**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 21, 2016

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

John F. Coleman, Jr.

Robert F. Powelson

David W. Sweet, Absent

Ruth Sanchez C-2015-2472600

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by PPL Electric Utilities Corporation (Respondent, PPL or Company) on November 16, 2015, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale, issued on October 26, 2015, in the above-captioned proceeding. No Replies to Exceptions have been filed. For the reasons stated below, we shall grant the Exceptions, in part, deny them, in part, and adopt the ALJ’s Initial Decision, as modified, consistent with this Opinion and Order.

**History of the Proceeding**

On March 16, 2015, Ruth Sanchez (Ms. Sanchez or Complainant) filed a Formal Complaint against PPL. In the Complaint, Ms. Sanchez alleged that PPL terminated her service without sending a termination notice and despite having received her required payment. Ms. Sanchez also alleged that it took PPL too long to resume service. For relief, the Complainant requested that the Commission order PPL to reimburse her for lost food during the one week her service remained off.

On April 6, 2015, PPL filed an Answer denying that it improperly terminated service or that it failed to notify the Complainant about a pending shut-off. The Respondent also denied that the Complainant had made a payment before the service termination and requested that the Commission dismiss the Complaint.

An evidentiary hearing was held by telephone on June 26, 2015. The Complainant appeared *pro se*, testified on her own behalf, and presented four exhibits that were admitted into the record. PPL was represented by counsel, who presented the testimony of one witness and offered three exhibits that were admitted into the record. The hearing generated a transcript of eighty-five pages. The record closed on July 28, 2015.

In the Initial Decision, issued on October 26, 2015, the ALJ sustained the Complaint, in part, pertaining to the claim of unreasonable service. The ALJ assessed a civil penalty of $2,000 against PPL for improperly terminating the Complainant’s electric service and for failing to timely restore electric service after receiving payment from Ms. Sanchez. Additionally, the ALJ denied the Complaint pertaining to the request for reimbursement for lost food because the Commission is without authority to issue civil damages. I.D. at 16-17.

As previously indicated, PPL filed Exceptions on November 16, 2015. No Replies to Exceptions were filed.

**Discussion**

**Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Company. If the evidence presented by the Company is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Company. [*Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d) While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

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

**ALJ’s Initial Decision**

The ALJ made twenty-one Findings of Fact and reached six Conclusions of Law. I.D. at 2-5, 16. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

The ALJ explained that termination of service is an extreme measure citing Sections 1406(a) and (b) of the Code, 66 Pa. C.S. §§ 1406(a) and (b), which provide:

**(a) Authorized termination.--**A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer:

(1) Nonpayment of an undisputed delinquent account.

(2) Failure to comply with the material terms of a payment arrangement.

\* \* \*

**(b) Notice of termination of service.—**

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

(C) by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.

(iii) During the months of December through March, unless personal contact has been made with the customer or responsible adult by personally visiting the customer's residence, the public utility shall, within 48 hours of the scheduled date of termination, post a notice of the proposed termination at the service location.

(iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.

(2) The public utility shall not be required by the commission to take any additional actions prior to termination.

Additionally, the ALJ noted that Section 56.93(c) of our Regulations, 52 Pa. Code § 56.93(c), requires a public utility to “conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit.”

According to the ALJ, the testimony supported the following findings: (1) PPL appropriately issued a ten‑day termination notice on April 1, 2014; (2) the Complainant satisfied the April 1, 2014, termination notice by paying $263.36 on April 11, 2014; (3) Ms. Sanchez made timely payments to PPL in May, June and July 2014; (4) the delay in PPL receiving the June 2014 monthly payment was caused by PPL’s requirement that payments be mailed to Kentucky; (5) PPL’s exhibits indicate that it issued a subsequent ten-day termination notice on June 12, 2014, assuming that the Complainant had failed to timely pay in June 2014; (6) PPL did not rescind the termination process after speaking with Ms. Sanchez on June 20, 2014, or after receiving her payment on June 20, 2014; (7) PPL terminated the Complainant’s service on July 15, 2014, without issuing a new termination notice; (8) PPL terminated electric service on July 15, 2014, without providing written or personal three-day notice after June 19, 2014; and (9) PPL forced the Complainant to wait from Friday, July 18, 2014, until Tuesday, July 22, 2014, before resuming service after PPL received the requested payment on July 18, 2014.[[1]](#footnote-1) I.D. at 8.

