**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held August 11, 2016 |
| Commissioners Present:Gladys M. Brown, ChairmanAndrew G. Place, Vice ChairmanJohn F. Coleman, Jr.Robert F. PowelsonDavid W. Sweet |  |
| Frank Rezzetano | C-2015-2462441 |
| v. |  |
| Duquesne Light Company  |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Rescission and Amendment (Petition) of Frank Rezzetano (Complainant or Mr. Rezzetano) filed on January 26, 2016, concerning our Final Order entered on December 28, 2015 (*December 2015 Final Order*), which adopted the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Katrina L. Dunderdale issued on November 23, 2015, in the above-captioned proceeding. An Answer to the Petition (Answer) was filed by Duquesne Light Company (Duquesne or Company) on February 11, 2016.[[1]](#footnote-2) For the reasons stated below, we shall deny the Complainant’s Petition.

**History of the Proceeding**

 On January 7, 2015, the Complainant filed a Formal Complaint (Complaint) against Duquesne alleging that Duquesne threatened to terminate or had already terminated his electric service and that there were incorrect charges on his bills.[[2]](#footnote-3) In the Complainant, the Complainant accused Duquesne of discrimination for its refusal to provide electric service to his apartments. The Complainant did not request any specific relief.[[3]](#footnote-4) Complaint at 2-3.

 On February 5, 2015, Duquesne filed an Answer in which it admitted and denied certain material allegations contained in the Complaint.[[4]](#footnote-5) Specifically, Duquesne denied the Complainant’s alleged discrimination by the Company and the Complainant’s averment that there were incorrect charges on his bills. Answer at 1-4.

On March 11, 2015, the Commission issued a Telephonic Hearing Notice that scheduled an initial telephonic hearing for this matter for May 4, 2015. On April 29, 2015, the Complainant requested a continuance of the hearing due to a medical condition. The Complainant also requested that the telephonic hearing be rescheduled to be held in person in July 2015. On April 30, 2015, the Commission granted the Complainant’s request and the in-person hearing was rescheduled for July 7, 2015.

On July 7, 2015, a hearing was held in this matter. The Complainant appeared *pro se* and presented four exhibits including a written statement (Complainant Exhibits 1 through 4) that were admitted into the record. Duquesne was represented by counsel, who presented the testimony of one witness and offered five exhibits (Duquesne Exhibits 1, 2, 3, 4 and 12), which were admitted into the record. Due to time limitations, the proceeding on July 7, 2015, was continued until July 20, 2015, at which time the Complainant and Duquesne were present. Duquesne was again represented by counsel, who presented the testimonies of two additional witnesses and offered an additional nine exhibits (Duquesne Exhibits 14 through 20, 23 and 24), which were admitted into the record. The record in this case contains two transcripts: (1) a ninety-six page transcript and nine exhibits for the July 7, 2015 hearing (July 7, 2015 Hearing Transcripts or July 7 Tr.); and (2) a ninety-one page transcript and nine exhibits for the July 20, 2015 hearing (July 20, 2015 Hearing Transcripts or July 20 Tr.). The record was closed on August 26, 2015.

**Discussion**

 **A. Nature of Filing**

We begin by considering the nature of the Complainant’s filing, because the analysis to be applied depends on the type of filing before us. As noted above, no parties filed timely Exceptions to the ALJ’s Initial Decision by the required due date of December 14, 2015. Therefore, in accordance with Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), the decision of the ALJ became final by Order entered December 28, 2015, without further Commission action*.* Nevertheless, on December 31, 2015, the Complainant filed a request for an extension of time to file Exceptions to the Initial Decision. On January 26, 2016, Duquesne filed an Answer opposing the Complainant’s request. Also, on January 26, 2016, the Complainant filed what he intended to be “Exceptions” to the Initial Decision. We note that the Exceptions were filed after the date that the Initial Decision became final and beyond the fifteen-day deadline to file a petition for reconsideration. However, because the Complainant is appearing *pro se,* we shall exercise our discretion, pursuant to Section 5.572(d) of our Regulations, 52 Pa. Code § 5.572(d), and consider the Complainant’s “Exceptions” as a petition for rescission and amendment of the Commission’s *December 2015 Final Order* (Petition).[[5]](#footnote-6) Duquesne filed an Answer to the Petition on February 11, 2016.

