

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John M. Novak	:	
	:	
v.	:	F-2024-3046076
	:	
Palmco Energy PA LLC d/b/a Indra Energy	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision sustains the Formal Complaint of an electric service customer. By failing to file an answer to the Formal Complaint or appear for the hearing, Respondent failed to rebut Complainant’s *prima facie* case that Respondent violated the Public Utility Code, a Commission regulation, or a Commission Order by enrolling him in its electric generation supply service without his authorization. A fine of \$2,000 is imposed on Respondent.

HISTORY OF THE PROCEEDING

On January 10, 2024, John Novack (Complainant or Mr. Novack) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Palmco Energy PA LLC d/b/a Indra Energy (Indra, Company or

Respondent).¹ In his Complaint, Mr. Novack checked the box labeled “Other,” and explained:

Indra Energy fraudulently hijacked my PECO account.... [On] 7/27/23, I called Indra Energy and spoke with Salomon, who stated that I requested to change by service to Indra Energy (which was a lie). I asked if he could show me a record of any conversation or correspondence where I had spoke[n] with or agreed to change my PECO to Indra. He would not answer the question but kept apologizing, circumventing the question.

Compl. ¶ 4. For relief, Mr. Novack requested the following:

To show me where Indra Energy has an audio recording, a signed agreement, a completed form from me or anything that shows that I requested that my service be changed to Indra Energy. The fact is that Indra Energy lied about this and there was no such visit to my home where I spoke with anyone and of course there is nothing that was conversed or in writing from me to approve any such change!

Further, Indra Energy is notorious for this kind of fabrication, and they have had major issues in the state of PA to the point that our Attorney General secured a settlement against Indra Energy in 2022. Unfortunately, it has apparently not deterred this kind of behavior.

Compl. ¶ 5.

The Complaint was served on Indra on February 6, 2024, via eService at Indra’s registered eService account. Indra did not file an answer to the Complaint.

¹ The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3934555. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

By Hearing Notice dated March 26, 2024, an Initial Call-In Telephonic Hearing was scheduled for May 15, 2024, and the matter was assigned to me.

A Prehearing Order was issued and served on May 8, 2024, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On May 15, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*. Nobody appeared on behalf of Indra. Because the Prehearing Order was only sent out seven days prior to the hearing, out of an abundance of caution and to ensure due process, the hearing was rescheduled to June 11, 2024.

On May 15, 2024, a Rescheduled Hearing Notice was issued, rescheduling the hearing to June 11, 2024. Also on May 15, 2024, a second Prehearing Order was served on the parties. The Rescheduled Hearing Notice and second Prehearing Order were served on the parties via eService.

On June 11, 2024, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. Once again, nobody appeared on behalf of Indra. The hearing commenced without the Respondent.

The record closed on July 17, 2024, upon the filing of the 26-page transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is John M. Novack, who resides at 60 Parkview Circle, Wayne, Pennsylvania 19087 (Service Address). Tr. 13.

2. The Respondent is Palmco Energy PA LLC d/b/a Indra Energy, an electric generation supplier (EGS) authorized to supply electricity to retail customers throughout Pennsylvania under a license issued by the Commission at Docket No. A-2009-2108338.

3. The Respondent enrolled Complainant in its EGS service on July 27, 2023. Tr. 14.

4. Complainant lives by himself. Tr. 17.

5. Nobody from Indra came to Complainant's door to solicit his business. Tr. 17.

6. Complainant did not request a change in his service. Tr. 14, 16.

7. In July of 2023, Complainant noticed Indra was listed as his supplier on his electric bill. Tr. 17.

8. Complainant did not receive any notice from Indra that he was enrolled with it as his EGS. Tr. 18.

9. After months of back and forth with Indra, Complainant's account was transferred back to PECO and charges from Indra were credited to his account. Tr. 20.

10. Respondent did not supply Complainant with any documentation that showed Mr. Novack requested a change in his service despite Complainant's request to Indra for such documentation. Tr. 14, 16.

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 he 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*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Complainant alleges that Indra made an unauthorized change to his supply service. This practice is known as “slamming,” which the Commission has described as fraudulent conduct for which it has “zero tolerance.” *See HIKO Energy LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079, 1090 (Pa. Cmwlth. 2017) (*HIKO*). Complainant has the burden of proving that Indra is accountable for slamming. The Commission regulations outline the standards for changing a customer’s electricity generation supplier. *See* 52 Pa. Code §§ 57.171-180. Under Commission regulations, “[a] licensee shall comply with the applicable requirements of the code and Commission regulations and orders. Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for the transfer of a customer without the customer’s consent.” 52 Pa. Code § 54.42(9).

