

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vincent Mattiola	:	
	:	
v.	:	F-2025-3054761
	:	
SmartEnergy Holdings, LLC	:	

**INITIAL DECISION**

Before  
Chad L. Allensworth  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of an electric generation service customer alleging that the electric generation supplier improperly billed him due to the customer failing to meet his ultimate burden of proof that the electric generation supplier violated the Public Utility Code or a Public Utility Commission regulation or order.

**HISTORY OF THE PROCEEDING**

On or about April 22, 2025, Vincent Mattiola (“Complainant”) filed a Formal Complaint (“complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against SmartEnergy Holdings, LLC (“SmartEnergy” or “Respondent”) alleging that Respondent imposed incorrect charges on his electric bill and enrolled him

in an unauthorized new contract as his electricity supplier at a variable rate.<sup>1</sup> Complaint ¶ 4.

As relief, Complainant requested that SmartEnergy compensate him for the difference in price charged on two billing statements, that SmartEnergy be penalized for fraudulently opening a new contract, that the Commission investigate other cases involving Respondent, that the Commission suspend/revoke Respondent's license to supply power in the Commonwealth and that SmartEnergy compensate him for loss of time. Complaint ¶ 5.

The Commission served the complaint on Respondent on April 25, 2025.<sup>2</sup>

Respondent did not file an answer to the complaint within the prescribed 20-days.<sup>3</sup>

On June 17, 2025, an Initial Call-In Telephonic Hearing Notice was issued scheduling the evidentiary hearing for July 31, 2025, at 10:00 a.m. and assigned the matter to me as the presiding officer. Additionally, on June 17, 2025, a Prehearing Order was issued that set forth requirements for the hearing.

On June 18, 2025, I emailed Complainant and Respondent to inquire as to whether Respondent intended to file an answer or otherwise participate in the hearing.

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<sup>1</sup> Complainant previously filed an Informal Complaint with the Commission's Bureau of Consumer Services ("BCS") on February 3, 2025, at BCS No. 4040842. BCS dismissed the Informal Complaint on March 19, 2025. Complainant timely filed the instant appeal.

<sup>2</sup> The Commission eServed Respondent with the complaint on April 25, 2025 to the two email addresses that Respondent had registered with the Commission.

<sup>3</sup> Commission regulations prescribe that answers shall be filed within 20 days after the date of service. 52 Pa. Code § 5.61. The 20-day period expired on May 15, 2025.

The email was sent to one of the same email addresses used to serve the complaint. That same day, Respondent responded by email advising that they would be filing an answer and would be represented by Attorney Bryce Beard.

On June 26, 2025, Respondent filed an answer and new matter wherein it denied the material averments of the complaint.<sup>4</sup> Specifically, Respondent admitted that Complainant enrolled with Respondent on a fixed rate contract on July 15, 2024, but denied that the contract provided for termination at the conclusion of the contract period. Answer ¶ 4.

In the new matter, Respondent asserted that Complainant is not entitled to a refund, that the Commission lacks statutory authority to require energy generation suppliers to issue refunds and that the Commission lacks authority to hear claims on awards for damages. New Matter ¶¶ 12-15.

The hearing was convened as scheduled on July 31, 2025. Complainant appeared *pro se*, testified on his own behalf and presented the following two exhibits that were admitted into the record:

- Complainant exhibit 4 – PPL bill due January 29, 2025, and
- Complainant exhibit 5 – PPL bill due February 28, 2025.<sup>5</sup>

Tr. 35-36; Complainant exhibits 4, 5.

Respondent appeared and was represented by Bryce Beard, Esq. Respondent presented the testimony Lidia Chavez – Director of Regulatory Compliance

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<sup>4</sup> The answer did not request that it be accepted *nunc pro tunc* or provide any explanation for the delay in filing.

<sup>5</sup> Complainant exhibits 1 – 3 were objected to by Respondent at the hearing and not admitted into the record. Tr. 17-20, 30-32.

for SmartEnergy who sponsored the following six exhibits that were admitted into the record:

- SmartEnergy exhibit 1 – Respondent’s answer and new matter;
- SmartEnergy exhibit 2 – Recording of July 15, 2024 sign-up conversation;
- SmartEnergy exhibit 2(a) – Transcript of July 15, 2024 sign-up conversation;
- SmartEnergy exhibit 3 – July 16, 2024 Welcome letter and terms of service;
- SmartEnergy exhibit 4 – October 31, 2024 Renewal notice and
- SmartEnergy exhibit 5 – November 15, 2024 Renewal notice.

