

Legal Department

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December 19, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RE: George W. Kopf, Jr. v. PECO Energy Company
PUC Docket No.: C-2012-2332993

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

—	Answer
—	Answer & New Matter
—	Motion to Dismiss
—	Motion for Judgment on the Pleadings
—	Preliminary Objection
—	Exceptions
<u>X</u>	Reply Exceptions (REVISED)
—	Main Brief
—	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company
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REPLY EXCEPTIONS

PECO Energy Company ("PECO Energy") hereby replies to the Exceptions filed by George W. Kopf, Jr. ("Complainant") in the above-referenced matter on December 18, 2012. On October 24, 2012, Complainant filed a formal complaint against PECO Energy at docket number C-2012-2332993. In his formal complaint, Complainant claims that he purchased a duplex at 226 Green Street, Philadelphia, PA in October 2011. See Formal Complaint, attached hereto as Exhibit "1". Complainant states that he has a tenant who leases the second floor apartment. The Complainant's second floor tenant signed a lease agreement in 2006, which requires her to pay for the electric usage in the common area. See Exhibit "1". The Complainant alleges that on October 15, 2012, PECO Energy advised him that he was in violation of 66 Pa.C.S. § 1529.1, in reference to foreign wiring. The Complainant states that he should not be in violation of section 1529.1 because his tenant agreed to pay for the utilities in the common areas. See Exhibit "1". He also requests that he not be required to install a third meter for the common area. See Exhibit "1".

Respondent, PECO Energy filed an Answer with New Matter on November 13, 2012, stating that the Complainant's formal complaint should be dismissed pursuant to 66 Pa.C.S. §1529.1 and Ace Check Cashing, Inc. vs. Phila. Gas Works, Docket No. C-2008-2056428 (Final Order entered May 21, 2010). PECO Energy filed a Preliminary Objection on November 13, 2012, requesting dismissal of the informal complaint as the company's actions were consistent with the law.

On November 29, 2012, Administrative Law Judge David A. Salapa issued an Initial Decision in the matter of George W. Kopf, Jr. v. PECO Energy. Co., C-2012-2332993 ("Initial Decision"). The Initial Decision sustained PECO Energy's Preliminary Objections and ordered

dismissal of the formal complaint for failure to state a claim upon which relief can be granted. ALJ Salapa's Initial Decision is well-reasoned with ample support from the record. As detailed in the Initial Decision, the complaint does not set forth that PECO Energy violated any regulation, statute or order. Consistent with 66 Pa. C.S. § 1529.1, if foreign wiring is found at a property owner's premises, PECO Energy is required to transfer the service and the balance into the property owner's name until the condition is corrected.

The Commission should sustain the Initial Decision of ALJ Salapa. The Complainant does not allege that the ALJ made an error of law or abused his discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Salapa because he simply disagrees with the ALJ's decision. Pursuant to 52 Pa. Code 5.533(b), "[e]ach exception must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision," and "[s]upporting reasons for the exceptions shall follow each specific exception." Complainant's attempt to further litigation in this matter by simply disagreeing with the outcome of the Initial Decision without identifying any specific error of law or abuse of discretion fails to satisfy the requirements is procedurally improper and should be dismissed summarily.

By way of further response, the Complainant's exceptions clearly demonstrate that he has misapplied case law and requests the Commission to apply proposed policy. In his Exceptions, the Complainant argues that the property owner in Colgan v. PECO Energy, C-2010-2163186 (Order entered March 10, 2010), had circumstances similar to the case at bar and the case was ruled in the property owner's favor. The Complainant urges the Commission to apply the Colgan case in his case. The Colgan case; however, is not applicable here as Ace Check Cashing was decided after Colgan and is therefore the current precedent applied in foreign wiring cases. In his Exceptions, the Complainant also argues that the Commission Proposed Policy Statement

~~“Allowing a Tenant to Notify the Utility of Willingness to Accept Financial~~ Responsibility for Foreign Load Service” be considered in this case. However, the proposed policy is not the law. In fact, the Commission withdrew the Proposed Policy Statement at Docket No. L-00980137 (Order entered September 23, 1998). As ALJ Salapa correctly articulated in his Initial Decision:

The Public Utility Code at 66 Pa.C.S. § 1529.1, requires that a public utility “shall forthwith list the account for the premises in question in the name of the owner” when a residential building contains one or more dwelling units not individually metered. 66 Pa. Pa.C.S. § 1529.1(b); Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010).

The Complainant apparently believes that the statute at 66 Pa.C.s. § 1529.1 does not apply to this case. The Complainant asserts that he has a lease with Ms. DelRaso that requires her to pay for the electricity used in the common areas and Ms. DelRaso has agreed to continue paying for the electricity used in the common areas. The Complainant argues that, since Ms. DelRaso agreed to pay for the electricity used in the common area, the Respondent improperly transferred her account to him and improperly refused to transfer the account back to Ms. Del Raso..... The Complainant is incorrect for two reasons.

First, the Public Utility Code does not authorize the Respondent to collect load charges from a tenant. In Santos the Commission held that “the utility must...place the account in the landlord’s name upon discovery of the foreign load and collect unpaid bills only from the landlord.” (emphasis added) Santos at 14.**Second, the Complainant’s lease with Ms. DelRaso, where she agreed to pay for the electricity used in the common areas, cannot supersede the provisions of 66 Pa.C.S. § 1529.1.**

The record clearly demonstrates that the issue of foreign wiring and the balance transfer at the Complainant’s rental property has been properly decided and dismissed as a matter of law. As ALJ Salapa has determined, when a utility finds foreign load, the utility is required to transfer the tenant’s account, including any arrearages, into the landlord’s name. See 66 Pa.C.S.A. § 1529.1. ALJ Salapa correctly decided:

The Complainant, is therefore, responsible for Ms. DelRaso’s account balance, including arrearages, as of the date of discovery of the foreign load plus usage until such time as the Complainant removes the foreign load and the Respondent verifies the removal.....The Complainant may seek damages from Ms. DelRaso for any amounts she owes, pursuant

to the lease, through the courts. Enforcement of the lease or other agreement between the Complainant and Ms. DelRaso is outside the Commission's jurisdiction. Corazzini v. UGI Penn Natural Gas, Inc., Docket No. F-2009-2101282 (Order entered July 16, 2010).

Through his exceptions, the Complainant cannot attempt to revise current statutes and case law on the issue of 66 Pa.C.S. § 1529.1. ALJ Salapa correctly concluded that the Complainant's case should be dismissed as the complaint fails to state a claim upon which relief can be granted. Accordingly, ALJ Salapa's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GEORGE W. KOPF, JR.

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket No. C-2012-2332993

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**George W. Kopf, Jr.
252 Bridge Street
Drexel Hill, PA 19026**

Dated at Philadelphia, Pennsylvania, December 19, 2012



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