

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                            |   |                |
|----------------------------|---|----------------|
| Jacqueline M. Dooling      | : |                |
|                            | : |                |
| v.                         | : | F-2020-3022291 |
|                            | : |                |
| PECO Energy Company        | : |                |
| and Viridian Energy PA LLC | : |                |

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

The Complainant alleged that: 1) her electric generation supplier was improperly switched to Viridian Energy PA LLC from PECO Energy Company; and 2) her automatic bill payments were improperly discontinued by PECO. This decision finds that the Complainant’s enrollment with Viridian, the handling of her switch to PECO, and the discontinuation of her automatic payments, do not rise to violations of the Code, regulations or a Commission Order and the Complaint is dismissed.

**HISTORY OF THE PROCEEDING**

On October 5, 2020, Jacqueline M. Dooling (Ms. Dooling or Complainant) filed a formal Complaint (Complaint) against Viridian Energy PA LLC (Viridian) and PECO Energy Company (PECO) with the Pennsylvania Public Utility Commission (Commission) alleging that she received a letter from PECO stating that she had an outstanding bill of several hundred dollars despite being enrolled in automatic electronic payments. She also alleges that she

subsequently learned that her electric energy supplier was switched from PECO to Viridian without her authorization. Further, during the hearing, the Complainant explained that she was also contesting PECO's decision to stop her automatic payments without notification, which resulted in a large bill.<sup>1</sup> As relief, Complainant wants her bill adjusted.

On October 23, 2020, PECO filed an Answer to the Complaint. PECO denied all material allegations of the Complaint and asserted that the Complainant signed up with Viridian on April 10, 2015.

On October 26, 2020, Viridian filed an Answer with New Matter, and Preliminary Objections. In its Answer, Viridian again denied all material allegations in the Complaint and averred that the Complainant was properly enrolled in 2015. In its New Matter, Viridian asserted that any claim regarding the 2015 enrollment was beyond the three-year statute of limitations and was barred pursuant to 66 Pa. C.S. § 3314(a). In its Preliminary Objections Viridian sought dismissal of the Complaint based on its statute of limitations claim.

The Complainant filed a "Reply to the Preliminary Objections" on November 5, 2020, and a "Reply to the Answer and New Matter of Viridian" on November 16, 2020. In both replies, she asserted that she did not become aware of the enrollment with Viridian until 2020 and therefore the Complaint was not barred by the statute of limitations.

On December 2, 2020, this matter was assigned to the undersigned administrative law judge. By order dated December 22, 2020, the Preliminary Objections were overruled. An Initial Call-In Telephonic Hearing Notice was issued on December 23, 2020, setting a hearing for February 11, 2021. A Prehearing Order was issued on December 28, 2020.

The evidentiary hearing was held on February 11, 2021, as scheduled. Ms. Dooling appeared *pro se* and testified on her own behalf. PECO was represented by Khadijah Scott, Esquire, who presented two witnesses: Sharon Sanders, a Senior Business Analyst in the

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<sup>1</sup> Tr. 14.

PECO energy acquisition group, and Wanda Rucker, PECO Regulatory Assessor. Viridian was represented by Lauren Burge, Esquire, who presented one witness, Carmen McMillan-English, Corporation Supervisor III, Customer Advocacy for Vistra Corporation, which owns Viridian.<sup>2</sup>

The following exhibits were admitted into the record during the hearing.

PECO Energy Exhibits:

- PECO 1- Billing Statement
- PECO 2- Prior Account Billing Statement
- PECO 3- Provider Enrollment
- PECO 4- Case Details Report
- PECO 5- BCS Decision

Viridian Energy Exhibits:

- Viridian 1- Screenshots of PECO's Online Portal
- Viridian 2- Renewal Letter
- Viridian 3- Second Renewal Letter
- Viridian 4- Price Change Notification
- Viridian 5- Price Change Notification
- Viridian 6- Price Change Notification
- Viridian 7- BCS Decision

During the hearing, PECO was directed to submit customer contact records for the Complainant's account.<sup>3</sup> On March 3, 2021, PECO submitted two additional exhibits. They are:

- PECO 6 – Dooling Account Number (XX080) customer contacts
- PECO 7 – Dooling Account Number (XX053) customer contacts

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<sup>2</sup> Tr. 95.

<sup>3</sup> Tr. 76.

