

Danielle Jouenne

215 665 4016
danielle.jouenne@bipc.com

Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
T 215 665 8700
F 215 665 8760
www.buchananingersoll.com

February 19, 2014

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120


Re: Lisa Morykan v. Metropolitan Edison Company
Docket No. C-2014-2403154

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, I have enclosed for electronic filing the Preliminary Objections of Metropolitan Edison Company to the Formal Complaint of Lisa Morykan in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


Danielle Jouenne /BCW

DJ/tlg
Enclosure
cc: Certificate of Service

RECEIVED

FEB 19 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LISA MORYKAN

v.

METROPOLITAN EDISON COMPANY:

:
:
:
:
:

Docket No. C-2014-2403154

NOTICE TO PLEAD

TO: Lisa Morykan
1624 Twin Pine Road
Stroudsburg, Pennsylvania 18360

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Metropolitan Edison Company to the Formal Complaint of Lisa Morykan within **ten (10) days** from service of this Notice, the facts set forth by Metropolitan Edison Company in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

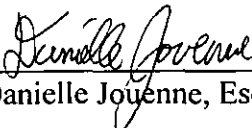
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Danielle Jouenne, Esquire
Buchanan Ingersoll & Rooney, PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555

Dated: February 19, 2014



Danielle Jouenne, Esq. *BRW*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LISA MORYKAN	:	
	:	
v.	:	Docket No. C-2014-2403154
	:	
METROPOLITAN EDISON COMPANY	:	

**PRELIMINARY OBJECTIONS TO THE COMPLAINT OF
LISA MORYKAN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company (“Met-Ed” or the “Company”) by and through its counsel Danielle Jouenne, Brian C. Wauhop, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.101(a)(4), and in support thereof, avers as follows:

I. Introduction

1. Through this Preliminary Objection, Met-Ed seeks the dismissal of a Formal Complaint filed by Lisa Morykan (“Complainant”), the owner of a residential rental property located at 202 Roy Lane, Stroudsburg, Pennsylvania 18360 (“Rental Location”), alleging that Met-Ed improperly transferred the balance of Account No. 100089469363 (“Tenant’s Rental Account”) in the amount of \$323.13 to the Complainant’s Met-Ed Account No. 100075636439 (“Pump House Account”) for electric service to 330 Rimrock Drive, Stroudsburg, Pennsylvania

18360 (“Pump House Location”) after the Company confirmed the presence of foreign load on Meter No. D15564912 serving the Rental Location (“Rental Meter”). (Compl. ¶¶ 4, 5.)¹

2. The Complainant admits in the Formal Complaint that the shared metering situation existed at the Rental Location due to the foreign load of an exterior common area “dusk to dawn” light on the Rental Meter and that the shared metering condition has since been corrected. (Compl. ¶¶ 4, 5.)

3. The Complainant demands a credit of \$283.13 to the Pump House Account on the theory that she is only responsible for the portion of the Tenant’s arrearage (i.e. \$40.00) that is related to foreign load on the Rental Meter. This argument is inconsistent with the Commission’s current foreign load policy pursuant to Pennsylvania Public Utility Code (“Code”) Section 1529.1 which requires a utility to list an electric service account, including any arrearages, in the name of the owner upon the finding of foreign load and imposes on the owner the responsibility for paying the utility services to the premises until the shared metering has been corrected. *Ace Check Cashing, Inc. v. Philadelphia Gas Works, Eddie and Jennifer West*, Docket No. C-2008-2056428 (Final Order entered May 21, 2010). (*Id.*)²

4. As explained in greater detail below, even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission. Code Section 701, 66 Pa.C.S. §701.

¹ The Complainant avers in the Formal Complaint that the Pump House Location and the Rental Location are both owned by the Complainant and are adjacent to one another. (Compl. ¶4C.) Though Patrick Murphy is referred to throughout the Formal Complaint as the Complainant’s tenant and averred to be the customer of record for the Tenant’s Rental Account, the Company’s records demonstrate that Judy Murphy was the customer of record for the Tenant’s Rental Account from February 7, 2012 until December 13, 2013. From December 17, 2013 until the present the Rental Location receives residential electric service under Account No. 100106835026 (“Complainant’s Rental Account”). For the purposes of this Preliminary Objection, Patrick Murphy will be referred to as (“Tenant”).

² The Complainant is willing to pay \$40.00 for the foreign load on the Tenant’s meter.

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission dismiss the Formal Complaint with prejudice.

II. Background

6. *Met-Ed is an electric distribution company that is certificated as a public utility in Pennsylvania.*

7. On or about January 15, 2014, the Complainant filed a Formal Complaint with the Commission against Met-Ed at the above-captioned docket requesting that the Commission direct the Company to credit the Pump House Account in the amount of \$283.13.(Compl. ¶ 5.)

8. The Formal Complaint identifies the Complainant as Lisa Morykan. (*Id.* at ¶ 1.)

9. The Formal Complaint concerns an electric service account with the Company formerly in the name of the Judy Murphy for electric service provided to the Rental Location under Account No. 100089469363 (“Tenant’s Rental Account”). (*Id.* at ¶ 1.)

10. *Upon information and belief, on or about June 13, 2013 Patrick Murphy (“the Tenant”) contacted the Company to report a shared metering situation at the Rental Location. (Compl. ¶ 4.)*

11. On or about July 12, 2013 the Company conducted a shared metering investigation at the Rental Location confirming shared metering. (*Id.*)

12. In a letter dated August 22, 2013, the Company notified the Complainant that the Company’s investigation revealed a shared metering situation at the Rental Location, and that “as a result of the shared metering issue existing previously the balance [of the Tenant’s Rental Account] in the amount of \$323.13 has been applied to your account.” (*Id.*)

13. On or about January 30, 2014, the Formal Complaint was served on Met-Ed.

14. The Complainant admits in the Formal Complaint that the shared metering situation existed at the Service Location due to the foreign load of an exterior common area “dusk to dawn” light on the Rental Meter. However, the Complainant demands a credit of \$283.13 to the Pump House Account on the theory that the Complainant is only responsible for the portion of the Tenant’s arrearage (i.e. \$40.00) that is related to foreign load on the Rental Meter. (Compl. ¶¶ 4, 5.)

