



**JOHN D. COYLE**  
Partner  
55 Madison Ave., Suite 400  
Morristown, NJ 07960  
[jcoyle@coylelawgroup.com](mailto:jcoyle@coylelawgroup.com)  
t. 973.801.0454  
f. 973.860.5520

May 14, 2021

**VIA Electronic Filing**

Administrative Law Judge Elizabeth Barnes  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Fl.  
Harrisburg, PA 17120

**Re: Application of All Choice Energy MidAmerica LLC**  
**Electric: A-2021-3024563**  
**Natural Gas: A: 2021-3024607**

Dear Judge Barnes:

This firm represents Choice Energy, LLC, d/b/a 4 Choice Energy (“4 Choice”), a Pennsylvania Public Utility Commission licensed provider of electric generation services (“EGS”), license number A-2012-2337893. I submit this letter in response to the motion to dismiss the objection from Choice to the application from All Choice Energy MidAmerica LLC (“All Choice”) to receive Pennsylvania EGS and Natural Gas Distribution Company (“NGDC”) licenses.

All Choice seeks the dismissal of 4 Choice’s objection on procedural and substantive grounds. Reiterating 4 Choice’s position, we do not oppose All Choice’s entry into the EGS market in Pennsylvania; 4 Choice opposes All Choice entering the exact same EGS market under the name All Choice as it has the great power to cause name confusion in the marketplace. All Choice responds that there would be no name confusion between All Choice and 4 Choice, even if both 4 Choice and All Choice are conducting the same business in the same areas of the Commonwealth of Pennsylvania.

All Choice is correct that “doing business as” trade names are regulated and assigned by the Secretary of State for the Commonwealth. All Choice is also correct that such trade name registration is not an exclusive designation to the use of the name. However, All Choice makes the incorrect legal leap to argue that this means that the Pennsylvania Public Utility Commission does not have any ability to make any determinations regarding the names used by EGSs in the Commonwealth.

Should All Choice’s EGS license be granted, one of the conditions of the licensure would be requiring compliance with “all applicable state and federal consumer protection laws.” 52 Pa. Code § 54.43. One such state consumer protection law is the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-2, *et al.* which applies to all entities conducting business in Pennsylvania. The UTPCPL defines an “unfair method of competition” or a “unfair or deceptive act” as any act in commerce “causing likelihood or confusion or of misunderstanding

as to the source.. or services” or “causing likelihood of confusion or misunderstanding as to affiliation ,connection or association with, or certification by, another.” 73 P.S. §201-2(4)(ii) and (iii).

We recognize that the typical course of action would be for All Choice to market to consumers that are located in areas where 4 Choice provides EGS services, including, customers who currently or previously obtained such services from 4 Choice and were now contacted by All Choice. Once the name confusion had been established, a violation of the UTCPL would be clear. Then, we can discuss this in terms of the damages caused by the confusion. Instead, we are seeking to proactively preempt the need for future legal action in the best interests of both 4 Choice and All Choice, as well as the consumers of the Commonwealth.

Counsel for All Choice represented on the telephone that there would not be any confusion because it would only use the name “All Choice Energy MidAmerica” when marketing its EGS services. That is inevitably why counsel for All Choice then contacted Your Honor to discuss withdrawing this objection based on the parties’ consent settlement. Instead, All Choice filed this motion. Most notably, nowhere in the application is any indication that it would only use the name “All Choice Energy MidAmerica.” Also notably, the company’s website is “Allchoicenergy.com”. This is the same website that advertises that it will be soon licensed in Pennsylvania.

The Pennsylvania Supreme Court has recently re-affirmed that the standard for name confusion under the UTCPL is similar to the federal Lanham Act in that it is not a question of “fraud” but on the mere existence of confusion. (“Actual deception proved by deceived consumers, is not necessary; the likelihood of deception or the capacity to deceive is the criterion by which the advertising is judged.”) *Gregg v. Ameriprise Fin., Inc.* 245 A.3d. 637, 647 (Sup. Ct. 2021)(internal citations omitted).

