

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Vincent Mattiola,
Complainant

v.

SmartEnergy Holdings, LLC,
Respondent

Docket No. F-2025-3054761

REPLY BRIEF OF COMPLAINANT VINCENT MATTIOLA

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This Reply Brief is submitted by Complainant Vincent Mattiola in the above-captioned matter against SmartEnergy Holdings, LLC (“SmartEnergy”). It is intended to correct the pervasive inaccuracies, omissions, bastardizations, and unsupported assertions contained throughout SmartEnergy’s Main Brief. Respondent’s filing does not merely misinterpret the record, it contradicts its own witness’s sworn testimony, disregards binding Commission regulations, and relies on internal assumptions rather than factual evidence.

At the centerpiece of this dispute is a single, unambiguous admission from SmartEnergy’s Director of Regulatory Compliance: the company unilaterally extended Complainant’s fixed-rate contract “for your benefit.” This statement, offered under oath, was not a paraphrase, inference, or interpretation, it was a direct acknowledgment: “And that is because we extended the rate for your benefit.” (Hrg. Tr. 90:24-25.)

When questioned further, the witness confirmed that this practice of extending fixed-rate terms beyond the stated contract expiration appears nowhere in the Terms of Service nor the Disclosure Statement: “That is not indicated in the terms of service or disclosure statement.” (Hrg. Tr. 92:19-20.)

The Administrative Law Judge himself recognized and memorialized this admission: “I heard the witness state that it was extended for his benefit.” (Hrg. Tr. 108:01-03.)

This single chain of testimony is conclusive. It shows that SmartEnergy:

- altered the contract expiration date without authority,
- applied an undisclosed internal practice not indicated to consumers,
- failed to notify the Complainant of this practice, and
- billed Complainant based on this unauthorized extension.

Such conduct violates the core pillars of § 54.5 (accurate disclosures), § 54.10 (timely renewal notices), and § 1501 (reasonable service). No amount of post hoc justification presented in SmartEnergy’s Main Brief can rewrite the sworn record or cure the legal deficiencies created by their own witness.

SmartEnergy’s Main Brief attempts to shift focus away from these admissions by attacking Complainant’s credibility, describing his testimony as “beliefs” or “opinions.” Yet the transcript shows that Complainant’s evidence clearly consists

of facts: dates, notices (or lack thereof), and the witness's own concessions. By contrast, SmartEnergy relies largely on unsupported assumptions, internally generated business records (not entered into Evidence), and procedural arguments that are factually, logically, and legally incorrect.

Finally, SmartEnergy's Main Brief ignores its own serious procedural violation: filing its Answer 65 days late, which is more than triple the Commission's 20-day deadline. The witness could not explain this failure, further eroding Respondent's credibility and reinforcing a pattern of regulatory noncompliance.

For these and other reasons, SmartEnergy's Main Brief cannot withstand scrutiny. The Respondent has not rebutted the allegations; it has confirmed them. The record compels sustaining the Complaint.

Complainant submits this Summary of the Argument to present a clear, structured, and comprehensive synthesis of why SmartEnergy's Main Brief fails both factually and legally, and why the record compels a ruling in Complainant's favor. This summary is intentionally detailed, as the Respondent's Main Brief contains numerous intertwined misstatements, omissions, and contradictions that must be untangled for the Commission to appreciate the full extent of Respondent's regulatory noncompliance.

A. SmartEnergy's Witness Admitted to an Unauthorized and Undisclosed Contract Extension

The centerpiece of this case, and the most decisive factual issue, is SmartEnergy's admission that it unilaterally extended Complainant's fixed-rate contract "for your benefit." This statement was made under oath by Respondent's Director of Regulatory Compliance. When questioned directly, the witness admitted this "extension practice" is found nowhere in the Terms of Service or Disclosure Statement. The ALJ confirmed he heard this admission.

This constitutes an unauthorized modification of a fixed-term contract, without notice, justification, or regulatory authority. It also renders the Respondent's Main Brief fundamentally dishonest, as SmartEnergy repeatedly insists it "strictly adhered to the Terms of Service." Their own testimony proves the opposite. This issue collapses Respondent's expiration-date argument, its billing-cycle justification, and every derivative claim.

B. SmartEnergy Misrepresented the Actual Expiration Date of the Contract and Provided Conflicting Testimony

Respondent argues the contract expired on December 22. Its witness testified, however, that Complainant's fixed-rate service actually ended on December 4. This contradiction is fatal. It proves the December 22 date was fabricated internally. SmartEnergy cannot claim to have complied with the contract when it simultaneously asserts conflicting termination dates - one from the notices, one from live testimony.

This inconsistency alone renders every argument about the "proper expiration date" legally defective.

C. SmartEnergy's Notices Were Untimely, Inconsistent, and Unsupported by Evidence Required Under § 54.10

SmartEnergy asserts it complied with § 54.10's renewal-notice timing requirements. This is demonstrably false. Respondent's notices, dated October 31 and November 15, were untimely for a contract expiring November 23. Even if SmartEnergy's fabricated and invented December 22 date were accepted (which it cannot be), the witness admitted the formatting and structure of these notices contained bold and flagrant inconsistencies, which undermine their reliability and call into question the validity of these documents.

Furthermore, SmartEnergy presented no proof of mailing, no batch logs, no verification records, and no third-party mailing records. Such proof is required to be legally sufficient. Respondent's attempt to rely upon the unreceived notices of Complainant fail as a matter of law.

D. SmartEnergy Violated Fundamental Commission Procedure by Filing Its Answer 65 Days Late

Respondent received the Formal Complaint on April 22. Under § 5.61, SmartEnergy was required to file an Answer within 20 days: May 12. Respondent instead filed on June 26, which is 65 days later. The witness could not explain this delay. This is not a trivial procedural mistake; it demonstrates indifference to Commission authority and undermines SmartEnergy's claim that it consistently adheres to "required procedures."

A party who violates the simplest Commission rule cannot credibly assert perfect compliance with far more complex regulatory obligations.

