

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

Public Meeting held February 20, 2025

Commissioners Present:

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

Marisa Diaz-Willis

F-2023-3045048

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions (Exceptions) of Marisa Diaz-Willis (Ms. Diaz-Willis or Complainant), filed on August 20, 2024, to the Initial Decision (I.D.) of Special Agent Michael J. Mroczka (Special Agent or Agent Mroczka), which was issued on July 30, 2024, in the above-captioned proceeding. Replies to Exceptions were filed by Philadelphia Gas Works (PGW or the Company) on August 29, 2024. For the reasons stated below, we shall deny the Exceptions filed by Ms. Diaz-Willis and adopt the Initial Decision without modification, consistent with this Opinion and Order.

I. History of the Proceeding

On December 4, 2023, Ms. Diaz-Willis filed a Formal Complaint (Complaint)¹ with the Commission against PGW. In the Complaint, Ms. Diaz-Willis made the following allegations: (1) that PGW is threatening to shut off her service or has already shut off the service; (2) that she would like a payment arrangement; and (3) that there are incorrect charges on her bill. Complaint at 2. For relief, Ms. Diaz-Willis asked for a “\$3000.00 credit to my account and a reasonable payment plan.” *Id.* at 3. In her narrative, Ms. Diaz-Willis noted that “[f]or several years my gas bill has crept up to almost \$1000 per month,” and represented that she “inherited” a PGW balance from her mother that she struggled to pay as a retiree “with limited financial resources.” *Id.* at 9.

On January 10, 2024, PGW filed its Answer and New Matter to the Complaint (Answer). In its Answer, PGW admitted in part and denied in part the allegations included in the Complaint. Answer at 1-2. PGW specifically alleged that the Complainant had previously received and defaulted on two Company-issued payment arrangements and one Commission-issued payment arrangement. *Id.* at 1. PGW stated that the Commission-issued payment arrangement included the amount transferred to Ms. Diaz-Willis after the death of her mother in August 2019 and that the balance transfer in 2019 occurred at a time that is now beyond the statute of limitations established by 66 Pa.C.S. § 3314. *Id.* at 2-3. Finally, PGW explained that the Complainant’s meter was removed and tested, with a meter test determining the meter

¹ The Complaint is a timely appeal from the informal decision of the Commission’s Bureau of Consumer Services (BCS), issued on October 26, 2023, at BCS Case No. 3915005. Therein, BCS dismissed the Complainant’s Informal Complaint. *See* Tr. at 64; PGW Exh. 5. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a). We further note that although the instant Complaint was not filed until December 4, 2023, the Complainant filed a “Notification of Intent to Appeal BCS Decision,” within the twenty (20) day timeframe specified by the Secretary’s Bureau in its Secretarial Letter dated October 26, 2023. Therein, the Secretary’s Bureau attached the BCS informal decision. Thus, the instant Complaint is a timely appeal.

was accurate. *Id.* at 1. PGW also filed a Preliminary Objection on January 10, 2024. The Preliminary Objection argued that the issues raised by Ms. Diaz-Willis in the Complaint regarding the balance transfer from August 30, 2019, are beyond the statute of limitations. Preliminary Objection at 2-3 (citing Pa.C.S. § 3314).

On February 24, 2024, Ms. Diaz-Willis filed a Reply to the Answer and New Matter and an Answer to the Preliminary Objection. I.D. at 2.

A hearing in this matter was held telephonically on April 9, 2024. The Complainant appeared *pro se* and entered one exhibit into the record. Counsel appeared on behalf of PGW and entered seven exhibits into the record. Agent Mroczka heard oral argument on PGW's Preliminary Objection prior to the hearing and held a decision on the Preliminary Objection in abeyance pending completion of the hearing. I.D. at 2-3.

The record in this matter closed on May 2, 2024, upon receipt of the transcript. I.D. at 3.

As mentioned, *supra*, the Commission issued the Initial Decision of Agent Mroczka in this matter on July 30, 2024. Therein, the Special Agent treated PGW's Preliminary Objection as a Motion to Dismiss the Complainant's claim of improper balance transfer, granted the Motion to Dismiss, and dismissed the improper balance transfer claim. I.D. at 8, 18. In addition, the Special Agent denied and dismissed the Complaint filed by Ms. Diaz-Willis against PGW. I.D. at 1, 15, 18.