**B. Legal Standards**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file:///C%3A%5Cresearch%5CbuttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C%3A%5Cresearch%5CbuttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings as well as rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. Normally, we expect petitioners to raise challenges in a petition for reconsideration within the fifteen-day time limit established by Section 5.572(c). 52 Pa. Code § 5.572(c). The fifteen-day time limit provides a party with sufficient time to review our orders and bring any perceived factual discrepancies to our attention. Further, it provides a necessary measure of certainty to the parties involved, allowing for finality in the administrative process. Rescission, in contrast, should be utilized by petitioners only if circumstances warrant special relief. *Feleccia v. PPL Electric Utilities Corp., et al.,* Docket No. C-20016210 (Order entered March 7, 2003) at 2.

Furthermore, Section 703(g) of the Code provides us with the discretionary authority to rescind or amend our orders. 66 Pa. C.S. § 703(g). However, a petition to modify or rescind a final Commission order may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Additionally, Section 1501 of the Code, 66 Pa. C.S. § 1501, requires all public utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make all repairs, changes, improvements, etc., to its service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501.

**ALJ’s Initial Decision**

 ALJ Dunderdale made thirty-three Findings of Fact and reached two Conclusions of Law. I.D. at 3-7, 13. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

 In discussing this case, the ALJ addressed two issues raised by the Complainant at the hearing: (1) Duquesne’s misapplication of the Complainant’s check payments; and (2) incorrect billing statements and high bills for the Complainant’s rental property at 457 Sapphire Way. I.D. at 7-14.

Regarding the first issue, the Complainant alleged that on two separate occasions, Duquesne failed to properly credit two check payments he made toward several accounts he has with the Company.[[6]](#footnote-7) The ALJ, however, explained that the record evidence showed the Complainant’s claim occurred only once and was immediately addressed by Duquesne when the Complainant called to complain. In that instance, the ALJ explained that the February 2014 Checkdid not provide clear instructions on how the Complainant wanted the check payment disbursed among the several accounts he had with Duquesne. The ALJ noted that although the Complainant wrote the account numbers and the dollar amounts on the back of the check, he failed to provide an itemization of how he wanted the funds applied on the payment stubs. According to the ALJ, this is particularly important because Duquesne’s automated payment processing system requires payment disbursements for multiple accounts to be clearly indicated on the payment stubs for efficient processing, which is beneficial to the Company and its customers including the Complainant.[[7]](#footnote-8) The ALJ, therefore, concluded that Duquesne correctly handled the February 2014 Checkbecause the Complainant did not indicate on the payment stubs how he wanted the funds applied.[[8]](#footnote-9) I.D. at 11. However, with regard to the April 2014 check, the ALJ concluded that Duquesne failed to apply and credit the proper funds as directed by the Complainant. The ALJ reiterated that Duquesne immediately addressed the Complainant’s concerns regarding both checks when he called to complain. *Id.*

With regard to the second issue concerning the Complainant’s allegation of incorrect billing statements and high bills for his rental property at 457 Sapphire Way, the Complainant contended that on December 5, 2013, he received a $170.80 electric bill from Duquesne for 457 Sapphire Way, which he claimed he had winterized on September 30, 2013, and turned off service at the electric panel. The Complainant intended to leave the unit vacant for the winter season but never contacted Duquesne to terminate service to that rental unit because he wanted to avoid paying termination fees.[[9]](#footnote-10) The Complainant asserted that when he called Duquesne to complain about the bill he received for the vacant unit, Duquesne told him that the bill was accurate and that he was responsible for paying the bill because the billing statement was in his name. I.D. at 6, 9 and 12.

