

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

Public Meeting held December 19, 2024

Commissioners Present:

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

Michael Hillman

C-2023-3038201

v.

Aqua Pennsylvania, Inc.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Michael Hillman (Mr. Hillman or the Complainant) on May 23, 2024,<sup>1</sup> to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued on May 7, 2024, in the above-captioned matter.

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<sup>1</sup> Although the Commission's documentation system shows May 28, 2024 as the date of filing of the Complainant's Exceptions, the Exceptions have a date stamp of May 23, 2024, affixed by the Commission's Secretary's Bureau. The Exceptions were timely filed.

On June 7, 2024, Aqua Pennsylvania, Inc. (Aqua or the Company) filed Reply Exceptions. Upon consideration of the Exceptions and Reply Exceptions, we shall grant the Complainant’s Exceptions, in part, and deny them, in part, and adopt the Initial Decision, as modified, consistent with this Opinion and Order.

## **I. History of Proceeding**

On February 2, 2023, Mr. Hillman filed a Formal Complaint (Complaint) against Aqua. The Complaint was an appeal from an informal decision of the Commission’s Bureau of Consumer Services (BCS), issued January 25, 2023, at BCS Case No. 3882309. In the Complaint, Mr. Hillman disputed billed charges and argued that “This is a foreign load, safety and discriminatory violations [sic] that remained since the last High Bill Dispute.”<sup>2</sup> The Complainant also indicated that he contacted Aqua on December 9, 2022 to inform the Company that he no longer resided at the address and to request that it discontinue billing him for service. Complaint at 2. As relief, the Complainant requested that the Commission direct Aqua to pursue collection from the current owner of the service address, rather than from him. The Complainant also requested a “Federal Jury Trial Hearing” in this matter. Complaint at 3.

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<sup>2</sup> The Complainant also stated in the Complaint form that “PECO shut-off electric and gas service on May 12, 2021, for non-payment.” This appears to be part of another complaint that the Complainant had filed with the Commission against PECO Energy Company (PECO). In that proceeding, the Commission adopted ALJ Heep’s Initial Decision and dismissed the Complainant’s formal complaint at Docket No. C-2023-3038204 by an Opinion and Order entered on February 22, 2024 (*Hillman v. PECO*).

On March 1, 2023, Aqua filed an Answer (Answer) and New Matter.<sup>3</sup> In the Answer, Aqua denied that there were incorrect charges on the Account. Aqua also denied that there was a reliability, safety, or quality issue with the water service provided to the Complainant. Aqua averred that it provided service to the Complainant from October 28, 2015, through December 9, 2022, and the final bill remains unsatisfied for an amount of \$2,784.23. Answer at 1-2.

Aqua averred that the foreign load allegation in the Complaint was the subject of a formal complaint filed by the Complainant against Aqua at Docket No. F-2020-3019026. Aqua also averred that the Commission adopted the Initial Decision of ALJ Christopher P. Pell that dismissed the case, with prejudice. *See, Michael Hillman v. Aqua Pennsylvania Inc.*, Docket No. F-2020-3019026 (Final Order entered January 27, 2021) (*Hillman I*). In the New Matter, Aqua averred that any dispute regarding the financial responsibilities of the Complainant and the owner/landlord is a matter to be resolved in the Court of Common Pleas and is outside the Commission’s jurisdiction. New Matter at 6.

On March 23, 2023, Mr. Hillman filed a Response to the New Matter, arguing that the foreign load issue was not timely addressed or corrected, that *Hillman I* was “judged in error,” and disputed Aqua’s argument that the Commission “lacks jurisdiction to conduct a federal jury trial hearing.”

On March 30, 2023, ALJ Heep issued an Initial Call-In Telephone Hearing Notice, setting a call-in hearing for May 16, 2023. Telephone Hearing Notice at 1.

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<sup>3</sup> Mr. Hillman’s Complaint, while filed with the Commission on February 2, 2023, was not, per the Commission’s case management system, served on Aqua until February 9, 2023. Therefore, Aqua’s Answer and New Matter were timely filed within the twenty (20) day period required by 52 Pa. Code § 5.61(a).

The telephonic hearing convened as scheduled on May 16, 2023. The Complainant appeared *pro se* and alleged that he had not received Aqua's Proposed Hearing Exhibits. At the hearing, counsel for Aqua also presented an oral Motion to Dismiss the Complaint. The ALJ realized that the hearing could not be conducted in an orderly fashion, by telephone, and adjourned the hearing. I.D. at 2-3 (citing Tr. at 13-15).

