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June 26, 2023

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**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

RE: Marie Blitzer v. PECO Energy Company, Green Mountain Energy Company  
Docket No. C-2022-3033912

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Preliminary Objections of Green Mountain Energy Company, with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*/s/ Bryce R. Beard*

Bryce R. Beard

Enclosure

cc: Administrative Law Judge F. Joseph Brady (c/o [pmcneal@pa.gov](mailto:pmcneal@pa.gov); [sdelvillar@pa.gov](mailto:sdelvillar@pa.gov))  
Certificate of Service (with Enclosures)

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

Marie Blitzer  
300 Blackberry Circle  
New Hope, PA 18938  
[donnamarielauterio@gmail.com](mailto:donnamarielauterio@gmail.com)

Khadijah Scott, Esquire  
PECO Energy Company  
2301 Market Street  
23rd Floor  
Philadelphia Pa 19103  
[Khadijah.Scott@Exeloncorp.Com](mailto:Khadijah.Scott@Exeloncorp.Com)

Date: June 26, 2023

*/s/ Bryce R. Beard*

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Bryce R. Beard, Esquire  
Green Mountain Energy Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marie Blitzer :  
 :  
 v. : Docket No. C-2022-3033912  
 :  
 PECO Energy Company, Green Mountain :  
 Energy Company :

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**NOTICE TO PLEAD**

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TO: Marie Blitzer  
300 Blackberry Circle  
New Hope, PA 18938  
[donnamarielaudio@gmail.com](mailto:donnamarielaudio@gmail.com)

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of Green Mountain Energy Company must be filed within 10 days of the date of service.

All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Green Mountain Energy Company, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

With a copy to:

Karen O. Moury, Esquire  
Bryce R. Beard, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
kmoury@eckertseamans.com  
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Date: June 26, 2023

/s/ Bryce R. Beard

Bryce R. Beard, Esquire

Attorneys for Green Mountain Energy  
Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marie Blitzer :  
 :  
 v. : Docket No. C-2022-3033912  
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 PECO Energy Company, Green Mountain :  
 Energy Company :  
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**PRELIMINARY OBJECTIONS OF  
GREEN MOUNTAIN ENERGY COMPANY**

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Pursuant to 52 Pa. Code § 5.101 of the regulations of the Pennsylvania Public Utility Commission (“Commission”), Green Mountain Energy Company (“Green Mountain”) submits the following Preliminary Objections to the Complaint of Marie Blitzer (“Complainant”), respectfully requesting dismissal of the Complaint. In support hereof, Green Mountain avers as follows:

**I. INTRODUCTION**

1. Green Mountain is an electric generation supplier (“EGS”) licensed by the Commission to supply electricity services to retail customers throughout Pennsylvania.<sup>1</sup>

2. The Complaint was served on Green Mountain by the Commission on June 6, 2023. Green Mountain is simultaneously filing an Answer and New Matter to the Complaint.

3. The Complaint requests that the Commission order Green Mountain or PECO to refund electric supply charges since November 21, 2013, dating back to when Complainant enrolled in PECO’s Standard Offer Customer Referral Program (“SOP”). The basis for the refund request is an allegation that Complainant’s account was assigned by PECO to Green Mountain without the Complainant’s knowledge or authorization. In its Answer and New Matter, Green

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<sup>1</sup> PUC Docket No. A-2011-2229050.

Mountain denies such allegations and avers that the Complainant enrolled with Green Mountain through PECO's SOP and that after Ms. Blitzers participation in the 12-month SOP, she continued to receive service from Green Mountain on a variable rate until her account was returned to PECO on or about February 10, 2022 with all the required notices pursuant to the Commission's regulations.

4. Under the Commission's regulations governing unauthorized switches, refunds of supply charges are warranted only: (a) if a customer disputes an enrollment within the first two billing periods since the customer should have reasonably known of a change of the supplier; and (b) the dispute investigation establishes that the change occurred without the customer's consent.<sup>2</sup> Even accepting as true, for purposes of ruling on the preliminary objections, the averments that the changes occurred without the customer's consent, the Complainant does not meet the first prong of the refund remedy since the customer enrolled with Green Mountain through PECO's SOP and the enrollment was not disputed for nearly nine (9) years.

5. Further, the Commission does not have statutory authority under the Public Utility Code to require Green Mountain to issue a refund<sup>3</sup> to Complainant. *Blue Pilot Energy, LLC v. Pa. Public Utility Commission*, 241 A.3d 1254, 1267 (October 27, 2020); *Paul W. Kerr v. Energy Plus Holdings LLC*, Docket No. F-2022-3032332 (Order Granting in Part and Denying in Part Preliminary Objections dated July 7, 2022, at p. 7).

