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November 24, 2021

**VIA E-FILING**

Rosemary Chiavetta, Secretary  
Secretary's Bureau  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

Re: Florence Parker Chaila v. Metropolitan Edison Company et al.  
Docket No.: C-2021-3024417

Dear Ms. Chiavetta:

Enclosed for filing, please find the Respondent, Choice Energy, LLC d/b/a 4 Choice Energy's Reply Exceptions and Verified Statement of John Coyle, Esq.

Thank you for your kind attention to this matter.

Very truly yours,

*Brian C. Deeney*

Brian Deeney for  
LEWIS BRISBOIS BISGAARD & SMITH LLP

BD:pl

cc: Hon. John Coogan (ALJ)  
Office of Special Assistants, PA Public Utility Commission  
Margaret Morris, Esq.  
Florence R. Parker Chaila, JD  
John D. Coyle, Esq.

PENNSYLVANIA PUBLIC UTILITY 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.

**REPLY EXCEPTIONS OF CHOICE ENERGY, LLC d/b/a 4 CHOICE ENERGY**

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

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Attorneys for Choice Energy LLC, dba 4 Choice  
Energy

## I. INTRODUCTION

On October 26, 2021, the Hon. John M. Coogan, A.L.J. filed his Initial Decision regarding the claims raised by Petitioner Florence R. Parker Chailla. Judge Coogan held that “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). (#21<sup>1</sup>)

Claimant was enrolled with Choice Energy, LLC dba 4 Choice Energy (“Choice”) via a telephone Third-Party Verification call on January 5, 2021, for a twenty-four-month fixed rate contract. (29-30). During the recorded TPV call, Claimant was informed of an early termination fee of \$10.00 per remaining month in the contract if cancelled after a three-day rescission period. (31). She was then provided with a telephone number to use to cancel her enrollment. (32). Then on January 6, 2021, Choice sent Claimant a welcome package with contract summary and customer disclosure statement that confirmed the above-terms and three-day right of rescission. (33-36). Claimant contacted Metropolitan Edison (“Med-Ed”) on February 1, 2021, to cancel her enrollment with Choice. (41).

As the cancellation on February 1, 2021, was after the statutory right of rescission period, Claimant was billed for commodity charges incurred during the period of enrollment and a \$230.00 service recovery charge. (44). After Claimant disputed the termination charge, for customer goodwill Choice mailed claimant a check for \$230.00. (47). Claimant has to this date refused to deposit the \$230.00 check from Choice and has refused to pay either the commodity charges or termination fee that was billed by Met-Ed. Instead, Claimant brought and maintained this action.

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<sup>1</sup> References to the Findings of Fact from the Initial Decision are ([number]).

Claimant submitted Exceptions to the Initial Decision that fail to present a legally sufficient basis to alter the findings from the Initial Decision. Additionally, Claimant raises new allegations of legal violations by Choice that were never raised in the underlying proceeding and cannot be presented here. Further, these certified and sworn statements supporting these National Do Not Call List claims are materially false. For all of these reasons, we respectfully submit that the Initial Decision be adopted by the Commission.

## **II. Response to Exceptions**

Claimant's exceptions do not refer to the numbered Factual Findings from the Initial Decision. This Reply attempts to match the substance of Claimant's objections to the Initial Decision.

- a. "I. Right to Make and Enforce Contracts."
- b. "II. Contracting Parties 'Mutually Assented' to Rescind."

It is unclear how to respond to the exceptions here. There was no violation of 42 U.S.C. § 1983, because the Commonwealth of Pennsylvania never deprived Claimant of any right under color of law. The extended discussions about "rescission" are misplaced.

There was an agreement to provide service—Choice offered to provide service on specific terms, Claimant accepted same, received written confirmation, and did not cancel during the statutory rescission period. (#25-35), Claimant subsequently terminated her enrollment (#41-42), and Claimant was billed by her EDC, Med-Ed, for the commodity provided by Choice and the contractual early termination fee. (#43-44). After being contacted by Claimant, for customer goodwill Choice agreed to refund the early termination fee and sent a check to Claimant for \$230.00, which she refuses to deposit. (#45-47).