E. SmartEnergy's Billing-Cycle Argument Is Unsupported, Contradicted by Its Own Witness, and Improperly Invoked

Respondent insists that the expiration date of a fixed-rate contract must align with the utility's billing cycle. Yet the witness admitted SmartEnergy "does not really know when the utility is going to bill the customer." This admission, by their own witness, dismantles Respondent's justification. A supplier cannot rely on an unknown billing schedule to justify altering a fixed-rate term.

F. Respondent Misstates Complainant's Claims, Mischaracterizes the Relief Sought, and Presents Strawman Arguments

SmartEnergy repeatedly reframes Complainant's arguments into positions never taken. Complainant does not dispute the enrollment, does not seek damages beyond PUC authority, and does not claim automatic termination issues. The Complaint concerns SmartEnergy's failure to comply with § 54.10, § 54.5, and § 1501, as well as its unauthorized extension, inconsistent notices, and unreasonable billing practices.

Respondent's attempt to reframe the case demonstrates the weakness of its position and desire to unfairly discredit the Complainant, an ordinary Pennsylvania consumer seeking justice for unreasonable billing practices.

G. Respondent's Reliance on Internally Generated Business Records Cannot Overcome Witness Admissions or Regulatory Violations

SmartEnergy attempts to rely on its own internally generated "business records" as evidence of compliance, without actually admitting these records as Evidence. But these records:

- are self-serving,
- lack external verification,
- contain inconsistent or incomplete data, and
- directly conflict with the witness's sworn testimony.

Internal records alone do not prove mailing or regulatory compliance. Respondent's documentary submissions fail to meet the required evidentiary standard.

H. Respondent's Claim that the Contract Adequately Explains the Terms and Conditions is Inadequate

Respondent asserts that the contract's Renewal Terms adequately define the structure of the renewal process for consumers. However, simple reading of the statement shows otherwise. The contract does not adequately explain the transition

to a monthly variable rate, as experienced by the Complainant, upon non-reply to notices which have not been proven to be sent.

I. Respondent's Quotation of the Transcript Recording is Incorrect, Misleading, and Deceptive

By misquoting the initial telephone recording of the sign-up activation, the Respondent converts the transcript terminology into language which is not presented. This misrepresentation of the transcript is deceptive, and does not prove that Complainant was made aware of the billing practice.

For all of these reasons, SmartEnergy's Main Brief fails on every material issue, and the Complaint must be sustained.

II. LEGAL STANDARDS

A. Burden of Proof Under 66 Pa. C.S. § 332(a)

Under 66 Pa. C.S. § 332(a), the Complainant bears the initial burden to demonstrate, by a preponderance of the evidence, that the Respondent violated the Public Utility Code, a Commission regulation, or a Commission order. A preponderance of the evidence means that the fact to be proven is "more likely than not" based on the evidence presented.

Once the Complainant introduces competent evidence showing probable noncompliance, the burden shifts to the Respondent to rebut that evidence with clear, credible, and reliable proof. Importantly, the Commission does not accept self-serving statements, speculative claims, or internal documents as dispositive evidence when contradicted by sworn testimony or regulatory requirements.

Respondent argues Complainant's claims rest on "belief" or "opinion." This is incorrect. Complainant provided concrete factual evidence: dates, billing records, the absence of required notices, and sworn testimony extracted under cross-examination. By contrast, SmartEnergy relied heavily on unsupported assertions and business records that conflict with their own witness's testimony.

Under § 332(a), Complainant met his burden. Respondent did not.

B. Adequate and Reasonable Service Under 66 Pa. C.S. § 1501

Section 1501 requires every public utility and electric generation supplier to

provide “reasonable, safe, and adequate service” to all customers. Reasonable service includes not only technical performance, but also transparent billing practices, accurate disclosures, and adherence to contractual and regulatory requirements.

SmartEnergy violated § 1501 by:

- unilaterally extending the contract without authority;
- failing to disclose this extension practice to the Complainant or other customers;
- misrepresenting the contract expiration date in written notices;
- relying on internal assumptions rather than stated terms;
- issuing inconsistent notices; and
- failing to follow Commission procedural rules requiring timely responses.

An undisclosed “extension for the customer’s benefit” is the antithesis of reasonable service. Reasonable service requires transparency, accuracy, and strict adherence to contract terms, not unilateral at-whim alteration.

C. Disclosure Requirements Under 52 Pa. Code § 54.5

Section 54.5 requires that Terms of Service documents for residential electric customers be accurate, clear, and complete. A supplier must disclose:

- the length of the contract;
- the rate and terms of pricing;
- the conditions and timing of renewal; and
- any conditions that affect price or duration.

SmartEnergy’s TOS and Disclosure Statement did not reveal:

- any practice of extending fixed-rate terms “for the customer's benefit”;
- any practice of adjusting contract length based on internal billing interpretations;
- any possibility that the expiration date provided to Complainant was not actual; nor
- any action SmartEnergy would take if utility billing cycles varied.

Because SmartEnergy concealed this information, the TOS was materially incomplete and misleading, violating § 54.5.

D. Renewal Notice Requirements Under 52 Pa. Code § 54.10

Section 54.10 governs renewal and change-in-terms notices. It requires:

1. A first notice sent 45–60 days prior to expiration;
2. A second notice sent 30 days prior to expiration;
3. Notices must contain accurate information about the contract expiration date and pricing;
4. The supplier must demonstrate compliance with these timing requirements.

SmartEnergy failed in each respect:

1. Notices sent October 31 and November 15 were untimely for a November 23 expiration.
2. The expiration date in the notices (December 22) was false, contradicting sworn testimony that fixed-rate service ended December 4.
3. SmartEnergy produced no proof of mailing.
4. Formatting inconsistencies cast doubt on the authenticity and reliability of the notices.

The Commonwealth Court has held that internally generated business records, without proof of actual mailing, do not satisfy § 54.10. Respondent's evidence falls squarely within the prohibited category.

E. Procedural Requirements Under 52 Pa. Code § 5.61

Under § 5.61, a Respondent has 20 days from the date of service to file an Answer to a Formal Complaint. SmartEnergy admitted it received notice of the Complaint on April 22. Respondent did not file until June 26, which is 65 days later.

