PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held April 24, 2025

Commissioners Present:

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

William Petsch C-2023-3041848

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by PPL Electric Utilities Corporation (PPL, Company, or Respondent) on May 7, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued April 17, 2024, in the above-captioned proceeding. In the Initial Decision, the ALJ sustained, in part, and denied, in part, the Formal Complaint (Complaint) of William Petsch (Complainant or Mr. Petsch), an owner and landlord of a multi-unit residential apartment building. Mr. Petsch disputed the transfer of a tenant's account to his account following the Company's virtual foreign load[1] investigation and alleged that he was having a reliability, safety, or quality problem with his utility service. No Replies to Exceptions were filed. For the reasons stated below, we shall grant PPL's Exceptions, in part, and render them moot, in part, consistent with this Opinion and Order.

I. History of Proceeding

On July 19, 2023, the Complainant filed a Formal Complaint (Complaint) against PPL indicating that there were incorrect charges on his bill and that he was having a reliability, safety, or quality problem with his utility service. Mr. Petsch explained on the form that after what PPL identified as a foreign load connection was rewired, the bill for the relevant apartment remained in his name. He also claimed that PPL misidentified some of the wiring as foreign load and obstructed his correction of the alleged foreign wiring by instructing the tenants not to sign a PPL form acknowledging that the wiring had been changed. He stated that PPL's foreign load test was conducted

[1] Foreign load was defined and addressed in Act 54, which was added to the Public Utility Code (Code) by the enactment of Public Law 379, No. 54 (Act 54), on July 2, 1993, with an effective date of September 1, 1993, and was codified at 66 Pa.C.S. § 1529.1.

by video and that he was told by PPL that there would be a reinspection in person, but that did not occur. I.D. at 1-2.

On August 10, 2023, PPL filed an Answer to the Complaint. PPL denied all material allegations of the Complaint and stated that the Service Address is a rental property owned by the Complainant. PPL also averred that the Company properly confirmed that there was foreign wiring and transferred the unpaid balances of the rental units' accounts to the Complainant. I.D. at 2.

On August 11, 2023, an Interim Order Setting Resolution Conference was issued, directing the Parties to participate in a conference and attempt to resolve the matter. The Parties did not reach such a resolution. I.D. at 2.

On September 20, 2023, an Initial Telephonic Hearing Notice was issued, setting the hearing for November 30, 2023. A Prehearing Order for Telephonic Hearing was issued on October 10, 2023, and the telephonic hearing convened as scheduled on November 30, 2023. Mr. Petsch represented himself and called as a witness Ms. Regina Prusscak, a former tenant in the Service Address apartment building. I.D. at 2. Mr. Petsch introduced no exhibits at the hearing. PPL presented two witnesses: Mr. Kevin George, a PPL Customer Contact Representative, and Ms. Donna Brauer, PPL Supervisor of Operations Support. PPL presented fifteen (15) exhibits, all of which were admitted into the record. *Id.*

During the hearing, PPL and the Complainant were directed to submit additional information for the record no later than December 15, 2023. On December 7, 2023, PPL submitted additional information regarding the charges transferred to the Complainant's account, marked as PPL Exhibit 16.

On January 2, 2024, an Order was issued giving Mr. Petsch until January 22, 2024, to file a response, reply, or objection to PPL Exhibit 16. The Complainant subsequently mailed additional documents and statements to the Commission. The three multi-page exhibits thereafter submitted by Mr. Petsch are marked as Complainant Exhibit A (Complainant statements and PPL documents and correspondence regarding transfers of charges unrelated to foreign load), Complainant Exhibit B (Estate documentation), and Complainant Exhibit C (Documents and statements regarding foreign wiring). I.D. at 3. On January 4, 2024, PPL filed objections to the admission of some of the documents submitted by the Complainant.[2] All post-hearing exhibits submitted by PPL and the Complainant were admitted into the record. I.D. at 3.

The record closed on January 22, 2024, upon receipt of the Complainant's Reply to PPL's Objections. *Id.*

On April 17, 2024, the Commission issued the ALJ's Initial Decision. The ALJ made forty-seven (47) Findings of Fact (FOF) and reached six (6) Conclusions of Law (COL). I.D. at 3-8, 19-20. The ALJ found that the property owner, Mr. Petsch, met his burden of proof by demonstrating by a preponderance of the evidence that the Company violated Sections 1501 and 1529.1(b) of the Code, 66 Pa.C.S. §§1501 and 1529.1(b) and Section 57.12(a) of Commission Regulations at 52 Pa. Code § 57.12(a) based upon PPL's provision of unreasonable service in conducting the foreign

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[2] The ALJ explained her ruling on PPL's Objections to the Complainant's post-hearing exhibits. PPL objected to the Complainant's documents as hearsay. The ALJ noted that the Rules of Evidence are relaxed in administrative proceedings, but that if hearsay is objected to, it is not acceptable evidence to support a finding. I.D. at 3, n. 2 (citing Pa. R.E. 801 and *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976)). The ALJ then allowed the objected-to documents to be admitted into the record but explicitly stated that the objected-to documents alone did not form the basis for any findings in the Initial Decision. I.D. at 3, n. 2.

load investigation and related activities, and by incorrectly transferring foreign load from Apartment 1 to the Complainant. The ALJ denied all other claims of the Complainant.

On May 7, 2024, PPL filed Exceptions claiming error in the Initial Decision. No Replies to Exceptions were filed. This matter is ripe for review.

II. Discussion

A. Legal Standards

1. Jurisdiction

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

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

66 Pa.C.S. § 701. 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

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 Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, he must show that PPL is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). Such a showing must be more convincing by even the smallest amount than that presented by PPL. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 54 (1950). Additionally, the 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 to be established. N*orfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon presentation by the Complainant of evidence initially satisfying the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to PPL. If the evidence presented by PPL is of co-equal weight, the Complainant's burden of proof has not been satisfied; the Complainant would be required to provide additional evidence to rebut PPL's evidence. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the 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. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

3. Foreign Load

The term "foreign load" refers to the situation where a customer's meter registers utility usage not exclusive to the customer's dwelling unit or its occupants. In 1993, the General Assembly amended the Code to include 66 Pa.C.S. § 1529.1 to address foreign load issues. Section 1529.1 provides, as follows (emphasis added):

> § 1529.1. Duty of owners of rental property
>
> (a) **Notice to public utility**.—It is the duty of every owner of a residential building . . ., which contains one or more dwelling units, *not individually metered*, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.
>
> (b) **History of account**.-- Upon receipt of the notice provided in this section, if the . . . residential building contains one or more dwelling units *not individually metered*, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto . . .
>
> (c) **Failure to give notice**.—Any owner of a residential building . . . failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

Thus, the owner of a rental property is responsible for the payment of utility services where there are one or more dwelling units not individually metered. The phrase "not individually metered," as used in Section 1529.1, is not defined in the Code or our Regulations. *See 1-A Realty v. Pa. PUC*, 63 A.3d 480, 483 (Pa. Cmwlth. 2013). However, since the enactment of Section 1529.1 of the Code in 1993, the Commission

has consistently construed "not individually metered" to be where the "utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants." *Id*. (citations omitted).

In *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) (*Ace Check Cashing*), we explained the operation of Section 1529.1. Specifically, Subsection (a) of Section 1529.1 establishes an affirmative duty on the owner of a property to notify the utility if a residential building contains "one or more dwelling units, not individually metered." If the landlord provides the required notice, Subsection (b) requires the utility to list the account with the foreign load in the landlord's name and hold the landlord responsible for the payment for utility services rendered 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. Thus, a utility has an affirmative duty to investigate a foreign load or high bill complaint, and if the utility discovers the presence of a foreign load, the utility is required to list the account in the landlord's name and hold the landlord responsible for the payment for utility services rendered to the account. *Ace Check Cashing*.

In *Chinniah v. PPL Electric Utilities Corporation*, Docket No. F-2012-2325248 (Order entered May 9, 2013) (*Chinniah*), the Commission noted that a utility has an affirmative duty to investigate a foreign load complaint. If, after investigation, the utility suspects a foreign load situation, the utility is required to transfer the account to the name of the property's owner. *Chinniah* at 10 (citing *Franckowiak v. PPL Electric Utilities Corp.*, 101 Pa. P.U.C. 630 (Order entered July 3, 2006) (*Franckowiak*)). As the Commission discussed in *Franckowiak*, the utility is not required to substantiate the foreign load because such a requirement would encourage dilatory behavior by a landlord and thwart the legislative intent of Section 1529.1 to encourage

cooperation with a utility's foreign wire inspections. *Chinniah* at 10-11 (citing *Franckowiak*).

Accordingly, once a foreign load is verified on a tenant's service, the utility is to list the account in the property owner's name and hold the property owner financially responsible for the current balance and any arrearages[3] on the account. It is only after the landlord corrects the foreign load, as verified by the utility, that the utility must re-list the account back in the name of the tenant; however, the landlord remains responsible for any arrearage on the tenant's account that existed prior to when the utility verified that the foreign load was corrected. *See Ace Check Cashing*. The utility must pursue collection of any unpaid amounts on the foreign load-affected account from the landlord, and not from the tenant.

As the Commission explained in *McGee v. PPL Electric Utilities Corp*., Docket No. C-2016-2549952 (Order entered July 12, 2018), Section 1529.1 is intended to protect residential tenants from the loss of utility service because another customer has service terminated by the utility. It recognizes that the property owner is in a better position than a tenant to know about and correct the existence of the foreign load. The operation of Section 1529.1 provides an incentive for the landlord to correct the foreign load situation resulting from the wiring, plumbing, or piping for which the landlord is responsible.

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

4. Transfer of Outstanding Balance

Our Regulations provide that, when a customer opens another service account, the utility may transfer an outstanding balance from the previous account to the new account. These Regulations state, in pertinent part, as follows:

> § 56.16. Transfer of accounts.
>
> (a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days' notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.
>
> (b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa. Code § 56.16(a), (b).

5. Adequate, Efficient, 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).

6. Civil Penalties

A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to $1,000 per violation for every day of that utility’s continuing offense. *See* 66 Pa.C.S. § 3301(a)–(b). The Commission's policy statement (Policy Statement) at 52 Pa. Code § 69.1201 establishes specific factors and standards the Commission will consider in evaluating litigated cases involving violations and in determining whether a fine is appropriate.

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

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

administrative filing or technical errors, it may warrant a lower penalty.

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

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty. Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

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

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

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

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

(8) Past Commission decisions in similar situations.

(9) Other relevant factors.

52 Pa. Code § 69.1201.

In the sections that follow, we shall evaluate the ALJ's Initial Decision, PPL's Exceptions thereto, and the facts developed on the record, bearing each of these legal principles in mind.