As previously noted, the Complainant timely filed Exceptions on August 20, 2024. PGW timely filed Reply Exceptions on August 29, 2024.

II. Discussion

A. Legal Standards

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992) (*Lansberry*). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950) (*Se-Ling Hosiery*). Additionally, this Commission's decision 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 & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Preliminary Objections

Section 5.101 of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.101, provides that preliminary objections may be filed in response to a pleading, must include a notice to plead, and state the legal and factual grounds supporting the objections. 52 Pa. Code § 5.1010 (a). Preliminary objections are limited to the following grounds:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

Commission preliminary objection practice is analogous to civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). Preliminary objections seeking dismissal of a pleading will only be

granted where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991), adopted by the Commission in *Montague v. Phila. Elec. Co.*, 66 Pa. P.U.C. 24 (1988).

The party filing preliminary objections may not rely only on its own factual assertions but must accept, for the purposes of disposing of the preliminary objection, all well-pleaded material facts of the other party, including fairly determined inferences from those facts. *Raynor v. D'Annunzio*, 243 A.3d 41 (Pa. 2020) (*Raynor*); *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985) (*County of Allegheny*). In ruling on a preliminary objection, the Commission must assume the factual allegations included in the Complaint are true and resolve any doubt in favor of the non-moving party by rejecting the preliminary objections. *Id.*, see also *Commonwealth v. UPMC*, 208 A.3d 898 (Pa. 2019); *Dep't of Auditor Gen. v. State Emps. Retirement Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

3. Statute of Limitations

The Code establishes a statute of limitations for actions and remedies at 66 Pa.C.S. § 3314. Section 3314, states:

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 therefore arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). The statute of limitations “can be tolled by the filing of an informal complaint with the Commission, *id.*, and by the doctrine of equitable estoppel

which is based on the theory of estoppel.” *David Harris v. Philadelphia Gas Works*, Docket No. C-2012-2298901 (Order entered January 4, 2013). The Commission has clarified that the doctrine of equitable estoppel “provides that a defendant may not invoke the statute of limitations if through fraud or concealment he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts.” *Lester Ely v. Pennsylvania American Water Company*, C-20055616 (Order entered July 10, 2006).

4. High Bill Dispute

Where a complainant alleges overbilling by their utility provider, the Commission utilizes the *Waldron* rule. See, *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 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 that: (1) the number of occupants in the household has not changed; (2) the potential for energy utilization was low; and (3) the complainant’s billing history shows no prior abnormalities. *Waldron; Replogle v. Pa. Elec. Co.*, 54 Pa. P.U.C. 528 (1980). Once the Complainant shows a *prima facie* case, the burden of proof shifts to the Respondent; 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 Thomas v. PECO Energy Co.*, 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 Co.*, Docket No. C-2009-2122979 at 6 (Opinion and Order entered October 13, 2010)).

5. Payment Arrangements^{2,3}

The Responsible Utility Consumer Protection Act (Act), 66 Pa.C.S. §§ 1401-1419, applies to consumer complaints alleging an inability to pay and requesting the Commission issue a payment arrangement. The Act imposes strict guidelines the Commission must follow in considering whether a payment arrangement can be issued, *inter alia*, as follows:

§1405. Payment arrangements

- (a) **General rule.** – The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.
- (b) **Length of payment arrangements.** – The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into

² We acknowledge that the Complaint and the ALJ’s Initial Decision were based, in part, upon Chapter 14 of the Code, 66 Pa.C.S. §§ 1401-1419 (Chapter 14), and specifically 66 Pa.C.S. §1405, which was in effect and governed the conduct at issue at the time of the conduct in question. We further note that Chapter 14 has subsequently sunset, effective December 31, 2024, according to its provisions, and is not currently in effect. Moreover, the Commission has clarified that its Regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered December 24, 2024). The Commission will apply this Statement of Policy in all proceedings related to issues in Chapter 14 until further direction is provided. *Id.* at 7.

³ Here, where the underlying facts and the contested Initial Decision were made prior to the sunset of Chapter 14 on December 31, 2024, we apply the language of Chapter 14, as applicable at the time, while noting the Commission’s Statement of Policy (*see supra* at n.1).

by a public utility and a customer shall not extend beyond:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

66 Pa.C.S. § 1405(a)-(b).

The Act also states the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change in income, in the event a customer defaults on a prior payment arrangement. 66 Pa.C.S. § 1405(d). The Act allows the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted because of a significant change in circumstances. 66 Pa.C.S. §1405(e).