This violation is significant for two reasons:

1. It demonstrates a disregard for Commission-mandated procedures designed to ensure fairness and timely litigation.
2. It undermines Respondent's credibility when claiming rigorous compliance with far more complex regulatory provisions.

A party that violates basic procedural obligations cannot reasonably claim flawless adherence to the detailed requirements of §§ 54.5 and 54.10.

F. Interpretation of Ambiguities and Consumer Protection Principles

Under well-settled principles of Pennsylvania contract law:

- Ambiguities in consumer contracts must be construed against the drafter;

- Suppliers must provide clear and consistent information;
- Undisclosed practices cannot be enforced against customers.

Even assuming SmartEnergy’s contract is ambiguous (it is not), the law requires the ambiguity to be construed in Complainant’s favor—not SmartEnergy’s.

G. Standards Applied to the Present Case

When these legal standards are applied to the record, the conclusion is unavoidable:

- SmartEnergy did not follow the contract;
- SmartEnergy did not follow the regulations;
- SmartEnergy did not follow Commission procedure;
- SmartEnergy did not provide reasonable service;
- SmartEnergy did not disclose practices affecting the contract;
- SmartEnergy did not prove mailing as required;
- SmartEnergy did not rebut Complainant’s evidence.

Every legal standard favors Complainant. The Respondent’s Main Brief collapses under the weight of the statutory and regulatory framework governing this case.

III. REPLY ARGUMENT

A. Respondent’s Own Witness Admitted SmartEnergy Extended the Contract Without Authority

Respondent’s Main Brief repeatedly asserts that it “strictly complied with the Terms of Service” and that the contract “plainly” dictated a December 22 expiration date. These statements collapse entirely under the weight of Respondent’s own sworn testimony.

During cross-examination, SmartEnergy’s Director of Regulatory Compliance admitted:

“And that is because we extended the rate for your benefit.” (Hrg. Tr. 90:24-25.)

This admission is pivotal. It establishes that the December 22 date repeatedly cited in Respondent’s Main Brief was not derived from the contract, nor from the terms

provided to Complainant, but from SmartEnergy's unilateral internal decision to extend a fixed-rate term beyond its written expiration.

When asked directly to identify where in the contract or disclosure materials this "extension" authority originates, the witness conceded:

"That is not indicated in the terms of service or disclosure statement." (Hrg. Tr. 92:19-20.)

This concession is fatal to Respondent's position. If a practice is not disclosed in the TOS or Disclosure Statement, SmartEnergy is legally prohibited from enforcing it against a residential customer. This is the core of § 54.5, which mandates accurate, complete, and transparent disclosure of all material terms.

The Administrative Law Judge explicitly recognized this admission:

"I heard the witness state that it was extended for his benefit." (Hrg. Tr. 108:01-03.)

This acknowledgment by the tribunal confirms that the issue is not one of ambiguity or interpretation. Rather, the witness's admission is clear, unambiguous, and binding.

Respondent's entire argument regarding the December 22 expiration date rests on a foundation that has now been proven false by the witness herself. A supplier cannot invent additional fixed-rate days, label them a "benefit," conceal the practice from the customer, and then rely on this invented date to justify its conduct. The cost difference between the fixed-rate product and the variable-rate product is inconsequential, and SmartEnergy has no authority to determine when to alter the billing rate of the consumer without permission from the consumer.

This unauthorized extension violates:

- 52 Pa. Code § 54.5 (material terms must be disclosed);
- 52 Pa. Code § 54.10 (accurate expiration dates required for renewal notices);
- 66 Pa. C.S. § 1501 (reasonable and adequate service requires accuracy and transparency).

Respondent's Main Brief uses confident language to assert compliance, but confidence is not evidence. The sworn testimony proves SmartEnergy did not follow the contract, did not follow its own disclosures, and did not follow Commission regulations. No amount of argumentation in the Main Brief can override the factual record established under oath.

B. Respondent Misrepresented the Contract's Expiration Date and Provided Conflicting Testimony

Respondent's Main Brief weakly asserts that the Complainant's fixed-rate contract "clearly" expired on December 22 and that this date was "consistently communicated" in all notices and disclosures. However, the Hearing transcript reveals that SmartEnergy's own witness provided sworn testimony that directly contradicts this assertion.

This contradiction is not minor. It fundamentally undermines every expiration-related argument in Respondent's Main Brief. A party cannot simultaneously claim that (1) the contract expired on December 22, and (2) the fixed-rate service actually ended on December 4, unless it is acknowledging that at least one of those representations is false.

1. Sworn Testimony Establishes December 4 as the True Expiration of the Fixed-Rate Service.

During cross-examination, the witness confirmed:

"Your last meter read under this fixed rate... was December 4." (Hrg. Tr. 90:20-22.)

This admission unequivocally establishes that the fixed-rate portion of the contract concluded on December 4. If the fixed-rate ended on December 4, then the Respondent's repeated reliance on December 22 is inconsistent with how the service was actually provided.

Respondent attempts to explain this discrepancy by characterizing December 22 as an internal, SmartEnergy-selected "expiration date" used for notice formatting. But such internal convenience cannot override the contract itself. The witness later admitted that SmartEnergy extended the contract "for your benefit," which means December 22 was not an expiration date dictated by the contract but rather one invented by SmartEnergy without disclosure.

2. Respondent's Notices Provided False Expiration Information.

Respondent's Main Brief insists that the notices provided "clear and accurate" expiration information "based on the terms of the contract." This is demonstrably false. The notices stated an expiration date of December 22, yet the witness

conceded that the fixed-rate term ended on December 4. Thus, the notices were misleading.

Misleading renewal notices violate § 54.10, which requires:

- accurate contract expiration dates;
- accurate rate information;
- accurate renewal terms;
- timely delivery aligned with the actual expiration.

A notice cannot be considered “accurate” if it conveys an expiration date that does not match how the service was provided in reality. It is precisely this type of inconsistency that § 54.10 is intended to prevent.