As set forth in our initial letter, 4 Choice has already been dragged into lawsuits regarding name confusion. 4 Choice was recently sued in actions brought by consumers who alleged that the “Choice” energy supplier calling him was 4 Choice. *Richard M. Zelma, v. Choice Energy LLC, et al.* Civil Action No. 2:19-cv-17535 (D.N.J. 2019). See also, *Soriano v. Choice Energy LLC*, MON-DC-4663-20 (New Jersey, Law. Div., Spec. Civ.). The Stipulation and Order of dismissal in the *Soriano* case is particularly notable because it contains the explicit provision that “Choice Energy LLC provided call logs establishing that the calls were not made to Plaintiff by Choice Energy.”

It is undisputable that Pennsylvania consumers who receive telephone solicitations for EGS services “from All Choice Energy” might reasonably believe they are receiving such calls “from four Choice Energy.” Under the UTCPL, the issue is not whether All Choice is intending to mislead consumers, but whether there could be confusion. We are not alleging based on this record that All Choice is intending to mislead consumers, despite the discrepancy between what their counsel represented and the filing before Your Honor.

With respect to the alleged procedural deficiency because the letter was not submitted as a verified petition, All Choice is correct. We apologize for the inadvertent non-compliance with

Administrative Law Judge Elizabeth Barnes

May 14, 2021

Page 3

PAPUC rules. Attached here is a verification from Michael Needham for 4 Choice, verifying that the contents of the initial letter, and this response. We respectfully request that this submission be accepted so that the parties can discuss the merits of the application. If not, 4 Choice will withdraw the application and resubmit as verified.

Respectfully submitted,

John D. Coyle

*Admitted pro hac vice*

Brian C. Deeney, Esq.

Attorney ID: 312184

Lewis Brisbois Bisgaard & Smith LLP

One Riverfront Plaza

1037 Raymond Blvd. Ste. 800

Newark, NJ 07012

973.792.8726 (ph)

973.577.6261 (fax)

[Brian.Deeney@lewisbrisbois.com](mailto:Brian.Deeney@lewisbrisbois.com)

## VERIFICATION

I, Michael Needham, am the managing partner of Choice Energy Services LLC, d.b.a. 4 Choice Energy. I hereby state that the facts set forth above, and in the April 7, 2021 letter submitted in response to the license application from All Choice Energy Midamerica, LLC, are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

*Michael Needham*

Dated May 14, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

Application of All Choice Energy  
MidAmerica LLC for approval to supply  
electricity or electric generation services as  
a supplier of electricity to the public in the  
service territories of PECO Energy  
Company and PPL Electric Utilities  
Corporation

Dkt. No. A-2021-3024563

Application of All Choice Energy  
MidAmerica LLC for approval to supply  
natural gas services as a supplier or  
aggregator engaged in the business of  
supplying natural gas services in the  
service territories of PECO Energy  
Company, Philadelphia Gas Works, and  
UGI Utilities

Dkt. No. A-2021-3024607

---

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of May, 2021, a copy of the foregoing papers has been served upon the persons listed below, in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55.

VIA Electronic Mail

Julie Steamer, Esq.  
Steamer Hart LLP  
86 Fleet Place  
Suite 32E  
Brooklyn, NY 11201  
jsteamer@steamerhart.com

**COYLE LAW GROUP LLP**

*s/ John D. Coyle*  
John D. Coyle  
55 Madison Avenue, Suite 400  
Morristown, NJ 07960  
(973) 801-0454  
*Admitted pro hac vice*

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

Brian C. Deeney, Esq.  
Attorney ID: 312184  
One Riverfront Plaza  
1037 Raymond Blvd. Ste. 800  
Newark, NJ 07012  
973.792.8726 (ph)  
973.577.6261 (fax)  
[Brian.Deeney@lewisbrisbois.com](mailto:Brian.Deeney@lewisbrisbois.com)

Dated: May 14, 2021