Based on these findings, the ALJ determined that Ms. Sanchez proved that PPL violated the termination procedures under Section 1406 of the Code. The ALJ explained that the crux of the Complaint is that PPL failed to provide notification of the termination in July 2014, and that PPL was on notice of these claims from the start of the proceedings. Ms. Sanchez denied receiving a ten-day notice of termination dated June 12, 2014, and denied that a customer service representative advised her on June 20, 2014, that PPL had issued another ten-day notice on June 12, 2014. Despite these allegations, the ALJ noted, PPL failed to produce a witness who could testify about the alleged termination notice sent to the Complainant on June 12, 2014, and failed to produce evidence that it conspicuously posted a written termination notice as required by 52 Pa. Code § 56.93(c). I.D. at 10.

The ALJ concluded that the Respondent’s evidence related to termination was simple hearsay and lacked sufficient weight to overcome the Complainant’s clear assertion that she never received a termination notice. Additionally, the ALJ credited Ms. Sanchez’s testimony about speaking with a PPL employee who admitted that no termination notice was issued by the Respondent in June 2014. The ALJ considered the testimony of PPL’s witness about the contents of the business records to be credible, but determined that the PPL witness could not speak definitively as to the contents of any correspondence. *Id.* at 11.

The ALJ believed that PPL should have provided a copy of the alleged termination letter in order to overcome the hearsay issue. Although the ALJ admitted PPL’s business records because the Complainant did not contest them, the ALJ explained that the records cannot form the basis of a finding of fact unless supported by other non-hearsay evidence. *Id.* (citing in part to *Walker v. Unemployment Compensation Bd. of Rev.*, 367 A.2d 355 (Pa. Cmwlth. 1976) (*Walker*)). Determining that PPL’s testimonial evidence could not substantiate what correspondence was issued, the ALJ concluded that the Respondent did not rebut Ms. Sanchez’s credible evidence of never receiving the termination notice dated June 12, 2014. I.D. at 11.

The ALJ reasoned that substantial evidence exists to prove that PPL did not provide reasonable and adequate service by virtue of its failure to prove that the termination notice dated June 12, 2014, was provided to the Complainant. Furthermore, the ALJ found that the Respondent provided unreasonable and inadequate service by terminating the service on July 15, 2014, despite receiving payment from Ms. Sanchez on June 20, 2014. Finally, the ALJ concluded that PPL provided unreasonable and inadequate service by terminating service on July 15, 2014, without providing written notification after the Respondent did not speak with an individual at the service address in the days immediately preceding the termination. *Id.* at 11-12.

Next, the ALJ addressed the Complainant’s request to be reimbursed for the value of the perishable food lost when her electric service was terminated. The ALJ denied this part of the Complaint citing the Commission’s lack of jurisdiction related to claims for civil damages. *Id.* at 12.

The ALJ then engaged in an analysis of the Commission’s Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation or Statute is appropriate. I.D. at 13-15. Upon examination of all of the factors, the ALJ determined that PPL’s actions in failing to properly credit Ms. Sanchez for her timely payment on June 20, 2014, and to properly terminate electric service due to non-payment, were serious and warranted a $2,000 civil penalty. *Id*. at 15.

**Exceptions**

In its first Exception, PPL objects to the finding that it failed to provide reasonable and adequate service in its termination of the Complainant’s service for non-payment. The Respondent argues that there was ample evidence of the Complainant receiving the termination notice dated June 12, 2014, which contained a shut off date of June 24, 2014. PPL asserts that after mailing the shut off notice, it attempted to contact Ms. Sanchez by telephone on June 18, 2014, and June 19, 2014. According to PPL, the Complainant performed an automated system account inquiry on June 20, 2014. Also on June 20, 2014, Ms. Sanchez spoke with a PPL customer service representative stating that she mailed a check on June 3, 2014. The Respondent proffers that its customer contact record exhibit, which was accepted into evidence, documented discussions with Ms. Sanchez in which the subject and consequences of service shut-off were mentioned but that the Complainant declined to further discuss termination. These customer contacts, PPL contends, lead to the conclusion that Ms. Sanchez was provided notice of service termination. Exc. at 4-5.

