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January 6, 2022

Via Electronic Filing

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

Re: Rashid El Malik v. PECO Energy Company & Reliant Energy Northeast LLC t/a NRG
Residential Solutions; Docket No. F-2020-3018838

Dear Secretary Chiavetta:

On behalf of Reliant Energy Northeast LLC t/a NRG Residential Solutions is the Answer to the Petition for Reconsideration filed by Rashid El Malik in the above-captioned matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.
Ra-osa@pa.gov (Word Version via email with enc.)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of NRG's Answer to the Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Electronic Mail

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Date: January 6, 2022

Karen O. Moury
Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rashid El Malik	:	
	:	
v.	:	Docket No. F-2020-3018838
	:	
PECO Energy Company & Reliant Energy	:	
Northeast LLC t/a NRG Residential	:	
Solutions	:	

**ANSWER OF RELIANT ENERGY NORTHEAST LLC T/A NRG RESIDENTIAL SOLUTIONS
TO PETITION FOR RECONSIDERATION OF RASHID EL MALIK**

I. INTRODUCTION

Pursuant to Section 5.572(e) of the regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code § 5.572(e), Reliant Energy Northeast LLC t/a NRG Residential Solutions (“NRG”) files this Answer to the Petition for Reconsideration of Rashid El Malik (“Complainant”) in the above-captioned matter. The Order entered on December 16, 2021 correctly found that the Complainant failed to carry his burden of proof to support the allegations that NRG violated the Commission’s regulations in switching his electric and natural gas accounts. Notably, the Petition raises no new and novel arguments not previously heard or considerations that appear to have been overlooked by the Commission. To the contrary, it is essentially a rehashing of the issues the Complainant raised in his Exceptions and have already been rejected. In support of this Answer, NRG further avers as follows.

II. BACKGROUND

1. The Complainant filed a Formal Complaint (“Complaint”) against PECO Energy Company (“PECO”) and NRG on January 29, 2020, alleging that his electric and natural gas accounts were switched from PECO to NRG without his authorization in January 2019. The

Complaint was an appeal of a decision rendered by the Bureau of Consumer Services (“BCS”), dismissing the Complainant’s Informal Complaint in which he alleged unauthorized switches. According to the Complaint, the Complainant learned about the switches through the confirmation letters sent to him by PECO. Complaint, ¶ 4; Tr. at 34-35; Complainant’s Exhibits 3 and 8.

2. NRG filed an Answer to the Complaint denying the material allegations and requesting dismissal of the Complaint.

3. An evidentiary hearing was held on July 1, 2020.

4. During the hearing, it was established that the Complainant’s electric and natural gas accounts were enrolled with NRG at a public location through use of the Eligible Customer List (“ECL”). Although NRG accepted the Complainant’s claim that he did not personally switch or authorize the switching of the accounts, no evidence was introduced to show that NRG improperly switched the accounts. To the contrary, NRG’s testimony and exhibits demonstrated that it received enrollment forms containing the Complainant’s signature and indicating that the switches were authorized. Tr. at 99-100, 102-103; NRG Exhibits 1 and 2. NRG’s witness explained that a family member or other representative of the Complainant who knew his address and telephone number could have authorized the switch, resulting in the sales agent using the ECL to obtain the utility account number that is needed for an enrollment. Tr. at 100-101, 104-107.

5. Due to the Complainant’s disputed enrollments, his electric and natural gas accounts were returned to PECO. Tr. at 32-34, 69. For the period of time that the Complainant was enrolled with NRG, he incurred electric and natural gas supply charges in the amount of \$69.28. Tr. at 88, 138. As a gesture of goodwill, NRG agreed to refund those charges based upon the Complainant’s disputed enrollments. Tr. 106.

6. On December 1, 2020, Administrative Law Judge (“ALJ”) Conrad Johnson issued an Initial Decision (“I.D.”) finding that the record lacked any evidence regarding who signed the enrollment forms that resulted in the Complainant’s electric and natural gas accounts being switched without his authorization. I.D. at 10-12.

7. On December 11, 2020, the Complainant filed Exceptions to the I.D., to which NRG filed Reply Exceptions on December 31, 2020.

