

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joan Toohey	:	
	:	
Complainant,	:	
	:	Complaint Docket
v.	:	No: C-2019-3010114
	:	
North American Power and Gas, LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

To: Joan Toohey

TAKE NOTICE:

Pursuant to 52 Pa. Code §§ 5.61 & 5.101, you are hereby notified that a written answer to the Preliminary Objections of North American Power and Gas, LLC shall be filed within 10 days of the date of service of the Preliminary Objections. Your answer should be submitted to the Commission in accordance with 52 Pa. Code §§ 1.4 & 1.21, with a copy served on undersigned counsel.

Date: June 19, 2019


Joshua L. Belcher
Counsel for North American Power and Gas, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joan Toohey	:	
	:	
Complainant,	:	
	:	Complaint Docket
v.	:	No: C-2019-3010114
	:	
North American Power and Gas, LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS
OF NORTH AMERICAN POWER AND GAS, LLC**

Pursuant to 52 Pa. Code § 5.101(a)(1) and (4), Respondent North American Power and Gas, LLC (“NAPG”) files its preliminary objections to the formal complaint (“Complaint”) of Joan Toohey (“Complainant”) in the above-captioned matter. NAPG respectfully requests that the Commission dismiss the Complaint for lack of subject matter jurisdiction under § 5.101(a)(1) and for lack of legal sufficiency under § 5.101(a)(4), and in support thereof, NAPG states the following:

1. NAPG is licensed by the Commission as an electric generation supplier (“EGS”) to offer and supply electric generation services in Pennsylvania. NAPG’s license number is A-2010-2176743.

2. The Complaint alleges that Complainant was “slammed” by NAPG and charged a rate that Complainant did not agree to, which would be a violation of 52 Pa. Code Subchapter M (standards for changing a customer’s electricity generation supplier). (Complaint, ¶ 5.)

3. The Complaint appears to request that the Commission order NAPG to reimburse Complainant for an unspecified amount of past amounts charged. (Complaint, ¶ 5.)

I. Preliminary Objection Based upon Lack of Subject Matter Jurisdiction

4. The Commission's regulations at 52 Pa. Code § 57.177 governing customer dispute procedures clearly provide that a customer must file a dispute regarding Subchapter M within two billing cycles after they should reasonably have known of the change of EGS in order to avoid responsibility for EGS bills rendered during that period.

5. With respect to Complainant, and as determined by the Commission's own Bureau of Consumer Services in the underlying matter BCS No: 3647183, Complainant enrolled as a variable rate customer of NAPG in February 2011 (service starting approximately April 4, 2011). See Informal Complaint Decision, dated January 18, 2019, attached as Exhibit A and incorporated herein by reference.

6. Complainant, whose account with NAPG was closed on November 8, 2018, did not file an informal complaint or otherwise dispute her enrollment until August 28, 2018, or seven and one half years after she was enrolled as a customer with NAPG and well beyond the two billing cycles required under the regulations.

7. In sum, even if the Complainant's allegations were true (which NAPG denies), the Commission lacks subject matter jurisdiction because the Commission's regulations do not allow for the requested remedy. Complainant cannot avoid responsibility for charges on her account based on actions that occurred over seven years earlier.

8. For the reasons set forth above, the Complaint should be dismissed as a matter of law for lack of subject matter jurisdiction.

II. Preliminary Objection Based upon Legal Insufficiency of a Pleading

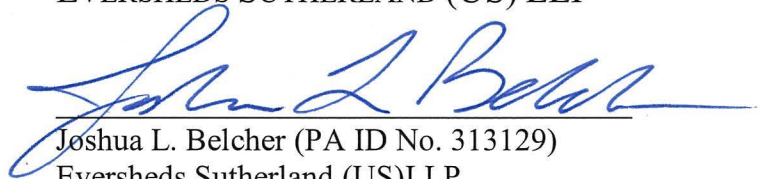
9. NAPG reasserts paragraphs 1 through 8 above.
10. In the alternative, the Complaint is legally insufficient because it does not (and cannot) state a legal claim for which relief can be granted.
11. For the reasons set forth above, the Complaint should be dismissed as a matter of law for legal insufficiency.

WHEREFORE, for the reasons set forth above, NAPG respectfully requests that its Preliminary Objections be granted and that the Honorable Commission dismiss the Complaint with prejudice and mark the docket as closed.

Date: June 19, 2019

Respectfully submitted,

EVERSHEDS SUTHERLAND (US) LLP



Joshua L. Belcher (PA ID No. 313129)

Eversheds Sutherland (US) LLP

1001 Fannin St., Suite 3700

Houston, Texas 77002

Tel: (713) 470-6118

joshuabelcher@eversheds-sutherland.us

Counsel for North American Power and Gas, LLC

EXHIBIT A



*COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF CONSUMER SERVICES
P.O. BOX 3265, HARRISBURG, PA 17105-3265*

1/18/2019

BCS No: 3647183

Joan Toohey
326 Simms Street
Philadelphia PA 19116

Dear Joan Toohey,

The Public Utility Commission has completed its investigation into your informal complaint. Our decision is attached. We sent a copy of this decision information to your utility company. You and the company must both follow this decision. Both parties may appeal this decision. If no one appeals, the decision will become final 20 days after the date of this letter.