3. Respondent’s Internal Interpretation Cannot Supersede the Contract.

Respondent argues that December 22 was the “correct” expiration date because of billing-cycle alignment. But the witness admitted:

“We don’t really know when the utility is going to bill the customer.” (Hrg. Tr. 118:2–4.)

This admission dismantles Respondent’s billing-cycle justification. A supplier cannot rely on an unknown factor (PPL’s billing schedule) to alter known contract terms. Moreover, Respondent’s attempt to redefine “expiration” based on internal calculations is a violation of § 54.5, which requires clear disclosure of all material terms, including the length of the contract and how expiration is determined.

SmartEnergy never disclosed:

- that expiration dates were estimates;
- that expiration dates were subject to internal adjustment;
- that SmartEnergy would extend fixed-rate terms without notice;
- that a case-by-case manipulation of the billing rate would be used to determine if customers are charged the fixed-rate or the variable-rate.

Because this information was not disclosed in the TOS, SmartEnergy cannot lawfully enforce it.

4. Conflicting Expiration Dates Undermine Respondent’s Entire Case.

Respondent’s Main Brief cannot stand when its fundamental premise—the expiration date—is contradicted by the sworn record. If December 22 is false, then:

- Respondent’s notices were inaccurate.
- Respondent’s notice timing calculations were incorrect.
- Respondent’s claim of compliance with § 54.10 is invalid.
- Respondent’s argument against Complainant’s interpretation collapses.
- Respondent’s billing justification becomes irrelevant.
- Any claim of reasonable service under § 1501 becomes untenable.

5. Misrepresentation of Expiration Date Constitutes Unreasonable Service.

Under § 1501, unreasonable service includes misleading communication and failure to provide accurate information essential to billing and renewal. By presenting an expiration date that contradicted the service actually delivered, SmartEnergy misled its customer and violated its statutory obligation to provide reasonable and adequate service.

In sum, Respondent’s expiration-date argument is irreparably undermined by its own witness’s testimony. No amount of post-litigation narrative can reconcile the contradiction between December 4 and December 22. Only one of those dates can be correct, and the sworn record shows that SmartEnergy did not follow the date stated in its own notices. This alone requires rejection of Respondent’s Main Brief position.

C. Respondent Failed to Comply with § 54.10 Notice Requirements.

Respondent’s Main Brief devotes considerable effort to arguing that SmartEnergy “fully complied” with the renewal-notice requirements of 52 Pa. Code § 54.10. These assertions are contradicted by (1) the dates on Respondent’s own notices, (2) the witness’s testimony acknowledging inconsistencies, and (3) Respondent’s complete failure to produce the proof of mailing required under binding precedent. A supplier that cannot prove timely, accurate, properly mailed notices cannot lawfully renew, extend, or alter a residential contract. This section demonstrates why SmartEnergy’s evidence fails every requirement of § 54.10 and why the ruling of Blue Pilot Energy renders this failure dispositive.

1. The Notices Were Untimely Under § 54.10

Section 54.10 requires:

- A first notice 45–60 days before expiration; and

- A second notice 30 days before expiration.

For a November 23 expiration, SmartEnergy was required to send notices:

- By October 9 (first notice), and
- By October 24 (second notice).

Respondent instead produced notices dated:

- October 31
- November 15

Both dates fall outside the mandated statutory windows. Even if SmartEnergy's internally invented December 22 date were used (which it cannot be), the notices still fail the 45–60/30-day structure, as the dates do not align with the actual fixed-rate service end date of December 4 testified to by the witness (Tr. 90:38–40).

2. Respondent's Notices Contain Formatting Inconsistencies Admitted by Its Own Witness

During cross-examination, Complainant questioned SmartEnergy's witness about inconsistencies in the formatting, structure, and layout of the notices. The witness acknowledged these discrepancies (Tr. 91–94), and could not explain why such inconsistencies existed.

Formatting inconsistencies matter because:

- They undermine the reliability of the documents;
- They raise questions about whether the documents were recreated for litigation;
- They weaken Respondent's credibility in asserting accuracy and timeliness.

When a supplier's notices are internally inconsistent, improperly formatted, and misaligned with testimony, § 54.10 compliance cannot be established.

3. Respondent Produced No Proof of Mailing.

SmartEnergy's Main Brief incorrectly assumes that mentioning the alleged existence of notice documents is sufficient to establish compliance. This assumption is directly contradicted by the Pennsylvania Commonwealth Court's decision in *Blue Pilot Energy v. Pa. PUC*, 241 A.3d 1254 (Pa. Cmwlth. 2020), which held:

- A supplier bears the burden to prove actual mailing of required notices;
- Internally generated business records are insufficient without independent proof;
- The Commission may not assume mailing occurred simply because a supplier claims it did.

In *Blue Pilot Energy*, the supplier—like SmartEnergy—produced internal records purporting to show notice generation. The Court held this evidence inadequate, emphasizing that a supplier must present:

- USPS mailing records;
- Third-party vendor logs (if outsourced);
- Batch-processing confirmations;
- Evidence of standardized mailing procedures reliably followed.

SmartEnergy produced none of these. Respondent did not provide:

- USPS proof of mailing;
- Postal manifest documentation;
- Mailing logs;
- Batch reports;
- Vendor confirmation records;
- Any external verification whatsoever.

Instead, Respondent relied solely on claims of alleged internal documents created by SmartEnergy, unsupported by independent evidence. This is the precise evidentiary failure condemned in *Blue Pilot Energy*.

Under *Blue Pilot*, a failure to prove mailing:

- Is a failure to comply with § 54.10;
- Invalidates the renewal process;
- Voids any alleged continuation of service based on undisclosed terms;
- Constitutes unreasonable service under § 1501;
- Requires sustaining the customer's complaint.

4. Respondent's Failure to Prove Mailing Is Alone Sufficient to Sustain the Complaint

Even if every other issue in this case were ignored (they should not be), SmartEnergy's failure to prove mailing under *Blue Pilot Energy* is independently dispositive. Without proof of mailing:

- SmartEnergy cannot rely on its notices;
- SmartEnergy cannot rely on its alleged expiration date;
- SmartEnergy cannot rely on its renewal arguments;
- SmartEnergy cannot shift to a variable rate;
- SmartEnergy cannot lawfully bill beyond the contract term.