In addition, PPL states that, at the time it mailed the shut off notice, the Complainant’s total account balance was $3,946.21. In support, the Respondent asserts that it had offered Complainant a payment arrangement in April 2014, but that Ms. Sanchez could not agree to it. According to PPL, the Complainant had no active payment arrangement in place and PPL’s bill issued on May 16, 2014, with the prior arrearage and a monthly bill charge of $227, brought the total balance to $3,946.21. PPL argues that the May 16, 2014, bill for this total balance was due on or before June 6, 2014. The Respondent explains that it normally grants a five-day grace period, which would have extended the payment date to June 12, 2014. However, Ms. Sanchez did not pay her bill by the required due date of June 12, 2014. PPL also asserts that the Complainant instead made a payment of $263.36, less than the total account balance, which was processed by PPL on June 20, 2014. Regarding the Complainant’s allegation that she mailed the check to PPL’s Pennsylvania address and was delayed because of the requirement to remit payments to Kentucky, PPL argues that there is no evidence that it would take two weeks for mail to travel from Pennsylvania to Kentucky. *Id.* at 5-6.

In summary, PPL argues that it complied with the ten-day written notice provision and the telephone notifications prior to terminating the Complainant’s electric service. Additionally, the Respondent asserts that Ms. Sanchez did not pay her entire account balance and, thus, PPL properly terminated service on July 15, 2014. *Id.* at 6.

In its second Exception, PPL contends that no civil penalty, or alternatively a lower civil penalty, should have been imposed. PPL objects to the ALJ’s emphasis on PPL’s pursuit of termination in spite of the fact that Ms. Sanchez made a payment of less than her total account balance on June 20, 2014. PPL contends that the Complainant needed to pay her entire balance or at least should have contacted the Respondent to establish another payment arrangement. According to the Respondent, nothing permitted Ms. Sanchez from avoiding termination by simply paying one monthly payment. *Id.* at 7-8.

Moreover, PPL argues that there was no evidence that the Respondent had posted and processed the Complainant’s partial payment at the time of Ms. Sanchez’s call on June 20, 2014. Instead, PPL proffers that the testimony of its witness supports a finding that the Respondent had offered to help the Complainant locate the missing payment. *Id.* at 8.

In further support of its second Exception, PPL objects to the ALJ’s conclusion that the Respondent’s conduct was intentional and not negligent. According to PPL, there is no evidence in the record to demonstrate that the Respondent intentionally violated Pennsylvania law. In contrast, PPL asserts that it provided the required notices of termination and when the Complainant failed to make the necessary payment it properly terminated the electric service. PPL also argues that there is no evidence that it had posted the Complainant’s partial payment at the time of Ms. Sanchez’s call to PPL. Therefore, the Respondent claims that it did not intentionally disregard this payment. *Id.* at 8-9.

Additionally, PPL believes that the amount of the fine appears to be improperly based on a perceived delay in restoring power. The Respondent argues that the evidence shows that the service was terminated on July 15, 2014; payment was received by check on Friday, July 18, 2014; and power was restored on Monday, July 21, 2014. PPL concludes that without any evidence of record to demonstrate that PPL intentionally lied to Ms. Sanchez, the ALJ erred by concluding that the Respondent’s actions were intentional. At most, PPL asserts, miscommunication occurred and, to the extent that the Commission determines that a violation of the termination rights occurred, the fine should be reduced. *Id.* at 9.

**Disposition**

Upon review of PPL’s first Exception related to the allegations of failure to provide reasonable and adequate service, we shall grant the Exception, in part, deny it, in part, and modify the ALJ’s Initial Decision accordingly.

Preliminarily, we note that the Complainant did not dispute that she owes the outstanding balance for her electric service. Tr. at 82. Moreover, PPL has established that there were no medical certifications or active payment arrangements on Ms. Sanchez’s account and that the full amount of her arrearage was due and payable to the Respondent. Tr. at 48; PPL Exh. 2. Thus, PPL was within its authority to proceed with the termination process for failure to pay an undisputed delinquent account pursuant to Section 1406(a) of the Code despite the fact the Complainant later made partial payments toward her arrearage.

First, we shall address the ALJ’s finding that the Respondent failed to produce a witness to testify about the ten-day termination letter which PPL asserts was issued on June 12, 2014, and failed to introduce a copy of the termination letter into evidence. We shall also review the ALJ’s determination that PPL’s evidence related to the issuance of this termination letter was simple hearsay.

As an administrative agency, the Commission follows the *Walker* rule, which provides that hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection, will be given its natural probative effect and may support a finding of an agency if it is corroborated by any competent evidence in the record. A finding of fact based solely on hearsay will not stand. *Walker*, 367 A.2d at 370.

The business records exception to the hearsay rule is commonly used in consumer complaint proceedings and only requires a copy of a business record and its appropriate authentication by a witness qualified to provide testimony on the subject matter.

