BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Vincent Mattiola,
Complainant

v.

SmartEnergy Holdings, LLC,
Respondent

Docket No. F-2025-3054761

EXCEPTIONS OF COMPLAINANT VINCENT MATTIOLA

Filed by:

Vincent Mattiola
Complainant, *pro se*
3552 Broadway
Allentown, PA 18104
3552Broadway@gmail.com

Filed with:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

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I. EXCEPTION #1: EGS Extension, Creation, or Manipulation Of A Contract Beyond It's Termination Date Constitutes "Slamming"

In the Initial Decision, pages 11 and 12 contain statements by Judge Allensworth describing the exceptions where the Commission could direct an EGS to refund charges, under the ruling in *IDT Energy*. Namely, when "a customer has been switched to an EGS without the customer's consent," as this "unauthorized switch of a customer's EGS is known as 'slamming.'" The Code ensures that a customer's electricity supplier does not change without "direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier."

Understandably, a change of supplier would constitute a change of contract terms. The price for electricity, percentage of renewable sources, cancellation policy, date of termination, etc could therefore be impacted, and thus the Commission ruled in *IDT Energy* that this shall not be permitted without the explicit permission of the customer. Such rulings are heartening, as consumers are regularly faced with myriad complexities to navigate in the electricity commodity purchasing realm already. The Commission explicitly forbids a new contract to be formed without the customer's consent.

In our case, SmarEnergy engaged in parallel behavior ruled unlawful by the Commission by first extending a contract – allegedly for the benefit of the consumer – and then creating an entirely new contract for the Complainant, all without his express permission.

There is little difference in the practical outcome of these two scenarios: A) As *IDT Energy* forbids, a customer's EGS contract being transferred and re-established as a new EGS contract. B) As occurred in this case, where the same EGS extended, and then created a new EGS contract with different terms.

Judge Allensworth is appreciated in using the *IDT Energy* example as a parallel to this case, however Complainant takes exception to the fact that the ruling in the Initial Decision does not recognize such parallel to be equally worth of the application of the law. For this, Complainant issues Exception #1, and asks the Commission to uphold the enforcement of *IDT Energy* as it also applies to equally egregious manipulations and extensions of contracts by the same EGS, alongside transfers of contracts from one EGS to another. Neither of which should be permitted without "direct oral confirmation from the customer of record or written evidence of the customer's consent."

II. EXCEPTION #2: Regarding "Timeliness of Respondent's Answer": Miscalculation Of The Late Filing Of SmartEnergy's Answer

The Initial Decision of Judge Allensworth clearly and concisely provides the verbiage of Section 5.61 of the Commission's regulations on page 12, which states:

§ 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.
***
(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 fact

Also on page 12, and continuing to page 13, the facts are established by Judge Allensworth that:

Complainant filed his complaint on April 22, 2025.

The Commission successfully eServed the complaint to SmartEnergy on April 25, 2025.

SmartEnergy was "required to file its answer" within 20 days after the date of service. This date was May 15, 2025.

Instead, SmartEnergy flouted this regulation of § 5.61(a) and filed its answer and new matter with the Commission on June 26, 2025.

Judge Allensworth describes this failure of SmartEnergy on page 13, however it is stated that, "SmartEnergy did not file its complaint until June 26, 2025, which was 62 days after service of the complaint."

Complainant makes this Exception to the above quoted statement, because a mathematical miscalculation is made.

<u>May 15, 2025 to June 26, 2025 is 42 days beyond the requirement, not 62 days.</u>

Given that the basis of this Complaint and case hinges on factual and accurate representation of timelines, deadlines, and regulatory requirements of EGS' being upheld by the Commission, it is extremely disheartening for the Complainant to be

incapable of conveying the importance he ascribes to accurate timekeeping and mathematical calculations of dates. A significant portion of the telephone Hearing centered around the importance of defining the correct dates of when the contract began and ended, and when notices were (allegedly) sent.

Complainant makes this Exception to the error written by Judge Allensworth in the Initial Decision, importantly despite the fact that the error is in Complainant's favor. Allowing the miscalculation to go unnoticed does appear to grant Complainant a stronger case against SmartEnergy's failure to comply with the regulatory standard, with a longer delay reported in the Initial Decision.

However, concerning the application of § 5.61(a) & (b), it is irrelevant whether SmartEnergy filed their answer 62 days, 42 days, 397 days, 21 days, or any number of days beyond the clearly defined 20 day deadline. A deadline is a deadline is a deadline. If the Commission is not going to hold EGS' to established deadlines, then why have the deadlines as part of the Code at all?

Complainant also takes exception to the fact that he is held to a different standard than the company which wronged him. For the Commission to make fair rulings, it is imperative that all parties are held to the same standards.

III. EXCEPTION #3: Regarding "Timeliness of Respondent's Answer": Enforcement of Regulatory Legal Standards Should Not Be Discretionary

Granting leniency toward missed filing deadlines is a dangerous precedent to establish, however this is the choice Judge Allensworth makes on page 13 of the Initial Decision.