In analyzing this issue, the ALJ explained that although the Complainant may have made an offhanded remark that the apartment was vacant, the primary nature of his calls to Duquesne were mostly about how he thought Duquesne mishandled his payments on various accounts. The ALJ questioned the Complainant’s claim because this issue was never raised in the Complaint and was only brought up for the first time during the initial hearing. The ALJ posited that while the Complainant may have made his case that the billing statements were inaccurate because Duquesne failed to properly credit his payments to his accounts, he never made it clear to Duquesne that he thought the bills were incorrect because he thought they were too high, given that the apartment was vacant. The ALJ stated that the Complainant failed to prove that Duquesne should have conducted a high bill investigation at 457 Sapphire Way. *Id.* at 12.

In light of the above reasons, the ALJ denied the Complaint because the Complainant was not able to satisfy his burden of proving that Duquesne failed to provide reasonable customer service in the way it handled the Complainant’s checks in applying and crediting funds to the Complainant’s various accounts, and in sending incorrect billing statements. In addition, the ALJ concluded that the Complainant did not satisfy his burden of proving his allegation that Duquesne failed to conduct a high bill investigation at 457 Sapphire Way because the Complainant never made it clear to Duquesne that the reason he thought the bills were incorrect was because they were too high. *Id.* at 12-14.

**Petition for Rescission and Amendment**

In his Petition, the Complainant first reiterates his argument that on two different occasions, Duquesne misapplied payments to his accounts from his February 2015 and April 2015 Checks. The Complainant also disagrees with the ALJ’s Initial Decision because he believes that Duquesne distorted the evidence regarding the checks, which he believes is illegal. *Id.* at 2-3.

With regard to the ALJ’s conclusion that the Complainant never requested a high bill investigation during his phone calls with the Company, the Complainant disagrees and claims that on several occasions during his phone calls, he did request a high bill investigation for 457 Sapphire Way but Duquesne refused to honor his request. As such, the Complainant is of the opinion that Duquesne was negligent when it refused to conduct a high bill investigation for 457 Sapphire Way and should be held responsible for the high bills.[[10]](#footnote-11) Petition at 1-2.

Lastly, the Complainant disputes the testimonies of Duquesne’s witnesses as hearsay. The Complainant contends that Duquesne’s witnesses were not personally familiar with the case and that their testimonies therefore were not accurate or legitimate because they were based only on company records. The Complainant argues that if the records were wrong, then the witnesses also were wrong. *Id.* at 3.

**Answer to Petition**

 In its Answer to the Petition, Duquesne first contends that because the Complainant filed the Petition prior to when the Commission ruled on his request for extension of time to file Exceptions, the Petition is improper, untimely and should be rejected *ab initio*.[[11]](#footnote-12) Answer to Petition at 8.

 Next, Duquesne responds to the Complainant’s Petition in which he reiterated that Duquesne misapplied the payments that were made to his accounts on two separate occasions. Even though Duquesne did not file an exception to the ALJ’s Initial Decision on this matter, Duquesne disagrees with the Complainant and the ALJ’s finding that it misapplied the Complainant’s payments two different times. Rather, Duquesne claims that the record is clear that it correctly applied payment from the April 2015 Checkas directed by the Complainant. However, Duquesne asserts that while it initially did not apply payment from the February 2015 check in accordance with the Complainant’s request, it immediately reallocated payments from the February 2015 Check after the Complainant called to complain. [[12]](#footnote-13) Accordingly, Duquesne asserts that ultimately, it properly applied payment to both checks in accordance with the Complainant’s desires, and thus, it provided reasonable service to the Complainant. *Id.* at 8-10, citing I.D. at 8 and11-12; July 7 Tr. at 78-82; Duquesne Exhs. 1, 2, 3, 4 and 12.