A “significant change in circumstances” is defined in the Code as:

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.

- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

B. Initial Decision

Agent Mroczka made eighteen (18) Findings of Fact and reached fourteen (14) Conclusions of Law. I.D. at 3-5, 16-18. 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.

In the Initial Decision, the Special Agent dismissed the Complaint filed by Ms. Diaz-Willis and concluded that the “Complainant’s claim that her mother’s balance was improperly transferred to her is dismissed as beyond the applicable statute of limitations.” Agent Mroczka also found that Ms. Diaz-Willis “failed to meet her burden of proving that she was overbilled for her gas service, or that she is eligible for a second or subsequent Commission-issued payment arrangement, or reinstatement of her prior payment arrangement.” I.D. at 1.

Regarding the Complainant’s claim that her mother’s balance was improperly transferred to her, Agent Mroczka analyzed the Preliminary Objection filed by PGW alleging such claims were beyond the relevant statute of limitations. I.D. at 7-8. In doing so, Agent Mroczka utilized the discretion afforded in the Commission’s Regulations at 52 Pa. Code § 1.2(a) to treat the Preliminary Objection as a Motion to

Dismiss Ms. Diaz-Willis' balance transfer claims. *Id.* In granting PGW's request to dismiss the Complainant's balance transfer claims, the Special Agent held that: "[i]t is clear from oral argument that Complainant's liability for the balance transfer arose on August 30, 2019. Tr. 4. Ms. Diaz-Willis filed her informal complaint on June 5, 2023, which was well beyond the three-year statute of limitations under 66 Pa.C.S. § 3314." *Id.* at 8. Agent Mroczka also noted that "since [the] Complainant purchased the property on November 12, 2008, and as owner of the property, she is connected to the property since that date and ultimately liable for any arrearages that arose since that date." *Id.* at 8, n.3.

In rejecting the Complainant's claims of incorrect billing, Agent Mroczka found that "[t]he pattern of usage does not imply improper billing." I.D. at 11. Instead, the Special Agent found "steady CCF usage in conjunction with the degree days along with a fluctuation in the actual price of gas..." *Id.* In support of this finding, Agent Mroczka also referred to a test of Ms. Diaz-Willis' meter, with the result of that meter showing "that the meter averaged 0.8% fast, which is within the two percent limits required by section 59.22 of the Commission's regulations." *Id.* at 9 (citing PGW Exh. 6). The Special Agent, after conducting an analysis pursuant to *Waldron, supra*, found that the Complainant "has not shown a change in usage patterns or provided any other evidence showing that she was incorrectly billed and therefore has failed to present a *prima facie* case of overbilling." I.D. at 11.

Finally, the Special Agent considered the Complainant's request for a Commission-issued payment arrangement, or in lieu of a new payment arrangement, reinstatement of her previous Commission-issued payment arrangement. I.D. at 11-15. Applying Section 1405 of the Code, the Special Agent noted that based on her income and family size, the Complainant would qualify for a Level 2 payment arrangement. *Id.* at 13 (citing 66 Pa.C.S. §1405). However, the Special Agent found that "Ms. Diaz-Willis has had a prior Commission-issued payment arrangement; therefore, further evaluation is necessary..." to determine whether Ms. Diaz-Willis qualified for a

second or subsequent payment arrangement. I.D. at 13. Agent Mroczka also found that, pursuant to Sections 1405(e) and 1403 of the Code, Ms. Diaz-Willis failed to show a “significant change in circumstance” necessary for reinstatement of the 2019 Commission-issued payment arrangement upon which the Complainant defaulted. *Id.* at 15 (citing 66 Pa.C.S. §§ 1405(e) and 1403).

Based on this analysis, the Special Agent granted PGW’s Preliminary Objection⁴ and denied and dismissed the Formal Complaint filed by Ms. Diaz-Willis. I.D. at 18.

C. Exceptions and Replies

At the outset, we note that the format of the Exceptions does not strictly comply with Section 5.533(b) of the Commission’s Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken. 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will exercise our discretion to accept the Exceptions, as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits. 52 Pa. Code § 1.2(a).