On May 31, 2023, the ALJ issued an order and directed Aqua to file its Motion to Dismiss in writing by June 7, 2023, and directed the Complainant to file any response no later than June 14, 2023. On June 7, 2023, Aqua filed a written Motion for Judgment on the Pleadings. The Complainant did not file a response on the due date. I.D. at 3.

On June 16, 2023, ALJ Heep issued an Order in which she denied the Complainant's request for a jury trial and dismissed all claims that were beyond the statute of limitations. The ALJ instructed the Parties to present their arguments regarding the dates of the statute of limitations at the next hearing. A further, in-person, hearing was scheduled for June 27, 2023. I.D. at 3.

On June 27, 2023, the ALJ convened an in-person hearing, as scheduled. Mr. Hillman appeared *pro se* and presented the testimony of one witness, his wife, Mrs. Marlo Hillman, and offered ten Exhibits. Aqua was represented by counsel, presented the testimony of three witnesses, and proffered three cross examination documents. During the hearing, the ALJ admitted all three documents that were presented by Aqua into evidence. The ALJ also admitted Complainant Exhibits G and J into evidence and the remaining Exhibits proffered by the Complainant were taken under advisement. The hearing was adjourned upon request by Aqua for continuance, due to the late hour. I.D. at 3.

On July 11, 2023, Mr. Hillman filed a response to Aqua's Motion For Judgment On The Pleadings. Mr. Hillman admitted that he had filed a formal complaint in 2020 in the proceeding in *Hillman 1*, regarding foreign load dating back to 2015. Mr. Hillman contested Aqua's investigation of the foreign load. The Complainant also questioned various aspects of ALJ Pell's 2020 Initial Decision in *Hillman 1*. Namely, he alleged that Aqua has continuously violated the issue at hand and requested that the statute of limitations should be tolled. I.D. at 4.

On July 17, 2023, Aqua filed a Reply to Hillman Answer to Motion. Aqua asserted that the Complainant is seeking to amend the Complaint and expand the scope of the proceedings, which should not be permitted. Aqua noted that the instant case is subject to a three-year statute of limitations under the statute 66 Pa.C.S. § 3314 and argued that there is no basis upon which to toll the statute of limitations, and that the Complainant's assertions regarding the 2020 proceeding in *Hillman 1* are not at issue here. I.D. at 4.

On July 25, 2023, the ALJ issued an Order that granted, in part, and denied, in part, Aqua's Motion for Judgment on the Pleadings/Motion to Dismiss. The ALJ dismissed all claims pertaining to the foreign load addressed by ALJ Pell in *Hillman 1* and any claims that arose more than three years prior to February 2, 2023, the date the instant Complaint was filed. The ALJ ordered that the remaining issues be permitted to proceed for decision in this proceeding. I.D. at 4.

The ALJ also ordered all further proceedings to be held in writing, issued a deadline of August 25, 2023 for Aqua to submit the testimony of its witnesses, and issued a deadline of September 29, 2023 for the Complainant to submit rebuttal testimony. I.D. at 4.

On August 7, 2023, the Complainant filed a motion in which he requested that he receive documents by certified mail because he was having problems receiving mail through his post office box. However, Mr. Hillman did not provide a street address to which mail could be sent. I.D. at 4.

On or about August 9, 2023, the Complainant filed a Right to Know Request seeking to review all documents in this case, as well as another case, *Hillman v. PECO, supra*. The Complainant also attached a Motion for Sanctions against Aqua. I.D. at 4-5.

On August 11, 2023, the Commission's Secretary's Bureau granted Mr. Hillman's Right to Know Request, and the files were made available at the Philadelphia Office of Administrative Law Judge (OALJ). Mr. Hillman has visited the Philadelphia OALJ on many occasions to review the files and to pick up copies of filings, orders, and notices. I.D. at 5.

On August 25, 2023, Aqua submitted its written testimony, and on October 20, 2023, Mr. Hillman submitted his written testimony. I.D. at 5.

On October 10, 2023, the ALJ issued a Further Call-In Telephonic Hearing Notice and scheduled cross examination for November 16, 2023. I.D. at 5.

On November 14, 2023, the ALJ granted a request for continuance from Aqua due to the unavailability of its witness. The hearing was rescheduled for January 16, 2024. I.D. at 5.