B. ALJ's Initial Decision

The ALJ determined that, based upon the evidence of record, PPL incorrectly found foreign load and transferred the Apartment 1 account and balance of $1,997.76 to the Complainant's account, as property owner, and that PPL provided the Complainant with unreasonable service in violation of Section 1501 of the Code, 66 Pa.C.S. § 1501, by not conducting an in-person inspection of the Service Address where there was a possible meter mix-up, and it was believed that there was foreign load. The ALJ also concluded that PPL provided unreasonable service in violation of Section 1501 by the delayed process used to place an account back in the name of a tenant due to the virtual inspection. Further, the ALJ found that PPL properly transferred the unpaid balances of the Complainant to new residential accounts of the Complainant and that the Company did not violate Act 54 when it transferred the Apartment 3 account and balance of $158.82 to the Complainant after the Complainant self-reported foreign load on the Apartment 3 meter. I.D. at 14, 20.

Accordingly, the ALJ ordered PPL to: (1) "within 30 days of the final Commission Order in this proceeding, . . . remit a civil penalty in the amount of two thousand five hundred dollars ($2,500); and, (2) "within 30 days of the final order of the Commission . . . remove from the Complainant's balance one-thousand nine hundred

and ninety-seven dollars and 76 cents ($1,997.76) plus any associated late fees and interest charges." I.D. at 21.

1. ALJ's Findings of Fact/Summary of Issues

The ALJ made the following Findings of Fact, which are quoted, verbatim:

> 1. The Complainant is William Petsch.
>
> 2. PPL Electric Utilities Corporation is the Respondent.
>
> 3. Mr. Petsch is executor of a family estate which includes [a property in] Waymart, Pennsylvania (the building). Tr. 10, 94; Complaint.
>
> 4. Mr. Petsch is one of six owners of the estate property. Tr. 27.
>
> 5. The building was a motel and is now a four-unit apartment building. Tr. 11, 28-29.
>
> 6. Regina Prusscak lived in the building for about four or five years in different apartments and moved out in November of 2022. Tr. 49, 50.
>
> 7. Apartment 1 was originally where Mr. Petsch's mother lived, and in size is approximately half of the building and included the boiler/storage room. Tr. 29.
>
> 8. The boiler/storage room was part of Apartment 1 and no tenant other than the Apartment 1 tenant had access to that room. Tr. 12, 50.
>
> 9. A light and the switch for the boiler, which heats Apartment 1 only, are in the boiler/storage room. Tr. 12-13, 26-27, 50.
>
> 10. The tenant in Apartment 1 was responsible for the oil for the boiler. Tr. 12-14.

11. At the time of the foreign load investigation, the tenant in Apartment 1 had purchased several space heaters and did not purchase oil to fill the boiler. Tr. 12-14.

12. Apartments 2, 3 and 4 have electric heat. Tr. 36.

13. In February 2023, the tenant in Apartment 1 contacted PPL about possible foreign wiring to her meter. Tr. 60-65.

14. On February 15, 2023, PPL conducted a virtual inspection for foreign load in Apartment 1. PPL Exhibit 4; Tr. 61.

15. For a virtual inspection, which PPL has conducted since the COVID pandemic, a PPL employee uses Google Meet to call someone at the service address who then walks around and turns various items on while PPL remotely controls the power to the service address. Tr. 66-67, 80,81.

16. If PPL determines through a virtual inspection that there is foreign load wiring, PPL sends the landlord/owner a "Fix Form" to complete to confirm that the foreign wiring connection was corrected. Tr. 26.

17. During the February 15, 2023 virtual inspection of the building, PPL found a light and boiler switch in the boiler/storage room connected to the meter for Apartment 1 and determined that it was foreign load. Tr. 61, 97, 100; PPL Exhibits 2, 4.

18. PPL transferred the Apartment 1 account into the Complainant's name as of February 15, 2023. PPL Exhibit 4.

19. During a February 17, 2023 telephone conversation with Kevin George, PPL Customer Contact Representative, Mr. Petsch self-reported that a water heater was connected to the meter for Apartment 3. Tr. 63-64, 83.

20. PPL transferred the Apartment 3 account into the Complainant's name as of February 17, 2023. PPL Exhibit 4.

21. On February 18, 2023, the boiler/storage room light and boiler switch were removed from the Apartment 1 meter. Tr. 23, 130.

22. When the light and boiler switch in the boiler/storage room were removed from the meter of Apartment 1, the Complainant also ended the Apartment 1 tenant's use of the boiler/storage room for storage. Tr. 27.

23. Also on February 18, 2023, the water heater was removed from the Apartment 3 meter. Tr. 23, 130.

24. On February 19, 2023, the Complainant called and faxed a message to PPL advising the Company that the light and switch were removed from the Apartment 1 meter. Tr. 24.

25. PPL mailed a Fix Form to the Complainant on February 27, 2024. Tr. 101; PPL Exhibit 2.

26. On March 1, 2023, PPL sent a foreign wiring notification report to the Complainant. Tr. 103; PPL Exhibit 3.

27. On March 1, 2023, PPL transferred the $1,997.76 account balance of Apartment 1 to the Complainant. Tr. 97; PPL Exhibit 1.

28. On March 5, 2023, PPL sent Mr. Petsch a letter stating that it had confirmed that the water heater was connected to the Apartment 3 meter, and PPL would transfer a $158.82 account balance for the tenant in Apartment 3 to Complainant's account. Tr. 104-105; PPL Exhibit 5.

29. Mr. Petsch asked PPL on several occasions to send someone to the building to inspect in person. Tr. 14, 30, 33, 52.

30. No PPL personnel inspected the building in person. Tr. 14.

31. The tenant in Apartment 1 would not sign the Fixed Form after the change to the wiring in the boiler/storage room was made. Tr. 19, 39, 41.

32. A Fix Form was received by PPL on March 6, 2023 and stated that "the tenant refused to sign." Tr. 93; PPL Exhibit 2.

33. On April 15th, 2023, PPL issued a reinvestigation order regarding the foreign load at the building. Tr. 94.

34. On April 24, 2023, there was a virtual reinspection and confirmation of the light and boiler switch rewiring. Tr. 68.

35. Ms. Prusscak's telephone was used to conduct the video foreign load reinspection on April 24, 2023. Tr. 50-51, 68.

36. On April 24, 2023, PPL transferred the Apartment 1 account out of the Complainant's name. Tr. 115.

37. On April 24, 2023, PPL confirmed by remote inspection that the water heater connection to the Apartment 3 meter was removed. Tr. 127.

38. On June 8, 2023, PPL transferred the Apartment 3 account out of the Complainant's name. Tr. 115.

39. When a tenant moved out of an apartment, the Complainant would temporarily open a PPL account in his name while he prepared the apartment for the next tenant. Tr. 20, 22.

40. Any balance on the temporary account of Mr. Petsch was transferred to the next account that he opened with PPL. Tr. 120-121.

41. A balance of $3,098.28 accumulated for the Complainant when he was the customer of record for Apartment 3 from April 5, 2018 through March 6, 2020. Tr. 125-126.

42. When in September of 2020 the Complainant opened an account in his name for Apartment 4, PPL transferred the Apartment 3 balance to the Complainant's Apartment 4 account and that balance was transferred in March of 2023 to an account that PPL opened for Apartment 1 in the Complainant's name after the foreign load investigation. Tr. 125-126, 142.

43. Mr. Petsch does not dispute that he had service turned on in Apartment 3 to perform rental preparation work. Tr. 20-21.

44. In prior years and during the foreign load inspection period in 2023, Mr. Petsch asked PPL to visit the service address because PPL meters were connected to the wrong apartments, specifically, Apartments 3 and 4. Tr. 14-16, 128.

45. PPL did not send anyone to inspect the Apartment 3 and Apartment 4 meters. Tr. 14-16.

46. A November 18, 2019 letter from PPL to the Complainant states that PPL closed account number 17891XXXXX for Apartment 3 as requested by the Complainant. Complainant Exhibit A, p. 18.

47. PPL Exhibit 16 lists the account number for Apartment 3 as 66342XXXX and the account number for Apartment 4 as 17891XXXX.

I.D. at 3-8.

Based upon this factual foundation, the ALJ summarized the issues presented for adjudication to be: (1) whether PPL should have transferred charges from

Apartment 1 to the Complainant due to foreign load; (2) whether PPL should have transferred charges from Apartment 3 to the Complainant due to foreign load; (3) whether PPL should have transferred the balances from other addresses to the Complainant; (4) whether PPL provided reasonable customer service; and (5) ancillary to the aforementioned issues, whether PPL's actions in this matter rise to the level that a civil penalty may be imposed.

2. Foreign Load and Transfer of Balance from Apartment 1 to the Complainant

The ALJ first addressed PPL's foreign load investigation of Apartment 1, noting that PPL transferred the account and the associated account balance of $1,997.76 from Apartment 1 to the Complainant after PPL concluded that the boiler/storage room light and boiler switch connected to the meter for Apartment 1 constituted foreign load. The ALJ determined that the transfer by PPL was in error. I.D. at 12 (citing PPL Exhs 1, 2).

The Complainant described the building, in which Apartment 1 is located, as part of a family estate of which he is the executor. When the Complainant's mother lived at the property, she lived in what is now designated as Apartment 1, which, in size, is approximately half of the building. Mr. Petsch further explained that the boiler/storage room light and boiler switch are part of Apartment 1, as the boiler is used to heat only Apartment 1. Therefore, Mr. Petsch continued, it was up to the tenant in Apartment 1 to buy the oil for the heating unit. He noted that when the tenant in Apartment 1 contacted PPL about alleged foreign load, the Apartment 1 tenant had not purchased oil for the boiler for heating and had purchased and operated several electric heaters in Apartment 1. He also stated that none of the other tenants has access to the boiler/storage room, which the tenant in Apartment 1 also uses for storage as it is part of the unit. I.D. at 12-13 (citing Tr. at 12-13, 29, 50). The Complainant further testified that he ultimately changed

the boiler/storage room connection when PPL did not send anyone out to investigate the connection in person. Thus, the Complainant ended the Apartment 1 tenant's access to, and use of, the boiler/storage room. I.D. at 13 (citing Tr. 26-27). The ALJ found the testimony of the Complainant to be credible. I.D. at 12.

The ALJ noted that the Complainant's witness, Ms. Prusscak, who was a tenant in the building for approximately four to five years until the November before the hearing, corroborated Mr. Petsch's testimony that only the tenant in Apartment 1 had access to the boiler/storage room and used it for storage. I.D. at 12-13 (citing Tr. at 49, 50).

The ALJ explained that, despite several requests by the Complainant, PPL did not send someone to inspect the purported foreign load in person. I.D. at 13 (citing Tr. at 14, 30, 33, 52). The ALJ found that the uncontradicted testimony of Mr. Petsch and Ms. Prusscak established, by a preponderance of the evidence, that at the time that PPL contended there was foreign load, the boiler/storage room and boiler switch and light attached to the meter for Apartment 1 were exclusive to Apartment 1 or its occupants. On this basis, the ALJ concluded that Section §1529.1 of the Code was not applicable and that PPL improperly transferred the balance of Apartment 1 to the Complainant's account. I.D. at 13.

