

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**INITIAL DECISION
ON REMAND**

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision sustains the Formal Complaint of an electric service customer. A fine of \$2,000 is imposed on Respondent under 52 Pa. Code § 54.42(9) for the transfer of Complainant’s Electric Generation Supplier and Natural Gas Generation Supplier without his consent.

HISTORY OF THE PROCEEDING

On January 10, 2024, John Novak (Complainant or Mr. Novak) 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. Novak 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. Novak 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.

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. Nobody appeared on behalf of Indra. The hearing commenced without the Respondent.

On October 10, 2024, an Initial Decision was issued, sustaining Mr. Novak's Complaint.

On October 24, 2024, Indra filed a Petition for Rehearing, alleging that it did not receive service of the Formal Complaint, hearing notices or prehearing order and that the documents were sent to the incorrect email address.

On November 13, 2024, the Commission inadvertently issued a Final Order in this matter which was prior to the close of the ten-day period allowed by Commission Regulations for the filing of an answer to the Petition. *See* 52 Pa. Code § 5.571(c).

On November 14, 2024, the Commission issued a Secretarial Letter rescinding the November 13, 2024 Final Order.

On November 15, 2024, Complainant filed an Answer to the Petition for Rehearing.

On January 23, 2025, the Commission entered an Opinion and Order granting the Petition for Rehearing, reopened the record and remanded the matter to the Office of Administrative Law Judge for further proceedings.

Indra did not file an answer to the Complaint.

On February 19, 2025, an Initial Telephonic Hearing on Remand Notice was served on the parties, scheduling a hearing on April 23, 2025 at 10:00 a.m.

On April 23, 2025, the hearing convened as scheduled. The Complainant appeared *pro se*, testified in support of his Complaint and offered no exhibits for the record. Michael Gruin, Esquire, appeared on behalf of Indra and presented the testimony of two witnesses: Ivette Arce, a compliance manager with Indra, and Cornel Batiste, the director of door-to-door retail sales and quality control with Indra. Ms. Arce and Mr. Batiste sponsored the following five exhibits, which were admitted into the record without objections:

Indra Exhibit 1 – Record of Verification
Indra Exhibit 2 – Indra’s Welcome Letter

Indra Exhibit 3 – Cost Analysis Email
Indra Exhibit 4 – Agent Guide
Indra Exhibit 5 – Indra Energy Code of Conduct

The record closed on May 15, 2024, upon the filing of the transcript (pp. 27-84) and transcript exhibits with the Commission.

FINDINGS OF FACT

1. The Complainant is John M. Novak, who resides at 60 Parkview Circle, Wayne, Pennsylvania 19087 (Service Address). Tr. 38.
2. The Respondent is Palmco Energy PA LLC d/b/a Indra Energy, an electric generation supplier (EGS) and a natural gas generation supplier (NGS) authorized to supply electricity and natural gas to retail customers throughout Pennsylvania under licenses issued by the Commission at Docket Nos. A-2009-2108338 (electric) and A-2009-2100320 (gas).
3. In July of 2023, Complainant noticed Indra was listed as his supplier on his electric bill. Tr. 39.
4. Prior to being enrolled with Indra, Complainant never spoke with anyone from Indra. Tr. 41.
5. Nobody from Indra came to Complainant's door to solicit his business. Tr. 41.
6. Complainant did not request a change in his electric or gas service suppliers. Tr. 39-40.

7. Complainant did not receive any notice from Indra that he was enrolled with it as his EGS. Tr. 77.

8. Mr. Novak's enrollment was received by Indra on June 29, 2023, by an in-person sale. Tr. 47; Indra Ex. 1.

9. A record of verification is submitted by a sales agent to initiate enrollment for an account. Tr. 47, 60; Indra Ex. 1, 4.

10. Sales agents conduct sales by using their mobile devices. After there is a sales presentation and the customer agrees to enroll, the agent will input the customer's information into their mobile device, including the customer's name, address, account number, email addresses, phone numbers, and the product it is offering. Then, the customer is emailed or texted a link that takes the customer to the full customer contract, and from there, the customer can review and sign the contract. The customer also completes a digital verification process to confirm the agreement. Tr. 48, 60-61; Indra Ex. 1.

11. The mobile devices that sales agents use record the geolocation to show where the agent was at the time of enrollment (e.g., whether they were at a customer's address). Tr. 49, 61-62; Indra Ex. 1.