On January 16, 2024, ALJ Heep convened a hearing, as scheduled. Mr. Hillman appeared *pro se* and represented himself. Mr. Hillman made available

Mrs. Hillman as a witness for cross examination. Aqua was represented by counsel and presented the testimony of one witness. I.D. at 5.

The final transcript containing 277 pages was received by the Commission on February 7, 2024.

On February 10, 2024, the Complainant filed two Motions entitled: (1) “Motion to Admit Exhibits;” and (2) “Motion for Rehearing/Reargument” (*Motion for Rehearing*). In the Motion to Admit Exhibits, Mr. Hillman requested admission of additional exhibits into the record. In the *Motion for Rehearing*, Mr. Hillman requested a rehearing, arguing that he did not have a complete, full, and fair hearing. I.D. at 6.

By an Order issued on February 15, 2024, the ALJ admitted the Complainant’s additional exhibits and denied the *Motion for Rehearing*. The record in this proceeding was closed on February 15, 2024. I.D. at 6.

The Initial Decision of ALJ Heep, as noted *supra*, was issued on May 7, 2024. Therein, the ALJ denied and dismissed Mr. Hillman’s Complaint, finding that the Complainant: (1) failed to meet his evidentiary burden to establish a continuing foreign load at the service address, and (2) failed to demonstrate that Aqua provided unsafe, unreasonable, or discriminatory service to him. I.D. at 14.

As previously noted, on May 23, 2024, the Complainant filed Exceptions to the Initial Decision. On June 7, 2024, Aqua filed Reply Exceptions.

## II. Discussion

### A. Legal Standards

#### 1. Jurisdiction

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

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

66 Pa.C.S. § 701. Accordingly, Section 701 of the Code provides for complaints against a public utility for anything done or not done in violation of the laws administered by the Commission or Commission Regulations and Orders. *Id.*

However, for the Commission to sustain a complaint against a public utility, the utility must be found to be in violation of its duty under the Code, the Commission's Regulations, or an Order of the Commission. Without proof of such a violation, the Commission does not have authority to require any action by the public utility in relation to the customer's complaint. *See West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984).

#### 2. Burden of Proof

Pursuant to Section 332(a) of the Code, the Complainant, as 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

Aqua 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*, 602 A.2d 863 (Pa. 1992). This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than the evidence presented by Aqua. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980) (*Norfolk*). "Opinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission." *Norman v. Phila. Gas Works*, Docket No. C-2018-2640719 (Opinion and Order entered October 7, 2021) (*Norman*).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to Aqua to present persuasive evidence rebutting that of the Complainant. If Aqua'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 Aqua. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*). While the evidentiary burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

### **3. Foreign Load**

"Foreign load" refers to a situation where a utility customer's meter registers utility usage not exclusive to the customer's residence or occupants. In 1993,

the General Assembly amended the Code to include 66 Pa.C.S. § 1529.1, addressing foreign load issues. Section 1529.1 provides for specific duties of owners of residential rental property containing one or more dwelling units that are not individually metered. *See*, 66 Pa.C.S. § 1529.1.<sup>4</sup>

Specifically, Subsection (a) of Section 1529.1 establishes an affirmative duty on the owner of a property to notify a utility provider if a residential building contains “one or more dwelling units, not individually metered.” If the property owner or landlord provides notice, Subsection (b) requires the utility to list the account with the foreign load in the landlord’s name and hold the landlord accountable for utility service payments related to the account. If the landlord fails to provide the required notice, Subsection (c) places an affirmative duty on the utility to proceed as if the notice had been provided. Therefore, a utility has an affirmative duty to investigate a foreign load or high bill complaint, and if the utility discovers a foreign load, the utility is required to list the account in the landlord’s name and hold the landlord responsible for payment for utility services rendered to the account. 66 Pa.C.S. § 1529.1; *see also*, *Ace Check Cashing, Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (*Ace Check Cashing*).

The intention of Section 1529.1 is to protect residential tenants from the loss of utility service because another customer has service terminated by the utility. *See*, *Elizabeth Santos v. Metropolitan Edison Co.*, Docket No. 00967757 (Opinion and Order entered August 7, 1997).

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<sup>4</sup> “Individually metered,” as used in Section 1529.1, is not defined by the Code or within our Regulations. *See*, *1-A Realty v. Pa. PUC*, 63 A.3d 480, 483 (Pa. Cmwlth. 2023) (*1-A Realty*). However, the Commission has consistently defined “not individually metered” in its decisions as the “utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants.” *Id.* at 483 (citations omitted).

