



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

June 29, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Rashid El Malik v. PECO Energy Company & Reliant Energy Northeast LLC t/a NRG
Residential Solutions; Docket No. F-2020-3018838

Dear Secretary Chiavetta:

On behalf of Reliant Energy Northeast LLC t/a NRG Residential Solutions are Objections to Subpoena in the above-captioned matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury
Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of NRG's Objections to Subpoena upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Electronic Mail

Rashid El Malik
1320 Via Margarita
Palos Verdes Estate, CA 90274
elmaliksr@gmail.com

Khadijah Scott, Esq.
PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19103
Khadijah.scott@exeloncorp.com

Conrad A. Johnson, Administrative Law Judge
Nicholas Miskanic, Legal Assistant
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222
cojohnson@pa.gov
nmiskanic@pa.gov

Date: June 29, 2020

Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rashid El Malik :
 :
 v. : Docket No. F-2020-3018838
 :
 PECO Energy Company & Reliant Energy :
 Northeast LLC t/a NRG Residential Solutions :

**OBJECTIONS OF RELIANT ENERGY NORTHEAST LLC T/A
NRG RESIDENTIAL SOLUTIONS TO SUBPOENA OF RASHID EL MALIK**

Pursuant to 52 Pa. Code § 5.421(f), Reliant Energy Northeast LLC t/a NRG Residential Solutions (“NRG”) files these Objections to the Application for Subpoena filed with the Commission on June 18, 2020 by Complainant, Rashid El Malik, in the above-captioned matter. In support of this Objection, NRG avers as follows:

1. Rashid El Malik (“Complainant”) filed a Formal Complaint against PECO Energy Company (“PECO”) and Reliant Energy Northeast LLC t/a NRG Residential Solutions on February 21, 2020.

2. The gist of Complainant’s Formal Complaint is that his electric and natural gas accounts were switched from PECO Energy Company (“PECO”) to NRG without his authorization.

3. Prior to the filing of the Formal Complaint, Complainant had filed an informal complaint with the Commission’s Bureau of Consumer Services (“BCS”), which resulted in a decision being issued on December 27, 2019 by BCS Investigator Avis Chisholm.

4. As to the Formal Complaint now pending before the Commission, PECO and NRG filed Answers. Also, PECO filed Preliminary Objections, which are being held in abeyance per the Interim Order issued Administrative Law Judge (“ALJ”) Conrad Johnson dated June 16, 2020.

5. By Corrected Hearing Notice dated June 9, 2020, a telephonic hearing was scheduled for this matter on July 1, 2020 at 11:30 a.m., Eastern time.

6. By Prehearing Order dated June 16, 2020, ALJ Johnson directed that proposed hearing exhibits be served on the parties at least five business days before the scheduled hearing. NRG electronically served its proposed hearing exhibits on June 24, 2020, which is one week before the scheduled date of the telephonic hearing.

7. The Prehearing Order also stated that if a party intended to subpoena witnesses for the hearing, a written application to the ALJ “sufficiently in advance of the hearing date so that the other parties will have the required ten (10) business days’ notice to answer or object, and so that you will have enough time to receive the subpoena and serve it.” Prehearing Order, Paragraph No. 7.¹

8. Under Section 5.42(a)(2) of the Commission’s regulations, other than when a subpoena is issued by the Commission on its own motion, “a subpoena will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena.” 52 Pa. Code § 5.42(a)(2).

9. Here, Complainant filed a document entitled “Subpoena in an Administrative Hearing” on June 18, 2020, with three separate parts directed at: (a) the BCS Investigator, Ms.

¹ Although the Prehearing Order afforded parties 10 business days to object to a subpoena, NRG is filing this objection within 10 calendar days in accordance with the regulations so that is on file prior to the evidentiary hearing scheduled for July 1, 2020.

Avis Chisholm, (b) PECO, and (c) NRG. As NRG represents neither the BCS Investigator nor PECO, this Objection only pertains to the Subpoena as it is directed at NRG. However, NRG notes that no indication is given in the Subpoena that the Commission's Law Bureau was served despite the provision in 52 Code § 5.421(c)(4) requiring same when directed to a Commission employee.

10. NRG further notes that an application for Subpoena must include a certificate of service and be served upon the presiding officer. 52 Pa. Code § 5.421(c)(2). While the Subpoena references ALJ Johnson, it does not include any indication on the proof of service that it was served on ALJ Johnson.

11. The Commission's regulations further require that the written application for subpoena specify the relevance, materiality and scope of testimony or documentary evidence requested, and list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents. 52 Pa. Code § 5.421(b).

12. The ALJ is required to address an objection within 10 days of filing. 52 Pa. Code § 5.421(f).

13. Even with the filing of these Objections prior to the expiration of 10 days, or before June 29, 2020, of service of the Subpoena on NRG, insufficient time exists to address NRG's Objections or for a subpoena to issue prior to the hearing scheduled for July 1, 2020.

14. NRG's Objections are numerous. First, it does not appear that the application for Subpoena has been properly presented to ALJ Johnson and even if it was, no certificate of service was included to show this information.

15. Second, the Subpoena fails to specify the relevance, materiality and scope of evidence that has been requested for NRG produce. Complainant filed the Formal Complaint and

carries the burden of proof under Section 332 of the Public Utility Code. 66 Pa.C.S. § 332. NRG is prepared to participate in the hearing on July 1, 2020, and has timely presented proposed hearing exhibits it intends to present at that time.

16. Third, the Subpoena does not list the facts that show the need for these documents. For example, other complaints against the sale representative are irrelevant to whether Complainant's account was switched without authorization. Similarly, other complaints against NRG have no bearing on the disposition of this complaint.

WHEREFORE, NRG respectfully requests that Administrative Law Judge Johnson grant these Objections to the Subpoena.

Respectfully submitted,

Karen O. Moury

Karen O. Moury
PA Attorney I.D. # 36879
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
717.237.6036
kmoury@eckertseamans.com

Dated: June 29, 2020