 Duquesne also avers that it properly billed Mr. Rezzetano for consumption that registered on his electric meter at 457 Sapphire Way. Although Mr. Rezzetano claimed the property was vacant and winterized between October 2013 and December 2013, Duquesne avers that its actual meter readings at the apartment indicated continued power consumption during the period in question. Duquesne cites to *Warren* for the proposition that the Complainant, as the ratepayer of record at that address, is responsible for the electricity consumed at the service address.[[13]](#footnote-14) Answer to Petition at 10‑11 (citing July 20 Tr. at 30; Duquesne Exhs. 4 and 14). Duquesne posits that the Complainant had ample opportunity to request a high bill investigation during his phone calls but failed to do so. Therefore, Duquesne asserts that as the ratepayer of record, the Complainant is responsible for payment of the actual consumption recorded at 457 Sapphire Way. Answer to Petition at 11-12 (citing Petition at 2); I.D. at 12; July 20 Tr. at 29-31, 34, 45, 48, 50, 54-55; Duquesne Exhs. 4, 14 and 20.

 With regard to the Complainant’s hearsay allegations, Duquesne asserts that the ALJ gave proper weight to its witnesses’ testimony. Answer to Petition at 12. Duquesne argues that its witnesses were familiar with the Complainant’s allegations and authenticated various business records that addressed the issues that were raised by the Complainant in the hearing. Duquesne further asserts that the testimonies of the witnesses were legal and permissible under applicable law and rules of evidence. Duquesne states that the “law does not require a witness qualifying business records [to] have personal knowledge of the facts reported in the business records.”[[14]](#footnote-15) According to Duquesne, the witness only must “provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness.”[[15]](#footnote-16) *Id.* at 12-14. Duquesne argues that the fact that the witnesses did not personally speak with the Complainant before he filed the Complaint or did not personally scan and process the Complainant’s checks, in no way discredits their testimonies. Duquesne further contends that because the testimonies of its witnesses were based on business records, they are not considered hearsay. *Id.* at 13-15.

Finally, Duquesne asserts that the invoice dated January 6, 2016, which the Complainant attached to the Petition, is extra-record evidence and should be rejected by the Commission.[[16]](#footnote-17) Duquesne avers that the invoice was prepared after the Commission issued its Final Order and should not be considered in the instant proceeding. Answer to Petition at 15. For all the aforementioned reasons, Duquesne requests that the Commission deny the Petition. *Id*.

**Disposition**

We find that the Complainant’s Petition fails to set forth any arguments that warrant special relief. Specifically, the Petition fails to raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559. Therefore, we shall decline to exercise our discretion to rescind our *December 2015 Final Order*. However, as discussed *infra*, we shall modify the ALJ’s Initial Decision consistent with the discussion herein.

Duquesne has requested that the Commission reject the Complainant’s Petition because it was filed after the deadline provided in the regulations but before the Commission acted to rule on the Complainant’s request for extension of time to file Exceptions. Notwithstanding Duquesne’s arguments, we have already established that because the Complainant is appearing *pro se,* we shall exercise our discretion and consider the Complainant’s “Exceptions” as a petition for rescission and amendment of the Commission’s final order.

With regard to the Complainant’s Petition disputing the ALJ’s conclusion that he failed to request a high bill investigation during his phone calls with the Company, we agree with the ALJ that the Complainant failed to satisfy his burden of proof with regard to his allegation that Duquesne ignored his request to conduct a high bill investigation.

In reaching this determination, we note that the Complainant is of the opinion that he should not have been charged for electric service at 457 Sapphire Way because it was vacant, completely winterized, and electric service was turned off at the electric panel. The Complainant also claims that upon receiving the high bill from Duquesne in December 2014, he requested a high bill investigation but Duquesne never honored his request. July 20 Tr. at 78-79. However, contrary to the Complainant’s claim, Duquesne testified that the Complainant never requested a high bill investigation during his phone calls. July 20 Tr. at 34. Furthermore, the record shows that the Complainant testified during the hearing that most of the calls he made to Duquesne were focused on the misapplied checks and not on a high bill investigation. July 7 Tr. at 57. As noted by the ALJ, the high bill investigation issue was not even mentioned until the hearing. As such, based on the record in this proceeding, we agree with the ALJ that while the Complainant may have made an offhanded remark about the unit being vacant and winterized, we are not convinced that he actually requested Duquesne to conduct a high bill investigation.

