

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Florence R. Parker Chailla	:	
	:	
v.	:	C-2021-3024417
	:	
Metropolitan Edison Company	:	
Choice Energy, LLC, d/b/a/ 4 Choice Energy, LLC	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the formal complaint of Florence R. Parker Chailla at Docket No. C-2021-3024417 for failure to prove that Metropolitan Edison Company or 4 Choice Energy, LLC violated the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. Ms. Chailla alleged, among other things, that she was inappropriately switched to 4 Choice Energy for electric generation service.

HISTORY OF THE PROCEEDING

On March 4, 2021, Florence R. Parker Chailla (Ms. Chailla or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against the Metropolitan Edison Company (Met-Ed) and 4 Choice Energy, LLC (Choice Energy),¹ docket

¹ Choice Energy, LLC is incorporated in the state of Iowa, and is incorporated and doing business in the Commonwealth of Pennsylvania as 4 Choice Energy, LLC. Choice Energy, LLC is a licensed electric generation supplier in Pennsylvania. See Pa. P.U.C. Docket No. A-2012-2337893. Although Ms. Chailla did not name Met-Ed as a respondent in her complaint, her complaint did concern matters involving Met-Ed, and Met-Ed asserted itself as a respondent in this proceeding in its answer and new matter filed on March 23, 2021.

number C-2021-3024417. In her complaint, Ms. Chailla indicated the utility is either threatening to shut off her service or has already shut off her service. She also claims there are incorrect charges on her bill; specifically, she alleges “[t]he 4 Choice Energy bill is incorrect and fraudulent. We did not agree or was [sic] provided time to decide to make a choice.”

Additionally, at the end of her complaint, Ms. Chailla attached a one-page cover letter followed by eleven pages of documents purporting to support that she was inappropriately enrolled as an electric generation supplier (EGS) customer with Choice Energy. Among other things, Ms. Chailla provided extensive detail regarding her position that she was not provided adequate opportunity to decide about making a change to her electric generation service. As requested relief, Ms. Chailla stated “[t]he elimination of the 4 Choice Energy bill is necessary and proper. That organization did not provide the 10-day time to consider and make a clear-headed decision before it began billing in complete disregard of my consumer rights under the Pennsylvania Unfair Trade Practices Act.”

On March 23, 2021, Met-Ed filed an answer and new matter to Ms. Chailla’s complaint. On March 24, 2021, Choice Energy filed an answer to Ms. Chailla’s complaint.

On March 27, 2021, Ms. Chailla filed a motion for protective order. On May 1, 2021, Ms. Chailla filed a motion for summary judgment.

On May 19, 2021, I issued an order granting the amended motion for admission *pro hac vice*, admitting John Coyle, Esquire *pro hac vice* in the above-captioned case, to appear as an attorney on behalf of Choice Energy.

On May 19, 2021, Choice Energy filed an opposition to Ms. Chailla’s motion for summary judgment. On May 24, 2021, Met-Ed filed an answer to Ms. Chailla’s motion for summary judgment. On May 24, 2021, Met-Ed also filed an answer to Ms. Chailla’s motion for protective order.

On June 1, 2021, Ms. Chailla filed a motion to strike, which was later withdrawn during the evidentiary hearing. Tr. 13.

On June 11, 2021, I issued an order, denying both the motion for summary judgment and motion for protective order, and referring the complaint to the Commission's mediation unit for mediation review. Mediation was declined, and a hearing notice was issued on June 16, 2021, scheduling a hearing for July 22, 2021.

The hearing convened as scheduled on July 22, 2021. The Complainant appeared *pro se* and testified. The Complainant offered thirteen exhibits, all of which were admitted into the record. (Chailla Exhibits 1-13). Choice Energy, appeared and was represented by John D. Coyle, Esquire. Choice Energy presented the testimony of Moses Cheung from Choice Energy. Choice Energy offered four exhibits, all of which were admitted into the record. (Choice Energy Exhibits 1-4). Met-Ed, appeared and was represented by Margaret A. Morris, Esq. Met-Ed presented the testimony of both Nora Arnold, a Supervisor of Supplier Services with Met-Ed, and Laurie Parker, an Advanced Customer Services Compliance Specialist in the Pennsylvania Compliance Department with Met-Ed. Met-Ed offered nine exhibits, all of which were admitted into the record. (Met-Ed Exhibits 1-9).