**(6) Records of a Regularly Conducted Activity.** A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if,

(A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a “business”, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with [Rule 902(11) or (12)](https://a.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1015610&cite=PASTREVR902&originatingDoc=NF8CCD5E04FCB11DA9C5DC44CDCEA6C7D&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) or with a statute permitting certification; and

(E) neither the source of information nor other circumstances indicate a lack of trustworthiness.

Pa. R. Evid. 803(6).[[2]](#footnote-2)

Authentication of business records requires that the submitting party satisfy the requirements of the Act, establishing the authenticating witness as the custodian or qualified witness who can testify to the record’s identity and preparation, and whether it was made in the regular course of business at or near the time of the act, condition or event. 42 Pa. C.S. § 6108. It is not essential under the Act to produce either the person who made the entries or the custodian of the record at the time the entries were made, and the law does not require that the witness qualifying business records even have a personal knowledge of the facts reported in the business records, as long as the authenticating witness can provide sufficient information relating to the preparation and maintenance of the records to justify the presumption of trustworthiness of the business records of a company*. Boyle v. Steiman*, 631 A.2d 1025, 1032 (Pa. Super. 1993), *appeal denied*, 538 Pa. 663, 649 A.2d 666.

PPL presented the testimony of Tammy Nalesnik, a customer service representative, who testified about the Complainant’s account activity statement and account contact history. Ms. Sanchez did not contest PPL’s witness testimony and the account exhibits were admitted into evidence. Additionally, the ALJ explained that Ms. Nalesnik presented credible testimony concerning the Respondent’s business records. However, the ALJ stated that Ms. Nalesnik was unable to provide any testimony outside the limitations of the business records and could not substantiate what correspondence was issued. I.D. at 11.

In her testimony, however, Ms. Nalesnik explained that a PPL representative reviewed the Complainant’s account on June 12, 2014, and determined that there were no medical certifications on the account and no active payment arrangements. Ms. Nalesnik also explained that PPL’s records document that it generated and issued a ten-day termination notice on June 12, 2014, to the Complainant which indicated a shutoff date of June 24, 2014. Tr. at 48-49; PPL Exh. 2 at 2. Although PPL did not produce a copy of the ten-day termination letter, its witness testified credibly that PPL’s records documented the issuance of the ten-day letter on June 12, 2014.

We find that Ms. Nalesnik’s testimony related to the issuance of the termination letter falls within the business records exception to the hearsay rule. Thus, we disagree with the ALJ’s findings that the evidence presented by PPL related to the termination letter was simple hearsay. With respect to the Complainant’s testimony that she did not receive the termination letter, we conclude that PPL presented sufficient evidence of at least co-equal weight that the letter was issued on June 12, 2014. Therefore, we find that the Complainant has not satisfied her burden of proof that PPL failed to issue a ten-day termination notice pursuant to Section 1406(b)(1)(i) of the Code, 66 Pa. C.S. § 1406(b)(1)(i).

Next, we shall address the ALJ’s finding that PPL did not provide reasonable and adequate service when it failed to conspicuously post a written termination notice at the residence pursuant to 52 Pa. Code § 56.93(c). I.D. at 10. Section 56.93 of our Regulations, pertaining to personal contact, provides in pertinent part:

(a) Except when authorized under § 56.71, § 56.72 or § 56.98 (relating to interruption of service; discontinuance of service; and immediate termination for unauthorized use, fraud, tampering or tariff violations), a public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person or by telephone, to provide notice of the proposed termination at least 3 days prior to the scheduled termination. If personal contact by one method is not possible, the public utility is obligated to attempt the other method.

(b) Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.

(c) If contact is attempted in person by a home visit, only one attempt is required. The public utility shall conspicuously post a written termination notice at the residence if it is unsuccessful in attempting to personally contact a responsible adult occupant during the home visit.

52 Pa. Code § 56.93.

PPL presented sufficient evidence that it made two three-day termination calls to the service address on June 18, 2014, and June 19, 2014, pursuant to 66 Pa. C.S.

§ 1406(b)(1)(ii). Tr. at 52. Although the Complainant alleged that she did not receive these phone calls, we note that Ms. Sanchez contacted PPL on June 20, 2014, in close proximity to these calls. Nonetheless, PPL was not required to show that the Complainant actually received the three-day calls but that the Respondent attempted the calls as required in 66 Pa. C.S. § 1406(b)(i)(ii) or 52 Pa. Code § 56.93(b). Here, PPL fulfilled its personal contact obligation by making the three-day personal contact with the Complainant and was not required to also post the conspicuous notice pursuant to 52 Pa. Code § 56.93(c).

