

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marie Blitzer	:	
	:	
v.	:	C-2022-3033912
	:	
PECO Energy Company, and	:	
Green Mountain Energy Company	:	

INITIAL DECISION ON REMAND

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision on Remand dismisses the Formal Complaint of Marie Blitzer against PECO Energy Company (PECO) and Green Mountain Energy Company (Green Mountain Energy) because she failed to satisfy her burden of proving that either PECO or Green Mountain Energy provided unreasonable service or violated the Public Utility Code, a Commission Regulation, or a Commission Order.

HISTORY OF THE PROCEEDING

On May 17, 2022, Marie Blitzer (Complainant or Ms. Blitzer) filed a Formal Complaint (Complaint) against PECO 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 requested 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 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 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 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). *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

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

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 Energy was added as a party of record and served with the Formal Complaint.

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

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

The Complainant did not file an answer to the New Matter.

Also on June 26, 2023, Green Mountain Energy filed Preliminary Objections to the Complaint. In its Preliminary Objections, which were also accompanied by a Notice to Plead, Green Mountain Energy 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 Energy's Preliminary Objections was due no later than July 10, 2023. 52 Pa. Code §§ 1.12(a), 1.56(a)(1), (b), 5.61(a)(2),

5.101(f)(1). The Complainant did not file an Answer to Green Mountain Energy's Preliminary Objections.

On July 17, 2023, I issued an Order denying Green Mountain Energy's Preliminary Objections.

On August 15, 2023, 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 Renee Tarpley, a Senior Regulatory Assessor at PECO. PECO offered two exhibits, which were admitted into the record without objection. Bryce Beard, Esquire, appeared on behalf of Green Mountain Energy and presented the testimony of Spencer Halstead, a Customer Support Manager at Green Mountain Energy. Green Mountain Energy offered one exhibit, which was admitted into the record without objection.

The record closed on September 13, 2023, 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. Respondent PECO Energy Company is a jurisdictional public utility, which provides electric service to the Complainant at the Service Address.
3. Respondent Green Mountain Energy Company is an electric generation supplier (EGS) licensed by the Commission to operate in Pennsylvania. Tr. 62.
4. On October 18, 2013, the Complainant established an account for electrical service with PECO. Tr. 7-8, 14, 16.

5. 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.

6. The sole reason the Complainant filed the Complaint was because she alleges that she did not authorize enrollment with Green Mountain Energy. Tr. 50, 58, 60, 70-72.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if she presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a

preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

In this case, a hearing on remand was held pursuant to the Commission's Opinion and Order vacating the Initial Decision and remanding this matter to the Office of Administrative Law Judge. *Blitzer v. PECO Energy Co.*, Docket No. C-2022-3033912 (Opinion and Order entered May 31, 2023). In that Opinion and Order, the Commission confirmed that any portion of the Complaint regarding any unauthorized switch of the Complainant's generation service in 2013 is untimely and barred by the statute of limitations. *Id.* at 5-6. However, the Commission did order that a further evidentiary hearing be held regarding whether there are incorrect charges on the Complainant's electricity bills from PECO within the statute of limitations. *Id.* at Ordering ¶¶ 4-5.

The purpose of the hearing was explained to the Complainant at the outset. Tr. 46-48. Nevertheless, all of the Complainant's arguments and questioning were centered around the alleged unauthorized switch of her generation service in 2013. Tr. 50, 58, 60, 70-72. The Complainant did not make any arguments, nor present any evidence, that her bills were incorrect for any other reason. To the contrary, through its witnesses and exhibits, both PECO and Green Mountain Energy provided a thorough explanation of the Complainant's bills during the period in question. Tr. 53-57, 62-68; PECO Exh. 1, 5.

The Complainant's opinion alone is insufficient to overcome the *prima facie* reasonableness of the Commission-approved tariff. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006). Thus, I find the Complainant failed to satisfy her burden of proving that either PECO or Green Mountain Energy provided unreasonable service or violated the Public Utility Code, a Commission Regulation, or a Commission Order. Accordingly, the Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain her burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).

4. The Complainant has failed to satisfy her burden of proving that either PECO or Green Mountain Energy provided unreasonable service or violated the Public Utility Code, a Commission Regulation, or a Commission Order. 66 Pa.C.S. § 701.

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: November 29, 2023

/s/
F. Joseph Brady
Administrative Law Judge