Additionally, Duquesne has indicated that it properly billed the Complainant for consumption at 457 Sapphire Waybased on actual meter readings. According to Duquesne, since the Complainant was the ratepayer of record during the period in question, he is responsible for payment of the bills.[[17]](#footnote-18) July 20 Tr. at 30; Duquesne Exhs. 4 and 14. We agree with Duquesne. Based on our review of the record, we note that other than the Complainant’s claim that the unit was vacant and winterized during the period in question; the Complainant has not presented any additional evidence to rebut Duquesne’s evidence.

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, the Complainant must show that Duquesne is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’ evidence must be more convincing, by even the smallest amount, than that presented by Duquesne. *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. *Mill v. Pa P.U.C.* 447 A.2d 1100 (Pa. Cmwlth. 1982). 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 customer shifts to Duquesne. If the evidence presented by Duquesne is of co‑equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of Duquesne. [*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).

Therefore, we note that while the Complainant presented evidence he believed was sufficient to satisfy his burden of proof in this case, the testimony put forward by Duquesne rebutted that of the Complainant. Consequently, because the evidence presented by Duquesne was of co‑equal value or “weight,” and the Complainant failed to provide additional evidence to rebut that of Duquesne, the Complainant failed to satisfy his burden of proof to demonstrate that Duquesne failed to conduct a high bill investigation upon his request or that Duquesne improperly billed him for usage at 457 Sapphire Way. As such, the request in the Petition for reconsideration of this issue is denied.

With regard to Duquesne’s handling of the February 2014 Check and the April 2014 Check, we agree with the ALJ’s conclusion that Duquesne correctly handled the February 2014 Check because the Complainant did not clearly demonstrate on the payment stubs how he wanted the funds disbursed.[[18]](#footnote-19) However, we disagree with the ALJ’s conclusion that Duquesne failed to properly handle the April 2014 Check*,* as directed by the Complainant. We note that based on the record, unlike the February 2014 Check,the Complainant included with the April 2014 Check, nine payment stubs that were appropriately annotated. The Complainant succinctly noted on the payment stubs, the amount to be applied to each of the nine accounts including the accounts for 4625 Liberty Ave and 457 Sapphire Way. July 7 Tr. at 83-84; Duquesne Exh. 2. The evidence indicates that on April 15, 2014, Duquesne applied $434.16 to the 4625 Liberty Aveaccount and $20.35 to the 457 Sapphire Way account, as directed by the Complainant on the payment stubs. July 7 Tr. at 84-87; Duquesne Exhs. 2, 3 and 4. The evidence also indicates that the ALJ acknowledged during the hearing that Duquesne appropriately disbursed payments from the April 2014 Check as instructed by the Complainant. July 7 Tr. at 93. Specifically, in addressing this issue during the hearing, the ALJ made the following remarks to the Complainant concerning the testimony of Duquesne’s witness regarding the April 2014 Check:

I will note that this witness testified that your accounts were handled correctly in April. It may have been another account. We are only looking at these two accounts. These two accounts, this witness just testified that what you wanted, what you wrote on the pay stub is what they actually credited to that account.

July 7 Tr. at 93.

Additionally, nothing on the record indicates that Duquesne failed to properly apply and credit payments from the April 2014 Check to the Complainant’s account. As shown in Duquesne’s exhibits, the Complainant sent payment stubs with the April 2014 Checkclearly specifying the payments he wanted to be allocated to his accounts and Duquesne duly complied with the Complainant’s directions. Duquesne Exhs. 2, 3 and 4. For this reason, we agree with Duquesne that although it reallocated payments from the February 2014 Check when the Complainant called to complain, there was no reason to do so on the April 2014 Check because Duquesne had properly applied payments from that check to the proper accounts as directed by the Complainant on each of the payment stubs that were attached to the to the check. Therefore, we shall modify the Initial Decision to reflect that the Company properly applied the April 2014 Check to the Complainant’s accounts.