If you do not agree with this decision you can appeal it by filing a formal complaint. Complete and return the attached Notification of Intent to Appeal within 20 days of the date on the form. The Commission will mail you formal complaint forms. When you complete and return the formal complaint forms, your appeal begins. The Commission will assign your complaint to the Office of Administrative Law Judge. They will contact you about your formal complaint.

You do not need a lawyer to file an appeal.

You must make all of the payments required by this decision. If you do not make these payments the utility company has the right to shut off your utility service.

Do not mail your payments to the Public Utility Commission. Mail your payments directly to your company.

If you have any questions, please call 1-800-692-7380.

Sincerely,

Josh Good
Investigator

**INFORMAL COMPLAINT DECISION
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joan Toohey
326 Simms Street
Philadelphia PA 19116

Date: 1/18/2019

V.

BCS: 3647183

Acct. No: 8486701309

North American Power (EGS)
PECO Energy (EDC)

DECISION ON INFORMAL COMPLAINT BY THE PUBLIC UTILITY COMMISSION (PUC):

STATEMENT OF COMPLAINT:

We received your informal complaint on 8/28/18. In the complaint, you disputed that North American Power (NAP) enrolled you as a customer of their electric generation service (EGS) without your knowledge or consent (slam). You requested the PA PUBLIC UTILITY COMMISSION (PUC) investigate, return your EGS service to your utility company PECO Energy (PECO), adjust the rates charged during the time your service was slammed and waive any possible penalties.

INVESTIGATION BY STAFF OF THE PUBLIC UTILITY COMMISSION FOUND:

1. NAP records showed on 2/15/11, you agreed to enroll on a variable rate plan with the EGS.
2. Title 52 Pa. Code § 54.5(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:
 - (3) Service commences from a default service provider.
3. Title 52 Pa. Code § 54.5(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:
 - (4) The length of the agreement, which includes:
 - (i) The starting date.
4. NAP records showed that notification of your enrollment, that included the terms and conditions of the agreed upon variable rate plan, with an approximate start date of 4/4/11, were mailed to your address of record.
5. Title 52 Pa. Code § 57.173 When a customer contacts an EGS to request a change from the current EGS or default service provider to a new selected EGS, the following actions shall be taken by the selected EGS and the customer's EDC:
 - (1) The selected EGS shall notify the EDC of the customer's EGS selection at the end of the 3-business day rescission period under § 54.5(d) (relating to disclosure

statement for residential and small business customers) or a future date specified by the customer. The selected EGS may notify the EDC by the end of the next business day following the customer contact upon customer consent.

(2) Upon receipt of this notification, or notification that the customer has authorized a switch to default service, the EDC shall send the customer a confirmation letter noting the proposed change of EGS or change to default service. The notice must include the date service with the new selected EGS or default service provider will begin. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS or default service provider.

6. PECO records showed on 2/21/11, notification of your enrollment with NAP as your chosen alternate EGS was issued to your address of record.
7. You stated that you cancelled NAP in November 2018 and have since returned to PECO as your default EGS.
8. Title 52 Pa. Code § 57.177(b) When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of the EGS and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for EGS bills rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the generation charges.
9. Neither PECO nor NAP have any record of you disputing the enrollment of your EGS service prior to your filing of this complaint, or prior to cancelling the EGS.

BASED ON THESE FINDINGS, WE CONCLUDE THAT:

1. You did not dispute the alleged slamming of your EGS service by NAP within the first two billing cycles, following enrollment.
2. The electric generation portion of your PECO account has been active on NAP's variable rate plan since 2011, you are therefore considered responsible for any and all charges and fees accumulated over the duration of your enrollment with the EGS.

THEREFORE, IT IS DECIDED THAT:

This informal complaint is dismissed.


If you have questions about the terms of this decision or how to appeal this decision, please call us at 1-800-692-7380.

Josh Good
Investigator
717 783 5236
jogood@pa.gov

VERIFICATION

I, Alon Erlichman, Vice President of Customer Operations at North American Power and Gas, LLC, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same were a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. Code. § 4904 (relating to unsworn falsification to authorities).

Date: June 17, 2019


Alon Erlichman, Vice President of Customer
Operations at North American Power and Gas, LLC

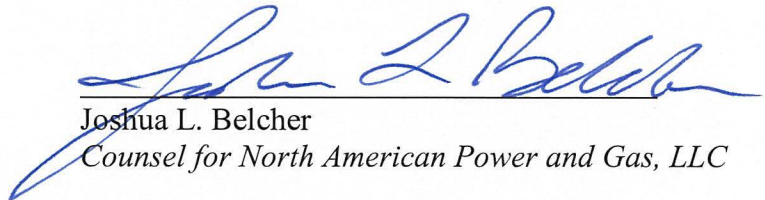
CERTIFICATE OF SERVICE
Joan Toohey v. North American Power and Gas, LLC
Docket No. C-2019-3010114

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objections of North American Power and Gas, LLC, upon the persons and in the manner listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

VIA FIRST CLASS AND ELECTRONIC MAIL:

Joan Toohey
326 Simms Street
Philadelphia, PA 19116
joanietbsn@comcast.net

Date: June 19, 2019


Joshua L. Belcher
Counsel for North American Power and Gas, LLC