3. Foreign Load and Transfer of Balance from Apartment 3 to the Complainant

Turning next to the issue of foreign load for Apartment 3, the ALJ found that PPL appropriately transferred the Apartment 3 account and the associated account balance of $158.82 to the Complainant after the Complainant self-reported that a building water heater was connected to the meter for Apartment 3. I.D. at 13-14 (citing Tr. at 64, 75-76; PPL Exh. 6). The ALJ noted that when there is a foreign load, Section 1529.1

requires a property owner to be responsible not only for the current charges, but for any arrearages on the account as well. The ALJ, thus, found PPL's transfer of the account balance to the Complainant to be appropriate.[4] I.D. at 13-14.

4. Transfer of Other Bills to the Complainant

The ALJ next addressed Mr. Petsch's dispute of the transfer of what PPL described as "unpaid balances" to him. I.D. at 14-15 (citing Tr. at 10). The Complainant acknowledged that when a tenant moved out and work was needed on the apartment, he would have the service turned on in his name to prepare the apartment for the next tenant. I.D. at 14 (citing Tr. at 20, 22). The ALJ noted that the records show that the Complainant regularly paid the small amounts incurred during those periods of work; however, the Complainant questioned whether he should be responsible for a balance of approximately $3,098.28 transferred to his account from Apartment 3 in the building. I.D. at 14 (citing PPL Exhs 11, 12). The ALJ concluded that the record supports a finding that it was not improper for PPL to transfer that amount to the Complainant's account. I.D. at 14.

The ALJ reasoned that, under Section 56.16(a) of Commission Regulations, a customer is to give at least seven days' notice to the public utility and a noncustomer occupant that the Service Address will be vacated and, in the absence of a notice, the

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[4] The ALJ was careful to note Mr. Petsch's testimony that he has been the customer of record for utility services of the property for approximately eleven years, but that he is the executor and not the exclusive owner of the property, suggesting that any balance transferred due to foreign load should be to the estate rather than to him. I.D. at 14, n. 3, (citing Tr. at 25-28). The ALJ also observed that both Mr. Petsch and PPL submitted documents regarding the ownership issue, via Complainant Exhibit B and PPL Exhibits 13-15, respectively. Based on these representations, the ALJ concluded that the questions of ownership and related claims for reimbursement by the estate are matters that should be addressed in a civil court, such as a Court of Common Pleas, and not by the Commission. I.D. at 14, n.3.

customer is responsible for services rendered. The ALJ further noted that a public utility may transfer an unpaid balance to a new residential service account of the same customer. I.D. at 14 (citing 52 Pa. Code § 56.16(b)). Here, the ALJ concluded that PPL's records and testimony established that Mr. Petsch has had several accounts with PPL. I.D.at 14 (citing PPL Exhs 11-12, 16). The ALJ noted the testimony of PPL's witness, Ms. Brauer, that the Complainant's PPL balances are transferred to the next account that he opens in his name and that PPL transferred balances from accounts opened by the Complainant at the building and from another building in Waymart, Pennsylvania, where he had service in his name. *Id.* (citing Tr. at 110-14; PPL Exh. 11, 12).

The ALJ detailed that a balance of $3,098.28 was due for Apartment 3 for service provided in the Complainant's name as the customer of record from April 5, 2018 through March 6, 2020. Additionally, when in September of 2020 the Complainant opened an account in his name for Apartment 4, PPL transferred the Apartment 3 balance to the Complainant's Apartment 4 account. I.D. at 15 (citing Tr. at 125-26). Furthermore, PPL opened an account in the Complainant's name for Apartment 1 after the foreign load inspection, to which the balance from Apartment 4 was then transferred.[5] *Id.* (citing Tr. at 142). The ALJ concluded that PPL was authorized to transfer these balances to the Complainant's new accounts under 52 Pa. Code § 56.16(b).

The ALJ noted that Mr. Petsch does not dispute that he had the service turned on in Apartment 3 to perform rental preparation work. I.D. at 15, (citing Tr. at 20-21). In addition, the ALJ pointed to evidence in the record that the tenants did not change the service to their names when they moved in, and there is no evidence that

[5] The ALJ explained that, when asked why the Apartment 1 foreign load balance was not transferred to the Complainant's Apartment 4 account, PPL's witness, Ms. Brauer, explained that the Apartment 4 account was not active at that time, so PPL created an Apartment 1 account for the Complainant. I.D. at 15, n.4, (citing Tr. at 139-140).

the Complainant called PPL to close the account after he completed his Apartment 3 preparation work. I.D. at 15. Therefore, the ALJ concluded that Mr. Petsch is responsible for the balance incurred during the period that he was the customer of record. *Id*. (citing 52 Pa. Code § 56.16(a)).

5. Reasonable Service

The ALJ next addressed the issue of whether the record supports a finding that PPL did not provide reasonable service to the Complainant. The ALJ observed that, although the COVID emergency is over, PPL continues to primarily conduct remote inspections of foreign load. The ALJ noted that while, in theory, this practice should suffice, under the facts of this case, the use of a remote investigation was questionable and unreasonable. I.D. at 15.

Noting that Mr. Petsch requested several times that an in-person inspection be conducted given the uniqueness of the setup of the dwellings in the building, the ALJ observed that PPL, nevertheless, did not send someone to the property. As a result, the ALJ noted that the Complainant was then compelled to remove the light and boiler switch from the meter for the apartment that it served as well as remove the Apartment 1 tenant's belongings from the storage room. I.D. at 15.

Additionally, the ALJ found that PPL's failure to send someone out to the building to investigate whether there was a meter mix-up with Apartment 3 and 4 resulted in confusion regarding a request by the Complainant to close an account. The ALJ concluded that the record supported Mr. Petsch's claims that, on several occasions, he requested that PPL conduct an in-person inspection of a meter mix-up for Apartments 3 and 4. I.D. at 16 (citing Tr. at 14-16). The ALJ observed that while PPL's witnesses at the hearing were not personally aware of the meter mix-up issue, exhibits in the record support Mr. Petsch's concern about the meter mix-up and his testimony that he

contacted PPL about the mix-up. I.D. at 16 (citing Tr. at 60, 86); PPL Exhs. 10, 16; Complainant Exhibit A, at 18, 19.

The ALJ further identified the confusion regarding different accounts experienced by Mr. Petsch and exacerbated by PPL's conduct of a virtual investigation. I.D. at 16. For instance, the ALJ found that a November 18, 2019 letter from PPL to the Complainant confirms that the Company closed the account of Mr. Petsch in Apartment 3, account number 17891XXXXX. *Id.* (citing Complainant Exh. A at 18). In contrast, the ALJ pointed to PPL Exhibit 16, which lists the account number for Apartment 3 as account number 66342XXXX and the account number for Apartment 4 as account number 17891XXXX. I.D. at 16. The ALJ also pointed to notations in the customer contact record for Apartment 4 that state that the customer called regarding "bill does not belong to the property dweller" and "the name on the account is not even in their name." *Id.* (citing PPL Exh. 10). In addition, the ALJ pointed out that on May 3, 2022 (*May 2022 Letter*), Mr. Petsch wrote to PPL regarding the transfer of the outstanding account balance of approximately $3,000 at Apartment 3 to his account. I.D. at 16 (citing Complainant Exh. A at 19). The ALJ explained that in the *May 2022 Letter*, the Complainant referred to the transfer as being from Apartment 4. The ALJ found each of these to be examples of the problems that arose because PPL did not conduct an in-person inspection of a possible meter mix-up. I.D. at 16.

Continuing, the ALJ concluded that the record also supports a finding that the use of a remote inspection procedure can cause undue delay in transferring the service back to the name of the tenant after a foreign load connection is corrected. According to the ALJ, with a remote inspection, there is the time required to mail out a Fix Form, have it signed, if possible, by the tenant, return the form to PPL, and schedule and conduct any re-investigations. The ALJ concluded that this results in an extended time that the owner will be responsible for the tenant's bill. I.D. at 16.

In terms of the timeframes in this case, the ALJ observed that the Complainant completed the rewiring of the water heater and the boiler/storage room light and switch on February 18, 2023 and notified PPL on February 19, 2023. I.D. at 16 (citing Tr. at 23-24, 130). PPL mailed out a Fix Form to the Complainant on February 27, 2023 and PPL received the completed Fix Form on March 6, 2023, which stated that the tenant refused to sign. I.D. at 16-17 (citing Tr. at 93; PPL Exh. 2). However, the ALJ explained, a re-investigation was not set up until April 15, 2023. I.D. at 17 (citing Tr. at 94). The re-investigation did not take place until April 24, 2023. The Apartment 1 account was transferred back to the tenant on April 24, 2023. The Apartment 3 account was not transferred out of the Complainant's name until June 8, 2023. I.D. at 17 (citing Tr. at 114-115).

The ALJ ruled that these delays, when combined with her finding that PPL incorrectly found foreign load for Apartment 1, could have been avoided if PPL had sent out someone to conduct in-person inspections. The ALJ opined that this was especially so given Mr. Petsch's repeated requests in the instant matter. The ALJ thus concluded that because the Company declined to conduct in-person inspections, this constituted unreasonable service by PPL in violation of Section 1501 of the Code. I.D. at 17.

6. Civil Penalties

The ALJ noted that a public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to $1,000 per violation for every day of that utility's continuing offense. I.D. at 17 (citing 66 Pa.C.S. § 3301(a)-(b)). The ALJ cited to the ten (10) factors and standards set forth in the Commission's Policy Statement, *supra*, at 52 Pa. Code § 69.1201 that the Commission considers in evaluating litigated cases involving violations and in determining whether a civil penalty is appropriate.

The ALJ found that there is essentially one violation in this proceeding: PPL provided unreasonable service to the Complainant by not performing an in-person inspection of the premises for the possible meter mix-up for Apartment 3 and the alleged foreign load regarding Apartment 1. As such, the ALJ concluded that consequently, PPL incorrectly determined that there was foreign load and transferred the balance from Apartment 1 to the Complainant, in violation of 66 Pa.C.S. § 1501. I.D. at 18. The ALJ then examined the nature of the conduct and whether, and to what extent, a civil penalty should be imposed. *Id*. at 18-19.

As to factor 1, the ALJ found that PPL's failure to send someone to conduct an in-person inspection, after repeated requests and explanations by the Complainant, was more than an administrative or technical error. As to factor 2, the ALJ noted that no personal injury or property damage occurred, suggesting a lower penalty would be appropriate. The ALJ determined that the Company intentionally decided not to send out someone to conduct the in-person inspection and that nothing in the record suggests that the Company is inclined to modify or revisit its practices and procedures with respect to remote inspections, which, in the view of the ALJ, supports a higher penalty under factors 3 and 4. I.D. at 18-19.

