

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gabriela Andrea Balogh	:	
	:	
v.	:	
	:	F-2023-3043661
Clearview Electric, Inc.	:	
and	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Gabriela Andrea Balogh against Clearview Electric, Inc. (Clearview) and PECO Energy Company (PECO) because she failed to satisfy her burden of proving that either Clearview or PECO provided unreasonable service or switched her electric generation supplier (EGS) in violation of the Public Utility Code, Commission regulations or a Commission Order.

HISTORY OF THE PROCEEDING

On October 2, 2023, Gabriela Andrea Balogh (Ms. Balogh or Complainant) filed a Formal Complaint (Complaint) against Clearview alleging that Clearview created an

unauthorized account in her name.¹ Ms. Balogh's Complaint listed Clearview as the Respondent but also included statements that she was in contact with PECO about this matter as well.

On November 9, 2023, Clearview filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated November 15, 2023, a telephonic hearing was scheduled for January 3, 2024, and the matter was assigned to me.

A Prehearing Order was issued on November 17, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to the proceeding.

On January 3, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*. Bryce Beard, Esquire, appeared on behalf of Clearview. Prior to going on the record, I raised the issue of whether PECO should be joined as an indispensable party. I continued the hearing without going on the record pending a decision on this issue.

On January 12, 2024, I issued an Order joining PECO as an indispensable party.

On February 1, 2024, Clearview filed an Amended Answer to the Complaint. In its Amended Answer, Clearview admitted in part, and denied in part, various material allegations of the Complaint. Specifically, Clearview admitted that it provided electric supply to the Complainant effective November 24, 2020, through May 12, 2023. Clearview alleged that: it received the Complainant's enrollment on November 13, 2020; it sent the Complainant a Welcome Letter and a copy of her Terms of Service with Clearview on November 19, 2020; and it has no record of any calls from the Complainant until May 8, 2023. Clearview requested that the Complaint be dismissed.

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3908358, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On February 7, 2024, PECO filed an Answer to the Complaint. In its Answer, PECO admitted in part, and denied in part, various material allegations of the Complaint. PECO alleged that: the Complainant established an account for electric service in November 2018 at 6026 Reach Street, Philadelphia, PA; the Complainant enrolled with Clearview on or around November 18, 2020; on November 18, 2020, PECO sent a notification letter advising the customer that a switch has taken place; the Complainant's enrollment with Clearview became effective on November 24, 2020; in August of 2021, the Complainant's account finalized and service began at 64 Jewel Lane, Levittown, PA; the Complainant's supplier, Clearview, was transferred to her active account; the Complainant contacted PECO on May 8, 2023 and requested to be dropped from Clearview; and the Complainant did not at any time prior to May 8, 2023, advise that she did not approve of the supplier on her account. PECO requested that the Complaint be dismissed.

By Hearing Notice dated February 16, 2024, an Initial Call-In Telephonic Hearing was rescheduled for April 19, 2024.

On April 19, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Bryce Beard, Esquire, appeared on behalf of Clearview and presented the testimony of one witness, Nicole Steele, Chief Administrative Officer at Clearview. Ms. Steele sponsored four exhibits, which were admitted into the record. Khadijah Scott, Esquire, appeared on behalf of PECO and presented the testimony of two witnesses: Carol Reilly, Energy Acquisition Operations Manager at PECO; and Ramona Milburn, Regulatory Assessor at PECO. Ms. Reilly sponsored four exhibits, which were admitted into the record. Ms. Milburn sponsored three exhibits, which were admitted into the record.