Tr. 45, 64; SmartEnergy exhibits 1 – 5. At the conclusion of the hearing, the parties elected to file post-hearing briefs. Tr. 125-128.

On August 19, 2025, the 134-page transcript was filed with the Commission.

On August 20, 2025, I issued a briefing order advising the parties when main briefs and reply briefs were due.

On October 6, 2025, Respondent filed its main brief in accordance with the briefing order.

Also, on October 6, 2025, Complainant submitted an email request to me and counsel for Respondent to extend the time to file his main brief. Respondent did not object to the extension.

On October 7, 2025, I issued an amended briefing order advising the parties of revised due dates for main briefs and reply briefs.

On November 7, 2025, Complainant filed his main brief in accordance with the amended briefing order.

On December 8, 2025, Complainant and Respondent filed their respective reply briefs in accordance with the amended briefing order.

On December 9, 2025, I issued an order closing the record.

### FINDINGS OF FACT

1. Complainant is Vincent Mattiola who resides at 3552 Broadway, Allentown, PA 18104 (“service address”). Tr. 9.

2. Respondent is SmartEnergy Holdings, LLC, which is a licensed electricity supplier with the Commission at Docket No. A-2014-2416214. Tr. 46.

3. On July 15, 2024, Complainant enrolled with SmartEnergy as his electricity generation supplier, via telephone agreement, for a four-month fixed rate followed by a month-to-month rate based on market conditions. Tr. 46, 49, 51, 114-115; SmartEnergy exhibits 2 and 2a.

4. On July 16, 2024, SmartEnergy sent a welcome kit to Complainant, which included a welcome letter and contract summary (“contract”) reflecting a four-month fixed rate electricity supply contract at \$0.0679 per kilowatt hour (“kWh”). Tr. 10, 39-40, 49; SmartEnergy exhibit 3.

5. The contract for the fixed rate became effective on July 23, 2024. Tr. 10, 54, 115.

6. The contract provided that Complainant would receive two written notifications in advance of the expiration or changes to the contract with the first at 45 to 60 days and in advance of the expiration of the contract and the second at 30 days in advance of either the expiration date or the effective date of the proposed changes to the contract. Tr. 10; SmartEnergy exhibit 3.

7. The contract did not include a specific automatic renewal clause. Tr. 26.

8. The contract provided that SmartEnergy would mail written notifications to Complainant explaining his options after the expiration of the fixed rate. SmartEnergy exhibit 3.

9. As the four-month fixed term was ending, SmartEnergy mailed written notices to Complainant on October 31, 2024, and November 15, 2024, which advised Complainant that his four-month fixed-rate plan was expiring and he could either contact SmartEnergy to lock in a new fixed-rate or he would automatically transition to a variable-rate plan. Tr. 48, 54; SmartEnergy exhibits 4 and 5.

10. Both notices were sent to the service address and neither of the renewal notices were returned as undeliverable. Tr. 57.

11. Complainant did not receive the written notices mailed by SmartEnergy. Tr. 22, 25.

12. Complainant did locate the contract online and reviewed the terms. Tr. 40.

13. Complainant did not respond to either of the written notices mailed by SmartEnergy. Tr. 56.

14. Complainant believed the contract would terminate as of November 23, 2024, which was four months from the July 23, 2024 effective date. Tr. 10-11, 22.

15. SmartEnergy is required to provide Complainant with four full monthly billing cycles at the agreed upon fixed rate. Tr. 109.

16. A monthly billing cycle is a cycle of an average of 30 days as determined by the utility. Tr. 53.

17. A contract termination date of November 23, 2024 would not have allowed SmartEnergy to provide Complainant with four full monthly billing cycles at the agreed upon fixed rate. Tr. 53.

18. The first full-month billing cycle under the contract started on or about August 5, 2024 and ended on September 4, 2024. Tr. 77-78, 115.

19. The second full-month billing cycle under the contract started on September 4, 2024 and ended on October 3, 2024. Tr. 115.