Weighing factor 5, the ALJ noted that there was only one customer affected, but that the remote inspection and time-consuming process resulted in the Complainant being responsible for the tenants' bills for an extended period. The ALJ stated that factors 6 and 7 (utility compliance history and cooperation of the regulated entity in an investigation) are not applicable in this case. I.D. at 19.

As to factors 8 and 9, the ALJ found that a significant civil penalty would be proper to encourage the Company to reconsider its remote inspection policy or, at least to allow that there are instances where an in-person inspection is required, particularly when requested by a customer who could possibly be held responsible for additional

charges. With regard to similar Commission decisions, the ALJ cited to *Vaughn v. PPL Electric Utilities Corp.*, Docket No. F-2021-3029570 (Order and Opinion entered October 27, 2022) (*Vaughn*) (PPL was fined $500 when it did not re-investigate foreign load and there was a delay in billing the customer for the foreign load); and to *Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984 (Order and Opinion entered July 16, 2020) (*Jones*) (PGW was fined $2,000 for failure to pursue timely follow-up to reclaim a meter after an unsuccessful initial attempt) as Commission decisions in similar situations to those presented in the instant matter. The ALJ did not mention any other relevant factors under factor 10. I.D. at 19.

After finding that the Company violated the Code, the ALJ evaluated whether a civil penalty should be imposed pursuant to 66 Pa.C.S. § 3301 and the Commission's Policy Statement. The ALJ concluded that here, the Company did not investigate the possible meter mix-up and the foreign load assertion in person. Upon considering the relevant factors under 52 Pa. Code § 69.1201(c), above, and the totality of the circumstances in this proceeding, the ALJ found that a total civil penalty of $2,500 was appropriate and sufficient to deter future violations of this type. The $2,500 was comprised of $500 for each of the three months that lapsed between February of 2023, when PPL was notified of the rewiring for the storage/boiler room, and when the Apartment 3 account was transferred back to the tenant, in June of 2023, plus $1,000 because the Company did not conduct an in-person inspection. I.D. at 19.

C. PPL Exceptions

As discussed, in detail, below, PPL, in its Exceptions,[6] contests the ALJ's findings in the Initial Decision that: (1) the Company's virtual foreign load investigation

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[6] PPL entitled its Exceptions as "Answer of PPL Utilities Corporation to the Complaint of William Petsch;" we shall however treat its filing as timely-filed Exceptions.

constituted unreasonable service and led to unreasonable delays in returning the account to the tenant's name; (2) the Company provided unreasonable service by failing to investigate a potential meter mix at the Service Address; (3) the imposition of a $2,500 civil penalty was warranted; and, (4) any civil penalty should be calculated based on the time period between February 18 and June 8, 2023. Exc. at 2

1. Exception No. 1 – Whether the ALJ Erred in Finding that PPL Provided Unreasonable Service to the Complainant by Not Performing an In-Person Investigation of the Premises for the Alleged Foreign Load

In its first Exception, PPL asserts that the ALJ erred in finding that PPL provided unreasonable service to the Complainant by not performing an in-person investigation of the premises for the alleged foreign load. Exc. at 2 (citing I.D. at 15-21). As such, PPL requests that the Commission reverse the ALJ's finding that the Company's virtual foreign load inspection constituted unreasonable service, arguing that: (1) Act 54 contains no requirement that foreign load inspections be conducted in-person; and (2) an in-person inspection would not have changed the outcome or timing of the Company's foreign load investigation. Exc. at 2-3.

PPL claims that the ALJ essentially read a new requirement into the Code, *i.e.* that utilities have a duty to investigate contested foreign load in person. PPL notes that although the ALJ's findings are couched in the specifics of this case, the ALJ's findings, in essence, forbid the Company from conducting virtual foreign load investigations by requiring the Company to investigate contested foreign load, in person. Exc. at 3.

According to the Company, the ALJ's findings place the onus on PPL to investigate foreign load in person any time the findings of a foreign load investigation are disputed by a landlord because, in the ALJ's view, this requirement is necessary because

the landlord could potentially be held responsible for additional charges. Exc. at 3 (citing I.D. at 19). However, PPL argues that a landlord always has the potential to be held responsible for additional charges under Act 54, because Act 54 is designed to compel landlord action by making landlords responsible for tenant accounts with foreign load. Exc. at 4 (citing 52 Pa. Code § 1529.1).[7] Thus, PPL submits that to comply with the ALJ's holding, the Company would be required to investigate contested foreign load investigations in person, regardless of the efficacy of a virtual investigation under the circumstances. PPL claims that the ALJ's findings set a new and demanding standard for foreign load investigations that is not required by Act 54 and which interferes with the Company's ability to determine how best to carry out foreign load investigations. Exc. at 4-5.

PPL argues that the precise method used to investigate foreign load is a managerial decision that should be left to the utility and guided by the factual circumstances of the investigation at hand. Exc. at 5. PPL notes that "[t]he Commission is not empowered to act as a super board of directors for the public utility companies of this state," and that utilities have the "right of self-management." *Id.* (citing *Metropolitan Edison Co. v. Pa. PUC*, 437 A.2d 76 (Pa. Cmwlth. 1981)("Absent a showing of abuse of discretion or arbitrary action by the public utility, the Commission lacks authority to interfere with the general management decisions of the public utility . . . The management decisions required to achieve reasonable rates and service are generally left to the public utility.") (internal citations omitted)). PPL asserts that the decision of whether a particular foreign load investigation should be conducted in person or virtually is an internal management decision that should not be restricted by the Commission. Exc. at 5.

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[7] We note that in its Exceptions, the Company inadvertently cited to "52 Pa. Code § 1529.1 in making this argument. However, it is clear from PPL's Exceptions that the Company intended to cite to "66 Pa.C.S. § 1529.1.

Further, PPL touts its history of success with virtual foreign load investigations that, it contends, should not be discarded due to the outcome of one foreign load investigation. Exc. at 5. PPL explains that the Company began conducting virtual foreign load inspections during the COVID-19 pandemic to investigate foreign load complaints safely and efficiently. *Id.* (citing Tr. at 80-81). PPL claims that video calls allow the Company to view the relevant features of the rental unit to determine which items are connected to the rental unit's meter, as if the inspector was there in person. Further, PPL notes that since the deployment of advanced metering infrastructure (AMI) meters, the Company is able to remotely shut off a customer's meter during a foreign load investigation. Exc. at 5 (citing Tr. at 79-81). PPL asserts that this remote shut off ability is less disruptive to customers and safer because it avoids problems with physically shutting off and restoring the customer's power, such as the possible inability to access and reset the main breaker in the customer's home. Exc. at 5-6 (citing Tr. at 80-81). The Company provides that since the COVID-19 pandemic, it has continued to conduct the majority of its foreign load investigations virtually. Exc. at 5-6 (citing Tr. at 81).

PPL insists that conducting inspections virtually is cheaper and less time-intensive than rolling a truck and sending a contractor to conduct the investigations in person. PPL also claims that virtual inspections protect tenants from retaliatory acts by landlords by allowing the Company to investigate foreign load claims without alerting the landlord. Exc. at 6 (citing Tr. at 84-85). PPL cites to the lack of any record evidence demonstrating that an in-person investigation would have improved the accuracy of the findings in the instant matter. Exc. at 6.

According to PPL, the ALJ incorrectly concluded that the Company's virtual foreign load investigation led to an inaccurate determination that there was foreign load on the meter for Apartment 1 and delayed the return of the Apartment 1 account to the tenant's name. The Company points to the ALJ's finding that "by not performing an

in-person inspection of the premises for . . . the alleged foreign load . . . PPL consequently incorrectly determined that there was foreign load and transferred the balance from Apartment 1 to the Complainant, in violation of 66 Pa.C.S. § 1501." Exc. at 7 (citing I.D. at 18). However, PPL asserts that an in-person investigation would not have changed the Company's initial determination that Apartment 1's meter had foreign load, and it would not have shortened the timeline for transferring the account out of the Complainant's name. Exc. at 6-7.

More specifically, PPL submits that its determination that the meter for Apartment 1 had foreign load was based on factors not influenced by the virtual nature of the investigation. For example, PPL notes that here, the tenant for Apartment 1 contacted the Company to report a suspicion of foreign wiring on her meter and asked the Company to investigate. Exc. at 7 (citing Tr. at 60-61). As such, PPL explains, the Company coordinated and performed a virtual investigation with the Apartment 1 tenant to investigate her claims. Exc. at 7 (citing Tr. at 60). Through the virtual investigation, the Company determined that there was foreign load on the meter because: (1) the light and switch in a utility room, off a separate laundry room and not inside the tenant's apartment, was connected to her meter; and (2) the tenant expressed shock that the light was connected to the meter and communicated that she was not aware that she was responsible for the light and switch in the utility room. Exc. at 7 (citing Tr. at 62, 65). PPL represents that these findings led the Company to determine that there was foreign load on Apartment 1's meter. PPL asseverates that the Company's transfer of the Apartment 1 account to the Complainant's name following the virtual investigation was reasonable given the factual circumstances, which gave rise to a reasonable suspicion that there was foreign load on Apartment 1's meter. PPL submits that Commission precedent requires the Company to make this transfer and notify the landlord within the first billing period that the utility suspects there is foreign load. Exc. at 7-8 (citing *Franckowiak* at 14). PPL notes that in *Franckowiak*, the Company was penalized for failing to place

the Complainant's account in the property owner's name after foreign wiring was "strongly suspected"). *Id.* at 8, n.5 (citing *Franckowiak* at 8-9).[8]

PPL also emphasizes that the Complainant's own actions after being notified of the existence of foreign load appeared to confirm the Company's initial determination that foreign load was present, because the Complainant immediately removed the utility room light and switch from Apartment 1's meter. Exc. at 8 (citing Tr. at 23-24). PPL details that just four days passed between the time PPL carried out its foreign load investigation and when the Complainant notified the Company that the light and switch had been removed from the Apartment 1 meter. Exc. at 8 (citing PPL Exh. 4 and Tr. at 23-24, 61, 63-64, 83-84, 97, and 100).

PPL submits that these undisputed facts demonstrate that the day after the Complainant learned that the Company determined Apartment 1's meter had foreign load, the Complainant corrected the issue, and that the Complainant notified the Company of his actions. Thus, PPL argues that the Complainant's actions immediately following notification of the foreign load determination confirmed the Company's initial suspicion of foreign load. PPL asserts that the virtual nature of the foreign load investigation did not influence the Complainant's actions. Exc. at 8-9.