12. The sales agent's geolocation showed that he was at Mr. Novak's service address. Tr. 49; Indra Ex. 1.

13. The customer contract and disclosure statement are emailed to the email address that is input by the sales agent. Tr. 49.

14. Mr. Novak was enrolled in both gas and electric supply with Indra. Tr. 50-51; Indra Ex. 1, 2, 3.

15. Mr. Novak's electric supplier was switched to Indra on July 11, 2023. Tr. 50; Indra Ex. 3.

16. Mr. Novak's natural gas supplier was switched to Indra on July 17, 2023. Indra Ex. 3.

17. Mr. Novak called Indra on July 27, 2023 and cancelled his enrollments. Tr. 51.

18. Mr. Novak was charged a total of \$89.49 by Indra for electricity supply and \$0 for natural gas supply. Tr. 51; Indra Ex. 3.

19. Mr. Novak was charged less for electric supply than he would have been charged by PECO Energy Company (PECO), his default electric supplier. Tr. 52; Indra Ex. 3.

20. Indra issued Mr. Novak a \$50 courtesy credit, which was applied to his PECO account. Tr. 52; Indra Ex. 3.

21. The agent who enrolled Mr. Novak was conducting sales for Indra via a third-party contract with a sales vendor. Tr. 60.

22. Indra's vendor partners are required to conduct a background check on every agent that they contract to sell on its program to ensure that the agent has no criminal history. Tr. 59.

23. Agents must then complete Indra's energy program training which includes training on specific market regulatory compliance guidelines and internal policies and procedures. Agents are then required to pass a test and sign Indra's code of conduct. Tr. 59-60.

24. Every one of Indra's in-person or door-to-door sales is performed using a digital confirmation of enrollment, which includes an independent digital verification process. Tr. 60; Indra Ex. 4.

25. The agent who performs the sale inputs the customer's information into their personal device. This information includes the customer's name as it appears on the bill, the service address, the account number, the email address, the phone number, and the exact product offering that the customer has agreed to enroll in. Tr. 61; Indra Ex. 4.

26. The customer then receives a link to their personal device via email or text message which provides the customer with a copy of the contract and the terms of service to review and sign. Tr. 61; Indra Ex. 4.

27. Once the contract is signed, the customer receives a second link that provides access to an independent digital verification that must be completed for final confirmation for successful enrollment, or enrollment is cancelled. Tr. 61; Indra Ex. 4.

28. Indra had safeguards in place when Mr. Novak was enrolled. Tr. 61-63.

29. Indra discovered that the email used to enroll Mr. Novak was created the day prior to enrollment. Tr. 64.

30. The email address used to enroll Mr. Novak does not belong to Mr. Novak. Tr. 77.
31. The phone number used to enroll Mr. Novak does not belong to Mr. Novak. Tr. 77.
32. The signature on the enrollment is not Mr. Novak's signature. Tr. 73, 77.
33. The agent who enrolled Mr. Novak was employed by the sales vendor for 47 days. Tr. 64-65.
34. The agent completed 145 total enrollments during his 47-day employment. Tr. 70.
35. There were two additional complaints filed against Indra regarding accounts opened by the agent. Tr. 70-71.
36. Indra has not contacted the other customers enrolled by the agent to discuss whether their enrollment was proper. Tr. 70.
37. Indra has since increased the safeguards to defend against fraudulent enrollments. Tr. 67-68.

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

Complainant alleges that Indra made unauthorized changes to his supply services. 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).

Slamming

Complainant credibly testified that he did not request a change in his supplier for his gas and electric accounts. Tr. 39-40. However, in July of 2023, Complainant noticed Indra was listed as his supplier on his electric bill. Tr. 39. Prior to being enrolled with Indra, Complainant never spoke with anyone from Indra and nobody from Indra came to Complainant’s door to solicit his business. Tr. 41. Complainant also explained that the phone number, signature, and email address in Indra’s documents did not belong to Mr. Novak. Tr. 77. Further, he did not receive any notice from Indra that he was enrolled with it as his EGS or NGS. *Id.* Through his credible testimony, Complainant established a *prima facie* case that Indra is accountable for slamming.

Indra’s witness, Ivette Arce, testified that Mr. Novak’s enrollment was received by Indra on June 29, 2023, by an in-person sale. Tr. 47; Indra Ex. 1. Ms. Arce and Indra’s other witness, Cornel Batiste, explained the process of enrolling new customers and the safeguards employed by Indra in doing so.