In her first Exception, the Complainant argues that the Special Agent erred in dismissing her balance transfer claims as being outside the relevant statute of limitations under Section 3314 of the Code. Ms. Diaz-Willis Exc. at 1-2 (citing 66 Pa.C.S. § 3314). Specifically, the Complainant states that “[w]hen I read PGW’s Preliminary Objections, that is the first time that I was only then privy to the details as to how PGW made the determination that I was responsible for my deceased mother’s balance.” Ms. Diaz-Willis Exc. at 2. Based upon this, the Complainant asserts that the

⁴ As referenced, *supra*, the Preliminary Objection was treated as a Motion to Dismiss the claim of improper balance transfer pursuant to 52 Pa. Code § 1.2.

limitations period established by Section 3314 “is not applicable to this situation...” and denial of her Complaint based upon a finding it was beyond the statute of limitations was not in “the spirit of which Statute of limitations at 66 Pa.C.S. § 3314 was crafted.” *Id.* (formatting in original).

In response, PGW states the Special Agent was correct to consider the Preliminary Objection as a Motion to Dismiss the balance transfer claim, arguing that the Complainant’s “substantive rights were not affected because she filed both a Response to the Preliminary Objections and a Reply to the Answer with New Matter, and she testified at the hearing about the balance transfer.” PGW R. Exc. at 4 (citing Tr. at 41-44). PGW also counters that the Special Agent correctly held that claims relating to the balance transfer were barred by the statute of limitations with the record, offering that:

The testimony from the parties and exhibits clearly demonstrates that the date the liability arose was August 30, 2019 as that was the date she contacted PGW and applied for service; that she was linked to the property since 1989 via Experian; she was advised of her obligation to assume the balance if she wanted service; and that she agreed to assume the balance in order to get service.

PGW R. Exc. at 4 (citing Tr. at 4, 41-43, 55-56, 79-82; PGW Exh. 1). After noting the statute of limitations may be tolled by filing an Informal Complaint or by equitable estoppel, PGW refers to the Complainant’s Informal Complaint in BCS Case No. 33743263, where Ms. Diaz-Willis contested the balance transfer and was found responsible for the transferred balance and issued the October 2019 Commission-issued payment arrangement. PGW R. Exc. at 4 (citing PGW Exh. 2). PGW contends that the Informal Complaint tolled the statute of limitations deadline by one day, with the three year statute of limitations from the date of her assumption of the debt, being August 31, 2022. PGW R. Exc. at 4. PGW notes that the Complainant did not appeal or further contest the BCS informal decision in that case and failed to file within the time

proscribed by the Code. *Id.* at 4-5. PGW asks the Commission to deny Exception No.1, arguing that the Complainant failed “to identify any error in law or fact that would support reversal...” *Id.* at 5.

In her second Exception, Ms. Diaz-Willis argues that she established a *prima facie* case of overbilling pursuant to *Waldron*. Ms. Diaz-Willis Exc. at 3. Pointing to her testimony and evidence, the Complainant avers “that there were no changes to occupants or usage in my household that would account for the significant increase in our bills from year to year during the same months...” and that the evidence she proffered via testimony and evidence “was not challenged or disputed” and “satisfies the *prima facie*.” *Id.* (formatting in original). Ms. Diaz-Willis concludes “that there hasn’t been any change in usage patterns therefore there isn’t any justification for the drastic increase in my bill from year to year comparing the same months.” *Id.* at 5.

In response, PGW submits that the Special Agent “correctly held that she was not overbilled...” based on application of the *Waldron* rule and the meter testing results presented by PGW. PGW R. Exc. at 5. PGW argues that the Complainant “did not present any contrary evidence and did not take any exception” to the ALJ’s finding that the meter test was within the 2% tolerance standard. *Id.* (citing 52 Pa. Code § 59.22(a)-(b); PGW Exh. 6). PGW notes that Ms. Diaz-Willis agreed the pattern of usage had remained consistent during the 2021-2024 period but that “Ms. Diaz-Willis does not account for the changing price of gas in her analysis.” PGW R. Exc. at 6. PGW asks the Commission to deny Exception No. 2, arguing that “Ms. Diaz-Willis has failed to identify any error in law or fact that would support reversal of the Initial Decision.” *Id.*

In her third Exception, Ms. Diaz-Willis seeks reconsideration and reinstatement of the 2019 Commission-issued payment arrangement. Ms. Diaz-Willis Exc. at 6. Contesting the Special Agent’s finding that she did not show evidence of a

significant change in circumstances pursuant to Section 1405(e) of the Code, Ms. Diaz- Willis notes her testimony regarding COVID-related business losses resulting in her defaulting on the 2019 Commission-issued payment arrangement are within “the spirit of the code...” and “[w]hether or not I was sick isn’t relevant unless I stated that I was incapacitated...” *Id.* at 5-6 (citing 66 Pa.C.S. § 1405(e)).