#### 4. Safe and Reasonable Service

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

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

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

## **5. Discrimination in Service**

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

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

66 Pa.C.S. § 1502.

### **B. Initial Decision**

In the Initial Decision, ALJ Heep made twelve (12) Findings of Fact and reached seven (7) Conclusions of Law. I.D. at 6-7, 13-14. The Findings of Fact and Conclusions of Law are incorporated herein by reference and adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In the Initial Decision, ALJ Heep made the following findings, based upon a review of the facts: (1) the record does not contain substantial evidence establishing the presence of foreign load at the residence with respect to Aqua. I.D. at 9-11; (2) the Commission does not have jurisdiction over municipal codes nor does the record contain any evidence supporting a finding that Aqua provided or allowed unsafe service. *Id.* at 11; (3) the record supports a finding that Aqua's provision of service was not unreasonable and does not raise to the level of a violation. *Id.* at 11-12; and (4) the

Complainant failed to show that Aqua acted in a way that was discriminatory towards him. *Id.* at 12-13.

The ALJ noted that, according to Mr. and Mrs. Hillman, there was continued foreign load at the service address; however, neither of them provided any details or other evidence in support of their opinion. Rather, the ALJ explained, most of the evidence presented through the testimony of Mr. and Mrs. Hillman pertained to events that occurred more than three years prior to the filing of the instant Complaint. The ALJ also noted that she had dismissed any claims that arose more than three years prior to February 2, 2023, when the instant Complaint was filed. As such, the ALJ concluded, these claims were not viable. The ALJ added that any claims pertaining to foreign load prior to the current Complaint were addressed and dismissed by ALJ Pell in *Hillman I.* I.D. at 9-11.

The ALJ also noted that, although Mr. Hillman presented a 2022 document showing an ongoing dispute with PECO regarding foreign load, there was no substantial evidence of foreign load pertaining to Aqua's services. Additionally, the ALJ noted nothing in the record demonstrated or suggested that Mr. Hillman's water meter was registering usage not exclusive to the service address or the Hillmans. Citing the Commission's conclusion in its Opinion and Order in *Norman, supra*, the ALJ explained that "[o]pinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission." As such, the ALJ concluded that the opinions of Mr. and Mrs. Hillman will not support a finding on behalf of the Complainant. I.D. at 10-11.

With regard to the Complainant's assertion as to the provision of unsafe service by Aqua, wherein Mr. and Mrs. Hillman raised concerns regarding Aqua's compliance with municipal codes, the ALJ noted that the Commission does not have jurisdiction over such issues. I.D. at 11 (citing *Shank v. PPL Elec. Utils., Inc.*,

Docket No. C-2009-2087300 (Opinion and Order entered August 31, 2009)). The ALJ also noted that, even if the Commission did have jurisdiction over compliance with municipal codes, the Complainant presented no evidence suggesting or supporting a finding that Aqua provided or allowed unsafe service in violation of 66 Pa.C.S. § 1501. I.D. at 11.

With regard to Mr. Hillman's assertion that Aqua did not adequately or timely respond to his concerns regarding possible foreign load and a high bill dispute, the ALJ concluded that it was not unreasonable that Aqua did not further reinvestigate a more than three year old foreign load claim that the Company had previously investigated in December of 2018 and March of 2019. The ALJ explained Mr. Hillman had contacted Aqua on December 9, 2022, to inform the Company that he had moved out of the house; and, later on January 3, 2023, filed an Informal Complaint with BCS. Consequently, Aqua customer service submitted its report to BCS, rather than the Complainant, on January 6, 2023. The ALJ concluded that considering Aqua's submittal of its report to BCS on January 6, 2023, within the 30-day dispute period outlined in the Commission's Regulations at 52 Pa. Code § 56.151, Aqua's action was not unreasonable. I.D. at 11-12.

The ALJ also noted the testimony of Mr. Hillman and Mrs. Hillman that they were treated in a discriminatory manner. However, the ALJ explained, such testimony was presented without any evidence. The ALJ concluded that a finding that the Complainant was treated in a discriminatory manner must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. The ALJ explained that a suspicion of the existence of a fact is insufficient. I.D. at 12-13 (citing *Norfolk*). The ALJ concluded that the record was devoid of substantial evidence to support a finding that Aqua's service to Mr. Hillman was discriminatory or that he was treated differently or unfairly. I.D. at 13.