Every one of Indra's in-person or door-to-door sales is performed using a digital confirmation of enrollment, which includes an independent digital verification process. Tr. 47, 60; Indra Ex. 4. The agent who performs the sale inputs the customer's information into their personal device. This information includes the customer's name as it appears on the bill, the service address, the account number, the email address, the phone number, and the exact product offering that the customer has agreed to enroll in. The customer then receives a link to their personal device via email or text message which provides the customer with a copy of the contract and the terms of service to review and sign. Once the contract is signed, the customer receives a second link that provides access to an independent digital verification that must be completed for final confirmation for successful enrollment, or enrollment is cancelled. Tr. 47-48, 61; Indra Ex. 4.

Indra's enrollment system has a built-in geolocation tracker that captures the location of both the agent and the customer during the time of the enrollment. In other words, the system allows Indra to confirm that the agent is at the customer's service address at the time of the enrollment. Mr. Batiste states that this enables Indra's quality assurance to identify, during the sales review, whether the enrollment was done properly or improperly. Tr. 49, 61-62.

Next, Mr. Batiste explains, Indra's enrollment system also captures information on both the agent and the customer's device, such as the device type; the operating system; the operation system version; the device IP address; and the exact date and time of each enrollment. Mr. Batiste states that these features allow Indra to go back and review the circumstances surrounding an enrollment in case there is a subsequent investigation resulting from a customer complaint. Tr. 62. In addition to that, Indra's Quality Team conducts quality assurance (QA) reviews on 100% of the sales, which includes flagging a potential email discrepancy, IP address issues, and GPS location issues. Mr. Batiste asserts that during these QA inspections, Indra reviews the IP

addresses on the sales to ensure the customer portion of the enrollment is not being completed on an agent's device and conducts GPS tracking on 100% of sales to ensure the door-to-door sales occurred at the customer's home. Tr. 62-63.

Ms. Arce explained that Indra believed these procedures were followed when enrolling Mr. Novak as Indra received a record of verification to initiate enrollment which had a signature, account number and proper geolocation. Tr. 47-49; Indra Ex. 1.

However, despite these safeguards, Indra discovered during its investigation of this matter that the email account that was used to complete the enrollment had only been created the day before, or the day of, the enrollment. Mr. Batiste stated that this gave Indra a reasonable basis to conclude that the agent may have improperly conducted the enrollment on Mr. Novak's behalf. Tr. 64.

Mr. Batiste explained that while it is not possible to know with certainty how the sales agent falsified the enrollment, it appears that he may have created a phony email address for Mr. Novak and emailed the enrollment link to that email address, where a potential accomplice may have impersonated the customer. Tr. 66. Mr. Batiste stated that it looked like a valid enrollment based on GPS location and digital verification. However, the agent was able to "fool [their] system into completing the enrollment." Tr. 66-67.

Ms. Arce testified that Mr. Novak was enrolled in both gas and electric supply with Indra. Tr. 50-51; *see* Indra Ex. 1, 2, 3. Mr. Novak's electric supplier was switched to Indra on July 11, 2023 and his natural gas supplier was switched to Indra on July 17, 2023. Tr. 50; Indra Ex. 3. On July 27, 2023 Mr. Novak called and cancelled his enrollments. Tr. 51.

Mr. Novak was charged a total of \$89.49 by Indra for electricity supply and \$0 for natural gas supply. Tr. 51; Indra Ex. 3. During the time enrolled, Mr. Novak was charged less for his electric supply than he would have been charged by PECO. Tr. 52; Indra Ex. 3. In an attempt to resolve complainant's concerns, Indra issued Mr. Novak a \$50 courtesy credit, which was applied to his PECO account. Tr. 52; Indra Ex. 3. Mr. Novak explained that this did not resolve his concerns.

Based on the foregoing, Complainant has met his burden of proving that Indra made an unauthorized change to two of his supply services in violation of 52 Pa. Code §§ 54.42(9), 57.171-180. Accordingly, Mr. Novak's Complaint will be sustained. Next, because I find that Indra violated Commission regulations, it is necessary to determine whether a civil penalty is appropriate under the facts of this matter.

Other Sales by the Sales Agent

Mr. Batiste explained that the door-to-door salesmen are not employees of Indra. They are employees or contractors of its business partners. The agent who enrolled Mr. Novak was doing sales for Indra via a third-party contract with a sales vendor. Tr. 60.

