

the Order approving their latest rate increase.”. The OOR invited both parties to supplement the record and directed the PUC to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On February 15, 2023, the PUC submitted a position statement arguing that it granted the Request and “has made all of the relevant records [the Requester] requested available....”

On February 16, 2023, the Requester submitted a position statement.²

LEGAL ANALYSIS

The PUC is a Commonwealth agency subject to the RTKL. 65 P.S. § 67.301. Records in the possession of a Commonwealth agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. *See* 65 P.S. § 67.305. As an agency subject to the RTKL, the PUC is required to demonstrate, “by a preponderance of the evidence,” that records are exempt from public access. 65 P.S. § 67.708(a)(1). Preponderance of the evidence has been defined as “such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence.” *Pa. State Troopers Ass’n v. Scolforo*, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting *Pa. Dep’t of Transp. v. Agric. Lands Condemnation Approval Bd.*, 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The PUC argues that it has made all responsive records available by providing a weblink and instructions on how to access the responsive records.³ Section 704(b) of the RTKL permits an agency to respond to a request for records “by notifying the requester that the record is available

² The issues raised in this submission do not fall within the jurisdiction of the OOR and appear to relate to, among other things, challenging the bill imposed by Duquesne Light Company. As the documentation does not relate to the issue underlying this appeal, it is not included as part of the record. *See* 65 P.S. § 67.1102(a)(2) (stating that “[t]he appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute”).

³ The PUC provided a link to its website, www.puc.pa.gov, and explained that the Requester had to click on “Document Search” and then type in the docket number. The PUC provided the docket number for the Duquesne Light Company (R-2021-3024750) and the Peoples Natural Gas Company, LLC (R-2022-3030661).

through publicly accessible electronic means[,]” 65 P.S. § 67.704(b)(1). Moreover, directing a requester to an internet website satisfies an agency’s obligation under Section 704 of the RTKL. *See Citizens for Pennsylvania’s Future v. Pa. Turnpike Comm’n*, OOR Dkt. AP 2015-0726, 2015 PA O.O.R.D. LEXIS 856. A review of the PUC’s website⁴ shows that the responsive documents are available by conducting a document search and searching for documents with the provided numbers. The Requester does not argue that his Request was denied in any way or that he is unable to access the records, but rather, appears to be challenging issues that are not properly before the OOR. Accordingly, the PUC met its burden under the RTKL. *See* 65 P.S. § 67.704(b)(1).

CONCLUSION

For the foregoing reasons, the appeal is **denied**, and the PUC is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.⁵ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: February 22, 2023

/s/ Lyle Hartranft

LYLE HARTRANFT, ESQ.
APPEALS OFFICER

⁴ *See* www.puc.pa.gov (last visited February 16, 2023).

⁵ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

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