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[8] PPL also notes that in *Franckowiak*, the Company argued that "it cannot place an account in the property owner's name unless and until it substantiates the existence of foreign wiring." PPL Exc. at 8, n.5 (citing *Franckowiak* at 9). However, PPL continues, the Commission found this interpretation of Section 1529.1 of the Code to be "too narrow and would permit (and perhaps encourage) property owners to thwart the legislative intent by failing to promptly and fully cooperate with a utility's foreign wiring inspections." *Id.* PPL further notes that the Commission confirmed that the burden is on the owner of the property, not the tenant, to arrange for investigation of foreign wiring claims, holding that a utility should transfer "responsibility for service effective the first billing period that the company suspected that there was foreign load." PPL Exc. at 8, n.5 (citing *Franckowiak* at 14). In addition, PPL highlights that the Company was ordered to pay a civil penalty of $500.00, for "[n]ot promptly placing the account in the landlord's name," in violation of Section 1529.1 of the Code. PPL Exc. at 8, n.5 (citing *Franckowiak* at 10).

PPL also contests the ALJ's finding that the virtual investigation caused a delay in the account being returned to the tenant's name. PPL reasons that the time period between the virtual investigation and the verification of the rewiring, was not attributable to the virtual investigation. Exc. at 9. According to PPL, the ALJ incorrectly found that because the Company failed to re-investigate the claim "the Complainant was then compelled to remove the light and boiler switch from the meter for that apartment that it served as well as remove the Apartment 1 tenant's belongings from the storage room." *Id.* (citing I.D. at 15). PPL notes that only three days passed between the Company's virtual foreign wiring investigation and the Complainant's rewiring of the Apartment 1 meter, and only one day had passed from the time the Company informed the Complainant of the suspected foreign load and his corrective action. Exc. at 9 (citing I.D. at 5-6). Thus, PPL asserts that there was no delay due to the virtual investigation that somehow forced the Complainant to fix the wiring of Apartment 1. Exc. at 9.

Furthermore, PPL asserts that the virtual investigation did not result in a delay in transferring the Apartment 1 account out of the Complainant's name. PPL notes that on February 27, 2023, the Company mailed the Complainant a Fix Form to complete. PPL explains that this form verifies to the Company that the foreign load has been removed, via a description of the work performed, a signature of the landlord, and a signature of the tenant. Exc. at 9 (citing I.D. at 6). In cases where the tenant refuses to sign the Fix Form, an order to re-investigate is triggered. The Company then contacts the landlord and sets up another investigation to confirm that the foreign load issue has been corrected. Exc. at 9 (citing Tr. at 93-94). Here, PPL states, the Company received the Fix Form for Apartment 1 on March 6, 2023, which indicated that the tenant refused to sign and confirm that the foreign load issue had been corrected. Exc. at 9 (citing

Tr. at 93).[9] Because the tenant did not sign the Fix Form, PPL explains that an order to re-investigate the foreign load was issued on April 15, 2023, and the virtual re-investigation took place on April 24, 2023. PPL continues that during that virtual re-investigation, the Company confirmed that the utility room light and switch were no longer on the meter for Apartment 1 and transferred the account back to the tenant's name the same day. Exc. at 9-10 (citing Tr. at 94). The time period between the Company's receipt of the Fix Form and re-investigation was 40 days. PPL submits that this delay was due to the refusal of Apartment 1's tenant to sign the Fix Form and was not due to the virtual nature of the foreign load investigation. The Company maintains that 40 days is not unreasonable. Additionally, the Company represents that its re-investigation was also carried out virtually, which allowed the Company to accurately verify there was no foreign load remaining and to place the account back in the tenant's name. Exc. at 9-10 (citing Tr. at 68).

PPL also argues that the ALJ erred in noting: "the time required to mail out a Fix Form, have it signed, if possible, by the tenant, return the form to PPL and schedule and conduct any re-investigations. This results in an extended time that the owner will be responsible for the tenant's bill." Exc. at 10 (citing I.D. at 16). In this regard, PPL explains that this "extended time" is because these procedures are part of all foreign load investigations, virtual or in-person, and have been put in place to: (1) provide the owner notice that foreign load was determined to be present in the rental property and the opportunity to correct the foreign load; (2) provide the owner with a Fix Form to complete once the foreign load is corrected; (3) provide the Company with verification that the foreign load was corrected, either through the consent of the tenant or re-investigation with the landlord; and (4) ensure that the account is only transferred out of the owner's name *after* the correction of the foreign load has been verified. Exc. at 10

[9] We note that, specifically, PPL's witness, Ms. Brauer, testified that "For Apartment 1 . . . the only fix form that [PPL] received was on March 6th, [2023,] and it just stated on there 'the tenant refused to sign.'" Tr. at 93.

(citing Tr. at 93). PPL insists that these procedures are proper under the requirements of Act 54 and necessarily take time to complete. Exc. at 10-11 (citing 52 Pa. Code § 1529.1; *Binelli v. Met. Edison Co.*, 2018 Pa. PUC LEXIS 266, Docket No. C-2017-2597097 (Order entered July 12, 2018), at *14 ("It is only after the landlord corrects the foreign load, as verified by the utility, that the utility must re-list the account back in the name of the tenant").[10] PPL claims that an in-person investigation would not relieve the Company or the Complainant from complying with these policies designed to ensure that foreign load has been corrected. PPL asserts that the Company's policies related to foreign load, including the ability to investigate claims virtually, balance the interests of the tenant and the landlord, consistent with the goal of Act 54 to protect tenants from paying for electricity that should be the responsibility of the property owner. Exc. at 10-11.

As such, PPL claims that the ALJ erroneously concluded that the Company's virtual investigation constituted unreasonable service, because an in-person investigation would not have altered the Company's initial finding of foreign load or negated the need to verify that the suspected foreign load was corrected. PPL argues that the Commission should grant the Company's Exception 1 because the ALJ's erroneously found that the Company provided unreasonable service to the Complainant, because the virtual inspection led to an incorrect determination that foreign load existed and delayed the transfer of the tenant's account out of the Complainant's name. In PPL's view, this finding should be reversed. Exc. at 11.

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[10] We note that here, PPL has, again, inadvertently cited to "52 Pa. Code § 1529.1" in making this argument. However, it is clear from PPL's Exceptions that the Company intended to cite to "66 Pa.C.S. § 1529.1."

2. Exception No. 2 – Whether the ALJ's Findings Related to an Alleged Meter Mix are Supported by Substantial Evidence

In its second Exception, PPL asserts that the ALJ incorrectly found that the Company provided unreasonable service to the Complainant by failing to investigate a possible meter mix between Apartments 3 and 4. Exc. at 11-12 (citing I.D. at 16-17). More specifically, PPL takes issue with Finding of Fact No. 44, which states:

> 44. In prior years and during the foreign load inspection period in 2023, Mr. Petsch asked PPL to visit the service address because PPL meters were connected to the wrong apartments, specifically, Apartments 3 and 4. Tr. 14-16, 128.

Exc. at 11-12 (citing I.D. at 8).

PPL claims that as a result, the ALJ also erred as a matter of law in concluding that "PPL provided unreasonable service when the Company would not conduct an in-person inspection of the service address where there was a possible meter mix-up . . ." Exc. at 12 (citing I.D. at 20.)[11] PPL argues that neither the ALJ's Finding of Fact No. 44, nor the Conclusion of Law[12] based upon that finding, are supported by substantial evidence in the record and, thus, the Commission should reverse the ALJ's findings related to the alleged meter-mix.

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[11] According to PPL, it is unclear whether the ALJ imposed a civil penalty on the Company based on her findings related to a possible meter mix at the service address. As such, the Company explains that it is addressing the ALJ's findings regarding a possible meter mix and challenging any civil penalty amount attributable to the ALJ's findings related to a possible meter mix, which, the Company maintains, were not based on substantial evidence in the record. Exc. at 12, n.7.

[12] *See* I.D. at 20, COL No. 3.

PPL also argues that the ALJ's finding that the Complainant had requested an investigation of a possible meter mix was based on: (1) the Complainant's unsubstantiated assertions that he had previously asked the Company to investigate a possible meter mix; (2) a failure to give weight to the Company's testimony rebutting the Complainant's meter mix claims; (3) statements by the Complainant in an unauthenticated letter presented on page 19 of the Complainant's Exhibit A related to forwarding bills to a new address; and (4) certain entries in PPL's Exhibits 10 and 16 related to prior accounts in the Complainant's name for Apartments 3 and 4 at the Service Address. As discussed below, PPL asserts that none of these items constitute substantial evidence that the Company failed to investigate a possible meter mix at the Service Address. Exc. at 12.

First, PPL asserts that the Complainant's sole evidence in support of his claim that he notified the Company of a possible meter mix consisted of vague and unsubstantiated assertions raised for the first time at the hearing. Exc. at 12. Specifically, PPL notes that the Complainant testified, as follows:

> [a]nd I begged PPL on seven letters, please come, because they have the wrong – the meters hooked up to the wrong apartments . . . I told them to come see the situation and what happened," and "I sent them letters after letters with the apartment number and the meter number, but they still didn't change it.

Id. at 12-13 (citing Tr. at 14-15). PPL adds that after Mr. Petsch claimed to have sent the letters "ranging from June 7th, July 18th of [2022]," the ALJ asked him to send copies of the letters verifying these claims within two weeks following the hearing. The Complainant agreed to send the letters on the record during his direct testimony. Exc. at 13 (citing Tr. at 16).

However, PPL asserts that the Complainant failed to include any such letters in any of the three exhibits submitted into the record following the hearing, leaving his claims related to the alleged request unsubstantiated. Exc. at 13 (citing Complainant Exhs. A, B, and C). PPL argues that the Complainant's mere bald assertions that he alerted the Company to a possible meter mix cannot be considered evidence in this proceeding, because "mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim." Exc. at 13 (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Leung v. Philadelphia Gas Works*, 2021 Pa. PUC LEXIS 519, Docket No. F-2020-3020041 (Opinion and Order entered October 28, 2021)(rejecting the Complainant's claim that she did not request service be placed in her name because she did not produce any evidence to support her allegations)). PPL proffers that, although Mr. Petsch was given the opportunity to substantiate his claims, the Complainant's Exhibits contain no evidence corroborating his "bald assertions" that he notified PPL of a possible meter mix and requested that the Company investigate the claim. Accordingly, PPL avers that the ALJ erred by relying on the Complainant's assertions as evidence in support of Finding of Fact No. 44 of the Initial Decision and in further relying on these assertions as evidence that the Company provided unreasonable service to the Complainant. Exc. at 13.

Next, PPL argues that the ALJ erred in failing to give weight to the Company's testimony rebutting the Complainant's claims related to a requested meter mix investigation. PPL claims that instead, the ALJ improperly concluded that "[w]hile the witnesses presented by PPL were not personally aware of the meter mix-up issue, exhibits in the record support Mr. Petsch's concern about the meter mix-up and his testimony that he contacted PPL about the mix-up." Exc. at 13-14 (citing I.D. at 16). According to PPL, the record does not support the ALJ's characterization of PPL's testimony and evidence on this issue. Exc. at 14.