Mr. Batiste described policies and procedures in place to screen and train sales agents. Indra's vendor partners are required to conduct a background check on every agent that they contract to sell on its program to ensure that there is no criminal history. Agents must then complete Indra's energy program training, which includes training on specific market regulatory compliance guidelines and internal policies and procedures. Agents are then required to pass a test and sign Indra's code of conduct. Tr. 59-60.

The sales agent who enrolled Mr. Novak with Indra worked with Indra's vendor for a total of 47 days, from June 21, 2023, through August 7, 2023. Tr. 64-65. In those 47 days, the sales agent enrolled 145 customers, including Mr. Novak. At the time of the hearing, there were two additional complaints filed with the Commission on accounts opened by this sales agent. Tr. 71.

Indra informed the vendor that this agent cannot be part of the program and had them placed on the do-not-hire list. Mr. Batiste states that Indra informed the hiring vendor that if there was any further "fraud committed by other agents from this particular vendor, [it] would immediately terminate that vendor." Tr. 67.

Indra has not contacted any of the other 142 customers to ascertain the legitimacy of their enrollments. Tr. 70. Only eight of the 145 customers remain with Indra, which Mr. Batiste classifies as unusual. *Id.*

It is concerning that Indra has failed to reach out to the customers enrolled by this sales agent in order to fully understand the depth of the malfeasance. Logic suggests that the three complaints filed with the Commission (approximately two percent of the 145 customers), would not amount to the whole of this salesperson's transgressions. Indra's failure to address this with the customers will impact the penalty assessed below.

Implementation of Additional Safeguards

Indra explained that it has added several safeguards since this incident to prevent further fraudulent enrollments. Indra presented testimony that it now completes outbound welcome calls to new enrollments to confirm that they did, in fact, complete an enrollment and it does a more extensive review of each enrollment. This review includes an analysis of every email address and phone number against a fraud prevention database.

Indra uses the fraud prevention database to determine if the email address was recently created, whether it existed prior to enrollment and if it is affiliated with the customer being enrolled. Tr. 67-68. Mr. Batiste states that Indra has also implemented systemic processes that prevent potential fraud, such as an anti-spoofing function in its enrollment that blocks agents' attempts to spoof customer's addresses during the enrollment process. Tr. 68.

Indra has implemented an additional GPS function in its enrollment which gives it the ability to autoblock enrollments at certain distances. This means if an agent is not in the vicinity of the customer, the system will automatically block any enrollment attempt. Tr. 68. Indra is also in the process of implementing a program that enables it to integrate its enrollment tool with a national database to identify and flag invalid emails and phone numbers in real time, at the point of enrollment. This would enable Indra to reject fraudulent enrollment attempts before they can even be sent to the utility or be completed in its systems. *Id.*

Indra's implementation of additional safeguards will also influence the penalty assessed.

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). The Commission finds the act of slamming to be a serious violation for which it has “zero tolerance.” *See HIKO*. 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. Novak, as he was eventually credited all amounts paid to Indra and transferred back to PECO. However, Mr. Novak has spent considerable time addressing this matter with the Commission. Nonetheless, because Mr. Novak was able to correct this fraudulent transfer early by diligently reviewing his bill, the resulting consequences on Mr. Novak were not serious in the end. This factor suggests a lower penalty.

The third factor considers whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). The record shows that the sales agent intentionally falsified the enrollment of Mr. Novak. 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). Indra explained that it has implemented or will be

implementing additional safeguards in an attempt to prevent this issue in the future. This factor suggests a lower 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 for a short duration. However, Mr. Novak had two accounts that were 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 provided regarding Indra's compliance history. Therefore, this factor has no bearing 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. As mentioned above, the sales agent who enrolled Mr. Novak with Indra enrolled 145 customers in his 47 days doing door-to-door sales. There were three complaints filed with the Commission regarding this salesperson's enrollments. Indra discovered that, at the very least, Mr. Novak's enrollment was fraudulent. Indra has not reached out to the other 142 customers to determine the validity of their enrollments and take corrective measures. In fact, there are eight customers currently enrolled with Indra who may be ongoing victims of this salesperson's fraud, let alone the other 134 people who may have been negatively affected. Indra's actions or inaction suggests a business practice of accepting the profit of fraudulent enrollments. This suggests a higher 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 are two accounts at issue here, electric and gas, these cited cases suggest a \$2,000 total fine for Indra.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). There are no other relevant factors to consider.

Indra’s action of enrolling Mr. Novak in its EGS and NGS services 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, 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 and natural gas 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by John M. Novak in John M. Novak 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:

Matthew L. Homsher, 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.