Accordingly, we respectfully submit that the Initial Decision be affirmed.

c. “IV. Enrollment—DisEnrollment with Choice Energy

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.

From the Discussion:

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.

At the hearing, Ms. Chailla testified that the TPV call informed her of a ten-day right of rescission. When the recording of the call was played for the Court (Choice Exs. 1 and 4), Ms. Chailla acknowledged that she verbally agreed to the three-day rescission statement. Claimant’s exception here argues in some form that the initial sales call she received informed her of a ten-day right of rescission, even though the TPV call stated three days, and the contract summary and disclosure statement stated three days. This is devoid of merit and the Initial Decision finding should be sustained.

d. Demand of counsel for Choice

Claimant in her Exceptions demands that Counsel for Choice provide support for the position that a physically signed contract is not required for enrollment. 52 Pa. Code §111.7(b) and subparts (1) through (5) authorize such enrollment.

e. Exception regarding receiving notice.

Claimant appears to argue here that mail is sometimes placed in a sewer instead of being delivered and that she never received the Disclosure until March, despite receiving notice on January 14, 2021, from Met-Ed of the switch in suppliers. Judge Coogan held:

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.

(Initial Decision pp. 11-12). Claimant's exception quotes "reference.com" for the statement that properly addressed items are rarely lost by the USPS. While the source may be far from authoritative, it fits with the Commission rebuttable presumption that the mail was delivered to Claimant. Thus, the Initial Decision properly held that Claimant failed to meet her burden to rebut the Commission's presumption of delivery.

f. V. Do Not Call Registry

Claimant here takes exception to the findings on page 15-16 of the Initial Decision regarding testimony from Choice about obtaining Claimant's telephone number from a list of numbers that were not on the national do-not-call list. Claimant states here—under oath and under penalty of perjury—that the number “540-424-5386 was registered on the National Do Not Call Registry as early as December 27, 2016.”

Claimant's support for this is the supposed email she received on December 27, 2016, indicating that she had completed the “First Step” in enrollment and that she needed to click the link below to complete the registration within 72 hours. (p.12). Claimant then cut-and-pasted a portion of an email confirming “Registration Complete.” (p.13). As per Claimant's sworn statement, this was the confirmation she received after enrolling on December 27, 2016.

An apparent review of the cut-and-paste from Claimant's brief suggests that the portion of the email stating that the “number ending in 5386” is two different fonts, with the “5386” being in a different font. The Federal Trade Commission maintains a website portal whereby a telephone number can be checked to see if it is on the do-not-call list, and when it was enrolled. <https://www.donotcall.gov/verify.html>. The telephone number Plaintiff was registered with for the formal hearing was “570-534-7082.” That telephone number was registered with the do-not-call list on December 28, 2016. (Verified Statement of John Coyle, Ex. A). This would be the logical follow-through after completing the first step in the enrollment process on December 27, 2016.

But that was not the number called by Choice; it was (570) 424-5386. Plaintiff puts a partial confirmation of the “registration complete” screen she received, without including the portion of the screen that shows the date. Why? Because the telephone number (570) 424-5386 was enrolled in the Federal Trade Commission's do-not-call list on November 13, 2021---**two days**

before she stated under oath that she had registered the number five years earlier. (Coyle Statement, Ex. B).

In summation, to argue that Choice's representative Moses Cheung testified falsely about calling numbers that are not registered on the do-not-call list:

- 1) Claimant doctored the email from December 27, 2016, pasted in her brief;
- 2) Falsely presented the "Registration Complete" screen as her confirmation;
- 3) Actually, registered her number five years later, two days before filing her exceptions;  
and
- 4) Certified to the truth of these falsehoods stating that she "hereby affirm that the foregoing statements made herein are true to the best of my knowledge or belief. I am aware that if any of the foregoing is willfully false, I may be subject to punishment."

For these purposes here, Claimant has failed to present non-fabricated, and non-perjured evidence to rebut the factual findings from the Initial Determination. Accordingly, this exception must be denied.

g. "Why did Choice Energy send a 'refund' check to the Chaillas."

