

November 29, 2021

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2021-3024417
Florence R. Parker Chailla v. Met-Ed and Choice Energy LLC
Reply Exceptions of Met-Ed**

Dear Secretary Chiavetta:

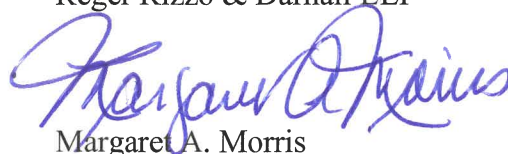
Attached for filing is the Reply of Metropolitan Edison Company to the Exceptions filed by Florence R. Parker Chailla (Complainant) in the above referenced proceeding.

A copy of the Reply Exceptions has been provided to the Parties in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosures

cc: The Hon. John Coogan, PA Public Utility Commission [w/ encl.]
Office of Special Assistants, PA Public Utility Commission [w/ encl.]
Tori Giesler, Esquire, FirstEnergy Service Company [w/ encl.]
Brian C. Deeney, Esquire [w/ encl.]
John D. Coyle, Esquire [w/ encl.]
Florence R. Parker Chailla [w/ encl.]

**Re: Docket No. C-2021-3024417
Florence R. Parker Chailla v. Met-Ed and Choice Energy LLC
Reply Exceptions of Met-Ed**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

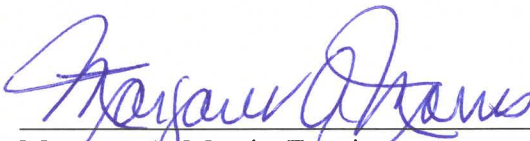
Via Electronic Mail

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Dated: November 29, 2021



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FLORENCE R. PARKER CHAILLA :
 :
 v. : Docket No. C-2021-3024417
 :
 METROPOLITAN EDISON COMPANY :
 and :
 CHOICE ENERGY LLC :
 d/b/a 4 CHOICE ENERGY :

**REPLY EXCEPTIONS ON BEHALF OF METROPOLITAN EDISON COMPANY
TO EXCEPTIONS FILED BY FLORENCE R. PARKER CHAILLA**

Margaret A. Morris, Esq.
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Dated: November 29, 2021

Counsel for Metropolitan Edison Company

I. Introduction

In accordance with the Commission's directive and Section 5.535 of the Commission's regulation, 52 Pa. Code § 5.535, Metropolitan Edison Company (Met-Ed or the Company) timely files its Reply to the Exceptions filed by Florence R. Parker Chailla (Complainant) which support the adoption of the Initial Decision (ID) of Administrative Law Judge John M. Coogan (Judge Coogan) without modification. The Commission should affirm Judge Coogan's dismissal of the Formal Complaint for Complainant's failure to sustain the burden of demonstrating that 4 Choice Energy, LLC (Choice Energy) and Met-Ed violated the Public Utility Code, the Commission's regulations, or an order of the Commission.

The Commission should affirm the Findings of Facts and Conclusions of Law set forth in the well reasoned ID and sustain the dismissal of the Complaint. Some assertions stated in the Exceptions appear entirely unrelated to the issues raised at the hearing and addressed in the ID. Other assertions appear to be a mere regurgitation of the Complainant's poorly supported claims presented at the hearing. Any issue not raised at hearing or document not offered and admitted into the record are not properly before the Commission and should be disregarded.

II. Procedural Background

On March 4, 2021, the Complainant filed a Formal Complaint alleging, *inter alia*, Met-Ed is either threatening to shut off her service or has already shut off her service. Complainant also claims there are incorrect charges on her bill; specifically, she alleges that the bill issued by Choice Energy is "incorrect and fraudulent."

On March 23, 2021, Met-Ed filed an Answer and New Matter specifically denying the Complainant's allegations. Met-Ed asserted that there was no pending termination notice and averred that the Company has no control over the information provided by the EGS that appears on the Complainant's bills issued by Met-Ed.

The hearing convened as scheduled on July 22, 2021. The Complainant appeared *pro se* and testified. She offered thirteen exhibits, all of which were admitted into the record. (Chailla Exhibits 1-13). Choice Energy, presented the testimony of Moses Cheung and offered

four exhibits, all of which were admitted into the record. (Choice Energy Exhibits 1-4). 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 and 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 was closed on September 7, 2021.

III. Initial Decision

Judge Coogan found that the Complainant did not carry her burden of proof and dismissed the Complaint. Specifically, he concluded:

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.

ID at 16-17.

IV. Complainant's Exceptions

A. Procedural Issues

Pursuant to Commission regulations,¹ “[e]ach exceptions must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision,” and “[s]upporting reasons for the exceptions shall follow each specific exception.” The Complainant's Exceptions violate Section 5.533(b) of the Commission's regulations² which requires each exception to be numbered, to identify the finding of fact or conclusion of law to which exception is taken, and to cite to relevant pages of the ID. While the Company recognizes that the Commission has been hesitant to rule unfavorably against *pro se* litigants like the Complainant based on technical grounds, in this case a substantial part of the Exceptions should be summarily rejected because their content is well beyond the scope of what the Commission may consider and or are based entirely on non-record evidence.

Section 5.431 of the Commission's regulations³ provides that after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. Attached “Exhibits A and B” were not presented at the July 22, 2021 hearing.

At no time prior to the issuance of the ID or the filing of Exceptions did the Complainant file a petition to reopen the record to introduce any of the alleged “evidence” that is contained in her Exceptions. Even if the Commission considered the Complainant's Exception as a request to reopen the record, the emails included in the Exceptions are not newly discovered evidence which would justify granting such relief. A petition seeking to reopen the record may be entertained as a petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), if the newly discovered evidence was not in existence, or was not discoverable through the exercise

¹ 52 Pa. Code § 5.533(b).