The record closed on May 14, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Gabriela Andrea Balogh.
2. Clearview Electric, Inc. is an EGS authorized to supply electricity to retail customers throughout Pennsylvania under a license issued by the Pennsylvania Public Utility Commission. Tr. 25-26.
3. PECO Energy Company is an electric distribution company (EDC) under the jurisdiction of the Pennsylvania Public Utility Commission.
4. The Complainant established an account with PECO for electric service in November of 2018 at 6026 Reach Street, Philadelphia, Pennsylvania. Tr. 58; PECO Exh. 2.
5. On November 13, 2020, Clearview received notification of the Complainant's enrollment from online broker PowerSetters. Tr. 29; Clearview Exh. 1.
6. On November 18, 2020, PECO sent a notification letter to the Complainant advising that her EGS was being switched to Clearview. Tr. 10, 50-51; PECO Exh. 3.
7. On November 19, 2020, Clearview sent the Complainant a Welcome Letter and a copy of her Terms of Service with Clearview. Tr. 9, 19, 32-33; Clearview Exh. 2.
8. The Complainant's enrollment with Clearview became effective on November 24, 2020. Tr. 10, 49-51; PECO Exh. 3.
9. In August of 2021, the Complainant's account at 6026 Reach Street finalized and service began at 64 Jewel Lane, Levittown, Pennsylvania (current address). Tr. 58-59; PECO Exhs. 1-2.

10. Clearview remained the Complainant's EGS at the 64 Jewel Lane account. Tr. 59-60; PECO Exh. 1.

11. Clearview sent the Complainant rate change notices to her current address on April 20, 2022, June 3, 2022, July 1, 2022, and October 2, 2022, none of which were returned as undeliverable. Tr. 35-37; Clearview Exh. 3.

12. Clearview has no record of any calls from the Complainant until May 8, 2023. Tr. 34.

13. The Complainant contacted PECO on May 8, 2023 and requested to be dropped from Clearview. Tr. 10-11, 52.

14. The Complainant never contacted PECO about the switch to Clearview until May 8, 2023. Tr. 21.

15. Clearview was the Complainant's EGS from November 24, 2020, through May 12, 2023. Tr. 26.

16. The EGS is listed on every bill from PECO. Tr. 51-52; PECO Exh. 4.

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).

The Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of "service" is to be broadly construed. *Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020)

(citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them

66 Pa.C.S. § 102.

In this case, the Complainant alleges that Clearview and PECO changed her EGS without her authorization (*i.e.* “slamming”²) in November of 2020 and requests a refund. The Complainant bases her position entirely upon the fact that Clearview cannot produce her signature on a contract. Tr. 12-14, 69. I find this is insufficient to satisfy her burden of proof that either Clearview or PECO engaged in slamming or provided unreasonable service.

The procedures pertaining to changing a customer’s EGS are set forth at 52 Pa. Code Chapter 57, and state in pertinent part:

When a customer contacts an EGS to request a change from the current EGS or default service provider to a new selected EGS, the following actions shall be taken by the selected EGS and the customer’s EDC:

(1) The selected EGS shall notify the EDC of the customer’s EGS selection at the end of the 3-business day rescission period under § 54.5(d) (relating to disclosure statement for residential and small business customers) or a future date specified by the customer. The selected EGS may notify the EDC by the end of the next business day following the customer contact upon customer consent.

² “Slamming” is an unauthorized change made to a customer’s supply service. *HIKO Energy LLC v. Pa. Pub. Util. Comm’n*, 163 A.3d 1079, 1090 (Pa. Cmwlth. 2017).

(2) Upon receipt of this notification, or notification that the customer has authorized a switch to default service, the EDC shall send the customer a confirmation letter noting the proposed change of EGS or change to default service. The notice must include the date service with the new selected EGS or default service provider will begin. The letter shall be mailed by the end of the next business day following the receipt of the notification of the customer's selection of an EGS or default service provider.

52 Pa. Code § 57.173. With respect to a customer's claims disputing an EGS change, the law provides as follows:

§ 57.177. Customer dispute procedures.

- (a) When a customer contacts an EDC or an EGS and alleges that the EGS has been changed without consent, the company contacted shall:
 - (1) Consider the matter a customer registered dispute.
 - (2) Investigate and respond to the dispute consistent with §§ 56.151 and 56.152 (relating to utility company dispute procedures).
- (b) **When the customer's dispute has been filed within the first two billing periods since the customer should reasonably have known of a change of the EGS** and the dispute investigation establishes that the change occurred without the customer's consent, the customer is not responsible for EGS bills rendered during that period. If the customer has made payments during this period, the company responsible for initiating the change of supplier shall issue a complete refund within 30 days of the close of the dispute. The refund or credit provision applies only to the generation charges.
- (c) A customer who has had an EGS changed without having consented to that change shall be switched back to the original EGS for no additional fee. Any charges involved in the switch back to the prior EGS are the responsibility of the company that initiated the change without the customer's consent.

