**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marie Blitzer :

:

v. : C-2022-3033912

:

PECO Energy Company :

**ORDER DENYING**

**PRELIMINARY OBJECTIONS OF GREEN MOUNTAIN ENERGY COMPANY**

ABBREVIATED 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 Company (Green Mountain), without her knowledge or consent. The Complainant requested a refund.

On August 9, 2022[[1]](#footnote-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 the Complainant enrolled with supplier, Green Mountain, 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 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 was barred by the three-year statute of limitations set forth at 66 Pa.C.S. §3314(a) and requested that the Complaint be dismissed.

On October 19, 2022, a hearing was held. 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

On January 19, 2023, I issued an Initial Decision dismissing the Complaint on the basis that the entirety of the Complainant’s claims were barred by the statute of limitations.

On May 31, 2023, the Commission entered an Opinion and Order vacating the Initial Decision and remanding this matter to the Office of Administrative Law Judge (OALJ). *Marie Blitzer v. PECO Energy Co.*, Docket No. C-2022-3033912 (Opinion and Order entered May 31, 2023). Further, the Commission ordered that Green Mountain Energy Company be joined as an indispensable party to this proceeding and that a further evidentiary hearing be held regarding whether there are incorrect charges on the Complainant’s bills from PECO within the

statute of limitations. *Id*. at Ordering ¶¶ 4-5.

By Hearing Notice dated June 7, 2023, a Further Telephonic Hearing on Remand was scheduled for August 15, 2023, at 10:00 a.m.

On June 8, 2023, Green Mountain was added as a party of record and served with the Formal Complaint.

On June 26, 2023, Green Mountain filed an Answer and New Matter to the Complaint. The New Matter was accompanied by a Notice to Plead. In its Answer, Green Mountain either admitted or denied the various averments of the Complaint. In particular, Green Mountain denied that the Complainant was charged any incorrect rate for Green Mountain’s service since November 2013, or that Green Mountain violated any law or regulation.

In its New Matter, Green Mountain 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 against Green Mountain be dismissed.

Also on June 26, 2023, Green Mountain filed Preliminary Objections to the Complaint. In its Preliminary Objections, which were also accompanied by a Notice to Plead, Green Mountain argues that the Commission lacks jurisdiction to order refunds of supply charges and the Complainant is barred by the three-year statute of limitations set forth at 66 Pa.C.S. §3314(a).

The Complainant’s Answer to Green Mountain’s Preliminary Objections was due no later than July 10, 2023. 52 Pa.Code §§ 1.12(a), 1.56(a)(1) and (b), 5.61(a)(2), 5.101(f)(1). The Complainant did not file an Answer to Green Mountain’s Preliminary Objections.

Green Mountain’s Preliminary Objections are now ready for disposition. For the reasons discussed below, the Preliminary Objections will be denied as moot and Green Mountain will remain a party for the August 15, 2023 Hearing on Remand.

DISCUSSION

The Commission’s Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company,* 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Green Mountain averred in its Preliminary Objections that the Commission lacks jurisdiction over the claims raised in the Complaint. The Commission’s Rules provide, in relevant part:

**§ 5.101. Preliminary objections**.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and 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.

(7) Standing of a party to participate in the proceeding.

\* \* \*

52 Pa. Code § 5.101(a).

In this case, the Commission has already ruled that any portion of the Complaint regarding any unauthorized switch of the Complainant’s generation service in 2013 is untimely and barred by the three-year statute of limitations set forth at 66 Pa.C.S. §3314(a). *Marie Blitzer v. PECO Energy Co.*, Docket No. C-2022-3033912, pp. 5-6 (Opinion and Order entered May 31, 2023). Therefore, Green Mountain’s Preliminary Objections are moot. The further evidentiary hearing being held on August 15, 2023, will be regarding whether there are incorrect charges on Ms. Blitzer’s bill from PECO within the statute of limitations per the Commission’s Opinion and Order. *Id.* at 9. Further, it is the Commission’s opinion that Green Mountain is an “indispensable party” in this regard. *Id.* at 8. Accordingly, Green Mountain’s Preliminary Objections will be denied.

THEREFORE,

IT IS ORDERED:

That the Preliminary Objections of Green Mountain Energy Company in Marie Blitzer v. PECO Energy Company at Docket No. C-2022-3033912 are denied.

Date: July 17, 2023 /s/

F. Joseph Brady

Administrative Law Judge

**C-2022-3033912 - MARIE BLITZER v. PECO ENERGY COMPANY-ELECTRIC**

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*GREEN MOUNTAIN ENERGY*

1. PECO was not served with the Formal Complaint until July 20, 2022. [↑](#footnote-ref-1)