A copy of PECO 6 and PECO 7 were emailed to the Complainant on March 24, 2021, and Complainant was advised to submit income information and respond to PECO 6 and PECO 7 no later than April 2, 2021. On June 1, 2021, Ms. Dooling submitted a letter in response to PECO exhibits 6 and 7. It is marked Complainant 1.

Complainant 1 and PECO 6 and PECO 7 are admitted herein.<sup>4</sup> A 105-page hearing transcript was generated. The record closed on June 1, 2021 when the Complainant submitted her response.

### FINDINGS OF FACT

1. The Complainant is Jacqueline M. Dooling.
2. The Complainant receives electric utility service on York Road in Hatboro, Pennsylvania.
3. The Complainant resides in an apartment complex in Hatboro. (Tr. 9).
4. Respondent PECO Energy Company provides electricity and gas service and is a jurisdictional utility of the Commission.
5. Respondent Viridian Energy PA, LLC is an alternate electric generation supplier (EGS).
6. The Complainant contacted PECO and applied for PECO electric and gas service in Unit D-3 of her apartment complex on March 25, 2015. (Tr. 23).
7. The effective service connection date to Viridian was March 25, 2015, account number ending in 053. (Tr. 23)

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<sup>4</sup> Although submitted beyond the deadline, Complainant 1 is admitted because the Complainant is acting *pro se* and because the first email sent to her regarding the PECO late-filed exhibits was returned as undeliverable.

8. Ms. Dooling had automatic electronic payments set up to pay her electric bill. (Tr. 7).

9. On the same day that she applied for PECO service, March 25, 2015, the Complainant was referred to Viridian through the PECO standard offer program. (Tr. 23; PECO Exhibits 3, 6).

10. The standard offer program provides residential and small commercial customers a seven percent discount off of PECO's current price to compare at the time the referral was made. (Tr. 22).

11. March 25, 2015 is the date of the Complainant's standard offer enrollment with Viridian. (Viridian Exhibit 1, Tr. 82-83).

12. Suppliers participating in the PECO standard offer program must provide a discounted rate for 12 billing cycles. *Id.*

13. Customers can terminate the third-party supplier relationship at any time without penalty or early termination fees. *Id.*

14. PECO mailed the Complainant a confirmation of new electric service supplier letter on April 7, 2015. (Tr. 25).

15. Viridian submitted the Complainant's enrollment form to PECO on April 6, 2015. (Tr. 23; PECO Exhibit 6).<sup>5</sup>

16. On February 5, 2016, Viridian sent the Complainant a renewal letter, which explained that she had the option of discontinuing her enrollment with Viridian. (Tr. 84; Viridian Exhibit 2).

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<sup>5</sup> The PECO testimony was that the confirmation letter of Complainant's switch to Viridian was mailed on April 7, 2015. The PECO client contacts document records the letter as being issued on April 6, 2015.

17. The Complainant did not respond to the February 5, 2016, Viridian re-enrollment letter. (Tr. 84).

18. On February 17, 2016, the Complainant was sent a letter from Viridian advising that she could reenroll in a fixed rate plan; the Complainant did not respond to the letter. (Tr.84-85; Viridian Exhibit 3).

19. The Complainant continued as a month-to-month customer of Viridian because she did not discontinue Viridian service or enroll in a fixed-rate plan. (Tr. 85).

20. The Complainant did not respond to enrollment and fixed rate letters sent to her by Viridian in 2017 and 2018. (Tr. 86, Viridian Exhibits 4,5,6).

21. Each bill sent to the Complainant for an approximate five-year period indicated that Viridian was the Complainant's electric generation supplier. (Tr 41.)

22. In the winter of 2020, the Complainant received mail from PECO stating that she owed several hundred dollars for service. (Tr. 7).

23. After receiving the large bill, Ms. Dooling checked her bank statements and noted that there were no PECO payments for two or three months and called PECO on March 2, 2020. (Tr. 7).

24. When the Complainant contacted PECO about the large bill, PECO advised the Complainant to contact Viridian regarding the amount of the bill because she was a Viridian customer. (Tr. 12).

25. PECO also advised the Complainant that there had been a meter mix up and that PECO removed her from automatic debit because of the mix up. (Tr. 7).

26. On October 21, 2019, the property manager of the Complainant's apartment building contacted PECO regarding a meter mix-up. (Tr. 46).

27. PECO investigated the report of the meter mix-up, completed the investigation on November 12, 2019, and found that the Complainant was being underbilled for gas usage. (Tr. 46).