SmartEnergy filed their answer to the initial Complaint beyond the required deadline.

This was not a clerical error. It was not a few days late due to extenuating circumstances. It was not a holiday or weekend overlap. It was not an oversight. And no request for extension was made by SmartEnergy. This was either a bold and utter disregard for the rule of law, or a showing of complete ignorance of the law. Neither of which is defensible, and neither of which should be openly permitted by the Commission.

Judge Allensworth describes the penalty for such failure to reply as, "deemed to be in default and the relevant facts stated in the complaint may be deemed admitted." Shockingly, however, the Initial Decision makes a bold assertion that "this is discretionary." Complainant takes exception to this ruling, as discretionary

application of the law is antithetical to the judicial process. Treating one party with more leniency than the other, when the facts are very clearly established, grants favor to the very organizations which are being regulated by the Commission. This statement by Judge Allensworth appears to suggest that the Commission chooses which laws, and when, are applied to EGS' from the Code. Establishing this precedent erodes the trust of the public in the Commission's ability to fairly protect consumers from the nefarious activities of EGS'.

It is true that Complainant did not file a motion for the default judgement in this matter, at the time of the missed deadline for SmartEnergy's reply. This fact is simply because there was no Hearing or adjudication scheduled at this time. The notion that the Complaint would be heard before a Judge was not yet determined, as the only event which had occurred was that Complainant had submitted his Complaint to the Commission. Had the Commission already informed the Complainant that a Hearing would be scheduled, then Complainant would have known to whom to file the motion for default judgement. Otherwise the motion for default judgement – which could have been filed on Day 21 after the Complaint was submitted, and deadline missed – would have been submitted to no Office.

In this statement, Judge Allensworth implies that the Complainant should have filed a pretrial motion before the hearing date was scheduled. Complainant submits this exception to the fact that this was not possible.

Therefore, Complainant asks with this exception that the Commission have notified parties of the Default of the Respondent immediately on the 21st day beyond the very clearly defined 20 day deadline.

No leniency should have been granted by Judge Allensworth and no favor given to the Respondent. Whether Complainant elaborates or articulates the impact on his personal substantive rights is immaterial, as the Commission clearly has the authority to follow the calendar of deadlines it has established itself.

IV. EXCEPTION #4: SmartEnergy Did Not Send Notices On Time

The Initial Decision outlines the timeline of this case in a concise manner in the "Findings of Fact" from page 5 to page 9. On page 18, the Initial Decision begins to elaborate upon the ruling of the failure of SmartEnergy "to provide timely and verifiable notices regarding the expiration or change in terms for his electric generation supply service."

The requirement is simple, and outlined in § 54.10. “Notice of contract expiration or change in terms for residential and small business customers.”

(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.

(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.

On page 22 of the Initial Decision, the fact is confirmed that SmartEnergy “sent Complaint the initial notice on October 31, 2024 and the options notice on Novermber 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.”

However, page 7 of the Initial decision states, “The fourth full-month billing cycle under the contract started on November 1, 2024 and ended on December 4, 2024.”

Complainant makes this exception based on the contraindicated statements within the Initial Decision. How can a four-month fixed rate contract simultaneously be deemed by Judge Allensworth to end on December 4, 2025 AND December 22, 2024?

Additionally prior to receiving the “initial notice” required by § 54.10, how would any customer know that contract date had been changed? The initial notice itself is the document which is apparently used to establish the date change. Permitting the initial notice to be used for counting the deadline dates prior to termination, and simultaneously for informing the consumer of the new termination date is simply illogical because consumers would only know from the initial notice that the termination date had been changed. Therefore, the counting of days prior to which the notices are required cannot be based on the extended date which has not yet been established. It can only be based on the actual final date of the four-month billing cycle, which was December 4, 2024.

Complainant holds that the initial notice should have been provided 45 to 60 days prior to the expiration of the fixed duration contract: December 4, 2024.

This would mean that the initial notice should have been provided between October 5 and October 20, 2024. Notably, SmartEnergy did not provide the initial notice in this time period, as the fact shows it was provided on October 31, 2024.

Complainant also holds that the options notice should have been provided 30 days prior to the expiration of the fixed duration contract: December 4, 2024.

This would mean that the options notice should have been provided before November 4, 2024. Notably, SmartEnergy did not provide the options notice in this time period, as the fact shows it was provided on November 15, 2024.

This exception is made because the calculation of required deadlines is once again made in error. It also establishes another very dangerous precedent whereby EGS' can apparently alter the final date of the contract, and then use that fabricated date to count back toward their own deadlines for provided notices.

Complainant holds that the termination date of a contract should never be modified without the express permission of the party affected. The Commission cannot allow EGS' to move the goalposts as they deem fit, or else the regulatory authority of the Commission with the deadlines established by the Code to PROTECT CONSUMERS may be simply ignored by EGS' like SmartEnergy.

V. EXCEPTION #5: Uno Flatu: The Complaint Should Not Be Outside The Commission's Jurisdiction

Examination of the Initial Decision reveals an uno flatu contradiction whereby the parties are told on page 25 that the Complainant's claims are "outside the Commission's jurisdiction," and on page that "The Commission has jurisdiction over the subject matter of this Complaint."

