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October 26, 2020

Via Electronic Filing

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

Re: Jacqueline Dooling v. PECO Energy Company and Viridian Energy PA LLC
Docket No. F-2020-3022291

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Viridian Energy PA LLC's ("Viridian") Preliminary Objections with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

LMB/lww
Enclosure

cc: Hon. Charles E. Rainey w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

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

Via Email and First Class Mail

Jacqueline Dooling
350 N. York Road, Apt. C3
Hatboro, PA 19040
jacquelinemdooling@gmail.com

Hon. Charles E. Rainey, Jr.
Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
bobbwillia@pa.gov

Dated: October 26, 2020

/s/ Lauren M. Burge

Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACQUELINE DOOLING,	:	
	:	
Complainant	:	
	:	Docket No. F-2020-3022291
v.	:	
	:	
	:	
PECO ENERGY COMPANY AND	:	
VIRIDIAN ENERGY PA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Jacqueline Dooling
350 N. York Road, Apt. C3
Hatboro, PA 19040

You are hereby notified that a reply to the new matter in the enclosed **Preliminary Objections** of Viridian Energy PA LLC, must be filed within 10 days of the date of service.

All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Viridian Energy PA LLC, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:*

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com

*Due to the COVID-19 pandemic, the Pennsylvania Public Utility Commission is encouraging individuals to eFile documents. Information regarding eFiling with the Commission is available at <https://www.puc.pa.gov/efiling/default.aspx>."

/s/ Lauren M. Burge

Lauren M. Burge, Esquire

Attorney for
Viridian Energy PA LLC

Date: October 26, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JACQUELINE DOOLING,	:	
	:	
Complainant	:	
	:	Docket No. F-2020-3022291
v.	:	
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	:	
PECO ENERGY COMPANY AND	:	
VIRIDIAN ENERGY PA LLC,	:	
	:	
Respondent	:	

**VIRIDIAN ENERGY PA LLC's
PRELIMINARY OBJECTIONS**

Pursuant to 52 Pa. Code § 5.101(a), Viridian Energy PA LLC (“Viridian” or “Respondent”) submits these Preliminary Objections to the Formal Complaint of Jacqueline Dooling (“Ms. Dooling” or “Complainant”), which the Pennsylvania Public Utility Commission (“PUC” or “Commission”) served on Viridian on October 5, 2020. In support of these Preliminary Objections, Viridian avers as follows:

I. INTRODUCTION

1. Contemporaneously with the filing of these Preliminary Objections, Viridian has filed an Answer with New Matter to the Complaint, which is incorporated herein by reference. Viridian’s Answer denies the material allegations set forth in the Complaint.

2. Paragraph 4 of the Complaint alleges that Ms. Dooling was switched to receive electric generation supply from Viridian without her authorization. Paragraph 5 of the Complaint requests that the Pennsylvania Public Utility Commission (“Commission”) require that she be provided an explanation for the switch and that she have “all financial responsibility adjusted accordingly.”

3. Viridian submits, pursuant to 52 Pa. Code § 5.101(a), that Commission action regarding the Complainant’s enrollment through PECO’s Standard Offer Program to receive

electric generation service from Viridian is barred by the statute of limitations in 66 Pa. C.S. Section 3314(a). Section 3314(a) requires an action to be brought within three years from the date at which the liability arose. The Complainant began receiving service from Viridian in 2015 which is well beyond the three year statute of limitations. Therefore, the Commission lacks jurisdiction to address these claims.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

4. The Commission's Rules of Rules of Administrative Practice and Procedure permit the filing of preliminary objections.¹ The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

5. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

¹ 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

6. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.³

7. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁴

8. Viridian submits these preliminary objections pursuant to 52 Pa. Code § 5.101(a)(1) based on the lack of Commission jurisdiction over the specific issues presented. The Commission lacks jurisdiction over those claims which are outside the three (3) year statute of limitations, and therefore such issues and claims must be dismissed.

B. Allegations Beyond the Statute of Limitations

9. Section 3314(a) of the Public Utility Code, 66 Pa. C.S. § 3314, provides a general limitation period of three years for any action under the Public Utility Code, except as otherwise provided.⁵

² *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

³ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

⁴ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

⁵ *See Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa. Cmwlth. 1992).

10. The statute of limitations at 66 Pa. C.S. § 3314 is non-waivable. Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside the three year statute of limitations.⁶

11. As discussed in Viridian's Answer, Ms. Dooling began receiving electric generation supply from Viridian in April 2015 after enrolling through PECO's Standard Offer Program. The enrollment occurred well beyond the three-year statute of limitations at 66 Pa. C.S. § 3314.

12. The Formal Complaint makes allegations regarding actions or inactions that occurred more than three years before October 4, 2020, when the Complainant filed this action.

13. Those allegations that are outside the three-year statute of limitations must be dismissed. This includes the propriety of the Complainant's enrollment through PECO's Standard Offer Program to begin receiving service from Viridian in 2015 and the resulting charges.

⁶ See, e.g., *Jahnene Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203, Final Order (Act 294) entered January 27, 2015 adopting the Initial Decision dated November 18, 2014.

III. CONCLUSION

WHEREFORE, Viridian respectfully requests that this Commission (a) grant Viridian's preliminary objections; (b) dismiss the Complaint in its entirety; and (c) grant any other relief to Viridian that is deemed to be reasonable and appropriate.

Respectfully submitted,

/s/ Lauren M. Burge

Lauren M. Burge, Esquire
PA Attorney I.D. #311570
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Pittsburgh, PA 15219
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(412) 566-6099 (fax)
lburge@eckertseamans.com

October 26, 2020

Attorney for
Viridian Energy PA LLC

Verification

I, Martine Trinka, am Counsel, Retail Operations for Viridian Energy PA LLC (“Viridian”), and I hereby state that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect Viridian to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).

Dated: October 26, 2020



Martine Trinka
Counsel, Retail Operations
Viridian Energy PA LLC