20. The third full-month billing cycle under the contract started on October 3, 2024 and ended on November 1, 2024. Tr. 115.

21. The fourth full-month billing cycle under the contract started on November 1, 2024 and ended on December 4, 2024. Tr. 115.

22. The last meter reading under the fixed rate contract was on December 4, 2024, but SmartEnergy continued to apply the fixed rate to Complainant's electric generation service until December 22, 2024. Tr. 89-91, 117-120; SmartEnergy exhibits 4 and 5.

23. SmartEnergy provided Complainant electric generation service at the fixed rate of \$0.0679 per kWh for a total of 134 days, which is four full-month billing cycles plus 13 days. Tr. 88-89.

24. SmartEnergy began applying a variable rate to Complainant's electric generation service on December 23, 2024. Tr. 120.

25. From December 23, 2024 to February 7, 2025, Respondent charged Complainant \$0.17800 per kWh for electric generation based on a variable rate plan. Tr. 22, 48, 56, 74; Complainant exhibits 4 and 5.

26. The PPL price-to-compare for electric generation from December 2024 to February 2025 was \$0.10771 per kWh. Complainant exhibits 4 and 5.

27. On February 3, 2025, Complainant learned that his electricity supply rate changed and was higher than his previous rate. Tr. 11.

28. On or about February 3, 2025, Complainant contacted PPL and PPL informed Complainant that SmartEnergy was his electricity supplier and he was on a variable rate. Tr. 11.

29. On February 3, 2025, Complainant submitted a cancellation request to SmartEnergy. Tr. 11, 46.

30. On February 3, 2025, Complainant filed an Informal Complaint with BCS. Tr. 11.

31. Complainant terminated electric generation service with SmartEnergy on February 7, 2025. Tr. 47, 56, 74.

32. On March 19, 2025, the Informal Complaint was closed. Tr. 13.

33. On April 22, 2025, Complainant filed the instant complaint in this matter.

34. On June 26, 2025, SmartEnergy filed its answer and new matter.

35. Respondent's answer was not filed timely. Tr. 25.

## DISCUSSION

### BURDEN OF PROOF

Complainant alleges that there were incorrect charges on his bill based on SmartEnergy continuing to be his electric generation service provider at a variable rate after the expiration of his four-month contract at a fixed rate.

The party seeking affirmative relief from the Commission bears 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 to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.

Cmwlth. 1990). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. 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. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Finally, the offense must be a violation of the Public Utility Code (“Code”), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

This means that the Complainant must submit sufficient evidence to establish a *prima facie* case that SmartEnergy’s actions were a violation of the Code, the Commission’s regulations or a Commission’s order. If he does that, then the burden of going forward with the evidence sometimes called the burden of persuasion to rebut the evidence of the Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal weight, Complainant has not satisfied the burden of proof. Complainant would then have to provide additional evidence to rebut the evidence of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983). While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

## ELECTRIC GENERATION SUPPLIER (“EGS”)

The definition of “public utility” at Section 102 of the Code, 66 Pa.C.S. § 102, does not include EGSs except for the limited purposes as described in Section 2809, 66 Pa.C.S. § 2809, regarding licensing requirements and Section 2810, 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) (“*Delmarva*”). 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 Section 103 of the Code, 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). 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 Section 1312, 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 Section 1312, 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 Sections 2809 and 2810, 66 Pa.C.S. §§ 2809, 2810.

However, the Commission carved out two exceptions to this no refund rule in *IDT Energy*. First, the Commission noted that, pursuant to Section 57.177 of the Commission’s regulations, 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*. The unauthorized switch of a customer’s EGS is known as “slamming.” The Code addresses slamming at Section 2807, 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 Section 54.42, 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

### Timeliness of Respondent's Answer

Section 5.61 of the Commission's regulations provides, in pertinent part, as follows:

#### **§ 5.61. Answers to complaints, petitions, motions and preliminary objections.**

(a) *Time for filing.* Unless a different time is prescribed by statute, the Commission, or the presiding officer, answers to complaints and petitions shall be filed with the Commission within 20 days after the date of service.

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(c) *Failure to file an answer to a complaint.* A respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted.

