

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leroy E. Bitterman III	:	
	:	
v.	:	F-2024-3051938
	:	
Clearview Electric, Inc.	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

A Complainant filed a Formal Complaint against his former electric generation supplier alleging that it switched his electric generation supplier without his consent and that its rates were unreasonable. This Initial Decision dismisses the Formal Complaint, finding that Complainant failed to meet his burden of proving that his electric generation supplier was changed without his consent and that the Pennsylvania Public Utility Commission lacks the jurisdiction to review the rates charged by an electric generation supplier.

HISTORY OF THE PROCEEDING

On October 30, 2024, Leroy E. Bitterman III (“Mr. Bitterman” or “Complainant”) filed a Formal Complaint (“Complaint”) against Clearview Electric, Inc. (“Clearview” or “Respondent”) with the Pennsylvania Public Utility Commission

(“Commission”). Complainant alleged that he was overcharged by Respondent, stating that Respondent consistently charged him over \$0.25 per kwh while the average rate in his area is \$0.10 per kwh. As relief, Complainant requested reimbursement from Respondent in the amount of \$1,200. The Complaint was served upon Respondent on November 1, 2024.¹

On November 21, 2024, Respondent filed an Answer with New Matter to the Complaint. In its Answer, Respondent asserted that after multiple written notices, to which Complainant did not respond, Complainant’s electric generation supplier (“EGS”) was changed from YEP Energy (“YEP”) to Respondent. Respondent asserted that it was Complainant’s EGS from August 3, 2023, to July 31, 2024. Respondent denied that its rates were excessive. Specifically, Respondent asserted that Complainant received five rate change notices from Respondent notifying him of changes to his month-to-month variable service rate from November 2023 – April 2024, to which Complainant did not respond.

In its New Matter, Respondent asserted that the Commission is limited in its ability to order refunds of supply charges and that the Commission does not regulate supply prices charged by EGSs.

Respondent’s Answer with New Matter contained a Notice to Plead, informing Complainant that he had 20 days from the date of service to file a Reply to the New Matter. Complainant did not file a Reply to the New Matter.

¹ The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (“BCS”) at BCS No. 4006017. The timely appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On December 30, 2024, the Commission issued an Initial Call-In Telephonic Hearing Notice scheduling an evidentiary hearing for February 19, 2025, and assigning this matter to me as Presiding Officer.

Also on December 30, 2024, the Commission issued my Prehearing Order which provided the procedural rules that would govern the evidentiary hearing.

On January 30, 2025, Respondent filed a Motion for Continuance.

On January 31, 2025, I issued an Interim Order granting Respondent's Motion for Continuance and continued the February 19, 2025, evidentiary hearing date.

On February 4, 2025, the Commission issued a Rescheduled Initial Call-In Telephonic Hearing Notice rescheduling the evidentiary hearing for March 31, 2025.

On March 31, 2025, the evidentiary hearing was held as scheduled. Complainant appeared for the hearing and testified on his own behalf. Attorney Bryce Beard appeared on behalf of Respondent and presented the testimony of one witness who sponsored five exhibits that were admitted into the record.

On May 28, 2025, a 42-page electronic transcript of the evidentiary hearing was filed with the Commission. The record in this proceeding was closed on this date.

This matter is ready for resolution. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant is Leroy E. Bitterman III.

2. Respondent is Clearview Electric, Inc., a Pennsylvania licensed EGS. Tr. 18.
3. YEP Energy was a Pennsylvania licensed EGS that exited the supplier business in Pennsylvania as of August 28, 2024. Tr. 22.
4. The service address is 1122 Boulder Road, Blakeslee, Pennsylvania. Tr. 10-11.
5. Mr. Bitterman's mailing address is 38 Hillside Drive, Woolwich, New Jersey ("mailing address"). Tr. 16.
6. On November 30, 2015, Mr. Bitterman was enrolled with YEP through PPL Electric Utilities's standard offer program. Tr. 24.
7. On June 23, 2023, YEP and Clearview sent a letter to Mr. Bitterman which indicated that YEP would be transferring his EGS service to Clearview before the end of July 2023. Tr. 23; Clearview Exhibit 2.
8. The June 23, 2023, letter indicated that YEP was selling their business to Clearview and that Mr. Bitterman's terms of service would remain the same. Clearview Exhibit 2.
9. The June 23, 2023, letter was addressed to Mr. Bitterman's mailing address. Tr. 23; Clearview Exhibit 2.
10. Mr. Bitterman did not respond to the June 23, 2023, letter. Tr. 24.

11. Mr. Bitterman's EGS was transferred to Clearview from YEP effective August 3, 2023. Tr. 18.

12. Mr. Bitterman received month-to-month variable rate service from YEP at the time his service was transferred to Clearview. Tr. 24-25.

