



Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL: 717 237 6000  
FAX: 717 237 6019

December 21, 2023

Bryce R. Beard  
717.237.6041  
bbeard@eckertseamans.com

**Via Electronic Filing**

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

RE: David Mason v. Reliant Energy Northeast LLC d/b/a NRG Home  
Docket No. C-2023-3044090

---

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Motion for Judgement on the Pleadings of Reliant Energy Northeast LLC d/b/a NRG Home, 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: Certificate of Service (with Enclosure)  
Administrative Law Judge Eranda Vero ([evero@pa.gov](mailto:evero@pa.gov); c/o [pmcneal@pa.gov](mailto:pmcneal@pa.gov))

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing **Motion for Judgement on the Pleadings** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

David Mason  
565 North 20<sup>th</sup> Street 2<sup>nd</sup> Floor Rear  
Philadelphia, PA 19130  
[davemason815@gmail.com](mailto:davemason815@gmail.com)

Khadijah Scott, Esquire  
PECO Energy Company  
2301 Market Street S23-1  
Philadelphia, PA 19103  
[khadijah.scott@exeloncorp.com](mailto:khadijah.scott@exeloncorp.com)

*Counsel for PECO Energy Company*

Date: December 21, 2023

*/s/ Bryce R. Beard*

---

Bryce R. Beard, Esquire  
Counsel for Reliant Energy Northeast LLC  
d/b/a NRG Home

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Mason,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3044090
	:	
Reliant Energy Northeast LLC d/b/a NRG	:	
Home	:	
	:	
Respondent.	:	

---

**NOTICE TO PLEAD**

---

TO: David Mason  
565 North 20<sup>th</sup> Street 2<sup>nd</sup> Floor Rear  
Philadelphia, PA 19130  
[davemason815@gmail.com](mailto:davemason815@gmail.com)

You are hereby notified that an Answer to the enclosed **Motion for Judgment on the Pleadings** of Reliant Energy Northeast LLC d/b/a NRG Home must be filed within 20 days of the date of service.

All pleading must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Reliant Energy Northeast LLC d/b/a NRG Home 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@eckertsemans.com](mailto:kmoury@eckertsemans.com)  
[bbeard@eckertseamans.com](mailto:bbeard@eckertseamans.com)

Date: December 21, 2023

*/s/ Bryce R. Beard*

---

Bryce R. Beard, Esquire

*Counsel for Reliant Energy Northeast LLC  
d/b/a NRG Home*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Mason,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2023-3044090
	:	
Reliant Energy Northeast LLC d/b/a NRG	:	
Home	:	
	:	
Respondent.	:	

---

**MOTION FOR JUDGMENT ON THE PLEADINGS OF  
RELIANT ENERGY NORTHEAST LLC  
D/B/A NRG HOME**

---

Pursuant to 52 Pa. Code § 5.102 of the regulations of the Pennsylvania Public Utility Commission (“Commission”), Reliant Energy Northeast LLC d/b/a NRG Home (“NRG Home”) submits the following Motion for Judgment on the Pleadings to the Complaint of David Mason (“Complainant” or “Mr. Mason”), respectfully requesting dismissal of the Complaint. In support hereof, NRG Home avers as follows:

**I. INTRODUCTION**

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

2. In his formal complaint, Mr. Mason requests that the Commission order NRG Home to refund electric supply charges since May 23, 2017, dating back to when Complainant enrolled with NRG Home through PECO Energy Company’s (“PECO”) Standard Offer Program (“SOP”). The basis for the refund request is an allegation NRG Home “falsely billed” Complainant “without [his] permission.”

---

<sup>1</sup> PUC Docket No. A-2010-2192350.

3. In its Answer, NRG Home denies such allegations and avers that the Complainant enrolled with NRG Home through PECO's SOP, that NRG Home provided all necessary notices and options as Mr. Mason's SOP contract was nearing its 12-month term and his service would be transitioned to a monthly variable rate plan, and that NRG Home provided Mr. Mason with multiple 30-day rate change notices from 2019-2022.

4. As discussed herein, Commission lacks jurisdiction to award the Complainant the relief he is requesting and to hear matters outside the Commission's explicit 3-year statute of limitations. Therefore, NRG Home requests that the Complaint should be dismissed in its entirety.