The record consists of a 177-page transcript and twenty-six exhibits. The record closed on September 7, 2021, upon my receipt of the hearing transcript. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The complainant in this case is Florence R. Parker Chailla.
2. The first respondent in this case is Metropolitan Edison Company.
3. The second respondent in this case is Choice Energy, LLC, d/b/a/ 4 Choice Energy, LLC.
4. The service address is 25 Garden Street, Stroudsburg, Pennsylvania, 18360 (Service Address). Tr. 20.

5. Optatus Chailla is Met-Ed's customer of record for the Service Address. Met-Ed Exhibits 1, 2.
6. Optatus Chailla's account number with Met-Ed for the Service Address ends in 1580 (Chailla account). Met-Ed Exhibits 1, 2.
7. Optatus Chailla is Ms. Chailla's husband. Tr. 172.
8. Ms. Chailla is an authorized contact with Met-Ed for the Service Address. Tr. 120.
9. Chailla Exhibit 1 is a January 14, 2021, letter from Met-Ed to Optatus Chailla at the Service Address, confirming enrollment with Choice Energy (January 14 Met-Ed confirmation letter). Chailla Exhibit 1.
10. Chailla Exhibit 2 is an e-mail dated February 1, 2021, from Ms. Chailla to First Energy, requesting that the Choice Energy enrollment be cancelled. Chailla Exhibit 2.
11. Chailla Exhibit 9 are e-mail notifications of monthly billings from Met-Ed to Ms. Chailla for the Chailla account with due dates 02/16/2021, 03/16/2021, 04/14/2021, 05/17/2021, 06/15/2021, and 07/14/2021. Chailla Exhibit 9.
12. Chailla Exhibit 10 are account statements of monthly billings from Met-Ed for the Chailla account with due dates 02/16/2021, 03/16/2021, 04/14/2021, 05/17/2021, 06/15/2021, and 07/14/2021. Chailla Exhibit 10.
13. Chailla Exhibit 12 is a third-party verification call recording from January 5, 2021, where Ms. Chailla enrolled with Choice Energy for electric generation service at the Service Address. Chailla Exhibit 12.

14. Chailla Exhibit 13 is a March 11, 2021, telephone voicemail recording from Laurie Parker at Met-Ed to Ms. Chailla. Chailla Exhibit 13.

15. Choice Energy Exhibit 1 is a transcript of the January 5, 2021, third-party verification call. Choice Energy Exhibit 1.

16. Choice Energy Exhibit 2 is a January 6, 2021 welcome letter, contract summary, and disclosure statement. Choice Energy Exhibit 2.

17. Choice Energy Exhibit 3 is a check dated March 19, 2021, to Optatus Chailla for \$230.00. Choice Energy Exhibit 3.

18. Choice Energy Exhibit 4 is a third-party verification call recording from January 5, 2021, where Ms. Chailla enrolled with Choice Energy for EGS service at the Service Address. Choice Energy Exhibit 4.

19. Met-Ed Exhibit 1 is a customer contact history for the Chailla account. Met-Ed Exhibit 1.

20. Met-Ed Exhibit 3 is an EGS enrollment letter dated January 14, 2021, addressed to Optatus Chailla at the Service Address. Met-Ed Exhibit 3.

21. Met-Ed Exhibit 4 is a monthly bill dated January 26, 2021, for the Chailla account. Met-Ed Exhibit 4.

22. Met-Ed Exhibit 5 is an EGS de-enrollment letter dated February 3, 2021, addressed to Optatus Chailla at the Service Address. Met-Ed Exhibit 5.