In response, PGW asserts that “[a] plain reading of Sections 1405(e) and 1403 provide a clear, unambiguous standard when deciding whether a prior Commission-issued payment arrangement can be reinstated.” PGW R. Exc. at 6. PGW argues that a loss of business revenue “not due to chronic or acute illness but from a pandemic, is not one of the allowable basis [sic] for reinstatement.” *Id.* PGW also notes that “[w]hen given the opportunity to provide additional testimony for Special Agent Mroczka to consider for her request, Ms. Diaz-Willis again referenced, in relevant part, the effect Covid had on her business.” *Id.* at 7 (citing Tr. at 39-41). Absent any evidence presented by Ms. Diaz-Willis, PGW asks the Commission to find that Agent Mroczka correctly denied Ms. Diaz-Willis’ request for reinstatement of the 2019 Commission-issued payment arrangement. PGW R. Exc. at 7.

PGW also counters Ms. Diaz-Willis’ assertion that the Initial Decision was not supported by substantial evidence, offering that the Complainant “does not point to any specific, supporting examples...” and that “[t]he record clearly demonstrates that the Initial Decision is supported by substantial evidence and applicable and relevant law...” PGW R. Exc. at 7. PGW requests the Commission deny the Complainant’s Exception No. 3 and adopt the Initial Decision.

III. Disposition

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied

without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

For the foregoing reasons, we will deny the Complainant's Exceptions. Upon review, we find that the Initial Decision is supported by substantial evidence and relevant law, and we shall adopt it without modification, consistent with this Opinion and Order.

First, we agree with the Special Agent's findings regarding the application of the statute of limitations in Section 1405 of the Code, 66 Pa.C.S. § 1405, to bar the Complainant's claim regarding the transferred balance and are unpersuaded by Ms. Diaz-Willis' Exception No. 1. Namely, we concur with the Special Agent's finding that the liability for the balance transfer arose on August 30, 2019. Further, we find substantial evidence within the record that the Complainant was aware of this transferred amount and her obligation to pay it. *See*, Tr. at 4, 41-43. Indeed, Ms. Diaz-Willis filed an Informal Complaint with BCS on October 22, 2019, where she contested the balance transfer and requested a Commission-issued payment arrangement. *See* BCS Case No. 33743236; PGW Exh. 2. BCS issued an informal decision on October 22, 2019, issuing a Commission-issued payment arrangement and finding Ms. Diaz-Willis responsible for the transferred balance. PGW Exh. 2. As PGW observed, this informal decision was not appealed and it tolled the relevant statute of limitations by only one day, or until August 31, 2022. Tr. at 57-58; PGW Exh. 2. Ms. Diaz-Willis filed the instant Complaint in this proceeding on December 4, 2023, which is well beyond the three-year statute of limitations under 66 Pa.C.S. § 3314.

Additionally, we find that the Commission is well within the discretion afforded in 52 Pa. Code § 1.2 to consider PGW's Preliminary Objection as a Motion to

Dismiss the balance transfer claims alleged by Ms. Diaz-Willis. Doing so ensures adherence to Commission Regulations on preliminary objections, particularly that a party may not rely only on its own factual assertions but must accept, for the purposes of disposing of the preliminary objection, all well-pleaded material facts of the other party, including fairly determined inferences from those facts. *Raynor; County of Allegheny*. This treatment of the filing also secures the just, speedy, and inexpensive determination of this proceeding, as contemplated by the Code. 52 Pa. Code § 1.2(a).

Based upon our agreement with the ALJ's well-reasoned analysis and disposition of the Complainant's claim regarding the transferred balance, we shall deny the Complainant's Exception No. 1.

In considering the overbilling and incorrect billing portion of Ms. Diaz-Willis' Complaint, and restated in her Exception No. 2, we find insufficient evidence to sustain the Complaint; therefore, we will adopt this portion of the Initial Decision, without modification. First, based upon a testing of the meter. The Complainant's meter was within the tolerance standard established by 52 Pa. Code § 59.22(a), which states in relevant part that:

If, upon test of a meter, it is found to have an average error of more than 2.0% fast, the public utility shall refund to or credit the customer for the overcharge, based upon what the meter would have registered had it not been fast or slow for a period equal to 1/2 the time elapsed since the last previous test, but not to exceed 12 months or 1/2 the period of occupancy of the premises by the customer, whichever is less...