² 52 Pa. Code § 5.533(b).

³ 52 Pa. Code § 5.431.

of due diligence, prior to the expiration of the time within which to file a petition for rehearing.⁴ The attached “Exhibits” were clearly available at the time of the hearing on July 22, 2021. If the Complainant believed that this “evidence” would have assisted in her case, she should have pursued this matter during the hearing. The hearing has concluded, and it is now too late to attempt to introduce evidence that was clearly available to the Complainant at the time of hearing. In accordance with *Duick*, the Commission should not entertain the new evidence referenced in and attached to the Complainant’s Exceptions as “Exhibits A and B.”

B. Substantive issues

The Complainant’s attempt to further litigate this matter by simply disagreeing with the outcome of the ID without identifying any specific error of law or abuse of discretion to satisfy the requirements is procedurally improper and should be summarily dismissed. The Exceptions fail to present a legally sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision. The Complainant’s Exceptions that relate to the allegations concerning Met-Ed and the Company’s response are set forth below and consolidated where appropriate.

1. **Right to make and enforce contracts**
2. **Contracting parties ‘mutually assented’ to rescind**

The Complainant argues that her federal constitutional rights were violated by Choice Energy and Met-Ed, its agent, regarding the enrollment and de-enrollment of her Account with Choice Energy.

The Complainant failed to articulate how 42 U.S.C. § 1983 is applicable to the present Complaint proceeding. The Code specifically authorizes the Commission to supervise and regulate all public utilities doing business in Pennsylvania and the power and authority to enforce its regulations. 66 Pa.C.S. § 501. The Code specifically sets forth Met-Ed’s obligation regarding the deregulated generation market. 66 Pa.C.S. § 2807. The Commission has promulgated regulations for the enrollment and de-enrollment of an account with a licensed electric generation supplier. 52 Pa. Code § 57.171- 57.180. The Complainant has not offered any

⁴ *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 (Order entered December 17, 1982).

evidence that Met-Ed violated its obligation under the Code or Chapter 57 regulations. Rather, she engages in a rambling discussion regarding her “recission” of her enrollment with Choice Energy which Met-Ed was not privy.

The Complainant’s Exceptions 1 and 2 are without merit and should be denied. Judge Coogan’s Findings of Fact and Conclusions of Law on this issue should be adopted without modification.

3. Met-Ed’s paper vs. electronic bills are very different 52 Pa. Code §56.15

The Complainant argues that the electronic bill issued by Met-Ed violated Commission regulations at 52 Pa. Code § 56.15.

Judge Coogan dismissed this allegation and specially stated:

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.

ID at 15.

The Complainant offered nothing more than her opinion which ignores the fact that the email, just like the envelope for the paper bill, is the vehicle to deliver the electronic bill.

The Complainant’s Exception 3 is without merit and should be denied. Judge Coogan’s Findings of Fact and Conclusions of Law on this issue should be adopted without modification.

4. Threat to terminate language was made by Met-Ed⁵

The Complainant makes the absurd argument that a sentence in both the Enrollment Letter and De-Enrollment Letter that Met-Ed issued constitutes a threat of termination in violation of Commission regulations.

Judge Coogan dismissed this allegation and specially stated:

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.

ID at 15.

52 Pa. Code § 56.91 specifically sets forth the provisions and contents of a valid termination notice. The referenced sentence is clearly not a threat of termination.

The Complainant's Exception 4 is without merit and should be denied. Judge Coogan's Findings of Fact and Conclusions of Law on this issue should be adopted without modification.

V. Conclusion

Section 332(a) of the Code⁶ provides that the proponent of a rule or order has the burden of proof in a Commission proceeding, except as otherwise provided in Section 315 of the Code.⁷ "Burden of proof" imports the duty of ultimately establishing the existence of a certain

⁵ The Complainant also numbered this Exception as 3.

⁶ 66 Pa.C.S. § 332(a).

⁷ 66 Pa.C.S. § 315.

fact or set of facts by evidence which preponderates to a legally required extent.⁸ The term “preponderance of the evidence” means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.⁹ Accordingly, one must review the record in this case to determine whether the Complainant has satisfied her burden of proof. If the review indicates the burden has been satisfied, one must then determine whether the respondent has submitted evidence of co-equal value or weight to refute Complainant’s evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence.¹⁰

Furthermore, substantial evidence in the record must support the decision of the Commission.¹¹ The term “substantial evidence” means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹² The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint.¹³

As Judge Coogan recognized in his well reasoned ID, the Complainant has not met the burden of proving that Met-Ed violated the Code or Commission’s regulations. The Complainant’s evidence regarding the allegations against Met-Ed consisted solely of unsupported assertions, personal opinion, as she claimed in testimony, no matter how strongly held, does not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁸ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁹ *Id.*

¹⁰ *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm’n.*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

¹¹ *See, e.g.*, Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704; *Yellow Cab Company v. Pa. Pub. Util. Comm’n.*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

¹² *Norfolk & Western Ry. Co. 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. 1961); *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

¹³ *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976).

For the reasons set forth in these Reply to Exceptions, Metropolitan Edison Company, respectfully requests that the Commission adopt the Initial Decision of the Honorable John M. Coogan without modification and dismiss the Formal Complaint of Florence R. Parker Challa against Metropolitan Edison Company in its entirety.

Respectfully submitted,

Reger Rizzo & Darnall LLP



Dated: November 29, 2021

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