6. As the Commission lacks jurisdiction to award the Complainant the relief she is requesting, the Complaint should be dismissed in its entirety.

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<sup>2</sup> 52 Pa. Code § 57.177(b); 52 Pa. Code § 59.97(b).

<sup>3</sup> The only authority in the Public Utility Code empowering the Commission to direct the issuance of refunds is in the context of regulated rates charged by public utilities. 66 Pa.C.S. § 1312.

## II. ARGUMENT

### A. Applicable Legal Standards

7. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.<sup>4</sup> 52 Pa. Code §5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994). The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.<sup>5</sup>

8. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and should be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

9. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.<sup>6</sup> However, the

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<sup>4</sup> 52 Pa. Code §5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>5</sup> *Id.*

<sup>6</sup> *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>7</sup>

10. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.<sup>8</sup>

11. The filing of preliminary objections serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary.<sup>9</sup>

**B. Lack of Commission Jurisdiction, 52 Pa. Code § 5.101(a)(1).**

12. Under Section 5.101(a)(1) of the Commission's regulations, preliminary objections may be filed against a complaint alleging lack of Commission jurisdiction.

13. The Commission is a creation of the General Assembly and only has the powers and authority granted to it by the legislature that are contained in the Public Utility Code.<sup>10</sup> The Commission must act within and cannot exceed its jurisdiction.<sup>11</sup> Jurisdiction cannot be conferred by the parties where none exists.<sup>12</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>13</sup>

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<sup>7</sup> *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

<sup>8</sup> *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>9</sup> 66 Pa.C.S. §703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

<sup>10</sup> *Shedlosky v. Pa. Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>11</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

<sup>12</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>13</sup> *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), alloc. denied, 637 A.2d 293 (Pa. 1993).

i. The Commission Lacks Jurisdiction to Order Refunds of Supply Charges

14. The only instance in which the Commission's regulations provide for a refund of EGS supply charges to a customer is: (i) when the enrollment is disputed within the first two billing periods since the customer should reasonably have known of a change of the supplier; and (ii) the dispute investigation establishes that the change occurred without the customer's consent.<sup>14</sup> Even accepting the factual averments in the Complaint as true, for purposes of ruling on these preliminary objections, the Complainant did not dispute the enrollment through PECO's SOP with Green Mountain until over nine (9) years later, nor disputed, after the initial 12-month SOP term, the month-to-month variable product Green Mountain provided. The Complainant is therefore entitled to no relief.

15. The Commission also lacks statutory authority to grant the relief requested by the Complaint for a refund of supply charges.<sup>15</sup>

16. Granting preliminary objections when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy. No reason exists for going to hearing when the Commission lacks statutory authority to direct the issuance of a refund of EGS supply charges. Accordingly, the Complaint should be dismissed.

ii. The Statute of Limitations Bars Claims From Prior To May 17, 2019

17. Under Section 3314 of the Public Utility Code, no action may be brought more than three years after the date at which liability arose.<sup>16</sup>

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<sup>14</sup> 52 Pa. Code § 57.177(b); 52 Pa. Code § 59.97(b).

<sup>15</sup> *Blue Pilot Energy, LLC v. Pa. Public Utility Commission*, 241 A.3d 1254, 1267 (October 27, 2020). *Paul W. Kerr v. Energy Plus Holdings LLC*, Docket No. F-2022-3032332 (Order Granting in Part and Denying in Part Preliminary Objections dated July 7, 2022, at p. 7).

<sup>16</sup> 66 Pa. C.S. §3314.

18. Here, Complainant is seeking refunds from PECO or Green Mountain for nine (9) years, or since approximately the time of Complainant's enrollment with Green Mountain through PECO's SOP on October 22, 2013. Yet, the Complaint was not filed until May 17, 2022. Claims for relief for the period of time from October 22, 2013 through May 17, 2019 are barred by the statute of limitations. As the Commission has no jurisdiction to entertain those requests for relief, that portion of the Complaint should be dismissed.

19. Granting preliminary objections when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy. No reason exists for going to hearing on matters outside the Commission's 3-year statute of limitations. Accordingly, the Complaint should be dismissed.

WHEREFORE, Green Mountain Energy Company respectfully requests that the Commission (a) grant these Preliminary Objections; (b) dismiss the Complaint; and (c) grant any other relief deemed appropriate.

Respectfully submitted,

*Bryce R. Beard*

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Date: June 26, 2023

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