Based on the foregoing, the ALJ dismissed the Complaint. I.D. at 16.

## B. Exceptions

At the outset, we note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each Exception be numbered, identify the findings 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 exercise our discretion to accept the Exceptions, despite the failure of the Complainant to number the Exceptions and to clearly identify the finding or conclusion to which exception is taken, pursuant to Section 1.2(a) of our Regulations, and consider the merits. *See*, 52 Pa. Code § 1.2(a).

As previously noted, on May 23, 2024, Mr. Hillman timely filed his Exceptions to the Initial Decision. The Complainant's Exceptions consist of a five-page type written letter titled "EXCEPTIONS/OBJECTIONS," which is separated into thirty paragraphs. The Complainant alleges, *inter alia*, the following:

1. The Complainant appears to dispute the ALJ's explanation that he dismissed any claims that arose more than three years prior to February 2, 2023. According to the Complainant, the doctrine of "Equitable Estoppel" tolls the statute of limitation due to "intentional concealment," based on his answer to Aqua's Motion for Judgment on the Pleadings.
2. The Complainant also cites to certain civil cases he filed with the Court of Common Pleas, the Federal Court, and the Federal Appeals Court, in support of his argument that his claims should be tolled. Mr. Hillman does not explain the outcome of these civil cases, but instead submits that "two years would be added to the 3 yrs limitations with a total of 5 yrs from the December 9, 2022 date, leading back to December 2017."

3. The Complainant cites to Sections 1501, 1502, 1504, and 1505 of the Code, 66 Pa.C.S. §§ 1501, 1502, 1504, 1505, and also to certain case law, and to his Answer to Aqua's Motion for Judgment on the Pleadings. The Complainant then insists that his water and gas utility services were interrelated such that both Aqua and PECO have violated these sections of the Code and the case law.
4. Mr. Hillman argues that the ALJ misstated several dates in the "Relevant History of the Proceeding" section of the Initial Decision.

Additionally, the Complainant cites to several case holdings, and to several provisions of the Code and the Commission's Regulations regarding hearings and due process. Exc. at 1-5.

### **C. Reply Exceptions**

In its Replies to Exceptions, Aqua asserts that the ALJ correctly dismissed any claims that arose more than three years prior to February 2, 2023, the date the instant Complaint was filed. Therefore, Aqua submits that the Complainant's arguments to the contrary, as set forth in his Exceptions, are without merit and should be denied. However, Aqua agrees that the incorrect dates identified by the Complainant in the "Relevant History of the Proceedings" section of the Initial Decision, while non-substantive, should be corrected. Aqua Exc. at 4.

Aqua further submits that the balance of the Complainant's arguments in the Exceptions raise irrelevant points, or simply repeat positions that the ALJ considered and soundly rejected based on the record evidence. Aqua asserts that there is substantial evidence in the record to demonstrate that the Complainant failed to carry his burden of proving that Aqua violated the Code, a Commission Regulation, or a Commission Order. Accordingly, Aqua requests that the Commission deny the Exceptions, adopt the Initial

Decision, as modified to correct the dates in the “Relevant History of the Proceeding” section of the I.D., and dismiss the Complaint, with prejudice. R. Exc. at 3-5.

### **III. Disposition**

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

#### **A. Foreign Load**

Although the Complainant did not directly except to this issue, the Complainant’s requested relief in the Complaint was mostly centered on his allegation of continued foreign load at his service address. As such, we shall address it. In this regard, we shall not revisit the totality of the foreign load allegations at the Complainant’s service address dating back to 2019, and as presented in his formal complaint in *Hillman I*. The Commission, in *Hillman I*, dismissed Mr. Hillman’s allegation of an ongoing foreign load and found that Aqua acted properly in investigating foreign load at the service address and further found that the issue had been remediated.

As we have noted *supra*, “[o]pinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission.” *Norman* at 30. No new evidence of a continued foreign load with respect to Aqua was presented in this case. Therefore, we find the Complainant has failed to meet his burden of establishing that a foreign load continues to exist at the residence.

## B. Typographical Errors in the Initial Decision

As noted, *supra*, the Complainant argues in his Exceptions that the ALJ misstated several dates in the “Relevant History of the Proceeding” section of the Initial Decision. More specifically, in paragraph 29 of his Exceptions, the Complainant claims, as follows:

RE: p5, par 2 October is an incorrect date ---should be  
Sept. 29.....p5, par 4. January 16, 2023 should be 2024 p6.  
par 1 February 8, 2023 should be 2024.