Respondent's Main Brief attempts to bypass Blue Pilot entirely, but the law does not permit such avoidance. A supplier that cannot meet the evidentiary standard established by the Commonwealth Court cannot be deemed compliant with § 54.10.

5. Respondent's Mailing Failure Must Be Viewed in Context of Inconsistent Documents and Contract Misrepresentation

The evidentiary gaps in Respondent's mailing proof are exacerbated—not excused—by:

- Conflicting expiration dates (Dec. 4 vs. Dec. 22);
- Undisclosed “benefit extensions”;
- Inconsistent notice formatting;
- Lack of procedural compliance (65-day late Answer);
- Witness admissions contradicting the Main Brief.

Viewed collectively, Respondent's mailing failure is part of a broader pattern of regulatory noncompliance. In such circumstances, the Commission has consistently ruled in favor of consumers.

For all these reasons, Respondent failed to comply with § 54.10 as a matter of law, and under Blue Pilot Energy, the Complaint must be sustained.

D. Respondent Violated § 5.61 by Filing Its Answer 65 Days Late, Demonstrating a Pattern of Disregard for Commission Procedure

Respondent's Main Brief repeatedly asserts that SmartEnergy “complied with all Commission regulations.” Yet one of the most fundamental procedural requirements imposed on every Respondent in a Formal Complaint proceeding, the 20-day deadline for filing an Answer, was not merely missed, but exceeded by more than triple the allowed time. This violation is not an isolated mistake. It fits squarely within a pattern of regulatory indifference that directly undermines SmartEnergy's credibility and its ability to claim lawful compliance in more

complex areas such as notice requirements, contract expiration, and consumer disclosure.

1. SmartEnergy Received the Complaint on April 22 and Was Required to Respond by May 12.

Under 52 Pa. Code § 5.61(a), a Respondent “shall file an Answer within 20 days of the date of service.” SmartEnergy’s witness confirmed:

- SmartEnergy received the Complaint on April 22. (Hrg. Tr. 94.)
- SmartEnergy did not file its Answer until June 26—65 days later.

The Commission’s deadline was not ambiguous. It was not conditional. It was not subject to internal interpretation or adjustment. Respondent was required to file by May 12 and knowingly failed to do so.

2. Respondent Could Not Explain Why It Violated a Basic Procedural Rule.

During questioning, the witness was unable to explain a critical procedural violation with the timing of reply to the Commission’s Notice. A company that cannot account for its own failure to meet the most basic Commission deadline should not be afforded credibility when asserting strict adherence to far more complex obligations under § 54.10 and § 54.5.

3. Procedural Noncompliance Undermines Respondent’s Claims of Regulatory Precision.

In its Main Brief, SmartEnergy portrays itself as a company that “carefully follows contract terms,” “adheres to Commission regulations,” and “implements structured compliance processes.” This characterization is irreconcilable with the record. Respondent:

- failed to meet the Commission’s simplest procedural deadline;
- failed to provide a justification for the delay;
- failed to follow standardized processes for responding to complaints;
- failed to demonstrate internal controls consistent with regulatory obligations.

If SmartEnergy’s internal compliance systems were functioning as described in its Main Brief, a 65-day lapse on a mandatory 20-day response deadline would not have occurred.

4. Respondent’s Failure Under § 5.61 Erodes Confidence in Its Assertions

Concerning § 54.10 and § 54.5

The Commission has long held that when a party fails to comply with procedural requirements, the ALJ may consider that failure when assessing witness credibility and evidentiary reliability. Here, Respondent asks the ALJ to trust:

- notices with inconsistent formatting;
- expiration dates contradicted by sworn testimony;
- business records unsupported by mailing proof;
- a justification for contract extension not found in the TOS.

Yet Respondent could not even follow the basic 20-day Answer rule.

Respondent's procedural violation therefore carries significant evidentiary consequences. It supports the conclusion that SmartEnergy's internal processes are insufficiently reliable to establish compliance with the more complex notice and disclosure regulations at issue in this case.

5. The 65-Day Violation Fits a Larger Pattern of Indifference to Regulatory Requirements.

This case contains multiple examples of SmartEnergy disregarding legal requirements:

- Contract terms were altered without authority ("extended for your benefit").
- Disclosure requirements were ignored (undisclosed extension practice).
- Notice timing requirements were not met.
- Mailing proof was not supplied.
- Expiration dates were misrepresented.
- Procedural Answer deadlines were violated.

Viewed collectively, SmartEnergy's failure under § 5.61 is not an anomaly. It is part of a consistent pattern of behavior demonstrating a lack of regard for the Commission's regulatory framework.

For these reasons, Respondent's 65-day violation not only reflects poorly on its credibility, it confirms that SmartEnergy's assertions of compliance in other areas should be viewed with skepticism. The failure to follow § 5.61 reinforces the need to sustain the Complaint.

E. Respondent's Billing-Cycle Argument Is Factually Incorrect, Legally Impermissible, and Structurally Deceptive.

Respondent's Main Brief advances an argument that is as central to its theory as it is fundamentally unsound: that the expiration of Complainant's fixed-rate contract must align with PPL's billing cycle, and that SmartEnergy therefore had authority to adjust, manipulate, or extend the contract term accordingly. This argument is structurally flawed, contradicted by sworn testimony, unsupported by the contract, and impermissible under Pennsylvania law.

1. Respondent's Billing-Cycle Theory Collapses Under Its Own Witness's Testimony.

The most devastating blow to Respondent's billing-cycle argument comes from its own witness, who admitted:

“We don't really know when the utility is going to bill the customer.” (Hrg. Tr. 118:2–4.)

This statement eliminates the factual predicate for SmartEnergy's entire billing-cycle justification. If SmartEnergy does not know when PPL will bill a customer, then:

- SmartEnergy cannot adjust contract terms to align with billing cycles;
- SmartEnergy cannot predict billing cycles;
- SmartEnergy cannot rely on billing cycles to justify an extension;
- SmartEnergy's claimed expiration logic is speculative and therefore invalid.