23. Met-Ed Exhibit 6 is a monthly bill dated February 24, 2021, for the Chailla account. Met-Ed Exhibit 6.

24. Met-Ed Exhibit 9 is Met-Ed's EGS Coordination Tariff, Supplement No. 10, effective June 1, 2019 (Met-Ed EGS Coordination Tariff). Met-Ed Exhibit 9.

25. Ms. Chailla spoke with Choice Energy's sales agent Tamisha B. to enroll with Choice Energy as her EGS supplier. Choice Energy Exhibit 2; Tr. 25, 87-88.

26. Choice Energy's sales team agents identify himself or herself by name and state that they are a third-party supplier, and never identify themselves as being affiliated with a utility in any way. Tr. 85.

27. Choice Energy is unaware of any relationship Tamisha B. has with Met-Ed. Tr. 88.

28. Premier Business Solutions, which is wholly owned by the same owner of Choice Energy, does the outbound calls for Choice Energy. Tr. 88.

29. On January 5, 2021, Complainant confirmed her enrollment with Choice Energy for electric generation service at the Service Address through a third-party verification call (January 5 TPV call). Chailla Exhibit 12; Choice Energy Exhibits 1 and 4.

30. Ms. Chailla's contract term with Choice Energy was for twenty-four months. Choice Energy Exhibit 2.

31. The January 5 TPV call stated that, after the three-day right of rescission, if cancellation takes place during the contract, complainant may be charged with cost recovery in the amount of ten dollars for each remaining contract month. Chailla Exhibit 12; Choice Energy Exhibits 1 and 4.

32. The January 5 TPV call provided a phone number to call if complainant wished to cancel her contract with Choice Energy. Chailla Exhibit 12; Choice Energy Exhibits 1 and 4.

33. On January 6, 2021, Ms. Chailla was mailed a welcome package from Choice Energy, which includes a cover letter, a contract summary, and a disclosure statement (January 6 Choice Energy welcome package). Tr. 78-79; Choice Energy Exhibit 2.

34. In the January 6 Choice Energy welcome package, both the contract summary and disclosure statement include notice of a three-business-day right of rescission upon receipt of the disclosure statement. Choice Energy Exhibit 2.

35. Choice Energy does not have any record of Ms. Chailla's January 6 Choice Energy welcome package being returned. Tr. 86-87.

36. A Met-Ed customer's disenrollment from an EGS and return to default service must be effective within three business days after processing the request. Tr. 101; Met-Ed Exhibit 9 at Section 5.3.4(a).

37. After a Met-Ed customer is disenrolled from an EGS, the Met-Ed customer is still billed for usage when they were enrolled with the EGS. Tr. 101.

38. For the billing period December 21, 2020, to January 20, 2021, the Service Address was enrolled with Choice Energy from January 15, 2021, to January 20, 2021. Tr. 125; Met-Ed Exhibit 4.

39. For the billing period December 21, 2020, to January 20, 2021, Choice Energy charges were \$4.20. Tr. 125; Met-Ed Exhibit 4.

40. The balance owed to both Met-Ed and Choice Energy for the billing period December 21, 2021, to January 20, 2021, was paid in full. Met-Ed Exhibit 6.

41. On February 1, 2021, Ms. Chailla e-mailed First Energy, noting that the January 14 Met-Ed confirmation letter had been received, and requesting that Choice Energy be cancelled. Chailla Exhibit 2.

42. Ms. Chailla's disenrollment request was forwarded to customer service on February 3, 2021, which resulted in the service address being disenrolled from Choice Energy effective that same day. Tr. 105-106, 129, 151.

43. For the billing period January 21, 2021, to February 18, 2021, the Chailla account was enrolled with Choice Energy from January 21, 2021, to February 3, 2021. Tr. 125; Met-Ed Exhibit 4.

44. For the billing period January 21, 2021, to February 18, 2021, Choice Energy charges for the Chailla account were \$10.70 in commodity charges and \$230.00 for a service recovery charge. Tr. 130-131; Met-Ed Exhibit 6.