52 Pa. Code § 59.22(a). Here, Ms. Diaz-Willis' meter tested 0.8% fast, which is within the 2% threshold set forth in our above Regulations, such that a refund or credit is not warranted. *See* PGW Exh. 6.

Application of the *Waldron* rule similarly leads us to deny the Complainant's claims regarding overbilling and incorrect billing in her Complaint and in her Exception No. 2. Both Parties submitted evidence showing no change in usage patterns, with the record establishing that usage patterns were steady and that usage appropriately fluctuated based on weather conditions and degree days. *See* PGW Exh. 7a; Complainant Exh. 1. PGW also submitted substantial evidence that total usage was consistent throughout the period the Complainant received gas at the service address. PGW Exh. 4 at 5. Further, PGW provided testimony establishing that fluctuations in bill amounts were caused by changes in rates approved by the Commission. Tr. at 107-08. Under the circumstances, we find that Ms. Diaz-Willis has failed to satisfy her burden of showing evidence establishing a *prima facie* case of overbilling. Moreover, even if a *prima facie* case had been made, we find that PGW has submitted sufficient evidence to rebut the claim that Ms. Diaz-Willis was overbilled in this matter. For these reasons, we shall deny Ms. Diaz-Willis' Exception No. 2 and adopt this portion of the Initial Decision, without modification.

Turning to Ms. Diaz-Willis' Exception No. 3 and her request for second or subsequent Commission-issued payment arrangement or the reinstatement of the 2019 Commission-issued payment arrangement, we shall deny the Complainant's Exception No. 3 and adopt this portion of the Initial Decision, without modification. Section 1405(d) of the Code is clear that "[a]bsent 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 payment arrangement established by a commission order or decision." 66 Pa.C.S. § 1405(d). The record establishes that Ms. Diaz-Willis' household income is \$4,000 per month, which is the same household income reported by Ms. Diaz-Willis in the 2019 informal complaint leading to the 2019 Commission-issued payment arrangement. PGW Exh. 2, Tr. 56-57. Without a change in income, the Commission is precluded from issuing Ms. Diaz-Willis a second or subsequent Commission-issued payment arrangement.

We similarly conclude that Ms. Diaz-Willis has failed to show a “significant change in circumstances” as contemplated under Section 1403, which therefore precludes the Commission from reinstating the 2019 Commission-issued payment arrangement. 66 Pa.C.S. § 1405(e); 66 Pa.C.S. § 1403. While the Complainant offered testimony that her business struggled during the COVID-19 pandemic, her testimony was broad and did not allege that any income was lost due to her own chronic or acute illness, nor did the Complainant’s testimony establish the scope of such impacts on her business or household finances. Tr. at 36, 39; *see also* 66 Pa.C.S. 1405(e)(1). Without establishing her claims of a change in circumstances with substantial evidence, we find that references to “the spirit” of the Code regarding the COVID-19 pandemic are unpersuasive and misplaced. Therefore, we shall deny Complainant’s Exception No. 3 and adopt this portion of the Initial Decision, without modification, consistent with this Opinion and Order.

In summary, we shall deny each of the Complainant’s Exceptions, adopt the Initial Decision, without modification, and dismiss the Complaint.

IV. Conclusion

Based upon our review of the record and applicable law, we shall deny the Exceptions filed by Marisa Diaz-Willis and adopt the Initial Decision of Special Agent Michael J. Mroczka, issued July 30, 2024, without modification, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Marisa Diaz-Willis, filed August 20, 2024, to the Initial Decision of Special Agent Michael J. Mroczka at Docket No. F-2024-3045048, issued on July 30, 2024, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Special Agent Michael J. Mroczka, issued on July 30, 2024, at Docket No. F-2024-3045048, is adopted, without modification, consistent with this Opinion and Order.

3. That the Formal Complaint of Marisa Diaz-Willis filed on December 4, 2023, against Philadelphia Gas Works at Docket No. F-2023-3045048, is denied and dismissed, consistent with this Opinion and Order.

4. That this proceeding be marked 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: February 20, 2025

ORDER ENTERED: February 20, 2025