With regard to the Complainant’s Petition that the testimonies of Duquesne’s witnesses are illegitimate and should be considered as hearsay, we disagree. We note that during the hearing, the Complainant objected to the testimony of one of Duquesne’s witnesses as hearsay. The ALJ, however, explained to the Complainant that the business records exception rule applied to the witness’ testimony. The following conversation highlights the ALJ’s explanation of the business records exception rule to the Complainant during the hearing:

***Complainant****:* I’m a little mixed-up here. This lady says she’s going to testify to the records. That’s hearsay. How do I know whether that is true or false? Who can I cross?

***ALJ Dunderale****:* Do you want to answer that question?

***Duquesne’s counsel****:* Yes. Ms. Mueller is going to be testifying to documents that have been admitted under the business records exception to the hearsay rule. They were authenticated at Day 1 of the hearing by Mr. Figore, which is a recognized exception to the hearsay rule. Furthermore, Ms. Mueller has testified that she has conducted an investigation into the complaint testified. She certainly can testify to what she reviewed during the course of her investigation.

***ALJ Dunderdale:*** Put into English, he just gave you the legal answer. The plain answer is there are exceptions to almost every rule, including the law. The exception to the rule about hearsay includes the ability of a company to provide an actual record. The record basically comes in, and it’s doing the testifying. A person brings that record in. In this case, it was Mr. Figore on the first day. He brought in these records. He said, yes, I looked in the record that we keep for you and on your properties, and I found this piece of paper…I happen to hold in my hand Duquesne Light 3…I found this record, this is where I found it, this is how I know that according to our records this is what happened. According to the law, the record comes in itself. The record is providing the testimony. It’s considered an exception to the hearsay rule. The exception is called the business record exception.

July 20 Tr. at 6-7.

We agree with Duquesne’s position that under Pennsylvania law, a business record is not considered hearsay if: (1) the record was made at or near the time the information was transmitted by someone with knowledge; (2) the record was kept in the ordinary course of business; (3) making the record was regular practice; (4) the qualifications are shown by a qualified witness; and (5) neither the source of information nor any other circumstances indicate a lack of trustworthiness. Answer to Petition at 13 (citing Pa. R.E. 803(6)); 42 Pa. C.S. § 6108. We also agree with Duquesne’s contention that with business records, the witness must only “provide sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness.” Answer to Petition at 13-14, citing (*Margaret Anthony* at \*5).

Duquesne also contended that similar to the instant proceeding, in *Gasparro*, PECO’s regulatory assessor offered as exhibits computer-generated records made in the normal course of business. According to Duquesne, in *Gasparro*, the ALJ rejected the exhibits because they were not offered by a records custodian, but the Commission reversed the ALJ’s decision after PECO filed exceptions, stating as follows:

Where it can be shown that the entries were made with sufficient contemporaneousness to assure accuracy and that they were made pursuant to the business practices and not influenced by the litigation in which they are being introduced, a sufficient indicia of reliability is provided to overcome their hearsay nature.

Answer to Petition at 14 (citing *Gasparro* at \*3).

Furthermore, the Commission acknowledged in *Gasparro* that:

Quite often different individuals have personal knowledge of the various phases of a transaction so that no one individual has knowledge of the entire transaction. In addition, the frequent turnover of personnel often makes it impossible to identify the employee – if it were only one – who took part in the transaction. Under these circumstances, to require an entrant to have personal knowledge of the event recorded, and to require proof of the identity of the recorder, would exclude almost all evidence concerning the activities of large business organizations – a result diametrically opposed to the purpose and the spirit of the Uniform Business Records as Evidence Act.

*Id.* (citing *Gasparro* at \*4).

In light of the aforementioned, we conclude that the testimonies of Duquesne’s witnesses as to the content of the business records entered into evidence qualify as an exception to the hearsay rule. Therefore, the Complainant’s Petition regarding this issue is denied.

