billing adjustment and distribution of the results of the meter test, referenced in Ordering Paragraph Nos. 4 and 6, the Secretary's Bureau shall mark this docket closed.

**BY THE COMMISSION,**

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

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: September 4, 2024