8. By Order entered on December 16, 2021 (“*December 2021 Order*”), the Commission denied the Complainant’s Exceptions and found that “the Complainant failed to satisfy his burden of proof to demonstrate that NRG Residential had engaged in slamming or otherwise acted improperly in the switching of the Complainant’s electric or natural gas service.” *December 2021 Order* at 11. The Commission based its conclusion on the fact that “no evidence was presented as to who actually signed the enrollment forms on behalf of the Complainant or that NRG Residential engaged in other improper acts regarding the unauthorized switches.” *Id.*

9. On December 27, 2021, the Complainant filed a Petition for Reconsideration.

10. NRG files this Answer in opposition to the Complainant’s Petition, respectfully requesting that the Commission deny the Petition for Reconsideration.

III. LEGAL STANDARDS

11. The Public Utility Code establishes a party’s right to seek relief following the issuance of a decision. Such requests for relief must be consistent with Section 5.572 of the Commission’s regulations and/or Section 703(g) of the Public Utility Code. 66 Pa. C.S. § 703(f) relating to rehearing, and § 703(g) relating to the rescission, clarification and amendment of orders; 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

12. The standards for granting a petition for reconsideration, modification or clarification were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553,

559, 1982 Pa. PUC LEXIS 4 (1982). Under the standards established in *Duick*, such petitions may properly raise any matter designed to convince the Commission that it should exercise its discretion to amend or rescind a prior order, in whole or in part. Such petitions are expected to raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission.

IV. **ARGUMENT**

A. **The Commission-Approved Settlement Between the Bureau of Investigation and Enforcement and NRG Is Irrelevant to the Adjudication of this Complaint.**

13. The only new argument raised by the Petition for Reconsideration relates to a Settlement Agreement between the Bureau of Investigation and Enforcement (“I&E”) and NRG (“Settlement”), which the Commission approved on March 25, 2021.¹ Referring to the Settlement, the Complainant contends that the record supports the allegations of NRG’s unauthorized enrollment and shows a pattern of switching customers without consent. Petition at 3-4.

14. The Commission did not overlook the Settlement in the *December 2021 Order* adjudicating the Complaint. To the contrary, the Commission acknowledged the Settlement and expressed concerns about the similarity between the allegations raised during the I&E investigation and this proceeding. *December 2021 Order* at 7, fn. 5. The Commission also emphasized that it takes seriously allegations of slamming, but was not convinced on the basis of the record in this proceeding that NRG had engaged in any wrongdoing. Nonetheless, the Commission referred the matter to I&E for such further action as it may deem appropriate. *December 2021 Order* at 11-12.

¹ *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business*, Docket No. M-2020-3006647 (Order entered March 25, 2021).

15. In adjudicating the Complainant against NRG, the Commission properly limited its decision the record in this proceeding. Although the Settlement is a public document, it is not part of the evidentiary record. 52 Pa. Code § 5.406. Therefore, it may not be relied upon in the adjudication of the Complaint. Further, any concerns that the Complainant has about the experiences of other consumers are adequately addressed through the Commission’s referral to I&E.

16. Moreover, the Settlement has no relevance to the allegations that NRG committed any regulatory violations in its handling of the Complainant’s enrollments. The Settlement was the culmination of an informal investigation conducted by I&E based on informal complaints received by the Commission’s Bureau of Consumer Services (“BCS”) between April and September 2018. Settlement, ¶¶ 11, 13 and 14. Of note, in August 2018, NRG self-reported to the Office of Competitive Market Oversight (“OCMO”) that some sales agents had improperly used the eligible customer list (“ECL”) to enroll customers without authorization. NRG further advised OCMO that it had terminated all agents involved in this practice. Settlement, ¶ 15. Therefore, the results of the I&E investigation over a 6-month period in 2018 are irrelevant to the Complainant’s allegations regarding switches in January 2019.

17. In addition, the Settlement, which was filed with the Commission on September 29, 2020, acknowledged that NRG had undertaken a number of corrective measures designed to prevent similar occurrences in the future, including the elimination of the ability for sales agents to scroll through the ECL to locate a certain customer. The tool now only permits searching for a specific name and populations information if a match is located. NRG has also since deployed a technology solution to authenticate customers’ identities, thereby narrowing the ECL search

results and tightened its discipline policy for agents found to have committed ECL errors. Settlement, ¶ 24.