52 Pa. Code § 5.61(a), (c).

Commission records reflect that Complainant filed his complaint with the Commission on April 22, 2025 and the Commission successfully eServed the complaint to SmartEnergy on April 25, 2025. Commission records further reflect that SmartEnergy filed its answer and new matter with the Commission on June 26, 2025.

Complainant argues that SmartEnergy's failure to file a timely response to the complaint demonstrates disregard for procedure and warrants a civil penalty under Section 3301, 66 Pa.C.S. § 3301. Complainant's Main Brief at 12; Complainant's Reply Brief at 17-19.

SmartEnergy argues that Complainant's argument fails to articulate any prejudice or due process harm the timeliness of its filing. As such, SmartEnergy avers that any error or defect of procedure should be disregarded. SmartEnergy Reply Brief at 13.

Because the Commission served the complaint to SmartEnergy on April 25, 2025, SmartEnergy was required to file its answer on or before May 15, 2025. SmartEnergy did not file its complaint until June 26, 2025, which was 62 days after service of the complaint. SmartEnergy did not seek leave to file the answer *nunc pro tunc* nor did SmartEnergy include any explanation for the timeliness of its filing. Thus, SmartEnergy failed to file a timely answer to the complaint in accordance with Section 5.61, 52 Pa. Code § 5.61(a).

Based on SmartEnergy's failure to file a timely answer, it may be deemed to be in default and the relevant facts stated in the complaint may be deemed admitted. 52 Pa. Code § 5.61(c). However, this is discretionary. Complainant has not articulated that his substantive rights were affected by the late filing. Rather, Complainant focused on how the untimely filing demonstrated a pattern of disregard. Complainant's Reply Brief at 17. Moreover, Complainant did not file a motion for default judgment in this matter nor did Complainant move to strike the testimony/evidence presented by SmartEnergy at the hearing. Therefore, I have allowed SmartEnergy to present testimony and evidence pursuant to Section 1.2 of the Commission's regulations, 52 Pa. Code § 1.2.

## Contract/Disclosure Statement

Complainant argues that the four-month contract duration was definite and binding and SmartEnergy breached its own disclosure statement or contract requirement by continuing service beyond four calendar months. Complainant's Main Brief at 10. As an EGS, SmartEnergy is required to provide a disclosure statement that sets forth, in pertinent part, the following:

### **§ 54.5. Disclosure statement for residential and small business customers.**

(a) The agreed upon prices in the disclosure statement must reflect the marketed prices and the billed prices.

(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

(1) The customer requests that an EGS initiate service.

(2) The EGS proposes to change the terms of service.

(3) Service commences from a default service provider.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

(1) Disclosure of generation charges must conform to the following requirements:

(i) If the customer will be billed under a price per kilowatt-hour price structure, generation charges must be disclosed according to the actual prices per kilowatt-hour.

(ii) If a customer will not be billed under a price per kilowatt-hour price structure, the contract's terms must clearly explain the pricing structure and what the

customer's price for generation charges will be for a given period of time.

(iii) Generation charges must include an estimate of all applicable taxes except for State sales tax and county tax.

(2) If the price is introductory, the pricing statement must include a statement that the price is an introductory price, the duration of the introductory period and the price for the first billing cycle after the introductory period.

(3) If the price is variable, the variable pricing statement must include:

(i) Conditions of variability (state on what basis prices will vary) including the factors that the EGS will rely upon to establish the variable price.

(ii) Limits on price variability:

(A) If there is a limit on price variability, such as a specific price cap, a maximum percentage increase in price between billing cycles or minimum/maximum charges per kilowatt-hour for electricity during the duration of the contract, the EGS shall clearly explain the applicable limits. The EGS shall also state that the price can change each billing period, which must be printed in font size larger than the font size appearing in the terms of service.

(B) If there is not a limit on price variability, the EGS shall clearly and conspicuously state that there is not a limit on how much the price may change from one billing cycle to the next. The EGS shall also state that the price can change each billing period, which must be printed in font size larger than the font size appearing in the terms of service.

(iii) The price to be charged, per kilowatt-hour, for the first billing cycle of generation service.

(iv) A description of when and how the customer will receive notification of price changes. If the customer will not know the price until the time of billing, this must be disclosed in font size larger than the font size appearing in the terms of service.