45. On February 24, 2021, Optatus Chailla telephoned Met-Ed, disputing the Choice Energy charges (February 24 call). Met-Ed Exhibit 1; Tr. 132.

46. As a result of the February 24 call, Met-Ed mailed dispute rights to the Service Address. Met-Ed Exhibit 1; Tr. 132.

47. Ms. Chailla and Dr. Chailla were mailed and received a check from Choice Energy for \$230.00. Choice Energy Exhibit 3; Tr. 66, 82-83.

48. After a customer is disenrolled with an EGS, the EGS must deal with the customer directly regarding any refunds since the EGS can no longer assess the customer's account with the electric distribution company (EDC). Tr. 81-82, 101-102, 106; Met-Ed Exhibit 9 at Section 12.9(h).

49. Met-Ed did not remove the disputed Choice Energy charges because Met-Ed had already purchased the EGS receivables included in those charges. Tr. 106; Met-Ed Exhibit 9 at Section 12.9.

50. Met-Ed's EGS Coordination Tariff states that a customer's service may be terminated for failure to pay for generation service provided by an EGS and billed by the EDC. Met-Ed Exhibit 9 at Section 5.3.1(c); Tr. 123-124.

51. Met-Ed has not issued a termination notice for electric service to the service address. Tr. 122.

52. On March 11, 2021, Laurie Parker from Met-Ed called Ms. Chailla to discuss the issues raised in the formal complaint. Chailla Exhibit 13; Tr. 151-152.

DISCUSSION

Legal Standard

The Public Utility Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. Ms. Chailla has the burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a) because she is asking the Commission to issue an order to eliminate her Choice Energy bill.

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa. C.S. § 701.

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 623 A.2d 1100 (Pa. Cmwlth. 1982); 2 Pa. C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon 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, the complainant has not satisfied the burden of proof. The complainant would 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 (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).

Enrollment and Disenrollment with Choice Energy

The core of Ms. Chailla's complaint is that she was improperly enrolled with Choice Energy as her EGS, and that her request to disenroll with Choice Energy was improperly handled. As relief, Ms. Chailla requests elimination of her Choice Energy bill.

First, regarding her enrollment with Choice Energy, it is clear from the January 5 TPV call that Ms. Chailla enrolled with Choice Energy by giving her consent. However, Ms. Chailla claims she was improperly enrolled with Choice Energy because she was told by a Choice Energy sales agent she would have a ten-day period of review of her enrollment. Tr. 58,

61. By comparison, the January 5 TPV call only refers to a three-day right of rescission. Tr. 56-61.

The record does indicate that Ms. Chailla spoke to a Choice Energy sales agent on January 5, prior to confirming her enrollment via the January 5 TPV call. Choice Energy Exhibit 2; Tr. 87-88. Unlike the January 5 TPV call, there is no oral recording, written transcript, or other record of the content of Ms. Chailla's call with the Choice Energy sales agent.

Commission regulations require that EGS customers be informed of and provided a three-business-day right of rescission after receipt of the disclosure statement. 52 Pa. Code §§ 54.5(d), 111.7(b)(3). Although it has been established that Ms. Chailla did speak with a Choice Energy sales agent, I do not find that there is sufficient evidence of the content of Ms. Chailla's call with the Choice Energy sales agent to show that she was somehow deprived of her three-business-day right of rescission. Although Ms. Chailla claims she was informed of a "ten-day period of review", it is unclear from the record what exactly was conveyed during the phone call with the Choice Energy sales agent because no recording or transcript of that call was admitted into the record. To the contrary, I find that Choice Energy did provide Ms. Chailla a three-business-day right of rescission. Choice Energy clearly informed Ms. Chailla of the three-business-day right of rescission, through both the January 5 TPV call and the contract summary and disclosure statement included with the January 6 Choice Energy welcome package. Chailla Exhibit 12; Choice Energy Exhibits 1, 2, and 4. There is also no evidence that Ms. Chailla attempted to exercise her rescission rights within three business days of receipt of the disclosure statements but was denied.