Exc. at 5. Our review of the record in this proceeding supports the Complainant’s argument. As such, we shall make the following modifications to the Initial Decision:

1. On page 5, paragraph 2 of the Initial Decision, we shall modify the second sentence to state: “Mr. Hillman submitted written testimony on October 2, 2023.”<sup>5</sup>
2. On page 5, paragraph 4 of the Initial Decision, we shall modify the first sentence to state: “The hearing convened as scheduled on January 16, 2024.”
3. We shall modify the first sentence on page 6 of the Initial Decision to state: “The final pages of the 277-page transcript were received on February 7, 2024.”<sup>6</sup>

We further note that the History of Proceeding outlined in Section I of this Opinion and Order also reflects these corrected dates.

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<sup>5</sup> The Complainant’s written testimony was dated September 29, 2023, but was not officially filed with the Commission until October 2, 2023. *See*, R. Exc. at 4.

<sup>6</sup> The Complainant argues in his Exceptions that the 277 page transcript was received on February 8, 2024. Exc. at 5. However, our review of the Commission’s records indicates that the transcript was received by the Commission on February 7, 2024.

### C. Burden of Proof

Notwithstanding our above modification to the Initial Decision to correct the typographical errors in the “Relevant History of the Proceeding” section, we agree with Aqua that the remainder of the Complainant’s arguments in his Exceptions are without merit. Therefore, we shall deny the balance of the Complainant’s Exceptions.

In his Exceptions, the Complainant claims that the doctrine of “equitable estoppel” tolls the statute of limitations in this proceeding such that “two years would be added to the 3 yrs limitations with a total of 5 yrs from the December 9, 2022 date, leading back to December 2017.” Exc. at 2. However, Section 3314(a) of the Code states, as follows:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained **unless brought within three years from the date at which the liability therefor** arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314 (emphasis added). We note that the statute of limitations at 66 Pa.C.S. § 3314 is non-waivable since it terminates a party’s right to bring an action before the Commission, as well as any remedy the Commission may order. This Commission adopted the Initial Decision of ALJ Pell in *Hillman I*, wherein Mr. Hillman’s allegations of foreign load that were initially raised on February 21, 2020, with respect to his usage for the period from November 30, 2018, to April 22, 2019, were addressed. Therefore, any claim of foreign load that arose more than three years prior to February 2, 2023 is barred under the above statute of limitations. Accordingly, the Complainant’s argument is without merit.

As previously noted, the Complainant also submits that his water and gas utility services were interrelated, such that both Aqua and PECO have violated, *inter alia*, several provisions of the Code and certain case law. Exc. at 3. However, we note that other than the Complainant's opinion, there is no record evidence to support this allegation. Accordingly, this argument is without merit. As to the remainder of the Complainant's arguments in his Exceptions, we further agree with Aqua that such arguments are not dispositive to the Complaint, or simply repeat positions that the ALJ considered, and soundly rejected, based on the record evidence. *See*, R. Exc. at 5.

Based upon the above, we agree with Aqua and the ALJ that the Complainant has failed to meet his burden of proving that the Company violated the Code, a Commission Regulation or Order, or its Commission-approved tariff. Accordingly, we shall deny the balance of the Complainant's Exceptions, and adopt the Initial Decision, as modified above.

#### **IV. Conclusion**

Based on the foregoing discussion and our review of the Initial Decision, Exceptions, Reply Exceptions, and the record in this proceeding, we shall grant, in part, and deny, in part, the Exceptions filed by Michael Hillman, and adopt the Initial Decision issued by ALJ Darlene Heep on May 7, 2024, as modified, consistent with this Opinion and Order; **THEREFORE**,

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

1. That the Exceptions of Michael Hillman, filed on May 23, 2024, to the Initial Decision of Administrative Law Judge Darlene Heep, issued on May 7, 2024 at Docket No. C-2023-3038201, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Darlene Heep, issued on May 7, 2024, is adopted, as modified, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Michael Hillman on February 2, 2023, against Aqua Pennsylvania, Inc. at Docket No. C-2023-3038201, is denied and dismissed, consistent with this Opinion and Order.

4. That this proceeding at Docket No. C-2023-3038201 shall be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 19, 2024

ORDER ENTERED: December 19, 2024