(4) If the unit price changes based on actual customer usage or if the offer includes fees in addition to the unit price, the price per kWh must factor in all costs associated with the rate charged to the customer, including any fees, and show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format. If the offer includes an introductory price, the disclosure statement must show the average price per kWh of the introductory price, including any fees, and the price offered after the introductory period, including any fees, in separate tables.

(i) If the price is a fixed monthly amount, including any fees, that does not change based on actual customer usage, the disclosure statement must show the average price per kWh for usages of 500, 1,000 and 2,000 kWh of electricity in a table format.

(ii) If the price varies based on when the customer actually uses electricity, such as a time-of-use offer, the disclosure statement must show the price per kWh for each time period in table format.

(5) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.

**(6) The duration of the agreement, which includes:**

**(i) The starting date.**

**(ii) The expiration date, if applicable.**

(7) An explanation of sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions, if applicable.

(8) An explanation of prices, terms and conditions for special services, including advanced metering deployment, if applicable.

(9) The cancellation provisions, if applicable.

**(10) The renewal provisions, if applicable.**

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**(g) Disclosure statements must include the following customer notifications for fixed duration or non-fixed duration contracts:**

**(1) For fixed-duration contracts, disclosure statements must include the following notification: “If you have a fixed duration contract that will be ending, or whenever <EGS name> wants to change the contract, you will receive two separate notices before the contract ends or the changes happen. You will receive the first notice 45 to 60 days before, and the second notice 30 days before the expiration date or the date the change becomes effective. These notices will explain your options.”**

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52 Pa. Code § 54.5 (emphasis added).

Based on Complainant’s credible evidence presented at the hearing, Complainant established: that the disclosure statement provided that he be billed at the fixed rate of \$0.0679 per kWh for four months for electric generation service; that the contract was to run from July 23, 2024 to November 23, 2024; that the contract was to terminate at the conclusion of the fixed rate period; that the contract had no clauses of succession or renewal; that he was not notified of the change to a variable rate after expiration; and that he did not receive the written contract or any of the written renewal notices from SmartEnergy. Complaint ¶ 4; Tr. 10-11, 22, 25-26, 40. Therefore, Complainant met his *prima facie* case of establishing that SmartEnergy failed to provide

an accurate disclosure statement and/or meet notification requirements in violation of Section 54.5.

SmartEnergy does not contest that Complainant was to be billed at the fixed rate of \$0.0679 per kWh and that this fixed rate was to begin July 23, 2024 and continue for a fixed term. Tr. 54, 115. However, SmartEnergy established in its credible rebuttal evidence that it sent a welcome kit (i.e., disclosure statement) to Complainant on July 16, 2024, which included a contract that specified Complainant would be billed at the fixed rate for electric generation supply service for four monthly billing cycles as opposed to a straight four-month period. Tr. 49; SmartEnergy exhibit 3. SmartEnergy also established that that renewal was explained on the contract as Complainant would receive two separate written notices with the first being sent 45 to 60 days in advance of the expiration of the contract and the second being sent 30 days in advance of either the expiration date of the fixed rate or the effective date of the proposed changes. Tr. 109; SmartEnergy exhibit 3. Additionally, Complainant acknowledged that he did locate and review the contract with SmartEnergy online. Tr. 40.

In short, SmartEnergy's met the requirements for providing a contract/disclosure statement and specifying the terms of the fixed rate along with when and how Complainant would be notified of termination and renewal terms. Accordingly, SmartEnergy has successfully rebutted Complainant's allegations that SmartEnergy failed to provide an accurate disclosure statement in violation of Section 54.5.

#### Written Notices

Complainant argues that SmartEnergy failed to provide timely and verifiable notices regarding the expiration or change in terms for his electric generation supply service. Complainant's Main Brief at 11. As an EGS, SmartEnergy is required to

provide the following notices to customers prior to the expiration of a fixed duration contract or prior to a change in contract terms:

**§ 54.10. Notice of contract expiration or change in terms for residential and small business customers.**

An EGS shall provide the following notices to customers prior to the expiration of a fixed duration contract or prior to a change in contract terms:

(1) An initial notice shall be provided to each affected customer 45 to 60 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. For customers who have elected to receive electronic communications from the EGS, the notice shall be transmitted in the manner chosen by the customer. The initial notice must include:

(i) A general description of the proposed change in terms of service.

