

**IN AND BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

**FLORENCE R. PARKER CHAILLA,**

**CLAIMANT,**

**V.**

**Docket No. C-2021-3024417**

**METROPOLITAN EDISON COMPANY AND  
CHOICE ENERGY, LLC d/b/a 4 CHOICE ENERGY**

**RESPONDENTS.**

---

**REBUTTAL TO RESPONDENT’S REPLY TO  
SUMMARY JUDGMENT MOTION**

---

Rule 56.1(b)(1) requires:

- (1) A memorandum in opposition to a motion for summary judgment must begin with a section containing a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute must be numbered by paragraph, refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, state the number of movant’s fact that is disputed.

In Claimant’s papers filed, the following were undisputed and required defendant’s opposition to a motion for summary judgment to begin with a section containing a concise statement of material facts as to which the party contends a genuine issue exists.

Each fact was numbered by paragraphs:

- “1. February 3, 2021, Claimant cancelled the electric generation from 4 Choice Energy.
3. March 22, 2021, 4 Choice Energy’s Mike Needham wrote confirming his knowledge of the cancellation. **Exhibit C** March 22, 2021 letter- attached
4. Similarly, Mike Needham decided to ‘waive’ the cancellation fee.
5. Met-Ed on March 16, 2021, billed Claimants for 4 Choice Energy’s fees as follows - first if the electric bill, the second part is the breakdown in the paper bill:

Met-Ed Statement 03/16/2021

Yahoo/ Inbox

- **electriconline@firstenergycorp.com**  
**To:** thebusiness2@yahoo.com

Tue, Feb 23 at 2:03 PM

**\*\*\* PLEASE DO NOT REPLY TO THIS AUTOMATED MESSAGE \*\*\***

- Your **electric statement from Met-Ed** is available for review. To access your account securely online, visit [https://www.firstenergycorp.com/log\\_in](https://www.firstenergycorp.com/log_in).
- Account Number: 10 01 11 6715 8 0  
 Due Date: 03/16/2021  
 Amount Due: \$265.68  
 Service Address: OPTATUS N CHAILLA  
 25 GARDEN ST  
 STROUDSBURG PA 18360

The detailed breakdown of the March 16, 2021, **paper bill** is as follows:

Met-Ed alleged a consumption of	\$ 27.60
4 Choice Energy alleged a consumption of	<u>240.70</u>
Total current charges.	\$265.30
Less credit overpaid.	(\$ <u>2.62</u> )
Bal. Allegedly due should be	\$262.68

5. 4 Choice Energy's Mike Needham did not 'waive' cancellation fee or Met-Ed did not remove the cancellation fee from Claimant's April 14, 2021, bill - See **Exhibit B** as shown below:

**electriconline@firstenergycorp.com**  
**To: thebusiness2@yahoo.com**

Wed, Mar 24 at 2:03 PM

\*\*\* PLEASE DO NOT REPLY TO THIS AUTOMATED MESSAGE \*\*\*

Your **electric statement from Met-Ed** is available for review. To access your account securely online, visit [https://www.firstenergycorp.com/log\\_in](https://www.firstenergycorp.com/log_in).

Account Number: 10 01 11 6715 8 0  
Due Date: 04/14/2021  
Amount Due: \$297.83  
Service Address: OPTATUS N CHAILLA  
25 GARDEN ST  
STROUDSBURG PA 18360

The April 2021, **paper bill's** breakdown is as follows:

Met-Ed consumption	\$ 32.15
4 Choice Energy billed	<u>\$265.68</u>
Total bill for April.	\$297.83

6. 4 Choice Energy's Mike Needham did not 'waive' cancellation fee or Met-Ed did not remove the cancellation fee from Claimant's May 17, 2021, bill - See **Exhibit A** and as shown below:

**electriconline@firstenergycorp.com**  
**To: thebusiness2@yahoo.com**

Fri, Apr 23 at 2:03 PM

\*\*\* PLEASE DO NOT REPLY TO THIS AUTOMATED MESSAGE \*\*\*

Your **electric statement from** Met-Ed is available for review. To access your account securely online, visit [https://www.firstenergycorp.com/log\\_in](https://www.firstenergycorp.com/log_in).

Account Number: 10 01 11 6715 8 0  
Due Date: 05/17/2021  
Amount Due: \$267.41  
Service Address: OPTATUS N CHAILLA  
25 GARDEN ST  
STROUDSBURG PA 18360

May 17, 2021, **paper bill breakdown** is as follows:

Met-Ed billed	previous balance	\$297.83
	Less Payments posted	(\$ 57.80)
	Balance due	\$240.03
Met-Ed charges		\$ 27.38
4 Choice Energy charges		<u>\$240.03</u>
	Total billed charges incorrectly.	\$267.41”

Review of defendants opposition, it failed to address the items identified above as disclosed in Plaintiff’s papers.

Relief requested was in summary to revise the May 17, 2021, bill received from Met-Ed to reflect the removal of 4 Choice Energy’s billing.

Since defendant’s counsel failed to dispute material facts above, it is deemed admitted against 4 Choice Energy for all material facts stated above. Additionally, relief also was not addressed. Instead, defendants raised facts and information that was not raised in Claimant’s Summary Judgment motion filed by Plaintiff. As a result, Rule 56.1(b)(2), is applicable, which provides:

- (2) If the party opposing summary judgment relies on any facts not contained in movant’s memorandum, that party must set forth each additional fact in a separately numbered paragraph, supported by references to the record, in the

manner required by subsection (a), above. All material facts set forth in this statement of the non-moving party will be deemed admitted for the purpose of summary judgment unless specifically controverted by the reply of the moving party.