Complainant’s Testimony

Complainant testified credibly that he was enrolled with Indra as his EGS without his permission on July 27, 2023. Tr. 14. Mr. Novack stated that he did not request this change to his supply service, no one contacted him to change his supply service, and he was not notified that there was any change to his supply service. Tr. 14, 16-18. Mr. Novack only discovered the change because Indra was listed on his PECO bill. Tr. 17. Through his credible testimony, Complainant established a *prima facie* case that Indra is accountable for slamming.

Despite receiving notice of the hearing,² neither Indra nor a representative on behalf of Indra appeared for the hearing. Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002). Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

By failing to appear for the hearing, Indra has failed to rebut Mr. Novack's *prima facie* case. Therefore, Complainant has met his burden of proving the Indra made an unauthorized change to his supply service in violation of 52 Pa. Code §§ 54.42(9), 57.171-180.

Allegations in Complaint Admitted

On top of Indra's failure to appear at the hearing and rebut Mr. Novack's *prima facie* case, Indra may be deemed to have admitted to the allegations by failing to file an answer to the Complaint. Pursuant to Section 5.61(c) of the Commission's Regulations, 52 Pa. Code § 5.61(c), a respondent who fails to answer a complaint within the twenty-day response period may be deemed in default, and the relevant facts stated in the complaint may be deemed admitted. *See Hickory Hollow Farms c/o Lamar Harnish*

² Notice eServed to a party's registered email address with no notification that service failed is presumed to have been received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

v. Liberty Power Holdings LLC and United Energy Alliance LLC, Docket No. C-2016-2559494 (Final Order entered Aug. 31, 2017).

Here, Indra was provided with adequate notice of the alleged violations against it and had the opportunity to respond to the Formal Complaint. Indra failed to do so. Consequently, I deem the allegations in the Formal Complaint admitted. Therefore, by Indra's admission of the allegations in the Complaint, Mr. Novack has also met his burden of proof in this regard.

Penalties

Having concluded that Indra violated the Public Utility Code, Commission Regulations, or a Commission Order, it is appropriate to consider whether the Commission should assess a civil penalty for the violation.

A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to \$1,000 per violation for every day of that violation's continuing offense. *See* 66 Pa.C.S. § 3301(a)-(b). The Commission's policy statement at 52 Pa. Code § 69.1201 establishes specific factors and standards the Commission will consider in evaluating litigated cases involving violations and in determining whether a fine is appropriate. *See also Rossi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000).

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). It is hard to imagine an EGS signing a customer up for its services without permission being an administrative or technical error. Due to Indra's failure to present any evidence, it is not clear whether this

was a willful act by the Company as a whole or a single, deceitful salesman. This factor suggests a higher penalty.

The second factor to consider is whether the resulting consequences of the alleged conduct were of a serious nature. 52 Pa. Code § 69.1201(c)(2). The consequences of Indra's violation did not financially affect Mr. Novack as he was eventually credited all amounts paid to Indra and transferred back to PECO. However, the Commission finds the act of slamming to be a serious violation for which it has "zero tolerance." (*HIKO*). This factor suggests a higher penalty.

The third factor considers whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). As suggested above, it is difficult to discern how an EGS signing a customer up for its services without permission could be unintentional. Therefore, this factor suggests a higher penalty.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). There is no evidence whether Indra has made efforts to modify its procedures and Indra did not appear for the hearing to suggest that it made any modifications to its procedures. This factor suggests a higher penalty.

The next factor is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). For this specific Formal Complaint, there was only one customer affected. This factor suggests a lower penalty.

The sixth factor to be considered relates to the compliance history of the Company. 52 Pa. Code § 69.1201(c)(6). There is no evidence on Indra's compliance history and there was no Commission investigation. Therefore, this factor bears no weight on my determination.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). There was no Commission investigation in this matter.