Citing to the testimony of its witness, Mr. George, that he handles meter mix investigations for the Company, in addition to foreign load investigations, PPL asserts that Mr. George consistently testified that: (1) the Complainant never raised the meter mix issue with him during his direct testimony; (2) cross- examination by the Complainant; and (3) direct questioning by the ALJ. Exc. at 14 (citing Tr. at 59-60, 71-73, and 86-87). PPL also notes the testimony of its witness, Ms. Brauer, Supervisor of Operations Support for PPL, that she was familiar with and had reviewed the complete history of the Complainant's accounts, but was unaware of any suspicion of a meter mix at the Service Address. Exc. at 14 (citing Tr. at 92). PPL represents that the Company's exhibits related to the Complainant's prior accounts also contain no record of a suspected meter mix, nor a request to investigate a meter mix. Exc. at 14 (citing PPL Exhs. 1-16). PPL asserts that, at the very least, this consistent testimony from PPL's credible witnesses, supported by the Company's exhibits, should have been considered as rebuttal evidence sufficient to counter the Complainant's claims related to a possible meter mix at the address. The Company, therefore, disputes the ALJ's finding that the Company failed to follow up on a suspected meter mix, considering the Company's rebuttal of the Complainant's unsubstantiated claims. Exc. at 14.

In addition, PPL claims that the ALJ erred in relying upon a letter submitted by the Complainant as part of Complainant Exhibit A, arguing that the letter is unauthenticated and does not contain a request for the Company to investigate a possible meter mix up. According to PPL, the letter did not include any postmark or address sufficient to support a finding that it was ever sent to or received by PPL. Exc. at 14

(citing Complainant Exh. at 19). PPL also asserts that the contents of the letter are similarly inconclusive. PPL cites to the letter, which states, as follows:

> 5-3-22
> To whom it may concern:
> From 4-1-18 to 3-1-20
> Tim Askew and Amanda Wardow occupied Apt. 4 [in] Waymart PA 18472. They called in and had the bills sent to Amanda Weirdo "G" mail account. No bills were sent to me. And after 2 ye[ars] explaining this and also PP &L had wrong apt #, with numerous other mistakes. They want me to pay after they failed to transfer names, realized I have [indecipherable] accounts with PP& L and never ask for paperless building. Again Tim Askew & Amanda Weirdow's ne[w] address is [also in] Waymart PA 18472. PP&L needs to forward the bill there.
> thank you

Exc. at 15 (citing Complainant Exh. at 26).

PPL claims, that, even assuming, *arguendo*, that the letter was sent to PPL, a reasonable reading of it simply indicates that a request was made for the Company to forward bills related to Apartment 4 to the tenant's new address. PPL highlights that the letter did not contain a request for the Company to perform a meter mix investigation for Apartment 4's meter. Thus, claims PPL, a reasonable reading of the letter would not put the Company on notice of a possible meter mix between Apartments 3 and 4. As such, PPL maintains that the ALJ erred by relying on this letter as evidence that the Complainant requested a meter mix investigation. Exc. at 15.

Furthermore, PPL argues that the ALJ's reliance on certain provisions in PPL Exhibits 10 and 16 was similarly misplaced. Exc. at 15. PPL highlights that the

referenced entries in PPL Exhibit 10 (the customer contact history of Apartment 4, dated March 5, 2021), state in their entirety, as follows:

> "slip sent to us for this acct short note on it stating the bill does not belong to the property dweller. They did not identify themselves. They stated the name on the acct is not even in their name. state fraud proceedings have started. There are no notes abt fraud."
>
> "Contact ltr sent to whoever is residing or receiving PPL bills to contact us to resolve the issue. Open up the acct under the correct name. etc."

Exc. at 15-16 (citing PPL Exh. 10 at 1). PPL submits that a reasonable reading of the first entry in PPL Exhibit 10 demonstrates that an unidentified caller reported that they were receiving bills for an account that was not in their name, and states that they have initiated a fraud claim with "the state." Accordingly, PPL posits that the second entry above demonstrates that a letter was sent to the address asking the resident to contact the Company regarding the issue. Conversely, PPL claims that the entries in PPL Exhibit 10 do not support a finding that the Company was put on notice of, and failed to investigate, a possible meter mix; but rather, these entries demonstrate that the Company promptly followed up with a customer related to a claim of possible fraud on the account. PPL thus assigns error to the ALJ's reliance on these entries as evidence that the Complainant requested a meter mix investigation or that the Company was placed on notice of a suspected meter mix. Exc. at 16.

Similarly, the Company claims that PPL Exhibit 16, likewise, contains no evidence of a suspected meter mix between Apartments 3 and 4. PPL notes the ALJ's statements that "PPL Electric Exhibit 16 lists the account number for Apartment 3 as 66342XXXX and the account number for Apartment 4 as 17981XXXX" although "the account number closed for Apartment 3 was confirmed by the Company to be number 17891XXXX." Exc. at 16 (citing I.D. at 16). PPL further notes that PPL Exhibit 16

details the history of balance transfers from prior accounts in the Complainant's name. PPL points out that, while PPL Exhibit 16 shows that Apartment 3 was associated with account numbers beginning 66342 and Apartment 4 was associated with account numbers beginning 17891, the exhibit also shows that, at one point in time, the balance associated with Apartment 3 (account number beginning 66342) was transferred to an account associated with Apartment 4 (account number beginning 17891). Exc. at 16 (citing PPL Exhibit 16 at 1).

The Company maintains that a difference between the account numbers listed in a letter sent by the Company in November 2019 and the Company's records summarized in PPL Exhibit 16 does not tend to show that the Company was aware of a possible meter mix between Apartments 3 and 4. PPL argues that the Complainant has had a series of accounts in his name at the Service Address, dating back to 2010. These balances were transferred to the Complainant during periods the apartments were unoccupied, or tenants did not change service to their names. Exc. at 16-17 (citing I.D. at 15). Because the ALJ found that these balance transfers were proper and carried out in accordance with Section 56.16(b) of the Commission's Regulations, 52 Pa. Code § 56.16(b), PPL, therefore, asserts that PPL Exhibit 16 does not support a finding that the Company was put on notice of a possible meter mix, but rather, documents the Company's history of transferring prior account balances to the Complainant. Exc. at 17.

PPL thus contends that the only items in the record supporting a finding that the Company failed to investigate a possible meter mix are the Complainant's "unsubstantiated assertions" to that effect. PPL claims that these assertions were sufficiently rebutted by PPL's witnesses, who were familiar with the Complainant's accounts and investigated foreign load at the Service Address. Accordingly, PPL requests that the Commission grant its Exception No. 2 and modify the ALJ's Initial Decision accordingly. Exc. at 17.

3. Exception No. 3 – Whether the Commission Should Reverse the ALJ's Imposition of a Civil Penalty and Whether the ALJ's Justification Lacks Factual and Legal Support

In its third Exception, PPL submits the ALJ erroneously concluded that a civil penalty of $2,500 was warranted under the ten factors (the *Rosi* factors) set forth in the Commission's Policy Statement for evaluating whether a civil penalty should be imposed for violating a Commission order, regulation, or statute. Exc. at 19-26.

a. Whether the ALJ Erred in Finding that the First and Third Rosi Factors Weigh in Favor of a Civil Penalty, and Whether the Record Evidence Establishes that the Company's Virtual Investigation of the Foreign Load was Reasonable

PPL begins by noting that in applying the first and third *Rosi* factors, the ALJ found, as follows:

> PPL not sending someone to conduct an in-person inspection, after repeated requests and explanations by the Complainant, was more than an administrative or technical error" and that "the company intentionally did not send out someone to conduct the in-person inspection . . . which supports a higher penalty under factor 3 . . .

Exc. at 19-20 (citing I.D. at 18-19). PPL argues that the ALJ's findings under the first and third *Rosi* factors are not supported by evidence of record. Exc. at 19.

Furthermore, PPL asserts that, although not an "administrative or technical error," the Company's conduct in this instance was also not of a serious nature justifying a civil penalty. Rather, PPL asserts that the record evidence demonstrates that the Company's determination that foreign load existed on Apartment 1 was reasonable considering the location of the utility room and the tenant's shock that the utility room light and switch were connected to her meter. Exc. at 19 (citing Tr. at 60-65). PPL also

emphasizes that the Complainant rewired the meter for Apartment 1 *one day* after being notified of the Company's foreign load finding, which confirmed the Company's suspicions and triggered the issuance of a Fix Form to verify that the foreign load had indeed been fixed. Exc. at 19 (citing I.D. at 6).

Finally, PPL claims that the ALJ's characterization of the Company's actions as "willful refusals to re-investigate the foreign load in person" are misplaced, because the Company's reasonable suspicion of foreign load appeared to have been confirmed by the Complainant's own actions. A virtual re-investigation occurred within 40 days of notice of the foreign load correction, which, PPL insists, confirmed that the utility room had been removed from the Apartment 1 meter. PPL asserts that the re-investigation was required because the tenant refused to sign the Fix Form. PPL argues that when placed into context, the Company's conduct demonstrates a reasonable investigation into a foreign load Complaint culminating in a virtual re-investigation that led to the transfer of the account out of the Complainant's name. PPL claims that the ALJ, therefore, erred in finding that the first and third *Rosi* factors weighed in favor of imposing a civil penalty. Exc. at 20 (citing I.D. at 6-7, Tr. at 93-94).

b. Whether the ALJ Erred in Finding that the Fourth Rosi Factor Supports the Imposition of a Civil Penalty, and Whether the Company's Virtual Investigations are Effective and Efficient

PPL takes issue with the ALJ's analysis as to the fourth *Rosi* factor. PPL disagrees with the ALJ's finding that: "nothing in the record suggests that the company may modify or revisit its practices and procedures with respect to remote inspections, which supports a higher penalty under factor 4." Exc. at 20 (citing I.D. at 19). PPL proffers that its Exception No. 1, *supra,* details the benefits of conducting foreign load investigations virtually and the reasons why the Company should not be required to modify its internal policy to perform in-person foreign load investigations.