Ms. Chailla disputes she received the January 6 Choice Energy welcome package by claiming that after the January 5 TPV call, "there was no contract, no notice or information was received at all from Met-Ed or from 4 Choice Energy." Tr. 26-27. Per Commission regulations, there is a rebuttable presumption that a disclosure statement correctly addressed to a customer with sufficient first-class postage attached shall be received by the customer three days after it is deposited in the mail. 52 Pa. Code § 111.11(c). The January 6 Choice Energy welcome package is correctly addressed to the service address. Choice Energy Exhibit 2.

Choice Energy testified that postage is calculated by an automated postage machine. Tr. 87. Choice Energy also testified that the January 6 Choice Energy welcome package was mailed to Ms. Chailla on January 6. Tr. 79. Additionally, Choice Energy testified that it searched its records, and it does not have any record of Ms. Chailla's January 6 Choice Energy welcome package being returned. Tr. 86-87. Further, Ms. Chailla testified that she received other mail from Choice Energy addressed to the service address, including the \$230.00 refund check. Tr. 66; Choice Energy Exhibit 3. Given these factors, I do not find that Ms. Chailla's testimony is sufficient to defeat the presumption that she received the disclosure statement.

Ms. Chailla complains that, upon receipt of the January 14 Met-Ed confirmation letter, the ten-day period for review had expired, and therefore, the agreed-upon ten-day period of review was not provided. Tr. 27. Ms. Chailla concludes that, without a ten-day period of review, there was no way to determine terms and conditions of service with Choice Energy because she had not received a contract to understand what had been offered. Tr. 27. However, it was upon receipt of the Choice Energy's welcome package, including the disclosure statement, that Ms. Chailla's three-business-day, not ten-day, right of rescission began. As stated above, I do not find that Ms. Chailla has met her burden of proof to show that she was deprived of her three-business-day right of rescission.

Ms. Chailla also alleges that the switch to an EGS requires a signature. Tr. 169. However, as Choice Energy states, per Commission regulations, an EGS does not need a signature to complete a transaction involving telephone contact by an agent, so long as the transaction is verified. 52 Pa. Code § 111.7. Here, the transaction completed by the Choice Energy sales agent was validated by the January 5 TPV call.

Second, regarding her efforts to disenroll with Met-Ed, Ms. Chailla complains that, although Met-Ed stated the Choice Energy account was removed on February 3, 2021, she still received bills including charges for Choice Energy. Tr. 32-37. Similarly, Ms. Chailla complains that Choice Energy continued to bill the service address after its March 22, 2021 letter (Chailla Exhibit 8). Tr. 39-40 (citing Chailla Exhibits 9, 10, and 11).

Whether Ms. Chailla was properly disenrolled from Choice Energy is a separate issue from whether Choice Energy charges properly appeared on Ms. Chailla's Met-Ed bills after she was disenrolled. Regarding whether Met-Ed properly disenrolled Ms. Chailla, during her testimony, Ms. Chailla specifically cites 52 Pa. Code § 56.141 and her and her husband's efforts to contact Met-Ed to cancel her enrollment with Choice Energy. Tr. 27-29 (citing Chailla Exhibits 2, 3, 4, 5, 6, and 7), 169. I do not find that the evidence demonstrates that Met-Ed improperly disenrolled with Ms. Chailla from service with Choice Energy.