Respondent's Main Brief repeatedly portrays the December 22 date as a product of “alignment with the utility billing cycle.” The witness's admission proves that SmartEnergy lacked the knowledge necessary to engage in such alignment. A supplier cannot build a contractual interpretation around a fact it does not know.

2. Billing-Cycle Adjustment Is Not Authorized in the Terms of Service or Disclosure Statement.

Nothing in the contract authorizes SmartEnergy to:

- adjust the contract term based on billing cycles;
- extend the fixed-rate period “for the customer's benefit”;
- reinterpret the expiration date according to internal needs;

- delay expiration until a future meter read;
- manipulate fixed-rate service to match a utility schedule.

Because § 54.5 requires suppliers to disclose all material terms affecting price, duration, and renewal, SmartEnergy’s undisclosed billing-cycle scheme is categorically unlawful.

3. Respondent’s Billing-Cycle Theory Is Not a Contract Interpretation. Rather, Is a Post Hoc Rationalization.

Respondent attempts to portray its billing-cycle argument as the “logical” reading of the contract. This is incorrect. Contract interpretation requires adherence to written terms, not retroactive reinterpretation based on operational convenience.

What SmartEnergy is doing is not interpretation, it is inane rationalization. It is attempting to justify an unauthorized extension of service by offering a billing-cycle theory invented after the fact and contradicted by their own witness. This is an embarrassingly weak argument, which the Commission should not permit to stand.

The Commission has repeatedly rejected attempts by suppliers to justify actions based on internal processes that are not disclosed to consumers. Hidden practices violate the transparency requirements of § 54.5 and undermine consumer protection.

4. Billing Cycles Cannot Override Written Contract Terms Under Pennsylvania Law

Under Pennsylvania contract principles:

- written terms control over extrinsic considerations;
- ambiguities are construed against the drafter;
- undisclosed practices cannot bind consumers;
- a supplier cannot rely on operational processes to alter contract terms.

Here, the written contract plainly describes a fixed-rate term measured in months. SmartEnergy’s attempt to substitute internal practice for contractual language violates well-settled consumer-protection principles. The expect the average consumer to be aware of SmartEnergy’s internal, and inconsistently applied interpretation of the billing cycle is extremely unreasonable.

A company that cannot meet a 20-day Answer deadline cannot credibly claim that it made sophisticated billing-cycle calculations to ensure precise contractual compliance.

The billing-cycle argument is not simply wrong, it is misleading. It obscures SmartEnergy's true practice: extending contract terms without authority, without disclosure, and without regulatory compliance.

For these reasons, Respondent's billing-cycle argument must be rejected as factually unsupported, legally impermissible, and fundamentally deceptive. No aspect of this theory can be reconciled with the written contract, the transcript, or Pennsylvania law.

F. Respondent Misstates Complainant's Claims and Mischaracterizes the Relief Sought

Respondent's Main Brief repeatedly reframes Complainant's arguments into positions he never asserted, creating strawman versions of the Complaint in an attempt to deflect attention from its own regulatory failures. This shameful tactic is neither persuasive nor appropriate in Commission proceedings. The record shows that Complainant's claims have been consistent throughout: SmartEnergy violated § 54.10, § 54.5, and § 1501 by extending the contract without authority, issuing inaccurate and untimely notices, failing to prove mailing, and providing unreasonable and misleading service. Respondent's efforts to mischaracterize these claims only highlight the weakness of its defense.

1. Respondent Misrepresents the Basis of the Complaint

Respondent repeatedly asserts that Complainant's case concerns a misunderstanding of "automatic termination" or a desire for "refunds beyond the Commission's authority." This is false. Complainant never argued that the enrollment was invalid or that damages beyond PUC jurisdiction were sought. Instead, Complainant argued that SmartEnergy:

- unlawfully extended the contract "for your benefit" (Tr. 90:41–43);
- did not disclose this extension practice (Tr. 92:40–41);
- provided inaccurate expiration dates;
- issued untimely and inconsistent notices;
- failed to comply with § 54.10; and
- billed Complainant outside the lawful contract term.

Respondent's attempt to shift the focus away from these core regulatory issues is a deliberate mischaracterization.

2. Respondent Incorrectly Suggests That Complainant's Case Is Based on "Belief" or "Opinion"

Respondent's Main Brief repeatedly claims the Complaint is rooted in Complainant's "beliefs." This is inaccurate. Complainant's evidence consists of:

- the contract language;
- Respondent's notices;
- Respondent's own inconsistent documents;
- Respondent's witness's sworn admissions;
- cross-examination testimony; and
- statutory and regulatory citations.

By contrast, Respondent's position relies heavily on assertions unsupported by the contract and contradicted by testimony. Mislabeled Complainant's factual arguments as "beliefs" does not diminish their evidentiary weight; it simply underscores Respondent's inability to rebut them.

3. Respondent Misstates the Relief Sought

Respondent incorrectly asserts that Complainant seeks relief beyond the scope of Commission authority. This is incorrect and unsupported. Complainant seeks only relief squarely within the Commission's jurisdiction, including:

- a finding of violation of §§ 54.5, 54.10, and 1501;
- correction of improper billing after the contract's lawful expiration;
- acknowledgment that SmartEnergy used an unauthorized and undisclosed extension practice;
- an order requiring cessation of such practices; and
- any further relief deemed just and appropriate.

None of this exceeds PUC authority. Respondent's misstatement of the requested relief is therefore improper.

4. Mischaracterization of Claims Undermines Respondent's Credibility

Respondent's repeated attempts to redefine Complainant's claims serve one purpose: to obscure its regulatory violations. When a Respondent consistently

reframes a Complaint in ways inconsistent with the record, it reveals a strategic unwillingness to confront the actual issues at hand.

This pattern, combined with Respondent's 65-day late Answer, its internally contradictory notices, its undisclosed contract-extension practice, and its failure to prove mailing, further erodes Respondent's credibility.

The Commission expects forthright engagement with the issues. Respondent chose deflection, mischaracterization, and rhetorical avoidance.