(ii) The date a change shall be effective or when the fixed duration contract is to expire.

(iii) An explanation of why a change in contract terms is necessary.

(iv) A statement indicating when a follow-up options notice shall be issued with details regarding the proposed change.

(v) A statement explaining that the options notice must discuss the customer's options to the proposed change in terms of service or expiring fixed duration contract.

(vi) A statement indicating whether the existing fixed duration contract has a cancellation fee, and an explanation of the fee amount and how to avoid the fee, including a notice that the customer is not subject to the cancellation fee if the customer terminates the

contract at any time after the customer receives the options notice required under § 54.10(2).

(2) An options notice shall be provided, by first class mail, to each affected customer at least 30 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. The options notice must include:

(i) A statement advising the customer of the specific changes being proposed by the EGS and informing the customer of how to exercise the customer's options, including the customer's ability to accept the proposed changes, to choose another product offering from the customer's existing EGS, to select another EGS or to return to default service.

(ii) Information regarding new pricing or renewal pricing including the price to be charged, per kilowatt-hour, for the first billing cycle of generation service:

(A) If a customer fails to respond to the options notice and is converted to a month-to-month contract, the EGS shall provide a disclosure statement under § 54.5 (relating to disclosure statement for residential and small business customers).

(I) Notice of a subsequent change in pricing shall be provided to the customer at least 30 days prior to the new price being charged.

(II) For customers who have elected to receive electronic communications from the EGS, notice of the change in pricing shall be transmitted in the manner chosen by the customer. For all other customers, notice shall be provided by first class mail.

(B) If a customer fails to respond to the options notice and is entered into a new fixed duration contract, the EGS shall provide the fixed, per

kilowatt-hour price to be charged and term length of the contract.

(iii) The telephone numbers and Internet addresses, as applicable, for the Office of Consumer Advocate, the Commission and PaPowerSwitch.com.

(iv) Language clearly visible on the front of the envelope used to provide the options notice stating that it contains important information regarding the expiration or changes in terms of the customer's electric supply contract.

(v) A statement indicating whether the existing fixed duration contract has a cancellation fee and, if so, that the customer is not subject to the cancellation fee if the customer terminates the contract at any time between the date of the options notice and the expiration date of the fixed duration contract.

(3) When a customer fails to respond to either notice, the following apply:

(i) A fixed duration contract shall be converted to one of the following:

(A) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees.

(B) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.

(ii) The converted contracts shall remain in place until the customer chooses one of the following options:

(A) Select another product offering from the existing EGS.

(B) Enroll with another EGS.

(C) Return to the default service provider.

52 Pa. Code § 54.10.

Based on Complainant's credible evidence presented at the hearing, Complainant established he did not receive written notices from SmartEnergy prior to the expiration of the fixed rate nor prior to SmartEnergy switching him to a variable rate. Tr. 22, 25. Therefore, Complainant met his *prima facie* case of establishing that SmartEnergy failed to timely provide the initial notice and options notice under Section 54.10.<sup>6</sup>

SmartEnergy presented credible rebuttal evidence that it sent Complainant the initial notice on October 31, 2024 and the options notice on November 15, 2024 to the service address that advised Complainant his four-month fixed rate contract for electric generation service was ending on December 22, 2024 and if Complainant took no action his account would be transitioned to a variable rate plan. Tr. 54; SmartEnergy exhibits 4 and 5. SmartEnergy further established that the initial and options notices were properly addressed and mailed to the service address within 45-60 days<sup>7</sup> prior to the expiration date of the fixed rate or the effective date of the proposed change in terms and within 30 days<sup>8</sup> prior to the expiration date of the fixed rate or the effective date of the proposed change in terms, respectively. Tr. 54; SmartEnergy exhibits 4 and 5. Neither of the notices were returned as undeliverable. Tr. 56.

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<sup>6</sup> Complainant does not allege that the notices failed to contain the required information in 52 Pa. Code § 54.10. As such, only the issuance and timeliness of the notices is being addressed.

<sup>7</sup> 45 to 60 days prior to the December 22, 2024 fixed rate end date is October 23, 2024 to November 7, 2024.