## II. ARGUMENT

### A. Applicable Legal Standards

5. The Commission's Rules of Administrative Practice and Procedure permit the filing of a Motion for Judgment on the Pleadings.<sup>2</sup>

6. Judgment on the pleadings is available when the pleadings show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

7. Judgment on the pleadings should only be granted when the right to relief is clear and free from doubt.<sup>3</sup> In determining the absence of a genuine issue of material fact, the Commission must view the record in the light most favorable to the nonmoving party, giving that party the benefit of all reasonable inferences.<sup>4</sup> All doubts as to the existence of a genuine issue of material fact must be resolved against the entry of the judgment.<sup>5</sup> The Commission has discretion

---

<sup>2</sup> 52 Pa. Code §5.102.

<sup>3</sup> *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super. 1985).

<sup>4</sup> *First Mortgage Co. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978).

<sup>5</sup> *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979); *Day v. Volkswagonwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983).

to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.<sup>6</sup>

8. The Commission may not exceed its jurisdiction and must act within it.<sup>7</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>8</sup> As a creation of the legislature, the Commission possesses only the authority that the legislature has specifically granted to it in the Public Utility Code. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom.<sup>9</sup> Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy.<sup>10</sup> Questions of subject matter jurisdiction may never be waived and may be raised at any time by the parties or *sua sponte* by a court.<sup>11</sup>

9. A statute of limitations is non-waivable if the time limitation contained in it terminates not just the remedy but the actual right to bring the action.<sup>12</sup> The statute of limitations at 66 Pa. C.S. § 3314<sup>13</sup> is non-waivable since it terminates the remedy and the right to bring an action before the Commission.<sup>14</sup>

## **B. The Commission Lacks Jurisdiction to Order Refunds of Supply Charges.**

10. 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

---

<sup>6</sup> 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

<sup>7</sup> *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

<sup>8</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>9</sup> *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

<sup>10</sup> *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

<sup>11</sup> *Domus, Inc. v. Signature Bldg. Sys. of PA, LLC*, 252 A.3d 628, 636 (Pa. 2021); *Pennhurst Medical Group, P.C. v. Department of Public Welfare*, 796 A.2d 423, 425 n.2 (Pa. Cmwlth. 2002).

<sup>12</sup> *Reuben v. O'Brien*, 445 A.2d 801 (Pa. Super. 1982).

<sup>13</sup> Section 3314(a) of the Code provides as follows:

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.

<sup>14</sup> *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa. Cmwlth. 1992).

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>15</sup> Even accepting the factual averments in the Complaint as true, for purposes of ruling on this motion, the Complainant did not dispute the enrollment until nearly sixty seven (67) billing periods. The Complainant is therefore entitled to no relief.

11. The Commission also lacks statutory authority to grant the relief requested by the Complaint for a refund<sup>16</sup> of supply charges.<sup>17</sup>

12. Granting this Motion 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.

### **C. The Statute of Limitations Bars Claims From Prior To November 2, 2020**

13. 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>18</sup>

14. Here, Complainant is seeking refunds from NRG Home dating back to the time of Complainant's enrollment with NRG Home through PECO's SOP on May 23, 2017. Yet, the Complainant filed the Formal Complaint with the November 2, 2023.<sup>19</sup> Claims for relief for the period of time prior to November 2, 2020 are barred by the statute of limitations. As the

---

<sup>15</sup> 52 Pa. Code § 57.177(b); 52 Pa. Code § 59.97(b).

<sup>16</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.

<sup>17</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>18</sup> 66 Pa. C.S. §3314.

<sup>19</sup> While Mr. Mason initially noted that his complaint was an appeal of a BCS decision, it was administratively noted on his complaint form that this matter was not considered a timely appeal as the BCS complaint was dismissed August 8, 2023.

Commission has no jurisdiction to entertain those requests for relief, that portion of the Complaint must be dismissed.

15. Granting this motion 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**, Reliant Energy Northeast LLC d/b/a NRG Home respectfully requests that the Commission (a) grant this Motion; (b) dismiss the Complaint; and (c) grant any other relief deemed appropriate.

Respectfully submitted,

*Bryce R. Beard*

---

Karen O. Moury, Esquire (I.D. No. 36879)  
Bryce R. Beard, Esquire (I.D. No. 325837)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 237-6041 (phone)  
(717) 237-6019 (fax)  
kmoury@eckertseamans.com  
bbeard@eckertseamans.com

Date: December 21, 2023

*Counsel for Reliant Energy Northeast LLC  
d/b/a NRG Home*