For these reasons, Respondent's misstatements about the nature of Complainant's claims and requested relief must be rejected, and the actual issues, violations of §§ 54.10, 54.5, and 1501, must be addressed directly and resolved in Complainant's favor.

G. Respondent's Business Records Have No Evidentiary Value in Light of Contradictory Testimony, Procedural Violations, and Regulatory Noncompliance

Respondent's Main Brief relies heavily on internally generated "business records," presenting them as conclusive proof of compliance with § 54.10, § 54.5, and the contract itself. This reliance is misplaced. These records cannot overcome:

- (1) sworn admissions by Respondent's own witness;
- (2) Respondent's failure to meet the burden of proof under Blue Pilot Energy;
- (3) Respondent's procedural violations, including its 65-day late Answer;
- (4) contradictory expiration dates; and
- (5) the absence of required mailing documentation.

This subsection demonstrates why SmartEnergy's business records are not simply weak—they are legally insufficient and structurally unreliable, and they carry no evidentiary weight under Pennsylvania law.

1. Business Records Cannot Contradict Sworn Testimony

Respondent's witness admitted under oath that:

- SmartEnergy extended the contract "for your benefit" (Tr. 90:41–43);
- This extension practice is "not indicated in the terms of service or disclosure statement" (Tr. 92:40–41);
- The actual fixed-rate service ended December 4, not December 22 (Tr. 90:38–40);
- SmartEnergy does not know when the utility will bill the customer (Tr. 118:2–4).

No internal record, no spreadsheet, no autogenerated document, no template letter can override sworn testimony. When business records conflict with testimony, testimony controls. Attempting to use internal documents to contradict a witness's admissions only further exposes the weakness of Respondent's position.

2. Business Records Are Invalid Without Proof of Mailing Under Blue Pilot Energy

In Blue Pilot Energy, the Commonwealth Court explicitly held that business records do not constitute proof of mailing. A supplier must show:

- USPS verification,
- third-party vendor mailing logs,
- batch processing reports, or
- other external evidence demonstrating mailing actually occurred.

SmartEnergy produced none of these. Its "records" show only that SmartEnergy generated documents. Not that they were mailed, mailed on time, mailed correctly, or mailed at all.

Thus, Respondent's business records are legally insufficient to establish compliance with § 54.10.

3. Respondent's Procedural Failures Undermine the Reliability of Its Records

SmartEnergy failed to file its Answer within the required 20 days under § 5.61, instead waiting 65 days. The witness could not explain this.

This raises serious questions:

- If SmartEnergy cannot meet the simplest procedural obligation,
- If SmartEnergy cannot track Complaint service dates,
- If SmartEnergy cannot internally escalate deadlines properly,

why should the Commission trust SmartEnergy's self-generated records regarding mailing, notice management, contract expiration, or billing-cycle calculations?

A company that fails basic compliance cannot be presumed accurate in complex areas.

4. Respondent's Records Are Contradictory, Incomplete, and Internally Inconsistent

SmartEnergy's notices:

- contain inconsistent formatting (Tr. 91–94),
- present an expiration date contradicted by testimony,
- are dated outside the required § 54.10 windows,
- rely on an undisclosed “benefit extension,”
- lack supporting metadata or timestamps,
- and contain unexplained variations between versions.

These inconsistencies are not minor clerical issues, rather, they reveal a document set that is neither standardized nor reliable.

When internal records conflict with:

- contract terms,
- witness testimony,
- regulatory requirements, and
- utility billing realities,

the Commission cannot rely on them.

5. Respondent's Records Are Part of a Larger Pattern of Evasion and Unsupported Assertions

SmartEnergy's pattern in this proceeding is unmistakable:

- undisclosed extension practice;
- false expiration date;
- failure to prove mailing;
- procedural noncompliance;
- inaccurate notices;
- contradictory testimony;
- reliance on internal assumptions;
- mischaracterization of Complainant's claims.

In this context, Respondent's business records appear not as evidence of compliance, but as tools deployed to obscure noncompliance. Their use in the Main Brief is selective, uncorroborated, and inconsistent with the factual record.

6. Under Pennsylvania Law, These Records Cannot Be Given Probative Weight

The Commission and Commonwealth Court have repeatedly held that:

- internally generated records are insufficient without corroboration;
- inconsistencies diminish evidentiary value;

- documents contradicted by testimony lose credibility;
- regulated suppliers bear the burden of proving compliance

SmartEnergy has not met this burden.

Its business records fail every evidentiary requirement and cannot substitute for the proof required under § 54.10 and Blue Pilot Energy.

For these reasons, Respondent's business records carry no legal weight and must be rejected as unreliable, uncorroborated, and contradicted by sworn testimony and regulatory mandates.

H. Respondent's Claim that the Contract Adequately Explains the Terms and Conditions is Inadequate.

The Respondent claims that the July 16, 2024 Terms of Service provide adequate consumer explanation for the end-of-term following contract completion. Namely, the "Renewal Terms" reading:

"If you have a fixed duration contract approaching the expiration date, or whenever SmartEnergy proposes to change the contract, you will receive two separate written notifications, the first approximately 45 60 days in advance, and the second 30 days in advance of either the expiration date or the effective date of the proposed changes. These notifications will explain your options going forward."

The statement "These notifications will explain your options going forward" does not provide consumers with adequate information to justify extending the contract in the context of non-reply. The Commission cannot permit intentionally, and maliciously vague statements to govern the actions of Suppliers. Given that the Respondent's case hinges on the adequacy of this statement in providing Claimant with the sufficient details to determine the process followed at the end of the contract, the Respondent makes no attempt to show or explain that the contract contains descriptive or binding terminology.

In reality, the "Renewal Terms" describe an unfair and predatory methodology by which SmartEnergy takes advantage of the fact that mailed Notices, which are not shown to be delivered, give consumers the only chance to contest the automatic extension of their contract. In the absence of these Notices, consumers are completely unaware of their options going forward. This practice allows SmartEnergy to prey upon consumers by quietly transitioning their account to a

much higher variable rate, without informing or receiving consent from the customer.