13. On September 5, 2023, Clearview sent Mr. Bitterman a 45-day advance notice about changes to his existing terms of service, noting that his service was recently transferred from YEP, but clarifying that he would continue to receive service on a month-to-month variable rate contract. Tr. 25-26; Clearview Exhibit 3.

14. The September 5, 2023, notice was addressed to Mr. Bitterman's mailing address. Tr. 27; Clearview Exhibit 3, p. 1.

15. Mr. Bitterman did not respond to the September 5, 2023, notice. Tr. 26-27.

16. On September 20, 2023, Clearview sent Mr. Bitterman a 30-day advance notice about changes to his existing terms of service, noting that his service was recently transferred from YEP, but clarifying that he would continue to receive service on a month-to-month variable rate contract. Tr. 27; Clearview Exhibit 4.

17. The September 20, 2023, notice was addressed to Mr. Bitterman's mailing address. Tr. 27; Clearview Exhibit 4, p. 1.

18. Mr. Bitterman did not respond to the September 20, 2023, notice. Tr. 28.

19. On November 5, 2023, Clearview sent Mr. Bitterman a notice indicating that his rate would be changing from the current rate of \$0.175/kWh and monthly base fee of \$0.00 to \$0.1999/kWh and \$0.00 monthly base fee for his next billing cycle. Clearview Exhibit 5, p. 1.

20. On December 8, 2023, Clearview sent Mr. Bitterman a notice indicating that his rate would be changing from the current rate of \$0.1999/kWh and monthly base fee of \$0.00 to \$0.2699/kWh and \$0.00 monthly base fee for his next billing cycle. Clearview Exhibit 5, p. 2.

21. On April 8, 9, and 12, 2024, Clearview sent Mr. Bitterman a notice indicating that his rate would be changing from the current rate of \$0.2699/kWh and monthly base fee of \$0.00 to \$0.2509/kWh and \$0.00 monthly base fee for his next billing cycle. Clearview Exhibit 5, p. 3-5.

22. The rate change notices sent to Mr. Bitterman on November 5, 2023, December 8, 2023, and April 8, 9, and 12, 2024, were addressed to Mr. Bitterman's mailing address. Tr. 29; Clearview Exhibit 5.

23. Mr. Bitterman did not respond to any of the rate change notices.
Tr. 29.

24. Clearview tracks undeliverable mail that it receives from customers.
Tr. 30.

25. Clearview's records do not show that the June 23, 2023, letter; the September 5 and 20, 2023 notices; or the November 5, 2023, December 8, 2023 and April 8, 9, and 12, 2024, rate change notices were returned to Clearview as undeliverable to Mr. Bitterman. Tr. 30.

26. On July 26, 2024, Mr. Bitterman contacted Clearview and requested to be returned to default service supplier. Tr. 29-30.

27. The last date that Clearview provided service to Mr. Bitterman was on July 31, 2024, when Mr. Bitterman's supplier was switched to his default supplier. Tr. 19, 30.

DISCUSSION

Legal Standards

Burden of Proof

As a matter of law, to establish a legally sufficient claim, 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 (1990). The offense must also 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.

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 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); *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 complainant's evidence, the burden of going forward with the evidence shifts back to complainant, who must rebut the utility's evidence with some additional 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 a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

Electric Generation Suppliers

The definition of "public utility" at 66 Pa.C.S. § 102 does not include EGSs except for the limited purposes as described in 66 Pa.C.S. § 2809, regarding licensing requirements and 66 Pa.C.S. § 2810, regarding revenue neutral reconciliation. 66 Pa.C.S. § 102; *see also, Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005).

As the generation of electricity is not regulated as a public utility, the Commission lacks the authority to regulate EGS rates under Chapter 13 of the Code (relating to rates). 66 Pa.C.S. §§ 1301-1359. Thus, the Commission may not review

EGSs' rates to determine whether the rates are "just and reasonable" pursuant to 66 Pa.C.S. § 1301. *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1101 (Pa. Cmwlth. 2015).

Regarding refunds, in *Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014) ("*IDT Energy*"), the Commission held that, pursuant to 66 Pa.C.S. § 1312, it could not generally refund charges for electric generation supply service. The Commission reached this conclusion because it reasoned that 66 Pa.C.S. § 1312 applied only to rates charged by public utilities and EGSs are not public utilities except for the limited purposes of 66 Pa.C.S. §§ 2809 and 2810.

However, the Commission carved out two exceptions to this no refund rule in *IDT Energy*. First, the Commission noted that, pursuant to 52 Pa. Code § 57.177(b), it could direct an EGS to refund charges when a customer has been switched to an EGS without the customer's consent. Second, the Commission held that it has plenary authority under Section 501, 66 Pa.C.S. § 501, to direct an EGS to issue a credit or refund for an over bill. *IDT Energy* at 16-18.

