

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

MARIE BLITZER

v.

PECO ENERGY COMPANY

**PUBLIC MEETING OF APRIL 20, 2023
3033912- ALJ
DOCKET NO. C-2022-3033912**

MOTION OF VICE CHAIRMAN STEPHEN M. DeFRANK

On January 19, 2023, the Office of Administrative Law Judge (OALJ) issued the Initial Decision of Administrative Law Judge (ALJ) F. Joseph Brady in this matter involving the complaint filed by Marie Blitzer against PECO Energy Company (PECO) dated May 16, 2022. On the formal complaint form, Ms. Blitzer checked off the box indicating that the reason for her complaint is that there are incorrect charges on her bill. Ms. Blitzer added that “Green Mountain Energy was assigned to [her] bill/service without [her] authorization” and provided a two-page, single-spaced explanation of alleged incorrect charges she believes she has received from 2013, when she was first enrolled with Green Mountain, to as recently as February 2022. Ms. Blitzer then attached to her complaint a copy of her bill from PECO showing charges from Green Mountain for service from December 21, 2021 to January 25, 2022.

The Decision dismisses the complaint on the basis that the complaint is barred by the statute of limitations. The Decision notes that it is undisputed that Ms. Blitzer’s electric generation service was switched from PECO to Green Mountain in 2013 and that, therefore, Ms. Blitzer had until 2016 to timely raise her complaint pursuant to Section 3314(a) of the Public Utility Code which precludes recovery if an action is brought three years after the date on which the liability arose. 66 Pa.C.S. § 3314(a).

It is correct that Ms. Blitzer’s complaint regarding any unauthorized switch of her generation service in 2013 is now untimely. However, Ms. Blitzer also checked the box on her formal complaint indicating that there are incorrect charges on her bill and specifically averred that there are incorrect charges on her bill as recently as February 2022, as evidenced by the bill she attached to her complaint.

As a result, there is more to Ms. Blitzer’s complaint than just her enrollment with Green Mountain in 2013. The averments of incorrect charges on her bill as recently as February 2022 are within the Commission’s statute of limitations to consider. However, there was no discussion during the evidentiary hearing regarding incorrect charges on Ms. Blitzer’s bill and the Decision focusses solely on dismissing the complaint because the switch to Green Mountain occurred in 2013. There is no analysis in the Decision of whether incorrect charges as recently as February 2022 appear on Ms. Blitzer’s bill. Furthermore, Green Mountain was not even joined as an indispensable party to respond to the averments regarding incorrect charges.

An indispensable party is “one whose rights are so directly connected with and affected by litigation that he must be a party of record to protect such rights, and his absence renders any order or decree of court null and void for want of jurisdiction.” Columbia Gas Transmission Corp. v. Diamond

Fuel Co., 464 Pa. 377, 379 (Pa. 1975). Failure to join an indispensable party goes to the court's jurisdiction and, if not raised by the parties, should be raised *sua sponte*. Posel v. Redevelopment Authority of Philadelphia, 72 Pa. Commw. 115, 121 (Pa. Cmwlth 1983). The Pennsylvania Supreme Court has established that "the basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of a third party ... In order to make the analysis, however, one must refer to the nature of the claim and the relief sought." Cry, Inc. v. Mill Service, Inc., 536 Pa. 462, 468-469 (Pa. 1994).¹

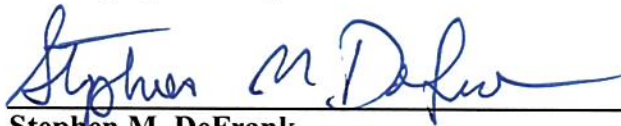
It is clear based on a reading of Ms. Blitzer's complaint and the transcript of the hearing held in this proceeding that Green Mountain should have been joined as an indispensable party in this matter because the charges of which Ms. Blitzer complains are charges from Green Mountain. Ms. Blitzer stated in her complaint that "after reviewing the bill, [her daughter] noticed that the supplier was not indeed PECO but Green Mountain Energy" and when asked "PECO pointed the finger at Green Mountain Energy and Green Mountain Energy pointed the finger back at PECO." In addition, the bill for electric service as recently as January 2022 that Ms. Blitzer attached to her complaint specifically listed Green Mountain as her electric generation supplier. Ms. Blitzer seeks as relief of her complaint to be refunded by "PECO/Green Mountain." There were also extensive references to Green Mountain by both Ms. Blitzer and counsel for PECO during the evidentiary hearing held in this matter. *See*, Tr. 7-15, 18, 22-25, 27-30, 33.

As a result, it is appropriate that this matter be remanded back to the OALJ so that Green Mountain can be joined as an indispensable party and a hearing held regarding whether there are incorrect charges on Ms. Blitzer's bill within the statute of limitations, measured from the date her complaint was filed on May 16, 2022.²

THEREFORE, I MOVE:

1. That the Initial Decision of Administrative Law Judge F. Joseph Brady in the matter of Marie Blitzer v. PECO Energy Company, at docket number C-2022-3033912, be remanded consistent with the above discussion.
2. That Green Mountain Energy Company be joined as an indispensable party to this proceeding and be given all notice and opportunity to be heard afforded as such.
3. That a further evidentiary hearing be held regarding whether there are incorrect charges on Ms. Blitzer's bill from PECO Energy Company within the statute of limitations.
4. That the Office of Special Assistants prepare an Opinion and Order for this matter.

April 20, 2023
Date



Stephen M. DeFrank
Vice Chairman

¹ The test for determining indispensability involves "at least" the following considerations: 1. Do absent parties have a right or interest related to the claim? 2. If so, what is the nature of that right or interest? 3. Is that right or interest essential to the merits of the issue? 4. Can justice be afforded without violating the due process rights of absent parties? Mechanicsburg Area School District v. Kline, 494 Pa. 476, 481 (Pa. 1981).

² A review of the Commission's docket indicates as well Preliminary Objections filed by PECO that were never addressed.