Claimant argues that Choice acted incorrectly by sending Ms. Chailla a refund check for the full amount of the \$230.00 early termination fee. (pp. 15-16). This entire action is premised on Claimant's objection to the early termination fee, which she was refunded prior to initiating this matter. To be clear, Choice did not need to issue the refund. However, as an accommodation to an unhappy customer, it did to make her whole. Instead, Claimant complains about being issued the refund. This is not a meritorious exception to the Initial Decision and should be denied.

### **III. CONCLUSION**

As set forth above, we respectfully request that the October 26, 2021, Initial Decision be affirmed and adopted in full.

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

*/s/ Brian C. Deeney*

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Energy

Date: 11/23/21

PENNSYLVANIA PUBLIC UTILITY 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.

**CERTIFICATE OF SERVICE**

I, Brian C. Deeney, hereby certify that on November 24, 2021, have served copies of the foregoing reply to Claimant's Exceptions electronically as follows:

- 1) eFile@pa.gov [efile@pa.gov](mailto:efile@pa.gov)
- 2) 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)
- 3) 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)
- 4) Secretary Rosemary Chiavetta, Esq., Pennsylvania Public Utility Commission [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov)

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

*/s/ Brian C. Deeney*

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Date: 11/24/2021

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PENNSYLVANIA PUBLIC UTILITY 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.

**VERIFIED STATEMENT OF JOHN COYLE IN SUPPORT OF  
REPLY EXCEPTIONS OF CHOICE ENERGY, LLC d/b/a 4 CHOICE ENERGY**

I, John Coyle, state the following:

1. I am an attorney at law, admitted to practice in and am a member in good standing of the bar of New Jersey, and admitted in this matter *pro hac vice*. I submit this Verified Statement in support of the Reply Exceptions of Choice Energy, LLC d/b/a 4 Choice Energy.

2. Attached hereto as Exhibit A is a true and correct copy of the email confirmation received from the Federal Trade Commission regarding the status of the telephone number 570-534-7082.

3. Attached hereto as Exhibit B is a true and correct copy of the email confirmation received from the Federal Trade Commission regarding the status of the telephone number 570-424-5386.

4. I verify that the facts set forth herein are true and correct, to the best of my knowledge, information and belief, and that I would be able to prove the same if a hearing were held regarding such facts. I understand that the statements are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to falsifications to authorities).

**Coyle Law Group LLP**



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[jcoyle@coylelawgroup.com](mailto:jcoyle@coylelawgroup.com)

Date: 11/24/21

# Exhibit A



John Coyle <jcoyle@coylelawgroup.com>

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## National Do Not Call Registry - Your Registration Is Confirmed

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**Verify@donotcall.gov** <Verify@donotcall.gov>  
To: jcoyle@coylelawgroup.com

Mon, Nov 22, 2021 at 10:34 PM

Thank you for registering your phone number with the National Do Not Call Registry. You successfully registered your phone number ending in 7082 on December 28, 2016. Most telemarketers will be required to stop calling you 31 days from your registration date.

Visit <https://www.donotcall.gov> to register another number or file a complaint against someone violating the Registry.

\*\*\*\*\*

Please do not reply to this message as it is from an unattended mailbox. Any replies to this email will not be responded to or forwarded. This service is used for outgoing emails only and cannot respond to inquiries.

# Exhibit B



John Coyle <jcoyle@coylelawgroup.com>

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## National Do Not Call Registry - Your Registration Is Confirmed

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**Verify@donotcall.gov** <Verify@donotcall.gov>  
To: jcoyle@coylelawgroup.com

Mon, Nov 15, 2021 at 6:56 PM

Thank you for registering your phone number with the National Do Not Call Registry. You successfully registered your phone number ending in 5386 on November 13, 2021. Most telemarketers will be required to stop calling you 31 days from your registration date.

Visit <https://www.donotcall.gov> to register another number or file a complaint against someone violating the Registry.

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Please do not reply to this message as it is from an unattended mailbox. Any replies to this email will not be responded to or forwarded. This service is used for outgoing emails only and cannot respond to inquiries.