### **CONTROVERTED NON-MOVING PARTY'S FALSE FACTS, STATED OUT OF CHRONOLOGY AND IN MISREPRESENTATION**

4 Choice Energy disputed items 1 and 2; and its statement is chronologically misrepresented and thereby controverted by Plaintiff. 4 Choice Energy's counsel alleged:

1. Choice did not provide Claimant with the "10-day time to consider and make a clear headed decision" about enrolling.
2. Claimant did not agree to the terms and conditions of EGS service from Choice Energy LLC, d/b/a 4 Choice Energy ("Choice");

With regard to the quotes in #1, "10-day time to consider and make a clear headed decision." That statement is not mentioned anywhere in Plaintiff's motion papers filed and it is a misrepresented statement. Regarding item #2, along with its recording marked as 'Exhibit A'; it clearly mentioned, firstly a 3-day period to review terms and conditions and a 10-day period to reply using the confirmation number 71001695.

The Confirmation number 71001695, disclosed in the recording was unknown to the Chailla's until that recording was received and heard today - May 19, 2021.

We too are left to wonder who would state a 3-day rescission would be allowed to make a decision when there is no proof or evidence presented that shows without a doubt that the alleged *3-day right of rescission and the alleged 10-day rescission* documents

were received. Had facts or evidence of the receipt of the supposed mailed items occurred on, or close to those dates or about the three-days after January 5, 2021, and 10-days or on January 15, 2021, surely counsel would have introduced such documents into evidence. However, it is affirmed that at no time was the January 6, 2021, letter received by the Chailla's until a copy of it was provided in the March 22, 2021, letter from Mr. Needham of 4 Choice Energy. 4 Choice Energy's Counsel's paper attached *Exhibit B - a January 6, 2021, letter addressed to the Chaillas. It is the same letter that for the first time it was seen by the Chaillas it accompanied Mr. Needham's March 22, 2021. See Exhibit C* in initial papers for his March 22, 2021, letter.

Therefore, it is alleged that no such evidence exists to show receipt of either document. Since no evidence was introduced, it is deemed admitted that the 3 and 10-day rescission documents were not received by the Chaillas.

Two issues makes the entire 'contracting' 4 Choice Energy process quite curious; *firstly*, the alleged contract is void of the Confirmation Number needed to cancel services as mentioned in the recorded voice of the Trusted TPD recording and *secondly*, a place to sign the '*contract*' to show agreement is also missing.

Upon what basis and at what reasonable time or opportunity did the Chaillas' have to review, understand or even learn of the terms and conditions of the 4 Choice Energy contract when none was received before January 15, 2021?

All learned counsel know that a contract requires an offer, acceptance, consideration and meeting of the minds are cornerstones to enter into any valid contract.

There is absolutely no evidence that anything was reviewed, that is, the ability to review and analyze the written terms and conditions before the first bill was charged by 4 Choice Energy onto the Chailla's bill from Met-Ed in February 2021.

Mutual assent to any contract requires that the terms be understood and agreed to in advance of the making of a contract. Without proof that the terms were received by the Chaillas' after the fact is out of order chronologically. Mutual assent is an agreement between two parties that intend to form a contract. Also known as a "meeting of the minds," mutual assent signifies that the parties agree to the terms they are setting, as long as the necessary requirements are in place. Such a consensus is the first step in the contractual process. Terms and conditions sent 3-days or 10-days later is not a contract because 4 Choice Energy's Trusted TPD service did not go through defendant's 4 Choice Energy's papers' 'Exhibit B' in total and nothing of that 4 Choice Energy 'Exhibit - B' was known to the Chailla before they were billed.

## **IN CONCLUSION**

PAPUC ALJ has suggested this matter be settled. Claimant has sought to settle the matter by reissuing the May 17, 2021, bill from Met-Ed by removal of the 4 Choice Energy cancelled charges.

4 Choice Energy's Counsel alleged Claimant has made frivolous claims; however, the issues raised in her Summary Judgment motion were not disputed. Failure to dispute

facts material to this matter are deemed admitted as a matter of law be considered admitted and construed against defendant 4 Choice Energy.

Tangents about unrelated other lawsuits that are not pertinent to this matter is a waste of all involved and that of the ALJ.

It is requested that this matter be decided on the papers.

Dated: May 19, 2021,

Respectfully submitted

*Florence R. Parker Chailla*

Florence R. Parker Chailla, JD  
P. O. Box 1111  
Stroudsburg, PA 18360  
(c) 570 534-7082  
(e) thebusiness2@yahoo.com

### **CERTIFICATION**

I affirm that the foregoing statements made herein are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made herein are willfully false, I may be subject to punishment.

Dated: May 19, 2021

Respectfully submitted

*Florence R. Parker Chailla*

Florence R. Parker Chailla, JD  
P. O. Box 1111  
Stroudsburg, PA 18360  
(c) 570 534-7082  
(e) thebusiness2@yahoo.com

## CERTIFICATE OF SERVICE

I, Florence R. Parker Chaila, JD hereby certify that on May 19, 2021, have served copies of the enclosed Opposition to Respondent's 4 Choice Energy's motion for summary judgment via email to:

The Honorable John M. Coogan  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120  
[jcoogan@pa.gov](mailto:jcoogan@pa.gov)

Margaret A. Morris, Esq.  
Reger Rizzo Darnall LLP  
Circa Centre, 13th Floor  
2929 Arch Street  
Philadelphia, PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

LEWIS BRISBOIS BISGAARD & SMITH LLP  
Brian C. Deeney, Esq.  
Attorney ID: 312184  
One Riverfront Plaza,  
1037 Raymond Blvd, Ste. 800  
Newark, NJ 07102  
973.792.8726 (Phone)  
973.577.6261 (Fax)  
[Brian.Deeney@lewisbrisbois.com](mailto:Brian.Deeney@lewisbrisbois.com)