In addition to the three-day notice provisions, however, Section 1406(b)(1)(iv) of the Code requires an added attempt at personal contact at the time of termination: “After complying with paragraphs (ii) [pertaining to three-day notice] and (iii) [pertaining to winter terminations], the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.” 66 Pa. Code § 1406(b)(1)(iv). Here, there is no indication in the record that PPL attempted to make personal contact with the Complainant or a responsible adult at the time of termination on July 15, 2015. Rather, it appears that PPL simply relied on its prior three-day notice calls on June 18th and 19th before terminating service on July 15, 2014. Tr. at 52. Moreover, Ms. Sanchez argued that the termination of her service on July 15, 2014, came as a shock and that she had no idea that PPL was going to shut off her service. Tr. at 82.

According to the record, the Complainant called PPL on June 20, 2014, to inform the Respondent that she had mailed a payment on June 5, 2014. Tr. at 61.[[3]](#footnote-3) Additionally, Ms. Sanchez made a payment of $263.36 on July 14, 2014, but PPL did not post it until July 18, 2014. PPL Exh. 1. Furthermore, from June 2014 to approximately December 2014, PPL required ratepayers to mail payments to its payment center in Kentucky instead of mailing payments to Pennsylvania. Ms. Sanchez testified that she sent her June 2014 payment to PPL’s Pennsylvania center rather than to Kentucky and informed PPL about this. Tr. at 11-12, 82. In light of Ms. Sanchez’s attempts at making payments on her outstanding account, albeit in amounts less than her outstanding balance, it is troubling that PPL did not appear to make any additional personal contact with Ms. Sanchez at the time her service was terminated on July 15, 2014. Under the circumstances of this case, an additional attempt at personal contact with the Complainant might have avoided the extreme measure of termination. Accordingly, we find that the Respondent failed to provide reasonable and adequate service by not providing additional personal contact at the time of termination pursuant to Section 1406(b)(1)(iv) of the Code.

Next, we shall consider the ALJ’s finding that PPL forced the Complainant to wait from Friday, July 18, 2014, until Tuesday, July 22, 2014, before resuming service after PPL received the requested payment on July 18, 2014. Section 56.191 of our Regulations, 52 Pa. Code § 56.191, addresses the payment of fees and the timing for restoration of service following termination. It provides in pertinent part that for an erroneous termination of a customer’s service a public utility shall reconnect service within twenty-four hours. *Id.* at § 56.191(b)(1). However, for a proper termination of a customer’s account occurring between April 1st and November 30th a public utility shall reconnect service within three calendar days upon satisfaction of any reconnection fees specified in the utility’s tariff. *Id.* at §§ 56.191(a) and (b)(1).

As discussed above, the Complainant was uncertain about the exact date of her service restoration. Tr. at 14-15. However, PPL’s witness clearly testified that service was restored on Monday, July 21, 2014. *Id.* at 52-53. Thus, a finding that the service was not restored until Tuesday, July 22, 2014, is not supported by substantial evidence in the record. Further, at the time of service termination there was no finding or determination that PPL acted erroneously in terminating Ms. Sanchez’s service on July 15, 2014.[[4]](#footnote-4) Here, the record indicates that the Respondent received Ms. Sanchez’s reconnection fee on Friday, July 18, 2014, and reconnected the Complainant’s service within three calendar days on Monday, July 21, 2014. Therefore, there is no basis to find that the Respondent provided inadequate or unreasonable service related to the reconnection of Ms. Sanchez’s service.

Upon review of PPL’s second Exception related to imposition of a civil penalty, we shall grant the Exception, in part, deny it, in part, and modify the ALJ’s Initial Decision accordingly.

Having determined that PPL violated Section 1406(b)(1)(iv) of the Code with respect to the provision of additional personal contact at the time of termination, we must next determine if a civil penalty should be imposed for this violation under the Commission’s Policy Statement at 52 Pa. Code § 69.1201. We find that the record contains sufficient evidence regarding these ten factors to permit us to determine that a civil penalty of $500 is appropriate.

The first factor to consider is whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). “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.” *Id*. While PPL did not offer an explanation for its actions, there is no evidence supporting a finding that the Respondent’s failure to attempt additional contact at the time of termination was the result of willful fraud or misrepresentation or other egregious conduct on the Company’s part. As such, this factor supports a lower penalty.