These two statements are incongruent, and Complainant makes this exception while asking the Commission to clarify whether it does, or does not have jurisdiction over the subject matter of this Complaint.

If the Commission only has jurisdiction over some of the subject matter of the Complaint, then this should have been more clearly enunciated in the Initial Decision's "Conclusions of Law." The statement on page 28, "1. The Commission has jurisdiction over the subject matter of this Complaint, " implies that the jurisdiction is over the entire subject matter, not a partial amount of subject matter.

VI. EXCEPTION #6: Only The Customer Should Decide What Is "For Their Benefit"

The Initial Decision describes the Respondent's extension of Complainant's contract of service from December 4 to December 22, as stated clearly on page 8, "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."

This fact is without dispute, and was admitted by the witness, Ms. Lydia Chavez during the Hearing.

Page 27 of the Initial Decision further states, "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…"

Complainant takes strong exception to Judge Allensworth permitting this practice, which creates a loophole by which EGS' can manipulate the customer's contract, so long as it is "for the benefit" of the customer. Without the permission of the customer. Without consulting the customer. Without verbal or written authorization from the customer. And importantly, without DEFINITION of what constitutes "for the benefit."

Opening this door to allowing one party to extend contract dates, so long as they deem it's "for the benefit" of the other party is a shocking allowance granted by Judge Allensworth in the Initial Decision of this case.

It appears Judge Allensworth and SmartEnergy both view the extension of the contract dates, while maintaining the same price as "for the benefit" of the Complainant, despite the Complainant definitively filing the Complaint and stating clearly that he emphatically does not believe this is for his benefit, nor does he, or did he want this benefit. Complainant, as a party to the contract, has the right to decide what is and is not for his benefit, NOT the EGS.

To expand on the loophole Judge Allensworth is creating, consider the following scenarios:

A. EGS decides to REDUCE the rate of electricity generation service, but INCREASE the amount charged for cancellation. Is this for the benefit of the customer, or not?
B. EGS decides to change the percentage of electricity provided by renewable vs. nonrenewable sources on the contract, to incorporate MORE renewable

sources, and INCREASES the rate charted. Is this for the benefit of the customer, or not?

C. EGS decides to change the percentage of electricity provided by renewable vs. nonrenewable sources on the contract, to incorporate LESS renewable sources, and DECREASES the rate charged. Is this for the benefit of the customer, or not?
D. EGS decides to MAINTAIN the rate of electricity generation service, but INCREASE the duration of the contract? Is this for the benefit of the customer, or not?

These are but a few situations which will arise should Judge Allensworth's ruling in the Initial Decision stand; that EGS are permitted to alter contracts, so long as they deem it is "for the benefit" of the customer.

This effectively rules that the person or entity who decides what is "for their benefit" does not necessarily have to be the person or entity themselves. This has vast implications for future contracts of the P.U.C., since it would create a regulatory standard whereby the decision of what is beneficial for someone (consumer) is not the consumer themselves.

Complainant submits this exception because it is an incomprehensible standard to establish. Why should an EGS be allowed to decide what benefits a consumer, and not the consumer themselves? What guidelines would deem an act for the benefit? Who prevails when an EGS deems an action "for the benefit" of the customer, but the customer rejects that notion?

If a contract is going to be extended, modified, changed, cancelled, manipulated, or altered in any way, the Commission should rule that this REQUIRES the consent of the party who is impacted by the change. Otherwise, the Commission is essentially granting EGS' the ability to extend consumers contracts *ad infinitum* apparently as long as the EGS feels they are doing it "for the benefit" of the consumer.

In this case, Complainant once again states very clearly that he did not want his contract to be extended, regardless of whether the price rate stayed the same for the extension, and regardless of whether SmartEnergy presumed that it was for his benefit.

Complainant strongly and respectfully urges the Commission to disallow this practice and acknowledge this exception.

VI. CONCLUSION

The case of Vincent Mattiola v. SmartEnergy Holdings, LLC avers that the EGS overstepped its legal boundaries as governed by the Pennsylvania Utility Commission in extending the Complainant's contract without his express permission. The Initial Decision dismisses this case, however Complainant submits the above Exceptions because the Commission failed to trigger Default Judgement after the Respondent did not meet it's required reply deadline, and the Initial Decision contains errors in calculations used to rule, while creating exploitable loopholes which EGS' can use to abuse consumers going forward.

Complainant respectfully asks that all Exceptions above are considered by the Commission and the ruling is changed to acknowledge the wrongdoing of the Respondent.

Respectfully submitted,

s/s Vincent Mattiola
Pro Se Complainant

3552 Broadway
Allentown, PA 18104
(484) 550-8122
3552broadway@gmail.com

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:

Bryce R. Beard, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
bbeard@eckertseamans.com

Administrative Law Judge Chad L. Allensworth
callenswor@pa.gov

Dated: Friday, March 19, 2026

/s/ Vincent Mattiola

Pro Se Complainant