28. PECO left a voice mail for the Complainant on November 5, 2019, and two voice mails on November 6, 2019, to discuss the meter mix-up. (Tr. 48; PECO Exhibit 7).

29. The Complainant did not contact PECO regarding the messages left regarding the meter mix-up. (Tr. 47).

30. When investigating the meter mix-up, PECO removed the Complainant from automatic payments to prevent charging her the incorrect amount. (Tr. 49).

31. PECO did not send a letter to the Complainant regarding the meter mix-up or discontinuation of her automatic payments. (Tr. 61-62).

32. PECO did not discuss with the Complainant re-enrolling in automatic payments until March of 2020, when the Complainant contacted PECO regarding the Viridian related charges bill. (Tr. 70).

33. On March 20, 2020, the Complainant contacted PECO to switch back to PECO as her electric generation supplier. (Tr. 26).

34. The Complainant was switched back to PECO service on March 25, 2020. (Tr. 26).

35. The Complainant was switched back to PECO with a telephone call; no paperwork was required. (Tr. 18-19).

36. The Complainant did not regularly look at her electric bills that she received in the mail when she was signed up for automatic payments. (Tr. 17-18).

37. PECO does not determine whether a customer chooses or switches to a third-party supplier. (Tr. 21).

38. The Complainant was a Viridian customer from March 25, 2015 until March 25, 2020. (Tr. 25-26).

### DISCUSSION

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate by a preponderance of the evidence that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission.

Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then be required to provide additional evidence to

rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The Pennsylvania Public Utility Code (“Code”) requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . . .

6 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Betchy v. West Penn Power Company*, Docket Number C-2018-3000257 (Order and Opinion entered October 8, 2020) citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995). As defined in the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . .

66 Pa.C.S. § 102.

With respect to claims disputing an EGS change, the law provides as follows:

**§ 57.177. Customer dispute procedures.**

- (a) When a customer contacts an EDC or an EGS and alleges that the EGS has been changed without consent, the company contacted shall:
  - (1) Consider the matter a customer registered dispute.
  - (2) Investigate and respond to the dispute consistent with §§ 56.151 and 56.152 (relating to utility company dispute procedures).
- (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.
- (c) A customer who has had an EGS changed without having consented to that change shall be switched back to the original EGS for no additional fee. Any charges involved in the switch back to the prior EGS are the responsibility of the company that initiated the change without the customer's consent.
- (d) If a customer files an informal complaint with the Commission alleging that the customer's EGS was changed without the customer's consent, the Bureau of Consumer Services will issue an informal decision that includes a determination of customer liability for any EGS bills or administrative charges that might otherwise apply, rendered since the change of the EGS.
- (e) In addition to customer-specific remedies, the Commission may, after investigation and decision, assess fines under 66 Pa.C.S. Chapter 33 (relating to violations and penalties) and initiate proceedings to revoke the license of an EGS that demonstrates a pattern of violating this subchapter. The Commission may order a particular EGS that has a pattern of violating this subchapter to obtain written authorization from every new customer as a condition of providing service in this Commonwealth. Nothing in this subchapter is intended to limit the Commission's authority.

52 Pa. Code § 57.177. The Complainant has the burden of showing that the Respondent has not complied with Section 1501 and 52 Pa. Code § 57.177.

Ms. Dooling avers that she was not aware of and did not consent to switching her electric generation service from PECO to Viridian. (Tr. 6-7, 14). She testified that she became

aware that she was a Viridian customer after she received a notice letter from PECO that she owed several hundred dollars for service. Thinking that she had automatic payments for PECO set up, the Complainant reviewed her bank statements, and discovered that there were no payments for her electric service for two or three months. (FOF 23).

On March 20, 2020, the Complainant called PECO and was informed that she was a Viridian customer. During that call, the Complainant stated that she wanted her service from PECO. PECO then contacted Viridian to confirm the transfer and the Complainant was transferred back to PECO on March 25, 2020. (FOFs 33-35).

The Complainant raises two issues: 1) she was not aware that she was a Viridian customer; and 2) the improper discontinuation of her automatic payments by PECO. The record does not support a finding that there was a violation here by either Viridian or PECO.

First, the record shows that the Complainant became a Viridian customer in March of 2015. In response to the Complainant asking how she was enrolled with Viridian, PECO witness Sanders testified that there was a “standard offer” alternate EGS program regulated by the Commission and initiated in 2013. As part of the program, when a customer called PECO, at the end of the call, the PECO Call Center operator would give a customer a brief overview of the alternate EGS program and ask whether the customer was interested. (Tr. 27).