<sup>8</sup> 30 days prior to the December 22, 2024 fixed rate end date is November 22, 2024.

Complainant argues that SmartEnergy provided no proof that the notices were actually mailed and the letters themselves displayed inconsistent fonts and missing account numbers in support of the fact that SmartEnergy never actually mailed the notices.

SmartEnergy counters that it complied with the regulatory requirements and Complainant's argument that postal receipts are required is in opposition to Section 111.11, 52 Pa. Code § 111.11, which creates a rebuttable presumption for first-class mailing when properly address. SmartEnergy Reply Brief at 6.

In this case, I find that the initial notice and options notice were both mailed appropriately and within the timeframes required. Because both notices were served by U.S. First-Class Mail to the service address and were not returned as undeliverable, it must be presumed that this mail was received by Complainant. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

As such, SmartEnergy met the requirements for serving the initial and options notice on Complainant. Accordingly, SmartEnergy has successfully rebutted Complainant's allegations that it failed to timely provide the initial notice and options notice required by Section 54.10.

#### Violation of Section 1501 (Unreasonable Service)

Complainant argues that SmartEnergy, as an electric generation supplier, violated Section 1501, 66 Pa.C.S. § 1501, by billing after expiration of the contract and failing to send timely notices. Complainant's Main Brief at 11-12; Complainant's Reply Brief at 7-8. Specifically, Complainant argues that SmartEnergy provided unreasonable

service based on misleading communications and billing beyond the expiration of the four-month fixed rate term. Complainant’s Reply Brief at 14.

SmartEnergy argues that it is an EGS, so Section 1501, 66 Pa.C.S. § 1501, does not apply to it because it is not a “public utility.” SmartEnergy Reply Brief at 8-10. As such, SmartEnergy asserts that it could not violate Section 1501. SmartEnergy Reply Brief at 10.

The definition of a “public utility” specifically excludes, “[e]lectric generation supplier companies, except for the limited purposes as described in sections 2809 (relating to requirements for electric generation suppliers) and 2810 (relating to revenue-neutral reconciliation).” 66 Pa.C.S. § 102. Additionally, there is clear precedent that Section 1501, 66 Pa.C.S. § 1501, does not apply to an EGS because it is not a public utility. *Delmarva; Naborn and Pronko v. Direct Energy Servs. LLC*, Docket No. F-2023-3037611 (Opinion and Order entered Mar. 4, 2024) (“*Naborn*”).

Accordingly, Complainant has failed to establish that SmartEnergy violated Section 1501, 66 Pa.C.S. § 1501.

#### Breach of Contract

Complainant argues that he entered into a four-month fixed rate contract with SmartEnergy on July 23, 2024 to receive electricity supply at \$0.0679 per kWh and SmartEnergy breached its own disclosure statement (i.e., contract) by continuing service beyond four calendar months. Complainant’s Main Brief at 10. Specifically, Complainant avers that the fixed rate contract should have ended on November 23, 2024 and by continuing to bill Complainant at the fixed rate until December 22, 2024 followed

by imposing a variable rate of \$0.1780 per kWh SmartEnergy breached the contract. Complainant's Main Brief at 10.

SmartEnergy argues that Complainant is essentially raising a breach of contract claim and that said claims are beyond the jurisdiction of the Commission. SmartEnergy Main Brief at 5; SmartEnergy Reply Brief at 3-4. Furthermore, SmartEnergy avers that there is no support for Complainant's claim that the agreement for electric generation service was required to be automatically canceled after four calendar months. SmartEnergy Reply Brief at 3-4. Additionally, SmartEnergy claims that the record established that Complainant's contract duration was required to allow him the benefit of receiving four full months at the fixed rate. SmartEnergy Reply Brief at 4.

SmartEnergy is correct that the Commission does not have jurisdiction to adjudicate breach of contract claims. *Naborn; Yaglidereliler Corp. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2413732 (Opinion and Order entered Jan. 16, 2015) (citing *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673 (Pa. Super. 1978)). In this case, Complainant is essentially claiming that SmartEnergy breached the agreed upon contract by providing him electricity supply at the agreed upon fixed rate of \$0.0679 per kWh for more than four calendar months and then switching him to a variable rate of \$0.1780 per kWh upon the expiration of the fixed rate. Because these claims constitute breach of contract issues, the Commission lacks jurisdiction to adjudicate it.