With regard to the invoice attached to the Complainant’s Petition, we consider the information to be extra-record evidence, which we hereby decline to consider in reaching a disposition on this matter pursuant to Section 5.431 of our Regulations, 52 Pa. Code § 5.431. Furthermore, we do not believe the invoice provides any relevant information that warrants the alteration of our disposition in this matter.

**Conclusion**

In light of the foregoing discussion, we shall deny the Complainant’s Petition and modify the Initial Decision of ALJ Dunderdale to reflect that the Company properly applied the April 2014 Check to the Complainant’s accounts, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Rescission and Amendment of the Commission’s Final Order entered on December 28, 2015, at Docket No. C-2015-2462441, filed by Frank Rezzetano on January 26, 2016, is denied, consistent with this Opinion and Order.
2. That the ALJ’s Initial Decision is adopted as modified, consistent with this Opinion and Order.
3. That the proceeding at this docket be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 11, 2016

ORDER ENTERED: August 11, 2016

1. The Complainant labeled his filing as “Exceptions” to ALJ Dunderdale’s Initial Decision. However, as discussed *infra*, since these Exceptions were not timely filed and a Final Order adopting the Initial Decision had already been entered, we are treating the Complainant’s Exceptions as a petition for rescission and amendment of a Commission order and Duquesne’s “Replies to Exceptions” as an “Answer to Petition” or simply “Answer.” [↑](#footnote-ref-2)
2. The Complainant owns two multi-unit rental properties in Pittsburgh, Pennsylvania, that receive electric service from Duquesne. The first rental property is located at 4625 Liberty Avenue, Second Floor Apartment, Pittsburgh Pennsylvania (4625 Liberty Ave*)*, which the Complainant has owned for approximately thirty-four years. The second rental property is located at 457 Sapphire Way, Second Floor Apartment, Pittsburgh Pennsylvania *(*457 Sapphire Way), which the Complainant has owned for approximately fifteen years. July 7, 2015 Hearing Transcript (July 7 Tr*.*) at 10. [↑](#footnote-ref-3)
3. The Complainant, however, requested during the hearing that the Commission should order Duquesne to remove all negative remarks with the three United States Credit Bureaus and show that his account balances are zero for his two rental units. July 20, 2015 Hearing Transcript (July 20 Tr.) at 88-89. [↑](#footnote-ref-4)
4. According to Duquesne, the Complainant established service for both 4625 Liberty Ave and 457 Sapphire Way accounts in his name on October 4, 2013. Service was cancelled in Complainant’s name at 4625 Liberty Ave on April 25, 2014, when another customer established service in their name. However, service to 457 Sapphire Way was terminated on May 2, 2014, for nonpayment. Answer at 2; July 7 Tr. at 15, July 20 Tr. at 9, 29 and 57-58, Duquesne Exhs. 3 and 4. Duquesne further averred that it referred the Complainant’s outstanding balances for 4625 Liberty Ave and 457 Sapphire Way to a third-party collection agency pursuant to standard company collections procedures. Duquesne charged an outstanding balance of $310.25 to the collection agency on July 31, 2015, which the collection agency reported to the credit bureaus. Answerat 4; July 7 Tr. at 9-11; July 20 Tr. at 25, 28, 50-57; Duquesne Exh. 19. [↑](#footnote-ref-5)
5. Since we are considering the Complainant’s “Exceptions” as a petition for rescission and amendment of the Commission’s *December 2015 Final Order*, the Complainant’s request for an extension of time to file Exceptions to the Initial Decision, is therefore, denied as moot. [↑](#footnote-ref-6)