As such, PPL intimates that changes in policy would not be advisable. Exc. at 20-21. In addition, the Company explains that its arguments in its Exception No. 1 also demonstrate that an in-person investigation in this case would not have altered the Company's initial finding of foreign load, nor would it have negated the need to verify that the suspected foreign load was corrected. Therefore, the Company maintains its position that it should not be required to revisit its foreign load investigation methodology and that a civil penalty should not be imposed for its failure to do so. *Id.*

c. Whether the ALJ Incorrectly Found that the Fifth Rosi Factor Weighs in Favor of Imposing a Civil Penalty, and Whether the Virtual Investigation Delayed the Return of Apartment 1's Account to the Tenant's Name

PPL next notes that when applying the fifth *Rosi* factor, the ALJ reasoned that "there was only one customer affected but the remote inspection and time-consuming process resulted in the Complainant being responsible for the tenants' bills for an extended period." Exc. at 21 (citing I.D. at 21). PPL submits in its Exception No. 1, the Company presented detailed reasons why, in its view, the virtual foreign load investigation did not cause a delay in returning the account to the tenant's name. Instead, PPL maintains, the tenant's refusal to sign the Fix Form caused the 40-day delay between receipt of notice that the foreign wiring was removed from Apartment 1's meter and when the Apartment 1 account was removed from the Complainant's name. As such, PPL asserts that the ALJ erred in attributing the delay to the Company's virtual investigation. Exc. at 21.

PPL continues by asserting that, even assuming that the virtual investigation caused a delay, the ALJ's characterization of the delay as "an extended period" was incorrect. The Company reiterates that, in total, 40 days passed between the first notice and the re- investigation of the correction to Apartment 1's meter. PPL asserts that this time period, which is only slightly longer than an average billing period,

does not warrant a civil penalty. The Company emphasizes its position that it must be provided time to verify the correction of suspected foreign load and cannot be required to transfer the account out of a landlord's name immediately upon notice without verification, especially considering that the Company is placed in the middle of two competing interests, *i.e.*, the landlord and the tenant. In short, the Company argues that it should be afforded sufficient time to investigate, verify, and re-investigate foreign load claims. In this case, the Company maintains that a 40-day period for re-investigation does not warrant the imposition of a civil penalty. Exc. at 21-22 (citing *Ace Check Cashing*).

d. Whether the ALJ Incorrectly Found that the Eighth Rosi Factor Weighs in Favor of a Higher Civil Penalty

PPL also takes issue with the ALJ's reasoning that "[a] significant fine would be proper to encourage the Company to reconsider its remote inspection policy or at least to allow that there are instances where an in-person inspection is required, particularly when requested by a customer who could possibly be held responsible for additional charges." Exc. at 22-23 (citing I.D. at 19).[13] The Company claims that its arguments in its Exception 1 not only explain that the virtual nature of the foreign load investigation did not affect the outcome of the investigation and did not delay the

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[13] The Company asserts that it wants to provide reasonable service to its customers and comply with Act 54. However, the Company emphasizes that it has faced civil penalties in the past for not placing an account in the landlord's name quickly enough upon a strong suspicion that foreign load was present on a tenant's meter. Exc. at 23, n.8 (citing *Franckowiak* at *10). Here, PPL claims that the record evidence demonstrates that the Company had good cause to suspect that foreign load was present. As such, the Company immediately transferred the tenant's account to the owner's name. Exc. at 23, n.8 (citing PPL Exh. 4). Moreover, PPL submits that the Complainant's immediate reaction upon notice of the Company's finding, in rewiring the meter for the affected tenant, appeared to confirm the Company's suspicion that foreign load existed. Exc. at 23, n.8 (citing Tr. at 23). Therefore, PPL asserts that the ALJ essentially imposed a fine on the Company for acting quickly upon a strong suspicion of foreign load. Exc. at 23, n.8.

Company's transfer of the account out of the Complainant's name, but also that the virtual investigation did not constitute unreasonable service. Based on the reasoning laid out in the Company's first Exception, *supra,* PPL claims that the imposition of a higher civil penalty for a practice that did not result in unreasonable service is inappropriate. Exc. at 22-23.

In addition, PPL asserts that the testimony of its witness, Mr. George, confirmed that the Company is not limited to virtual investigations. In this case, PPL notes that Mr. George followed up the virtual investigation of Apartment 1 with a phone call to the Complainant regarding Apartment 3, because the Company could not virtually confirm to which meter a hot water heater at the Service Address was connected. PPL states that in this case, the Complainant confirmed that the hot water heater was connected to the meter of Apartment 3, which triggered the transfer of that account to the Complainant's name. PPL asserts that this follow-up investigation by Mr. George demonstrates that the Company follows up by other means when a virtual investigation is not sufficient. PPL, therefore, insists that the ALJ's finding that a significant fine is necessary to encourage the Company to change its virtual investigation policy was inappropriate, as the Company can conduct in-person foreign load inspections when warranted under the circumstances. PPL asserts that for all of these reasons, the ALJ erred in finding that the eighth *Rosi* factor weighs in favor of imposing a "significant fine." Exc. at 23 (citing Tr. at 63-64).

e. Whether the ALJ's Reliance on the Commission's Decisions in *Vaughn* and *Jones* to Support the Civil Penalty under the Ninth Rosi Factor was Misplaced

The ninth *Rosi* factor provides that the Commission may consider past decision in similar situations. PPL assigns error to the ALJ's reliance upon the Commission's decisions in *Vaughn*, 2022 Pa. PUC LEXIS 351, and *Jones*, 2020 Pa. PUC

LEXIS 317 as support for the imposition of a civil penalty of "$500 for each of the three months that lapsed between February of 2023, when PPL was notified of the rewiring, and when the Apartment 3 account was transferred back to the tenant, in June of 2023, plus $1,000 because the Company did not conduct an in-person inspection." Exc. at 24-25.

PPL explains that in *Vaughn*, the Commission found that PPL's 75-day delay between suspecting foreign load at a rental unit and notifying the owner and transferring the affected account to the owner's name, prejudiced the owner and violated Sections 1529.1 and 1501 of the Code, 66 Pa.C.S. § 1529.1 and 1501. However, PPL submits that an examination of *Vaughn* illustrates why no civil penalty is warranted in this case. Namely, PPL argues that the ALJ's reliance on *Vaughn* here was misplaced for several reasons. Exc. at 24. First, PPL states that in *Vaughn*, as in the instant proceeding, the Company also conducted a virtual foreign load inspection, but the Commission neither found that the virtual inspection constituted unreasonable service nor did it penalize the Company for that practice. *Id.* (citing *Vaughn* at 1, 10-12). Further, PPL reasons that in *Vaughn*, the Commission determined that a $500 civil penalty was appropriate considering the 75-day delay in providing notice to the owner, which delayed the owner's ability to correct the foreign load. Exc. at 24(citing *Vaughn* at 14).

Conversely, PPL claims that in the instant proceeding, there is no dispute that the Complainant received notice of the foreign load issue within *two* days, and that the Complainant had the opportunity to correct the issue immediately, and in fact did correct the issue within one day. Furthermore, PPL claims that the reason for the delay in returning the account to the tenant immediately was outside the Company's control because the tenant refused to sign the Fix Form. Exc. at 24-25 (citing Tr. at 93-94). PPL asserts that, following the reasoning in *Vaughn*, the appropriate action to correct any prejudice sustained by the Complainant would be to return the account balance associated

with Apartment 1 to the tenant's name, relief granted under the I.D. that the Company is not challenging. Exc. at 25.

PPL likewise submits that the ALJ's reliance on the Commission's decision in *Jones* was similarly misplaced. PPL points out that, in *Jones*, the Commission found that Philadelphia Gas Works (PGW) provided unreasonable service by failing to follow up on its initial meter reclamation activity for approximately eight years, which led to the complainant accumulating unauthorized usage charges of over $24,000. Exc. at 25 (citing *Jones* at 31). There, PPL continues, the Commission imposed a civil penalty of $250 for every year that the Company failed to attempt to reclaim the meter at the service address, for a total civil penalty for eight years of inaction of $2,000. Exc. at 25 (citing at 33). In contrast, PPL asserts that the time period at issue in the present case is *40 days*, and the ALJ's total recommended civil penalty was larger than that imposed upon PGW for *eight years* of inaction. As such, PPL asserts that the time period in *Jones* is simply not a reasonable comparison for purposes of calculating a civil penalty in this case. Thus, PPL argues that any civil penalty imposed should be considerably less than that imposed for the 8-year delay in *Jones* or the 75-day delay in *Vaughn*. Exc. at 25.

Finally, PPL notes that it could locate no case in which the Commission penalized a utility for conducting a foreign load investigation virtually. Thus, PPL assigns error to the ALJ's 's decision to include a civil penalty of $1,000 because the Company did not conduct an in-person investigation. According to PPL, such a determination is not supported by prior Commission precedent and is not warranted based on the record in this case. The Company maintains that the virtual investigation did not constitute unreasonable service. PPL remains of the opinion that for the reasons the Company detailed in its Exception 1, penalizing the Company for conducting a virtual foreign load investigation is not warranted, because Act 54 contains no requirement that foreign load investigations be conducted in person, and an in-person investigation would not have changed the outcome in this case. For all of these reasons, PPL requests that the

Commission grant its Exception No. 3, reverse the imposition of the $2,500 civil penalty, and modify the I.D. accordingly. Exc. at 25-26.

4. Exception 4 – Whether the ALJ's Method for Calculating the Civil Penalty Should be Corrected

In its Fourth Exception, PPL submits that if a civil penalty is to be imposed, then the Commission also should correct the timeframe in the Initial Decision for calculating the same. Specifically, PPL notes that the ALJ referenced the time period from February 18, 2023 (the date the Complainant called the Company to report the wiring had been fixed in Apartment 1), to June 8, 2023 (the date the Company transferred the account for Apartment 3 out of the Complainant's name), or 110 days, and argues that this timeframe is incorrect and should be rejected. Exc. at 26.

PPL claims the start date for this time period is incorrect because under the ALJ's reasoning, PPL should be imposed a civil penalty for failing to return the account to the tenant's name immediately upon receipt of a verbal, unsubstantiated claim from an owner that foreign load had been corrected. PPL asserts that this standard runs afoul of the Commission's precedent, which requires a utility to verify that the foreign load has been corrected before transferring the account out of the landlord's name. Exc. at 26 (citing *Ace Check Cashing* at 11). PPL contends that the appropriate starting point, if any, for calculating a period of delay in re-investigating the foreign load would be March 6, 2023, the date the Company received the Fix Form from the Complainant related to Apartment 1. Exc. at 26.

PPL claims that the end date for this time period is also incorrect, because it is based on the return of Apartment 3's account to the tenant's name, rather than the return of Apartment 1's account. Instead, PPL argues, the end date for a civil penalty based on a violation related to Apartment 1 would be the date the Company removed the

Apartment 1's account from the Complainant's name, *i.e.*, April 24, 2023. Therefore, according to PPL, any civil penalty should be calculated based on the 40-day time frame between March 6, 2023 and April 24, 2023. Exc. at 27.

For all of these reasons, if a civil penalty is imposed, PPL requests that the Commission grant its Exception No. 4 and modify the ALJ's Initial Decision accordingly.

D. 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).

Upon review of the record evidence, the Initial Decision, and the Exceptions, we shall grant PPL's Exceptions and modify the Initial Decision, consistent with this Opinion and Order.