The unauthorized switch of a customer's EGS is known as "slamming." The Code addresses slamming at 66 Pa.C.S. § 2807(d)(1) which provides that "the commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier." The Commission's regulation at 52 Pa. Code § 54.42(a)(9) provides that the Commission may impose sanctions on an EGS for "the transfer of a customer without the customer's consent."

Analysis

In this matter, Mr. Bitterman alleged that he had his EGS changed to Clearview without his consent, testifying that he was unaware of the transfer when it occurred and did not recall receiving any letters concerning his EGS being transferred to Clearview. Tr. 11-12.

Mr. Bitterman also alleged that he was charged unreasonable rates by Clearview. Tr. 10-12. Mr. Bitterman testified that with Clearview as his EGS, he was receiving service at “egregious” rates of over \$0.30/kWh. Tr. 11. For relief, he requested a refund. In his Complaint, Mr. Bitterman asked to be refunded \$1,200.

Clearview presented the testimony of Nicole Steele, a Chief Administrative Officer employed by Clearview. Tr. 17. Ms. Steele testified that on June 23, 2023, YEP and Clearview sent a letter to Mr. Bitterman which indicated that YEP would be transferring Mr. Bitterman’s EGS service to Clearview before the end of July 2023. Tr. 23; Clearview Exhibit 2. The letter stated that Mr. Bitterman’s service was being transferred because YEP was in the process of selling its business to Clearview, but that his terms of service would remain the same. Clearview Exhibit 2. Mr. Bitterman’s EGS was transferred to Clearview from YEP effective August 3, 2023. Tr. 18. Addressing Mr. Bitterman’s claim that he was not aware of the EGS transfer, Ms. Steele testified that the June 23, 2023, letter was sent to Mr. Bitterman’s mailing address of 38 Hillside Drive, Woolwich, New Jersey, and that the letter was not returned to Clearview as undeliverable. Tr. 23, 30; Clearview Exhibit 2. Mr. Bitterman did not respond to the June 23, 2023, letter. Tr. 24.

Ms. Steele additionally testified regarding notices sent on September 5 and 20, 2023, informing Mr. Bitterman that his EGS was recently changed to Clearview but clarifying that he would continue to receive service on a month-to-month variable rate

contract. Tr. 25-27; Clearview Exhibits 3, 4. Ms. Steele testified that these notices were sent to Mr. Bitterman's mailing address and were not returned to Clearview as undeliverable. Tr. 27, 30; Clearview Exhibit 3, p. 1; Clearview Exhibit 4, p. 1. Mr. Bitterman did not respond to the notices. Tr. 26-27, 28.

Concerning Mr. Bitterman's unreasonable rates claim, Clearview Exhibit 5 contains several notices that were sent by Clearview to Mr. Bitterman notifying him of changes to his rates. Clearview Exhibit 5. Ms. Steele testified that all of these notices were sent to Mr. Bitterman to his mailing address and that none of the notices were returned to Clearview as undeliverable. Tr. 30. Mr. Bitterman did not respond to any of these notices. Tr. 29. Ms. Steele noted that when Mr. Bitterman contacted Clearview on July 26, 2024, and requested to be returned to default service, Clearview did so on July 31, 2024. Tr. 19, 29-30.

Now that I have summarized the relevant facts in this matter, I will now address Mr. Bitterman's claims.

First, I will address Mr. Bitterman claim that his EGS was switched to Clearview without his consent. Mr. Bitterman did not orally, or through writing, request that his EGS be switched from YEP to Clearview. As explained by Clearview witness Ms. Steele, the process of switching Mr. Bitterman's EGS from YEP to Clearview was initiated by YEP and Clearview due to YEP selling its business to Clearview. Upon Mr. Bitterman's switch to Clearview, Clearview assumed the month-to-month variable rate contract Mr. Bitterman had with YEP. Therefore, while Mr. Bitterman did not expressly consent to his EGS being switched, the EGS switch from YEP to Clearview was in name only as YEP sold its business to Clearview and Clearview assumed Mr. Bitterman's YEP contract. This is not evidence of slamming but is evidence of the transfer of YEP's customer base to Clearview after Clearview's purchase of YEP.

Additionally, the record evidence shows that Mr. Bitterman was notified by Clearview that his EGS was going to be switched from YEP to Clearview. Mr. Bitterman claimed that he did not receive notice of his EGS switch, testifying that he did not recall receiving any letters from Clearview concerning the switch of his EGS from YEP to Clearview. However, in providing this testimony Mr. Bitterman also stated the following:

Again, I don't recall receiving any letters, but I get so much junk mail because of the work I do, most of it gets thrown away not knowing that there was a change made officially.