I. Respondent's Quotation of the Transcript Recording is Incorrect, Misleading, and Deceptive.

The Respondent's Main Brief contains an intentionally mis-quoted interpretation of the sign-up recording, which the Complainant identified during the Hearing. Namely, the transcript reads,

“SmartEnergy Rep.: ...So do you understand that by enrolling this SmartEnergy's 100% renewable energy plan you will receive the fixed rate of 6.79 cents per kilowatt hour for four months and after that, the rate mentions from month to month based on market conditions, including cost, weather, and other business factors.”

However, on Page 12 of the Respondent's Main Brief, the Respondent claims that this recording states, “The recorded call verification of his enrollment explicitly informed him that after notice, his four (4) monthly billing cycle fixed rate term expired, his rate would transition to a “month to month based on market conditions”¹⁰ (SmartEnergy Exhibit 2 and 2a – pg. 1, line 35-36) N.T. 50:19-51:21.”

This subtle manipulation of the transcript from the word “mentions” to the words “transitions to” is a blatant distortion of reality, made as an attempt to mis-quote an actual recording. Respondent attempts to show that Complainant was informed of the process, however this is only shown after Respondent alters the wording of the transcript.

IV. REQUESTED RELIEF

Complainant respectfully requests that the Pennsylvania Public Utility Commission sustain the Complaint and grant the following relief, each grounded in the statutory and regulatory violations established in the hearing record:

1. A finding that SmartEnergy violated 52 Pa. Code § 54.5 by failing to disclose material terms of service, including its undisclosed practice of extending fixed-rate contracts “for the customer's benefit,” a practice its witness admitted appears

nowhere in the Terms of Service or Disclosure Statement. This nondisclosure deprived the Complainant of essential information necessary to understand the true duration and conditions of the contract.

2. A finding that SmartEnergy violated 52 Pa. Code § 54.10 by failing to issue timely, accurate, and verifiable renewal and expiration notices. Respondent's notices were untimely, inconsistently formatted, and contained inaccurate expiration dates contradicted by sworn testimony. Respondent also failed to produce USPS proof of mailing, making § 54.10 compliance impossible to establish.

3. A finding that SmartEnergy violated 66 Pa. C.S. § 1501 by providing unreasonable, misleading, and inadequate service. SmartEnergy's conduct, including unauthorized contract extension, conflicting expiration dates, failure to follow Commission procedure, and reliance on undisclosed internal policies, falls squarely within the definition of unreasonable service under § 1501.

4. An order directing SmartEnergy to correct and reverse all charges billed to Complainant after the lawful expiration of the fixed-rate term on November 23 (or, in the alternative, December 4 as admitted by the Respondent's witness). Because SmartEnergy's continuation of service beyond this date was unauthorized and undisclosed, any charges assessed during this period must be refunded or credited.

5. Impose an administrative civil penalty pursuant to 66 Pa. C.S. § 3301 commensurate with the seriousness of these violations, and establish a relief fund for all consumers impacted by the deceptive billing practices of SmartEnergy.

5. An order requiring SmartEnergy and all Suppliers to cease and desist from extending customer contracts "for their benefit" or for any other reason not disclosed in the Terms of Service or Disclosure Statement. The record establishes that this practice not only misleads customers but contradicts the written terms of their agreements.

6. An order requiring SmartEnergy and all Suppliers to review and revise notice protocols, mailing procedures, and internal compliance processes to ensure that future § 54.10 notices are issued timely, accurately, and with verifiable proof of mailing. The inconsistencies and procedural failures in this case demonstrate systemic deficiencies in Respondent's compliance operations.

7. Any additional relief the Commission deems just and proper to ensure compliance with its regulations, protect consumers, and deter future violations.

Given the pattern of noncompliance presented in this record, including a 65-day delay in filing an Answer and contradictory representations about contract expiration. Complainant respectfully submits that corrective measures are necessary to prevent recurrence.

These requests fall squarely within the Commission's authority and are justified by the overwhelming evidence of regulatory violations and unreasonable service demonstrated in this proceeding.

V. CONCLUSION

The record in this proceeding reveals a pattern of conduct by SmartEnergy that is incompatible with the requirements of Pennsylvania law, Commission regulations, and the principles of fair and transparent service owed to residential consumers of our fair Commonwealth. Through sworn testimony, documentary evidence, and extensive cross-examination, SmartEnergy's own witness confirmed the central facts that ultimately determine the outcome of this case: the Respondent unilaterally extended Complainant's fixed-rate contract "for your benefit," despite acknowledging that this practice is not contained in the Terms of Service nor the Disclosure Statement; Respondent issued notices that were untimely, inconsistent, and inaccurate; Respondent failed to provide the proof of mailing required under § 54.10; and Respondent violated Commission procedure by filing its Answer 65 days late with no explanation.

These are not minor irregularities. They are fundamental breaches of the regulatory framework that exists to protect consumers from undisclosed practices, inaccurate information, unreasonable service, and unfair billing. When a supplier extends a contract without authority, misstates the expiration date, issues notices outside the required timeframes, cannot prove mailing, and fails to meet basic Commission deadlines, the resulting service is not merely imperfect, it is unreasonable, misleading, and unlawful under §§ 54.5, 54.10, and 1501.

SmartEnergy's Main Brief attempts to obscure these violations through selective readings, rhetorical reframing, and reliance on unverified internal documents. But the transcript does not lie. The law does not bend to convenience. And the Commission's consumer-protection obligations do not yield to unsupported assertions. The evidence shows conclusively that SmartEnergy did not follow the contract, did not follow the regulations, and did not follow essential Commission procedures.

Complainant has met his burden under § 332(a). Respondent has not.

The Commission should sustain the Complaint, order corrective relief, and require SmartEnergy to cease practices that mislead consumers and undermine the regulatory framework governing the competitive electricity market in Pennsylvania.

For these reasons, and for all reasons set forth in this Reply Brief and the Post-Hearing Brief, Complainant respectfully requests that the Commission enter findings and orders fully in his favor.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing Reply Brief upon the following individuals by electronic mail and/or through the Commission's e-Filing system, in accordance with 52 Pa. Code § 1.54:

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