

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marie Blitzer	:	
	:	
v.	:	C-2022-3033912
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Marie Blitzer against PECO Energy Company because it is barred by the statute of limitations.

HISTORY OF THE PROCEEDING

On May 17, 2022, Marie Blitzer (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleged that PECO has billed her incorrectly since 2013 because she was switched to a third-party supplier, Green Mountain Energy, without her knowledge or consent. The Complainant requests a refund.

On August 9, 2022,¹ PECO filed an Answer which admitted in part and denied in part various material allegations of the Complaint. PECO admitted that the Complainant established an account for electrical service with PECO on October 18, 2013. PECO alleged that

¹ PECO was not served with the Formal Complaint until July 20, 2022.

the Complainant enrolled with supplier, Green Mountain Energy, on October 18, 2013, and was mailed a supplier enrollment notification letter on October 24, 2013. PECO further alleged that the Complainant's enrollment with Green Mountain Energy was the result of a referral from PECO Energy's Standard Offer Program, which was processed on her account on October 18, 2013, with an effective date of November 21, 2013. PECO argued that the Complainant is barred by the three-year statute of limitations set forth at 66 Pa.C.S. §3314(a) and requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated September 9, 2022, a telephonic hearing was scheduled for October 19, 2022, and the matter was assigned to me.

A Prehearing Order was issued on October 4, 2022, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On October 19, 2022, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Khadijah Scott, Esquire, appeared on behalf of PECO and presented the testimony of two witnesses: Carol Reilly, an Energy Acquisition Operations Manager at PECO; and Renee Tarpley, a Senior Regulatory Assessor at PECO. PECO offered the following six (6) exhibits, which were admitted into the record without objection:

- PECO Exhibit 1 – Account Activity Statement
- PECO Exhibit 2 – PECO Archived Contacts
- PECO Exhibit 3 – Customer's Supplier History
- PECO Exhibit 4 – Confirmation Letter
- PECO Exhibit 5 – Copy of Complainant's Monthly Bill
- PECO Exhibit 6 – BCS Decision

The record closed on November 8, 2022, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Marie Blitzer, who resides at 300 Blackberry Cir., New Hope, PA 18938 (Service Address). Tr. 5.

2. The Respondent is PECO Energy Company, a jurisdictional public utility, which provides electric service to the Complainants at the Service Address.

3. On October 18, 2013, the Complainant established an account for electrical service with PECO. Tr. 7-8, 14, 16.

4. On October 18, 2013, the Complainant enrolled with third-party supplier, Green Mountain Energy, with an effective date of November 21, 2013. Tr. 22-25; PECO Exh. 2.

5. The Complainant's enrollment with Green Mountain Energy was the result of a referral from PECO Energy's Standard Offer Program. Tr. 25; PECO Exh. 3.

6. On October 24, 2013, PECO mailed a supplier enrollment notification letter to the Complainant. Tr. 22-24; PECO Exh. 2.

7. Supplier information is always listed on a customer's monthly billing statement. Tr. 27; PECO Exh. 5.

8. On May 17, 2022, the Complainant filed a Complaint with the Commission against the Respondent.

DISCUSSION

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). Thus, the Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa.

Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993). To this end, the Commission has consistently held that Section 3314 of the Public Utility Code, 66 Pa.C.S. § 3314, “is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order.” *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018). Specifically, Section 3314 provides:

§ 3314. Limitation of actions and cumulation of remedies.

(a) General Rule. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a).

In this case, it is clear the date at which the alleged liability arose was older than three years, and thus, barred by the statute of limitations. The Complainant alleged that PECO switched her to a third-party supplier, Green Mountain Energy, without her knowledge or consent. However, it is undisputed that she was switched in 2013. Therefore, the Complainant had until 2016 to timely raise her Complaint. Instead, the Complainant filed her Complaint in 2022 – eight years after the alleged liability arose. As a result, Section 3314(a) divests the Commission of jurisdiction to hear the Complainant's action. Accordingly, the Complaint shall be dismissed.

CONCLUSIONS OF LAW

1. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

2. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super. 1945).

3. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

4. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

5. No action for the recovery of any penalties or forfeitures or any prosecution shall be maintained unless brought within three years from the date at which the liability arose. 66 Pa.C.S. § 3314(a).

6. Section 3314 of the Public Utility Code “is non-waivable because it terminates the right to bring an action as well as any remedy the Commission may order.” *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 23, 2018).

7. The Complainant’s claim that she was improperly billed by the Respondent is barred by the statute of limitations. 66 Pa.C.S. § 3314(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Marie Blitzer at Marie Blitzer v. PECO Energy Company, Docket Number C-2022-3033912, is dismissed.

3. That Docket No. C-2022-3033912 be marked closed.

Date: January 19, 2023

/s/
F. Joseph Brady
Administrative Law Judge