Interested customers would be transferred to a third-party vendor hired by PECO to handle the referral program who would give the terms and conditions of a supplier offer and ask whether the customer was interested in a discounted rate for 12 billing cycles. If the customer is interested, a number of participating suppliers were available from which to choose. (Tr. 27-28, 33).

PECO records show that the Complainant applied for PECO service on March 25, 2015, and a referral to Viridian was made on the same day. (PECO Exhibits 2, 6). PECO witness Sanders testified that after PECO received notice that the Complainant had enrolled with Viridian, PECO sent a letter to the Complainant on April 7, 2015 to confirm her enrollment. (Tr.

25). PECO records contain a notation dated April 6, 2015 that states “Contact Supplier Enrollment. Customer enrolled with Viridian Energy (8187) and enrollment.” (PECO Exhibit 6).

Additionally, the Complainant was sent notifications regarding her Viridian service by letter on at least 5 separate occasions from 2016-2018 and the Complainant did not respond or discontinue her service with Viridian. The Complainant had multiple opportunities to be aware of and discontinue her service with Viridian and did not. (FOFs 17-21).

When it was noted during the hearing that her PECO bills for five years showed that she was a Viridian customer (Tr. 41), the Complainant responded that for a few years she was going through medical treatment and had set up her bills for automatic payments, so she did not look at the billing documents sent in the mail which stated that she was a Viridian customer. (Complainant Exhibit 1). While this is an unfortunate circumstance, Viridian and PECO did not violate any Commission statute, regulation or order.

The record also shows that PECO and Viridian complied with 52 Pa. Code § 57.177. PECO investigated and responded when the Complainant informed PECO that she did not wish to be a Viridian customer. PECO contacted Viridian and the Complainant was switched back to PECO service within 5 days of her request for the switch back to PECO, with no fees charged. (Tr. 26, 47).

The Complainant contacted PECO on March 20, 2020, informed the company that she wanted PECO as her supplier rather than Viridian and her service was transferred back to PECO from Viridian on March 25, 2020, after the switch back was investigated and confirmed. According to the PECO and Viridian records, the Complainant had been a Viridian customer for five years. (FOFs 11, 14, 15, 38). Nothing supports a finding that the Complainant was enrolled with Viridian through surreptitious means, especially given that the Complainant did not respond to the notices regarding her Viridian enrollment sent to her throughout the years.

Second, regarding discontinuation of the Complainant’s automatic payments, the record shows a deficit all around. The Complainant testified that she did not regularly review

her PECO bills (Tr. 17-18), which could have brought the discontinuation of her automatic billing to her attention. The record also shows that PECO called the Complainant two or three times between November 5, 2019 and November 6, 2019, to inform her about the circumstances of the meter mix-up. The company representative simply left messages and did not actually speak with the Complainant. Complainant did not respond to those messages. (FOFs 28, 29).

When a customer is removed from automatic payment, a written notice sent by PECO may be more a prudent and effective notification. However, one cannot conclude that there was inadequate or unreasonable service in violation of Section 1501 given PECO's calls to the Complainant that were unreturned, and that the removal of the Complainant from automatic billing would be reflected in the bills issued to the Complainant and the Complainant's testimony that she did not regularly open or review her bills.

There is no Commission order, regulation, or section of the Public Utility Code upon which to find that PECO committed a violation by not sending a letter notifying Complainant about her removal from the automatic billing. Therefore, there is no violation here.

Accordingly, the Complaint is denied.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding.  
66 Pa.C.S. § 701.
2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.  
66 Pa.C.S. § 332(a).
3. A Commission decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a

conclusion. A “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

4. When a customer contacts an EGS and alleges that the EGS has been changed without consent, the company contacted shall treat it as a dispute and initiate an investigation. *See* 52 Pa. Code § 57.177.

5. The Complainant has not established by a preponderance of the evidence that PECO or Viridian violated the Pennsylvania Code, regulations, or a Commission Order. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Exhibit 1 and PECO Exhibits 6 and 7 are admitted into the record.
2. That the Complaint filed by Jacqueline M. Dooling against PECO Energy Company and Viridian Energy PA LLC at Docket No. F-2020-3022291 is denied and dismissed.
3. That the Secretary mark this docket closed.

Date: June 29, 2021

\_\_\_\_\_/s/  
Darlene Heep  
Administrative Law Judge