A Met-Ed customer's disenrollment from an EGS and return to default service must be effective within three business days after processing the request. Tr. 101; Met-Ed Exhibit 9 at Section 5.3.4(a). The January 14 Met-Ed confirmation letter states the Met-Ed Retail Choice Center should be contacted if the information regarding switching to Choice Energy is incorrect. Chailla Exhibit 1. Rather than make such specified contact, on February 1, 2021, Ms. Chailla contacted by e-mail a department unassociated with and unauthorized to process an EGS disenrollment request. Chailla Exhibit 2; Tr. 105, 144-145. Further e-mails were sent by Ms. Chailla and her husband on February 2, 2021, to Met-Ed departments unaffiliated with EGS disenrollment requests. Chailla Exhibit 4, 5; Tr. 144-146. Ms. Chailla's disenrollment request was eventually forwarded to Met-Ed customer service on February 3, 2021, which resulted in the service address being disenrolled from Choice Energy effective February 3, 2021. Chailla Exhibit 7; Tr. 105-106, 129, 151. Notwithstanding the initial disenrollment requests being directed to the wrong Met-Ed departments, Met-Ed complied with the terms of its tariff, and processed Ms. Chailla's disenrollment request within three business days. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth 1981). Therefore, Ms. Chailla has not satisfied her burden to demonstrate Met-Ed improperly disenrolled Ms. Chailla from service with Choice Energy.

Regarding Choice Energy's charges, as I discussed above, no violations have been established regarding Ms. Chailla's enrollment with Choice Energy. There is also no dispute that Ms. Chailla received Choice Energy's generation services while she was enrolled

with Choice Energy. Choice Energy billed Ms. Chailla based on her usage, and Met-Ed placed these charges on Ms. Chailla's bill. Tr. 76, Tr. 99-100, 102-103, 105; Met-Ed Exhibit 9 at Section 5.4.1. As Met-Ed testified, after a Met-Ed customer is disenrolled from an EGS, the Met-Ed customer is still billed for the usage from when they were enrolled with the EGS. Tr. 101. In other words, the charges from Choice Energy do not disappear simply because the customer has disenrolled with the EGS. The evidence shows that Ms. Chailla was only billed for Choice Energy between the times she was enrolled and disenrolled, i.e., January 15, 2021, to February 3, 2021. Chailla Exhibit 10; Met-Ed Exhibits 4-8. Therefore, I find no evidence that Ms. Chailla was incorrectly billed for Choice Energy's services on her Met-Ed bill.

Ms. Chailla also alleges that, through its communications or lack thereof, Met-Ed and Choice Energy violated 52 Pa. Code §§ 56.140-141, which generally govern customer disputes and inquiries. Tr. 28, 169-170. As an initial matter, these sections only apply to public utilities, and Choice Energy is not a public utility. *See* 52 Pa. Code § 56.2. Therefore, these allegations do not apply to Choice Energy. Further, I do not find that Ms. Chailla has established that Met-Ed violated either section.

Section 56.140 prohibits termination or threatening termination of service pending response to an inquiry. As discussed *infra*, I do not find that Met-Ed threatened to terminate Ms. Chailla's service. Section 56.141, *inter alia*, mandates public utilities attempt to resolve disputes in accordance with 52 Pa. Code § 56.151. Section 56.151, *inter alia*, mandates that the public utility should not issue a termination notice after initiation of a dispute, and should take steps to investigate the dispute. I do not find that Ms. Chailla has established that Choice Energy violated either Section 56.141 or 56.151. As explained *supra*, Met-Ed appropriately handled Ms. Chailla's disenrollment request. Additionally, the record shows that Ms. Chailla's husband contacted Met-Ed on February 24, 2021, to dispute the Met-Ed bill, including the Choice Energy charges, but Mr. Chailla hung up on Met-Ed. Met-Ed Exhibit 1; Tr. 132. As a result of Mr. Chailla's February 24 call, Met-Ed issued and mailed dispute rights to Mr. Chailla. Met-Ed Exhibit 1; Tr. 132. Additionally, a representative contacted Ms. Chailla on March 11, 2021, in an attempt to satisfy 52 Pa. Code § 56.151 and resolve Ms. Chailla's issues with Met-Ed. Chailla Exhibit 13; Tr. 151-152. Ms. Chailla did not return Met-Ed's call. Tr. 152.

Miscellaneous issues

Ms. Chailla's complaint also includes allegations not directly related to her enrollment and disenrollment with Choice Energy.