The eighth factor is the amount of the civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Slamming is serious and must be deterred. However, as mentioned above, it is not clear from the evidence whether this is conduct by the Company as a whole or by a wayward salesperson. Therefore, it is not clear, currently, that a large penalty is needed to deter Indra from committing this violation in the future. This factor suggests a lower penalty.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Commission has emphasized its zero-tolerance policy regarding slamming and other deceptive practices in violation of the Commission's regulatory authority over EGSs and NGSs. *See e.g., Pa. Pub. Util. Comm'n v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Opinion and Order entered Apr. 15, 2021) (*Liberty Power*). The Commission has previously fined companies \$1,000 per account for physically switching EGS service without a customer's authorization. *Liberty Power; Pa. Pub. Util. Comm'n v. Energy Servs. Providers, Inc.*, Docket No. M-2013-2325122 (Opinion and Order entered Oct. 2, 2014); *Pa. Pub. Util. Comm'n v. MXenergy Elec., Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Aug. 29, 2013). Because there is only one account at issue here, these cited cases suggest a \$1,000 total fine for Indra.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). The Company failed to file and answer to the Formal Complaint and failed to appear for the hearing, suggesting an indifference to the Complainant's concerns and the Commission's processes. I also note that unlike the cases cited above which

suggest a \$1,000 fine per account, this case was not a settlement and Indra either refused or did not care to participate in the resolution of this Complaint. This suggests a higher penalty.

Indra's action of enrolling Mr. Novack in its EGS service without his permission is an unauthorized change to his supply service in violation of 52 Pa. Code §§ 54.42(9), 57.171-180. Because of its violation and subsequent failure to participate in the adjudication of this Formal Complaint, a fine of \$2,000 is appropriate here. Furthermore, because the Commission takes the matter of slamming seriously, I will direct the Secretary's Bureau to serve a copy of this initial decision on the Commission's Bureau of Investigation and Enforcement for any further investigation and action as it may deem appropriate.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. A complainant must show, by a preponderance of the evidence, 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); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976).

4. The decision of the Commission must be supported by substantial evidence or 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. 2 Pa.C.S. § 704; *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).

5. Once 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, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

6. "A licensee shall comply with the applicable requirements of the code and Commission regulations and orders. Consistent with due process, a license may be suspended or revoked, and fines may be imposed against the licensee for the transfer of a customer without the customer's consent." 52 Pa. Code § 54.42(9).

7. Complainant has met his burden of showing that by making unauthorized changes to Complainant's electricity generation supplier, Respondent violated Commission regulations. *See* 52 Pa. Code § 57.171-180; 66 Pa.C.S. § 332(a).

8. The Commission's regulations provide a Policy Statement regarding factors and standards to assist the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate. 52 Pa. Code § 69.1201(a).

9. In settled cases, the Commission has found that a fine of \$1,000 per customer is appropriate for physically switching a customer's EGS service without the customer's authorization. *Pa. Pub. Util. Comm'n v. Liberty Power Holdings, LLC*, Docket No. M-2019-2568471 (Opinion and Order entered Apr. 15, 2021); *Pa. Pub. Util. Comm'n v. Energy Servs. Providers, Inc.*, Docket No. M-2013-2325122 (Opinion and Order entered Oct. 2, 2014); *Pa. Pub. Util. Comm'n v. MXenergy Elec., Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Aug. 29, 2013).

10. Indra's failure to respond to the Formal Complaint and appear for the hearing weigh in favor of a higher penalty based on consideration of the factors under the Commission's policy statement on slamming. 52 Pa. Code § 69.1201; *see also Rossi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Opinion and Order entered Feb. 10, 2000).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by John M. Novack in *John M. Novack v. Palmco Energy PA LLC d/b/a Indra Energy* at Docket No. F-2024-3046076 is sustained.

2. That within thirty (30) days of entry of the Final Order of the Commission, Palmco Energy PA LLC d/b/a Indra Energy shall remit a civil penalty in the amount of \$2,000 payable by certified check or money order to “Commonwealth of Pennsylvania” with the docket number of this proceeding listed and sent to:

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

3. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That the Bureau of Administrative Services, Assessment Section shall monitor this matter for compliance.

5. That, if Palmco Energy PA LLC d/b/a Indra Energy fails to make the civil penalty payment required by Ordering Paragraph No. 2 above, within thirty (30) days of the entry date of the Final Order of the Commission in this matter, it is further ordered that the Bureau of Administrative Services, Assessment Section, shall refer this matter to the Pennsylvania Office of Attorney General for collection of the total set forth above and appropriate action.

6. That, upon payment of the penalty required by Ordering Paragraph No. 2 above, Docket No. F-2024-3046076 be marked closed.

7. That the Secretary’s Bureau shall serve a copy of this Initial Decision on the Pennsylvania Public Utility Commission’s Bureau of Investigation and

