

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sarah Cotellese

v.

Clearview Electric, Inc.

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F-2024-3050038

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Sarah Cotellese because she failed to satisfy her burden of proving that Clearview Electric, Inc. violated its tariff, the Public Utility Code, or a Commission Regulation or Order.

**HISTORY OF THE PROCEEDING**

On June 18, 2024, Sarah Cotellese (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Clearview Electric, Inc. (Clearview or Respondent). In the Complaint, the Complainant disputed that she agreed to switch her energy supplier from PECO Energy Company (PECO) to Clearview. The Complainant requested a refund of the difference in charges between PECO and Clearview.

This matter is the timely appeal of a decision from the Bureau of Consumer Services (BCS) dated May 29, 2024, at BCS Case No. 3971992, which dismissed the informal complaint of the Complainant. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

By Secretarial letter dated July 11, 2024, Clearview was notified of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated August 22, 2024, a telephonic hearing was scheduled for November 5, 2024, and the matter was assigned to me.

On September 11, 2024, Clearview filed an Answer with New Matter along with a Notice to Plead. In its Answer, Clearview admitted in part, and denied in part, various material allegations of the Complaint. In particular, Clearview averred that it received the Complainant's enrollment on January 17, 2012, through a direct phone solicitation.

In its New Matter, Clearview averred that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction in this matter because it was brought more than three years from the date the liability arose.

Also on September 11, 2024, Clearview filed a Motion to Dismiss along with a Notice to Plead. In its Motion to Dismiss, Clearview reiterated its argument that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction in this matter because the alleged liability, *i.e.* enrollment with Clearview, occurred more than three years ago. Thus, Clearview requested the case be dismissed.

On October 8, 2024, Clearview served its Answer and New Matter and Motion to Dismiss on the Complainant again in order to correct a typographical error in the Complainant's email address. Clearview included updated Notices to Plead. Clearview also requested the hearing be rescheduled in order to provide adequate time for the Complainant to respond.

The Complainant's Answers to Clearview's New Matter and Motion to Dismiss were due within twenty days of the date of service. 52 Pa. Code §§ 5.63(a), 103. The Complainant did not file Answers to Clearview's New Matter or Motion to Dismiss.

By Cancelled/Rescheduled Initial Telephonic Hearing Notice dated October 9, 2024, the telephonic hearing was rescheduled for December 10, 2024.

On November 19, 2024, I issued an Order denying Clearview's Motion to Dismiss due to disputed questions of fact that must be proven at a hearing.

A Prehearing Order was issued on November 19, 2024, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On December 10, 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. Clearview offered no testimony or exhibits for the record.

The record closed on December 25, 2024, upon the filing of the transcript with the Commission.

## FINDINGS OF FACT

1. The Complainant is Sarah Cotellese.
2. The Respondent is Clearview Electric, Inc., a jurisdictional public utility, which provides electric supply service.
3. The Complainant enrolled with Clearview in January of 2012. Tr. 6.
4. On June 18, 2024, the Complainant filed a Complaint with the Commission against the Respondent.

## 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. Cmwlt. 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. Cmwlt. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlt. 1982).

In this case, the Complainant confirmed at the hearing that she switched her energy supplier to Clearview in January of 2012. Tr. 6. Based on these facts, the Respondent argues that the Complainant is barred by the statute of limitations at Section 3314 of the Code, 66 Pa.C.S. § 3314. Section 3314 limits actions for the recovery of penalties or forfeitures incurred under the provisions of the Code to three years from the date at which the liability arose. However, the Complainant does not seek recovery of any penalties or forfeitures but rather she seeks a refund (or credit) from the difference in charges between Clearview and PECO. Under such circumstances, the Commission has consistently held that the four-year statute of limitations provision pertaining to requests for refunds or credits under Section 1312 of the Code, 66 Pa.C.S. § 1312(a), should be applied. *See Whitaker v. Phila. Gas Works*, Docket No. C-2022-3035783 (Opinion and Order entered Oct. 16, 2023) (*Whitaker*); *Beverly Layne v. Phila. Gas Works*, Docket No.

F-00820471 (Opinion and Order entered Feb. 24, 2003); *Rivera v. Phila. Gas Works*, Docket No. C-20028491 (Opinion and Order entered Mar. 9, 2004).

Section 1312(a) of the Code provides in pertinent part:

**(a) General rule.**--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the Commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

66 Pa.C.S. § 1312(a).

Nevertheless, in order for Section 1312 to apply, the Complainant still has the burden to prove that “any rate received by a public utility was unjust or unreasonable or was in violation of any regulation or order of the Commission or was in excess of the applicable rate contained in an existing and effective tariff of such public utility.” *Id.*; see also, *Whitaker* at 13-14, fn.10 (citing *Souders v. PECO Energy Co.*, Docket No. C-2008-2053281 (Opinion and Order entered Apr. 30, 2009)).

Here, the Complainant did not present any evidence in support of her Complaint other than her own statement that she never would have agreed to the switch if she knew it would cost her more money over time. Tr. 6. Regardless of how earnestly the Complainant believes this to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit her to sustain her burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C 20066297 (Final Order entered Nov. 16, 2006) (citing *Pa. Bur. of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)). Thus, I find the Complainant failed to satisfy her burden of proving that Clearview violated its tariff, the Public Utility Code, or a Commission Regulation or Order. Accordingly, the Complaint shall 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. The four-year statute of limitations provision under Section 1312 of the Code applies to requests for refunds or credits. 66 Pa.C.S. § 1312(a); *See Whitaker v. Phila. Gas Works*, Docket No. C-2022-3035783 (Opinion and Order entered Oct. 16, 2023) (*Whitaker*); *Beverly Layne v. Phila. Gas Works*, Docket No. F-00820471 (Opinion and Order entered Feb. 24, 2003); *Rivera v. Phila. Gas Works*, Docket No. C-20028491 (Opinion and Order entered Mar. 9, 2004).
4. The Complainant has the burden to prove that “any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the Commission, or was in excess of the applicable rate contained in an existing and

effective tariff of such public utility.” 66 Pa. C.S. § 1312(a); *see also*, *Whitaker v. Phila. Gas Works*, Docket No. C-2022-3035783, at 13, fn.10 (Opinion and Order entered Oct. 16, 2023) (citing *Souders v. PECO Energy Co.*, Docket No. C-2008-2053281 (Opinion and Order entered Apr. 30, 2009)).

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

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

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Sarah Cotellessee at Sarah Cotellessee v. Clearview Electric, Inc., Docket Number F-2024-3050038, is dismissed.

3. That Docket No. F-2024-3050038 be marked closed.

Date: March 20, 2025

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/s/  
F. Joseph Brady  
Administrative Law Judge