Ms. Chailla's complaint states that Met-Ed is either threatening to shut off her service or has already shut off her service. The genesis of Ms. Chailla's concern appears to be the January 14 Met-Ed confirmation letter, which states "residential and small commercial customers who fail to pay for generation service provided by an electric generation supplier and billed by Met-Ed may have their service terminated." Tr. 27 (citing Chailla Exhibit 1). I do not find that this language constitutes Met-Ed threatening to terminate Ms. Chailla's electric service. This language simply states what may happen, should Ms. Chailla not pay for service from an EGS. Met-Ed's EGS Coordination Tariff states that the EGS election confirmation letter must include notice that a customer's service may be terminated for failure to pay for generation service provided by an EGS and billed by the EDC. Met-Ed Exhibit 9 at Section 5.3.1(c); Tr. 123-124. Rather than demonstrate a violation of law, Met-Ed's January 14 confirmation letter demonstrates Met-Ed is complying with the terms of its tariff. Ms. Chailla has otherwise not presented any evidence that Met-Ed has improperly threatened to terminate her service.

Ms. Chailla also asserts that the electronic statements and paper bills do not match Tr. 37-39 (citing Chailla Exhibits 9, 10, and 11). Commission regulations require a customer to receive the same information in an electronic bill as a paper bill. 52 Pa. Code § 56.11. Ms. Chailla has not presented evidence that shows Met-Ed has violated the law. As Met-Ed explains, the e-mails contained in Ms. Chailla's Exhibit 9 are not electronic statements but are an e-mail summary that states that the customer must follow a link to access the actual electronic statements. Tr. 136. Ms. Chailla's argument on this issue will also be rejected.

Ms. Chailla also cites 52 Pa. Code § 54.122 with regard to consumer privacy and expresses concerns regarding confidentiality. Tr. 21, 40-41. Specifically, Ms. Chailla expressed concern how the Choice Energy sales agent received her phone number to call her. Tr. 41. Choice Energy explained that it received Ms. Chailla's phone number by using a list of phone

numbers from a data company that does not include do-not-call numbers. Tr. 91. Based on the record, Ms. Chailla has not presented evidence to support a finding that Choice Energy violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission in obtaining Ms. Chailla's phone number.

Related to her privacy concerns, Ms. Chailla asserts the Choice Energy sales agent did not initially identify themselves as being with Choice Energy, but instead they identified themselves as being with Met-Ed, and then later identified themselves as being affiliated with Choice Energy. Tr. 40-41. Ms. Chailla has not presented evidence to demonstrate that the record supports this claim. As stated *supra*, there is no record of the content of the conversation with the Choice Energy sales agent other than Ms. Chailla's recollection. Choice Energy disclaimed any affiliation with Met-Ed and stated that its agents, who are employed by an entity wholly owned by the owner of Choice Energy, never identify themselves as being affiliated with a utility in any way. Tr. 85, 88. Again, Ms. Chailla's arguments regarding this issue will be rejected.

Conclusion

As relief, Ms. Chailla requests elimination of her Choice Energy bill. Over two billing periods, Choice Energy charged Ms. Chailla \$14.90 in generation charges and \$230.00 for a service recovery charge. Ms. Chailla acknowledges a check for \$230.00 was received from Choice Energy, but she asserts it was not cashed because it was not titled a refund, and additionally, she had not paid anything to Met-Ed or to Choice Energy to warrant a refund. Tr. 35. Mr. Cheung explained that the check is considered a refund because the way the process works is that a utility, i.e., Met-Ed, has already paid Choice Energy, and therefore Choice Energy is refunding that amount. Tr. 81. Because Ms. Chailla was no longer a Choice Energy customer, there was no other way for Choice Energy to adjust Ms. Chailla's account. Tr. 81-82. Met-Ed similarly stated that, because Ms. Chailla was no longer a Choice Energy customer, Choice Energy could no longer issue a credit to Ms. Chailla's bill with Met-Ed. Tr. 106. Therefore, Met-Ed explained the options for Ms. Chailla to satisfy the unpaid Choice Energy charges that remain on her bill was to cash the refund check and then remit payment to Met-Ed, or to

authorize Choice Energy to submit the check directly to Met-Ed to have it posted on the account. Tr. 106-107.