52 Pa. Code § 57.177 (emphasis added).

Here, the Complainant established an account with PECO for electric service in November of 2018. On November 13, 2020, Clearview received notification of the Complainant's enrollment with Clearview as her EGS. As a result, on November 18, 2020, PECO sent a notification letter to the Complainant advising that her EGS was being switched to Clearview. Likewise, on November 19, 2020, Clearview sent the Complainant a Welcome Letter and a copy of her Terms of Service with Clearview. The Complainant admitted that she received this letter. Tr. 9, 19-20. The Complainant initially testified that she attempted to call Clearview upon receipt of the Welcome Letter and could not reach them, but later argued that there was no need to call because she thought it was some type of preapproval mail that she did not pay attention to. Tr. 20. For its part, Clearview has no record of any calls from the Complainant until May 8, 2023. Moreover, the Complainant confirmed that she did not contact PECO until May 8, 2023. From November 24, 2020, through May 12, 2023, Clearview provided electric supply to the Complainant. During this time, Clearview was listed as the EGS on every bill from PECO. In addition, Clearview sent the Complainant four rate change notices to her current address on April 20, 2022, June 3, 2022, July 1, 2022, and October 2, 2022, none of which were returned as undeliverable.

Under the regulations, Ms. Balogh would not be responsible for her EGS bills if she disputed the switch within the first two billing periods since she should reasonably have known of a change of the EGS. Here, Ms. Balogh should have reasonably known of the change when she admittedly received the Welcome Letter on November 19, 2020, or when Clearview was listed as the EGS on every bill she received, or when she received one of the four rate change notices sent by Clearview. Instead, Ms. Balogh waited until May 8, 2023 – two and half years after she was switched to Clearview – to contact PECO and request to be dropped from Clearview. Tr. 10-11. This is well beyond the first two billing periods when she should have reasonably known of a change of the EGS, and therefore, Ms. Balogh is still responsible for her EGS bills and is not entitled to a refund.

Furthermore, I can find no evidence of slamming or unreasonable service by either Clearview or PECO. Based on the evidence presented, both Clearview and PECO

complied with applicable regulations and provided the Complainant with all required notices of change to her EGS. The Complainant had ample opportunity to dispute the change if she did not request it as she claims. Finally, I can find no legal requirement for a written signature in order to change EGS. In fact, the regulations state that confirmation can be made orally. *See* 52 Pa. Code § 57.174(a).³

Based on the foregoing, I find the Complainant failed to satisfy her burden of proving that either Clearview or PECO provided unreasonable service or switched her EGS in violation of the Public Utility Code, Commission regulations or a Commission Order. Accordingly, the Complaint will be denied.

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. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities," and to "make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.
4. Absent proof by a preponderance of the evidence that the Respondent violated the provisions of 66 Pa.C.S. § 1501, the Commission has no authority to require any action by Respondent. *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984).

³ (a) When a customer has provided the selected EGS or current EGS with oral confirmation or written authorization to select the new EGS or default service provider, consistent with electric data transfer and exchange standards, the EDC shall make the change within three business days of the receipt by the EDC of the electronic enrollment transaction.

5. The Complainant has failed to satisfy her burden of proving that Aqua violated its tariff, the Public Utility Code, or a Commission Regulation or Order. 66 Pa.C.S. §§ 332(a), 701.

6. The Complainant failed to file a dispute of her EGS change within the first two billing periods since she should reasonably have known of a change of the EGS and therefore is responsible for her EGS bills and not entitled to a refund. 52 Pa. Code § 57.177(b).

7. Confirmation of a change to a customer's EGS can be made orally. 52 Pa. Code § 57.174(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Gabriela Andrea Balogh at Gabriela Andrea Balogh v. Clearview Electric, Inc. and PECO Energy Co., Docket No. F-2023-3043661, is denied.

2. That Docket No. F-2023-3043661 be marked closed.

Date: August 12, 2024

/s/
F. Joseph Brady
Administrative Law Judge