The second factor is whether the resulting consequences of the conduct were of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* In this case, the Complainant’s electric service was terminated on July 15, 2014, and the loss of service resulted in the spoiling of perishable food. Under the circumstances, we find that the termination of the Complainant’s service was an extreme measure. We take seriously any conduct that results in termination of a customer’s utility service and, accordingly, conclude that a higher penalty is warranted when considering this factor.

The third factor is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “When conduct has been deemed intentional, the conduct may result in a higher penalty.” *Id.* There is no evidence to indicate that the Company’s actions in this instance were intentional. Therefore, we conclude that this factor warrants the imposition of a lower penalty.

The fourth factor is 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. 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. 52 Pa. Code § 69.1201(c)(4). Based on our review of the record, there is no indication that the Company has made efforts to modify its internal practices and procedures to address the conduct or to prevent similar occurrences in the future. Thus, this factor warrants the imposition of a higher penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In this case, the Complainant was the only customer impacted by PPL’s actions.

The sixth factor is the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). “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.” *Id.* There is little record evidence demonstrating that PPL has a poor compliance history. Additionally, we have reviewed the Commission’s records. Considering the size of the Company, and the relatively limited number of recent complaints against it that have been sustained, we believe this factor supports a lower penalty.

The seventh factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). “Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.” *Id.* This case was fully litigated, but there is no indication of bad faith or active concealment of violations.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The ninth factor is past Commission decisions in similar situations, 52 Pa. Code § 69.1201(c)(9), and the tenth factor is other relevant factors. 52 Pa. Code § 69.1201(c)(10).

Given the nature of the allegations in this case, as well as consideration of all of the above factors taken collectively, we find that a civil penalty of $500 is warranted and appropriate for the failure to attempt personal contact pursuant to 66 Pa. C.S. § 1406(b)(1)(iv). We find that this amount will be sufficient to deter future violations and is consistent with our prior decisions as well as the Code.

**Conclusion**

Based on our review of the record and the applicable law, we shall grant PPL’s Exceptions, in part, deny them, 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 November 16, 2015, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Katrina L. Dunderdale, issued October 26, 2015, is modified, consistent with this Opinion and Order.

3. That the Complaint of Ruth Sanchez is dismissed in part and sustained in part, consistent with this Opinion and Order.

4. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of receipt of the Commission’s final Opinion and Order, PPL Electric Utilities Corporation shall pay a civil penalty in the amount of $500. Said certified check or money order shall be made payable to “Commonwealth of Pennsylvania” and sent to:

Secretary

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA 17105-3265

5. That a copy of this Opinion and Order be served upon the Financial and Assessment Chief, Office of Administrative Services.

6. That the Secretary’s Bureau shall mark this proceeding closed upon payment of the penalty.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 21, 2016

ORDER ENTERED: July 21, 2016

1. The Complainant testified that her electric service was out for a whole week. Inquiring about the exact date of service restoration, the ALJ asked whether service was restored on July 22, 2014. In response, the Complainant stated: “Yeah, somewhere around that date. Yes.” Tr. at 14-15. However, PPL’s witness testified that service was restored on Monday, July 21, 2014. *Id.* at 52-53. [↑](#footnote-ref-1)
2. The "business records" exception to the hearsay rule is further defined in the Uniform Business Records as Evidence Act (Act), 42 Pa. C.S. § 6108. [↑](#footnote-ref-2)
3. On June 20, 2014, PPL credited the Complainant’s account for a payment of $263.36. PPL Exh. 1. [↑](#footnote-ref-3)
4. Although we conclude in this Opinion and Order that PPL violated 66 Pa. C.S. § 1406(1)(iv), there was no Commission determination that PPL conducted an erroneous termination at the time it terminated service on July 15, 2014. Further, the General Assembly did not specify what makes a termination “erroneous.” *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; General Review of Regulations*, Docket No. L-00060182 (Order entered June 13, 2011), Attachment One at 176 (*Rulemaking Order*). However, we explained in the *Rulemaking Order* that if “a consumer has paid the amount of money needed to avoid the termination of service then the grounds for the termination have been removed, making a termination of service in such an instance erroneous.” *Id.* at 177. Here, as noted above, the Complainant made only partial payments toward her entire arrearage that was due and payable and the grounds for her termination were not removed. Thus, there was no erroneous termination under the circumstances of this case. [↑](#footnote-ref-4)