6. The Complainant made a payment through Check No. 5067 to Duquesne on February 2, 2014, for the sum of $500 (February 2014 Check). According to the Complainant, he indicated on the back of the February 2014 Check*,* by account numbers, that $150 should be credited toward the account at 457 Sapphire Way, while the remaining $350 should be applied to the account at 4625 Liberty Ave. July 7 Tr*.* at 28-29; Complainant Exh. 1; Duquesne Exh. 1. The Complainant also made payment through Check No. 5096 for the sum of $830.72 to Duquesne on April 8, 2014, (April 2014 Check). July 7 Tr. at 39-40; Complainant Exh. 2; Duquesne Exh. 2. On April 15, 2014. Duquesne applied $434.16 to the 4625 Liberty Ave account and $20.35 to the 457 Sapphire Way account, as directed by the Complainant on the payment stubs from his bill that he attached to the check. July 7 Tr. at 84-89, 93; Duquesne Exhs. 2, 3 and 4. [↑](#footnote-ref-7)
7. Duquesne utilizes a fully automated payment system for payments made by check in which an employee removes the payment stub and the check from the envelope and then lays the items down on a machine that scans the payment stub and the check. The machine “reads” only the front side of the payment stub and the check, noting for the computerized system important identifying information and the amount of payment made. July 7 Tr. at 62-66 and 89-93. [↑](#footnote-ref-8)
8. Duquesne averred that in accordance with company policy, it applied $436.72 to pay off the account at 457 Sapphire Way, and then applied the remaining balance of $63.28 toward the account at 4625 Liberty Ave,which had a balance of $340.75. July 7 Tr. at 31, 70, 75-79; Duquesne Exhs. 1, 3 and 4. [↑](#footnote-ref-9)
9. The Complainant re-leased 457 Sapphire Wayat the end of April 2014. I.D. at 12. [↑](#footnote-ref-10)
10. The Complainant attached to the Petition an invoice from Duquesne to the Complainant for 457 Sapphire Way that isdated January 6, 2016, showing that the Complainant’s final bill was $487.27, and his total outstanding balance was $808.56. [↑](#footnote-ref-11)
11. *See* 52 Pa. Code §§ 5.533(a) and 5.536(a). [↑](#footnote-ref-12)
12. Duquesne submits that it was acting in accordance with company policy when it paid off the Complainant’s first bill from the February 2015 Check and applied the remainder from that check to the Complainant’s second bill. Answer to Petition at 8-9 (citing July 7 Tr. at 78-82); Duquesne Exhs. 1, 2, 3, 4 and 12. [↑](#footnote-ref-13)
13. *See Warren v. Duquesne Light Co.* Docket No. C-2014-2445857, 2015 WL 3763782 (Pa. P.U.C. May 21, 2015) (*Warren).*  [↑](#footnote-ref-14)
14. *See Margaret Anthony v. PECO Energy Company, Docket* No. C-2014-2408057, 2014 WL 4374226 at \*5 (Pa. P.U.C. July 30, 2014) (*Margaret Anthony).*  [↑](#footnote-ref-15)
15. *See Robert P. Gasparro v. PECO Energy Company, Docket* No. C-00015482, 2002 WL 34560343 at \*5 (Pa. P.U.C. March 28, 2002)(*Gasparro*)*.*  [↑](#footnote-ref-16)
16. *See Dr. Hubert C. Huh v. PECO Energy Co.,* Docket No. F-2013-2386249, 2015 WL 302145 at \*6 (Pa. P.U.C. January 15, 2015); *Mary Jane Hodak v. Pennsylvania Electric Company,* Docket No. C-2011-2274277, 2013 WL 392700 at \*5 (Pa. P.U.C. January 24, 2013); *Amir Williams v. Verizon Pennsylvania, Inc.* Docket No. F-01790520, 2006 WL 6611457 at \*3-4 (Pa. P.U.C. July 20, 2006).  [↑](#footnote-ref-17)
17. Duquesne Exhibits 4 and 14 shows the meter readings and the associated billing amounts for usage at 457 Sapphire Way during the period in question. Duquesne Exhs. 4 and 14. [↑](#footnote-ref-18)
18. Although, the Complainant included two payment stubs from his billing statements with the February 2014 Check*,* he did not fill in the boxes to indicate how he wanted the funds allocated. July 7 Tr. at 29, July 20 Tr. at 52; Complainant Exh. 1; Duquesne Exh. 1. [↑](#footnote-ref-19)