I agree with Choice Energy that the relief requested by Ms. Chailla, i.e., elimination of her Choice Energy bill, was largely provided by Choice Energy's willingness to refund her \$230.00 for a service recovery charge. Despite the rationale provided by Ms. Chailla for not cashing the check, there is not sufficient evidence in the record to show she could not have applied it against her balance with Met-Ed, effectively eliminating what she had been charged by Choice Energy. Although the \$230.00 refund did not account for the \$14.90 in commodity charges from Choice Energy, as explained *supra*, Ms. Chailla has not established that she was improperly enrolled or disenrolled with Choice Energy, or that her other miscellaneous allegations merit the relief she seeks. Because I do not find that Met-Ed or Choice Energy violated the Public Utility Code, the Commission's regulations, or an order of the Commission, Ms. Chailla's complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa. C.S. § 701.

2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is upon the complainant. 66 Pa. C.S. § 332(a).

3. To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosier v. Margulies*, 364 Pa. 45 (1950).

6. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa. C.S. § 701.

7. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 623 A.2d 1100 (Pa. Cmwlth. 1982); 2 Pa. C.S. §704.

8. To establish substantial evidence, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. Upon 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, the complainant has not satisfied his burden of proof. The complainant would 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*, 461 A.2d 1234 (Pa. 1983).

10. 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).

11. EGS customers must be informed of and provided a three-business-day right of rescission after receipt of a disclosure statement. 52 Pa. Code §§ 54.5(d), 111.7(b)(3).

12. There is a rebuttable presumption that an EGS disclosure statement correctly addressed to a customer with sufficient first-class postage attached shall be received by the customer three days after it is deposited in the United States mail. 52 Pa. Code § 111.11(c).

13. An EGS does not need a signature to complete a transaction involving telephone contact by an agent, so long as the transaction is verified. 52 Pa. Code § 111.7

14. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers, and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consol Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth 1981).

15. A Met-Ed customer's disenrollment from an EGS and return to default service must be effective within three business days after processing the request. Met-Ed EGS Coordination Tariff, Supplement No. 10, Section 5.3.4(a), effective June 1, 2019.

16. Section 56.140 of the Commission's regulations prohibits termination or threatening termination of service pending response to a public utility customer's inquiry. 52 Pa. Code § 56.140.

17. Section 56.141 of the Commission's regulations mandates public utilities attempt to resolve disputes in accordance with 52 Pa. Code § 56.151. 52 Pa. Code § 56.141.

18. Section 56.151 of the Commission's regulations mandates that the public utility should not issue a termination notice after initiation of a dispute, and should take steps to investigate the dispute. 52 Pa. Code § 56.151.

19. An EGS election letter sent to a Met-Ed customer must include notice that a customer's service may be terminated for failure to pay for generation service provided by an EGS and billed by the EDC. Met-Ed EGS Coordination Tariff, Supplement No. 10, Section 5.3.1(c), effective June 1, 2019.

20. Commission regulations require a customer to receive the same information in an electronic bill as a paper bill. 52 Pa. Code § 56.11.

21. Complainant failed to sustain the burden of demonstrating that 4 Choice Energy, LLC violated the Public Utility Code, the Commission's regulations, or an order of the Commission. 66 Pa. C.S. § 332(a).

22. Complainant failed to sustain the burden of demonstrating that Metropolitan Edison Company violated the Public Utility Code, the Commission's regulations, or an order of the Commission. 66 Pa. C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Florence R. Parker Chailla against Metropolitan Edison Company and 4 Choice Energy, LLC at Docket No. C-2021-3024417, is denied;

2. That the Secretary's Bureau shall mark Docket No. C-2021-3024417, as closed.

Date: October 26, 2021

/s/
John M. Coogan
Administrative Law Judge