Accordingly, Complainant's breach of contract claims for improperly extending the fixed rate and subsequent switch to a variable rate for electricity supply at the expiration of the fixed rate term are outside of the Commission's jurisdiction.

## Refund

Complainant seeks “correction of improper billing after contract’s lawful expiration.” Complainant’s Reply Brief, at 23. Specifically, Complainant seeks a reversal of all charges billed to Complainant after November 23, 2024 or after December 4, 2024. Complainant’s Reply Brief at 29.

SmartEnergy argues that the Commission does not regulate supply prices charged by EGSs and lacks authority to require EGS to issue refunds except in limited circumstances. SmartEnergy Main Brief at 6.

As previously stated, the Commission has determined that it generally cannot refund charges for electric generation supply service. *IDT Energy*. The Commission’s carved out two exceptions to this no refund rule. 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.

Complainant does not contest that he voluntarily enrolled with SmartEnergy as his EGS. Complainant Reply Brief at 22. Thus, the initial exception to the no refund rule does not apply here.

For the second exception to the no refund rule, 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*. In this case, Complainant presented credible evidence that he was enrolled with SmartEnergy as his EGS on a four-month fixed rate contract of \$0.0679 per kWh starting July 23, 2024, which Complainant believed would terminate automatically on November 23, 2024. Tr. 10. Thereafter, SmartEnergy switched Complainant to a variable rate resulting in higher electric generation charges. Tr. 11. Complainant officially terminated SmartEnergy as his EGS

on February 3, 2025. Tr. 11. Complainant claims that SmartEnergy erred by extending the term of his fixed rate beyond November 23, 2024 and switching him to a variable rate without permission. Tr. 22. From December 23, 2024 to February 7, 2025, Respondent charged Complainant \$0.17800 per kWh for electric generation based on a variable rate plan while the PPL price-to-compare for electric generation from during that same period was \$0.10771 per kWh. Tr. 22, 48, 56, 74; Complainant exhibits 4, 5. These claims establish a *prima facie* case for overbilling.

However, SmartEnergy presented sufficient credible evidence to rebut Complainant's claims. SmartEnergy established that it fully complied with providing Complaint electricity supply at the agreed upon fixed rate of \$0.0679 kWh for four full monthly billing cycles from July 23, 2024 to December 4, 2024. Tr. 88-89, 115. Thereafter, SmartEnergy continued to apply the fixed rate to Complainant until December 22, 2024 and sent the required notices advising Complainant of the expiration of his fixed rate and switch to a variable rate if no action was taken. Tr. 120; SmartEnergy exhibits 3, 4. Complainant was also advised of this switch during the initial enrollment call on July 15, 2024. SmartEnergy exhibits 2, 2a. On December 23, 2024, SmartEnergy switched Complainant to a variable rate and continued to provide electric generation service to Complainant until his cancelation on February 7, 2025. Tr. 74, 120.

Because SmartEnergy provided electric generation service in accordance with the agreed upon contract, except for extending the fixed rate beyond the four full monthly billing cycles to the benefit of the Complainant, and sent the required notices to Complainant, there is no basis to find that Complainant was overbilled in this matter.

Accordingly, Complainant ultimately failed to establish any violation of the Code, Commission regulations or a Commission order and therefore the complaint will be dismissed.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.
  
2. The party seeking affirmative relief from the Commission bears 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 to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).
  
3. Right to relief must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
  
4. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. 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. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. Of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).
  
5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

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 lacks the jurisdiction to review Complainant’s claim that Respondent charged him unreasonable electric generation supply charges.

*Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087 (Pa. Cmwlth. 2015).

12. Complainant failed to meet his ultimate burden of proof that SmartEnergy violated the Public Utility Code, Commission regulation or order. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Vincent Mattiola in the matter of Vincent Mattiola v. SmartEnergy Holdings, LLC at Docket No. F-2025-3054761 is dismissed.

2. That Docket No. F-2025-3054761 shall be marked as closed.

Date: February 27, 2026

\_\_\_\_\_/s/  
Chad L. Allensworth  
Administrative Law Judge