18. Notably, even if it had been admitted into the record of this proceeding, the Settlement is not evidence of any wrongdoing by NRG. The Settlement expressly acknowledges that the allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered. The Settlement further explicitly states that NRG “has made no concession or admission of fact or law.” Settlement, ¶ 35.

19. Accordingly, the Settlement has no bearing on the issue of whether NRG violated the Commission’s regulations in switching the Complainant’s electric and natural gas accounts and does not establish any pattern of unauthorized switches.

B. The Complainant Introduced No Evidence of NRG Wrongdoing.

20. Contrary to the Complainant’s claim in the Petition for Reconsideration that a preponderance of evidence in the record supports his assertion of slamming by NRG, he introduced no evidence to support his allegation that an NRG representative signed the enrollment forms, which resulted in his electric and natural gas accounts being switched from PECO to NRG. *December 16, 2021 Order* at 11-12; I.D. at 12.

21. In support of his claim, which has already been rejected by the Commission, the Complainant relies solely on the fact that the sales agent involved in his enrollments had a similar complaint lodged against him and that NRG has since coached the employee with additional training. Petition at 5. However, merely because a prior consumer has complained about an enrollment involving the same sales representative does not mean that the agent forged the Complainant’s signature on the enrollment forms.

22. As NRG's witness, Spencer Halstead, testified during the hearing, NRG received enrollment forms containing the Complainant's signature and indicating that the switches were authorized. Mr. Halstead explained that a family member or other representative who knew the Complainant's address and telephone number could have identified himself as the Complainant or as otherwise authorized to make the switch. The agent then would have used to the ECL to obtain the utility account number that is needed for the enrollment transaction. Tr. 100-101, 104-107.

23. Moreover, despite the lack of evidence showing that an NRG representative had completed the switches without authorization, NRG voluntarily agreed to refund the supply charges paid by the Complainant. Tr. 106. Therefore, the Complainant has been made whole and no additional relief is warranted or appropriate.

C. **NRG Provided Evidence to Show that Enrollment Forms Authorized the Switch from PECO to NRG.**

24. Through the Petition, the Complainant contends that NRG offered no evidence to refute his claim of "continuing to practice Slamming." Petition at 5.

25. As noted above, the Complainant did not present any evidence to show that NRG switched his electric and natural gas accounts without authorization. Further, the Complainant did not prove that NRG had continued to engage in alleged slamming nor would that have been appropriate since the Complainant may not represent other consumers' interests. *Pettko v Pennsylvania Water Company*, Docket No. C-2011-2226096 (Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings dated October 5, 2011, at 6); *Painter v Aqua PA, Inc.*, Docket No. C-2011-2239556 (Opinion and Order entered May 22, 2014, at 2, fn. 1).

26. The only evidence related to other allegations regarding unauthorized switches was an answer provided by NRG's witness to the Complainant's question about whether NRG has

received other requests to switch an account that was not requested by the customer. NRG's witness responded that some customers have made this allegation. Tr. 109-110. An acknowledgement that other customers have alleged unauthorized switches does not show that NRG committed any wrongdoing in switching the Complainant's accounts from PECO to NRG. Slamming allegations are just that and often arise as a result of one member of a household authorizing a switch unbeknownst to another member of the household.²

27. Moreover, NRG fully responded to the Complainant's claims of being switched without authorization by introducing the enrollment forms and committing to refund the Complainant for supply charges that were assessed during the brief period NRG provided electricity and natural gas to the Complainant. No basis exists in the evidentiary record to sustain the Complainant against NRG.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, NRG respectfully requests that the Petition for Reconsideration be denied and that the Commission uphold its December 16, 2021 Order.

Respectfully submitted,

/s/ Karen O. Moury

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Date: January 6, 2022

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² See, e.g., *Binh Tran v. Major Energy, LLC/Respond Power, LCC*, Docket No. C-2014-2417540 (Order entered July 30, 2015, at 9) (Commission dismissed complaint based on a family member authorizing a switch).