Tr. 11-12.

Thus, Mr. Bitterman admitted that he could have potentially thrown away letters and/or notices from Clearview. On the other hand, Clearview presented credible evidence that it provided Mr. Bitterman with notice of the EGS switch on June 23, 2023, via letter that was sent to Mr. Bitterman's mailing address and was not returned to Clearview as undeliverable. Notably, the June 23, 2023, letter indicated that Mr. Bitterman's terms of service would remain the same. Clearview further provided Mr. Bitterman with two notices in September 2023 informing him that his EGS was recently switched to Clearview and that his service remains on the month-to-month variable rate contract that he had when serviced by YEP. As I find that Mr. Bitterman received the letter and the two notices, I also find that he had ample opportunity to question or challenge the switch at or near the time it occurred but failed to do so. Mr. Bitterman's failure to respond to these communications from Clearview shows implied consent on behalf of Mr. Bitterman to the EGS switch.

In summary, because Mr. Bitterman's EGS was switched from YEP to Clearview after YEP sold its business to Clearview, and because Clearview provided Mr. Bitterman with notice of the switch to which Mr. Bitterman did not object, I do not find

Clearview responsible for slamming in this matter. As cited, the Commission may order refunds of rates charged by an EGS when the EGS is found to be responsible for slamming, pursuant to 52 Pa. Code § 57.177(b). As I find that Clearview is not responsible for slamming, Clearview will not be ordered to provide a refund to Mr. Bitterman pursuant to this regulation.²

Next, I will address Mr. Bitterman's claim that he was charged unreasonable rates by Clearview.³ Clearview, as an EGS, is not a public utility subject to the Commission's jurisdiction except in limited circumstances, as cited above. The Commission does not regulate the rates that an EGS charges its customers. *See Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087 (Pa Cmwlth. 2015). Thus, the Commission has no jurisdiction to review Mr. Bitterman's allegation that Clearview charged him unreasonable rates for electric generation supply service. Therefore, Mr. Bitterman's claim that he is being charged unreasonable rates by Clearview, and his request for a refund as a result of the alleged unreasonable rates, must be dismissed.

In conclusion, Mr. Bitterman has not met his burden of proving that Clearview is responsible for slamming. Further, the Commission lacks the jurisdiction to review Mr. Bitterman's unreasonable rates claim. Therefore, Mr. Bitterman's Complaint will be dismissed in the Ordering paragraphs below.

² This regulation also provides that, for a customer to be provided with a refund due to slamming, the customer must file his dispute within the first two billing periods since the customer should reasonably have known of a change of the EGS. 52 Pa. Code § 57.177(b). Thus, pursuant to this regulation, Mr. Bitterman was required to file his dispute within the first two billing periods following the switch of his EGS which became effective on August 3, 2023.

³ Mr. Bitterman did not allege that Clearview failed to bill him pursuant to the rate change notices sent to him on November 5, 2023, December 8, 2023, and April 8, 9, and 12, 2024.

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 Complainant by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. As a matter of law, to establish a legally sufficient claim, 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 (1990).

5. The Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704.

6. The definition of “public utility” at 66 Pa.C.S. § 102 does not include electric generation suppliers except for the limited purposes as described in 66 Pa.C.S. § 2809, regarding licensing requirements and 66 Pa.C.S. § 2810, regarding revenue neutral reconciliation. 66 Pa.C.S. § 102; *Delmarva Power & Light Co. v. Pa. Pub. Util. Comm'n*, 870 A.2d 901 (Pa. 2005).

7. As the generation of electricity is not regulated as a public utility, the Commission lacks the authority to regulate EGS rates under Chapter 13 of the Public

Utility Code. Thus, the Commission may not review EGSs rates to determine whether the rates are just and reasonable pursuant to 66 Pa.C.S. § 1301. *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087 (Pa. Cmwlth. 2015).

8. The Commission, pursuant to 66 Pa.C.S. § 1312, cannot generally refund charges for electric generation supply service. *Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).

9. The Commission can direct an EGS to refund charges when a customer has been switched to an EGS without the customer's consent. 52 Pa. Code § 57.177(b); *Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).

10. The Commission can direct an EGS to issue a credit or refund for an over bill. 66 Pa.C.S. § 501; *Commonwealth v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Opinion and Order entered Dec. 18, 2014).

11. The commission shall establish regulations to ensure that an electric distribution company does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier. 66 Pa.C.S. § 2807(d)(1).

12. The Commission may impose sanctions on an electric generation supplier for the transfer of a customer without the customer's consent. 52 Pa. Code § 54.42(a)(9).

13. Complainant has not met his burden of proving that Respondent transferred his electric generation supplier without his consent. 66 Pa.C.S. § 332(a).