With regard to PPL's Exception No. 1, we conclude that under the totality of the circumstances, and as elucidated on the record, PPL provided reasonable service when it conducted a virtual investigation of the alleged foreign load at the Service Address, and in conducting its re-investigation of the appropriate rewiring.

We begin by noting that, as highlighted by PPL, Act 54 does not require foreign load investigations to be conducted in-person. Instead, PPL may exercise its managerial discretion, based upon the facts presented, to conduct in-person or virtual foreign load investigations, as it deems appropriate, subject the reasonable service

mandate in 1501 of the Code.[14] That is, PPL may exercise its discretion to investigate, but the Commission still evaluates whether the reasonable service mandate of Section 1501 has been violated by an abuse of that discretion or arbitrary action. We find that PPL did not provide unreasonable service by conducting a virtual foreign load investigation and we thus grant Exception No. 1.

While hindsight may be 20/20, we cannot fault PPL for what was clearly a "reasonable suspicion" of foreign load for Apartment 1 at the time the matter was being investigated. The circumstances of this matter reveal that the tenant complained of high bills and was surprised upon the conduct of the virtual investigation to see the light go off in the boiler/storage room. This was an adequate basis upon which to conclude "reasonable suspicion" of foreign load. PPL has pointed out that the nature of foreign load investigations is such that it would not have reached a different conclusion had it been in-person for the same test. *See Franckowiak* at 14.

Further, upon being notified of the finding of foreign load at Apartment 1, the Complainant did not contest that issue with PPL, but instead acted to immediately re-wire the boiler/storage room electric away from the Apartment 1 account. This gave PPL little reason to doubt its reasonable suspicion of foreign load and its decision to re-investigate virtually to confirm the corrective rewiring. We agree with PPL that an on-site inspection was not indicated in this circumstance. Unlike the factual scenario in *Vaughn*, where the landlord consistently contested the existence of foreign load, in the instant matter, the Complainant's prompt action here to re-wire appeared consistent with the existence of foreign load for Apartment 1. Neither an abuse of discretion nor

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[14] "As explained by the Pennsylvania Supreme Court[,] under the [M]anagement [D]ecision [D]octrine[,] 'it is not within the province of the Commission to interfere with the management of a utility unless an abuse of discretion or arbitrary action by the utility has been shown.'" *Pickford v. Pa. PUC*, 4 A.3d 707, 715 (Pa. Cmwlth. 2010) (quoting *Pa. PUC v. Phila. Elec. Co.*, 561 A.2d 1224, 1226-27 (Pa. 1989)).

arbitrary action has been demonstrated to have occurred here, where PPL had a reasonable suspicion of foreign load, substantiated via the virtual inspection and the Complainant's prompt re-wiring.[15] For these reasons, we find no Section 1501 violation by PPL with regard to the Apartment 1 foreign load investigation and grant the Company's Exceptions arguing the point.

We also disagree with the ALJ on the issue of whether the conduct of a virtual inspection here caused an undue delay in transferring the service back to the name of the Apartment 1 tenant after the foreign load connection was corrected. *See* I.D. at 16. In our view, the timing of PPL's re-inspection of the Apartment 1 foreign load issue was not unreasonable under the circumstances presented in this matter. A period of 40 days is not an inordinate amount of time to process foreign wiring Fix Forms and conduct a re-investigation when a tenant refuses to sign such a form. That is what occurred in the instant case. Accordingly, we find no Section 1501 violation on this issue.

We note PPL's acknowledgement that an on-site visit may be the preferred method of a foreign load investigation, depending upon the factual circumstances presented. In its exercise of discretion, PPL should be careful to fully investigate the physical circumstances surrounding foreign load claims, especially in cases such as this which involve a somewhat unique set up of the apartments and the uncommon configuration at the Service Address. As noted *supra*, the definition of service under Section 1501 of the Code is very broad. Simply put, providing reasonable service in the context of Section 1529.1 of the Code involves conducting a thorough investigation of

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[15] We also find the Complainant's contemporaneous self-reporting of the Apartment 3 foreign load at the Service Location to be an important factor relevant to the reasonableness of PPL's investigative techniques. While the Complainant's self-report of the existence of foreign load on the Apartment 3 meter did not confirm the existence of the same on the Apartment 1 meter, it, combined with the prompt re-wiring of the Apartment 1 meter by the Complainant adds context for the investigator's choice of investigative and re-investigative techniques.

matters such as foreign load, to the distinct benefit of each customer, whether tenant or landlord.

This Commission's prior decisions have held that a suspicion or presumption of foreign load can be overcome by later inspection, and such an initial suspicion can be reversed with a resulting cancellation of the landlord's account and a transfer back of the arrears to a tenant's account. *See, e.g., Candice Jones v. PPL Electric Utilities Corp.*, Docket No. F-2019-3012336 (Final Order entered August 14, 2020) (PPL reversed its initial conclusion of a foreign load which was based upon a suspicion, cancelled the account created in the landlord's name, and put the disputed amount back onto the tenant's account); *Fresh Start Capital LLC v. Equitable Gas Co.*, Docket No. C-2009-2104054 (Final Order entered October 6, 2011) (The Commission found that the utility's on-site investigation and subsequent 64-day delay in written notification about an alleged foreign load determination were unreasonable, and ordered the utility to cancel the account created in the landlord's name and put the disputed amount back onto the tenant's account); and *Nicholas Loyle v. PECO Energy Company*, Docket No. F-2016-2531016 (Final Order entered January 27, 2017) (finding that the utility, upon a second on-site investigation of foreign load at the request of the property owner, reversed its initial foreign load finding because the utility's first inspection did not consider that the hall light at issue was a battery operated motion sensor light, which affected the utility's initial finding of a foreign load).

Here, we find it unfortunate that the Company's investigation and re-investigation of the Service Address resulted in an inaccurate finding of foreign load associated with Apartment 1, but we find that nevertheless, PPL's efforts to investigate the presence of foreign load were reasonable.

PPL states in its Exceptions:

> PPL Electric is not challenging the ID's finding that there was no foreign load on the meter for Apartment 1, PPL Electric maintains that it undertook reasonable efforts to investigate the presence of foreign load on Apartment 1's meter and that the findings of that investigation justified the initial transfer of the Apartment 1 account to the Complainant's name. The Company is also not challenging the ID's requirement to transfer the outstanding balance of $1,997.76 associated with the Apartment 1 account out of the Complainant's name.

Exc. at 2.

Based on the record developed at the hearing, we uphold the ALJ's conclusion in the Initial Decision that there was no foreign load on the Apartment 1 meter and the ALJ's ruling that it was appropriate to transfer the outstanding balance of $1,997.76 associated with the Apartment 1 account out of the Complainant's name. This is a conclusion with which PPL agrees. As such, we shall reinforce that, within thirty (30) days of the entry of this Opinion and Order, the Company shall be directed to transfer the outstanding balance of $1,997.76 associated with the Apartment 1 account, plus any associated late fees and interest charges, out of the Complainant's name.

We note that PPL initially had a basis to suspect a foreign load as a result of the tenant's report regarding the same, its virtual investigation, and the tenant's reaction upon participating in the virtual investigation. The Complainant's prompt correction of the wiring lent credence to PPL's assessment that foreign load was present for Apartment 1. Thus, the Company acted reasonably and in accordance with Section 1529.1 of the Code in transferring the tenant's account balance to the Complainant. Unfortunately, in some cases, a valid suspicion of foreign load may be incorrect, even when thorough techniques are employed, such as in this present case.

We also find that PPL's Exception No. 2 is meritorious. Based upon our review of the record we find no substantial evidence to support the Complainant's claim of an alleged meter mix-up and a PPL service violation for failure to investigate. The Complainant's sole evidence in support of his claim that he notified the Company of a possible meter mix consisted of assertions raised for the first time at the hearing and in a letter he submitted as a late-filed exhibit. *See* Complainant Exh. A at 19.

PPL presented evidence sufficient to rebut the Complainant's claim of a meter-mix issue having been raised to PPL. Specifically, PPL's witness, Mr. George, rebutted the Complainant's claim that he raised a meter mix-up issue during the foreign load investigation. Mr. George also noted that he would have been the person to investigate a meter mix-up had one been raised. In addition, PPL's witness, Ms. Bauer, testified that she was familiar with and had reviewed the complete history of the Complainant's accounts but was unaware of any suspicion of a meter mix at the Service Address. Tr. at 92. PPL's exhibits related to the Complainant's prior accounts also contain no record of a suspected meter mix, nor a request to investigate a meter mix. *See generally* PPL Exhs. 1-16.

Close examination of the references letter submitted by the Complainant, as part of Complainant Exhibit A, reveals that it does not contain a request for the Company to investigate a possible meter mix up. It is axiomatic that more than a trace or scintilla of evidence is required to support a finding, and the Complainant's bald assertions do not withstand scrutiny here. Therefore, we shall grant PPL's Exception No. 2. Thus, we reverse the ALJ's Finding of Fact No. 44 and Conclusion of Law No. 3 in the Initial Decision.

Because we grant PPL's Exceptions 1 and 2 and find no violation of Section 1501 of the Code by PPL in this matter, we find that the ALJ's imposition of penalties to be unwarranted in the circumstances. Further, we need not reach the

arguments raised in its Exception Nos. 3 and 4 regarding the issues of whether and to what extent the imposition of civil penalties is appropriate. As such, we find PPL's Exception Nos. 3 and 4 to be moot. Accordingly, the Initial Decision is modified, consistent with this Opinion and Order.

III. Conclusion

Based upon our review of the record and the applicable law, we shall grant PPL's Exceptions, in part, and render them moot, in part, and modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by PPL Electric Utilities Corporation on May 7, 2024, to the Initial Decision of Administrative Law Judge Darlene Heep, at C-2023-3041848, are granted, in part, and rendered moot, in part.

2. That the Initial Decision of Administrative Law Judge Darlene Heep, issued April 17, 2024, in the above-captioned proceeding, is modified, consistent with this Opinion and Order.

3. That the Formal Complaint of Willaim Petsch against PPL Electric Utilities Corporation at Docket No. C-2023-3041848 is sustained, in part, and denied, in part, consistent with this Opinion and Order.

4. That within thirty (30) days of the entry of this Opinion and Order of the Commission, PPL Electric Utilities Corporation shall remove from William Petsch's account the outstanding balance in the amount of one-thousand nine hundred and

ninety-seven dollars and 76 cents ($1,997.76) associated with the Apartment 1 account at issue in this proceeding, plus any associated late fees and interest charges.

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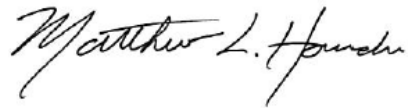
5. That the Secretary's Bureau shall mark this matter closed.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: April 24, 2025

ORDER ENTERED: April 24, 2025