

MURRAY E. BEVAN
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January 5, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: *Mayer Krain v. Choice Energy LLC*
C-2016-2581006

Dear Secretary Chiavetta:

This office represents Choice Energy, LLC (“Choice”). Enclosed please Exceptions to Administrative Law Judge Marta Guhl’s Initial Decision in the above-captioned matter. A copy has been served in accordance with the enclosed Certificate of Service.

Thank you for your consideration of this request. Please do not hesitate to contact me with any questions.

Respectfully submitted,



Murray E. Bevan

cc: Administrative Law Judge Marta Guhl (via electronic and regular mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mayer Krain :
 :
vs. :
 : **C-2016-2581006**
 :
Choice Energy, LLC :

**CHOICE ENERGY, LLC's EXCEPTIONS
TO INITIAL DECISION**

Choice Energy, LLC d/b/a 4Choice Energy ("Choice Energy," "Choice," or "Respondent"), by and through its counsel, submits its exceptions to Administrative Law Judge ("ALJ") Marta Guhl's Initial Decision. Choice Energy states as follows:

1. On December 18, 2017, ALJ Guhl filed an Initial Decision with the Public Utility Commission ("PUC" or "Commission") regarding Mayer Krain's ("Krain" or "Complainant") formal complaint against Choice Energy. Pursuant to 52 Pa. Code § 5.533, parties may file written exceptions to the Initial Decision with the Secretary of the Commission within twenty (20) days of the issuance of the Initial Decision.

2. Choice Energy files these exceptions in order to clarify the record for the Commission prior to the entry of a Final Order.

Exception 1: ALJ Guhl's Finding of Fact No. 5 that Complainant requested that he stop receiving telephone calls, and his home telephone number be removed from Respondent's call list

3. Choice Energy excepts to ALJ Guhl's finding on page 3 of the Initial Decision that "The Complainant requested that he stop receiving telephone calls, and his home telephone number be removed from the Respondent's call list." As indicated in the Answer filed by Choice (a document Complainant asserted, repeatedly, that he wanted in the record), Choice Energy placed Complainant's phone number on its internal do-not-call list on the first instance of such request which was on December 28, 2016 when it received Complainant's formal complaint from the PUC. In fact, Complainant testified that the last phone call he received from Choice Energy was on December 28, 2016. *See* Tr. 21, l. 2.

4. Choice Energy immediately complied with Complainant's request that his home phone number be removed from Choice's call list, which was also Complainant's sole requested remedy in his filed Complaint.

Exception 2: ALJ Guhl's Conclusion of Law No. 3 that Respondents failure to act when Complainant requested that the telephone calls stop and his name be placed on a do not call list is deemed intentional.

5. Choice Energy excepts to ALJ Guhl's conclusion of law on page 10 that "This was a litigated case. Choice's failure to act when Mr. Krain requested that the telephone calls stop and his name be placed on a do not call list is deemed intentional. The agent also failed to clearly identify itself and Choice and their relationship to electric distribution company. When an agent acting on behalf of Choice violates a Commission regulation, Choice is responsible. Such conduct is intentional and supports imposing a higher civil penalty."

This conclusion of law is facially and materially inconsistent with ALJ Guhl's finding of law No. 1, on page 9 of the Initial Decision, which states, "Choice's failure to comply with Mr. Krain's request and immediately stop telemarketing calls to his home telephone and place him on a do not call list is not a serious offense. It appears that it was more of an administrative or technical error, rather than willful fraud or misrepresentation on the part of the Respondent. As such, a lower civil penalty is warranted."

6. Choice Energy cannot have "intentionally" failed to place the Complainants number on its internal do-not-call list and also have simultaneously committed "an administrative or technical error, *rather than a willful fraud or misrepresentation on the part of the Respondent.*" (emphasis added). Choice Energy agrees with ALJ Guhl's first Conclusion of Law, and further points to the fact that it did put Complainant's number on its internal do-not-call list on December 28, 2016, as soon as it received Krain's Complaint.

7. Because Choice Energy's failure to place Krain's number on its internal do-not-call list prior to December 28, 2016 was, at worst, "an administrative or technical error," Choice Energy asserts that ALJ Guhl's finding of higher civil penalties is not warranted.

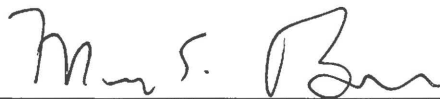
Exception 3: ALJ Guhl's Conclusion of Law No. 10 that Choice Energy was not properly recording the telephone calls to the Complainant.

8. Choice Energy excepts to ALJ Guhl's Conclusion of Law No. 10, on page 11 of the Initial Decision, which provides "With regard to the tenth factor, other relevant factors, this factor also supports a higher civil penalty. There is no evidence in the record that Choice was properly recording the telephone calls to the Complainant. There is nothing in the record to rebut Mr. Krain's assertions. Therefore, this also warrants a higher civil penalty."

Recording telemarketing calls was not part of the original complaint, answer, or presentation at the hearing. Complainant never requested recordings of his calls and never sought to present them as evidence. Imposing a higher penalty for an item that is irrelevant to Complainant's concerns, testimony, or evidence, is both unfair and unwarranted. Choice Energy asserts that ALJ Guhl's finding imposing a higher penalty is also unwarranted.

WHEREFORE, Choice Energy respectfully submits these Exceptions to the Public Utility Commission to be considered and incorporated into the Commission's Final Order.

Respectfully,



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Attorney for Choice Energy, LLC, d/b/a 4Choice
Energy

Dated: January 5, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

	X	
	:	
Mayer Krain,	:	
Petitioner	:	C-2016-2581006
	:	
v.	:	
	:	
Choice Energy, LLC	:	
Respondent	:	
	:	
	X	

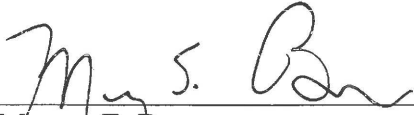
CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2018, a copy of the foregoing Exceptions has been service upon the persons listed below in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55.

Via Electronic and First Class Mail:

Mayer Krain
3650 Salina Road
Philadelphia, PA 19154
krain@verizon.net

Michael Guin
Stevens & Lee
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Murray E. Bevan

Date: January 5, 2018