15. Met-Ed is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection, which Answer and New Matter is incorporated into this Preliminary Objection as if fully set forth herein.

III. Preliminary Objection Regarding Legal Insufficiency Pursuant to 52 Pa. Code § 5.101(a)(4).

16. The Complainant refutes no aspect of the Company’s provision of retail electric service other than the Company’s transfer of \$323.13 from the Tenant’s Rental Account to the Pump House Account, which the utility was obligated to do pursuant to Code Section 1529.1, after confirming shared metering at the Rental Location. The Complainant admits the existence of the shared metering condition that warranted the balance transfer and therefore her Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.

17. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101; see also *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994).

18. The grounds for preliminary objections are limited to those set forth in 52 Pa Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

19. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, supra.

20. The Commission may dismiss a complaint without hearing if, in its opinion, a hearing is not necessary in the public interest. 52 Pa. Code § 5.21(d).

21. While the Commission generally refrains from dismissing complaints filed by *pro se* complainants without allowing them an opportunity to develop an evidentiary record, an administrative law judge has the discretion to dismiss a complaint on preliminary motion if that dismissal is neither arbitrary nor capricious, and is otherwise in accordance with the law. *Guesman v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2012-2326301 (Final Order entered January 4, 2013) (citing *Graham v. Philadelphia Suburban Water Company and Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00957557 (Order entered June 12, 1996)).

22. The only relief demanded by the Complainant is a credit in the amount of \$283.13 to partially offset the balance transfer the Company was obligated by Pennsylvania law to make after confirming the shared metering condition at the Service Location.

23. In accordance with Code Section 701, a person may complain about something done or omitted to be done by a public utility in violation of any law, regulation or order. 66 Pa.C.S. § 701.

24. The Formal Complaint contains no allegations that would constitute a violation of the Code, Commission order or regulation. Assuming all the facts pleaded in the Complaint to be true, the Complainant has failed to state a claim upon which the Commission could grant relief.

25. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

26. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true. *Id.*

27. Under Code Section 1529.1

If [a] . . . residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto[.]

66 Pa.C.S. § 1529.1

28. In *Ace Check Cashing*, supra, the Commission held that utilities are to list the account, including any arrearages, in the name of the landlord upon the finding of foreign load. The landlord has the responsibility to pay the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account back in the name of the tenant. However, the arrearages, if any, are required to remain with the landlord.

29. In *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757, (Final Order entered August 7, 1997) the Commission held that upon discovery of a foreign load, the utility must place the electric service account in the landlord's name and collect any unpaid bills only from the landlord. As a result, the Complainant is responsible for the *tenant's delinquent account balance, including arrearages*.

30. Applied here, Met-Ed transferred \$323.13 from the Tenant's Rental Account – including arrearages – to the Pump House Account pursuant to 66 Pa.C.S. § 1529.1 and Commission policy after Met-Ed confirmed the existence of shared metering at the Service Location. The Complainant admits as much in her Complaint:

The technician who came out did verify that the outdoor dusk to dawn light was indeed on the tenant's meter [.]

(Compl. ¶ 4.)

When we purchased this property in July of 2008, everything was the same way it was when this complaint was made. We were unaware that the outside dusk to dawn light was not on our service as we had our own meter paying electric each month.

(Compl. ¶ 5.)

31. Rather than deny the existence of shared metering, the Complainant argues that she is only responsible for the portion of the Tenant's arrearage that is related to foreign load on

the Rental Meter. However, the Commission's current foreign load policy does not recognize such *de minimis* exceptions and requires a utility to list an electric service account, including any arrearages, in the name of the owner upon the finding of foreign load and imposes on the owner the responsibility for paying the utility services to the premises until the shared metering has been corrected. *Ace Check Cashing*, supra (reversing the foreign load policy established in *Afshari v. PPL Electric Utilities Corp.*, et al., Docket No. C-20055547 (Final Order entered April 9, 2008)).

32. It is both clear and undisputed that Met-Ed fully complied with the Public Utility Code and Commission precedent in handling this foreign load situation after it confirmed the existence of shared metering at the Service Location. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of a preliminary objection, the Complainant has failed to allege that Met-Ed has committed or omitted an act in violation of a Commission statute, regulation, order, or Met-Ed's tariff. *County of Allegheny*, supra. In fact, the Formal Complaint actually admits that the Company transferred the Tenant's balance to the Complainant's Account after confirming the shared metering condition. (Compl. ¶¶ 4, 5.) As explained above, as a matter of law, the Company is required to transfer the Tenant's balance to the Complainant's Account after the Company confirmed the existence of shared metering at the Service Location.

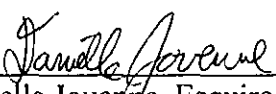
33. Therefore, the Complaint of Lisa Morykan is legally insufficient because it fails to state a claim upon which the Commission can grant relief. See 52 Pa. Code § 5.101(a)(4); *Roc v. Flaherty*, supra. Furthermore, a hearing is not necessary and would not serve the public interest in this matter. See 66 Pa.C.S. §703(b).

IV. Conclusion

WHEREFORE, for the foregoing reasons, Metropolitan Edison Company respectfully requests that the Commission grant its Preliminary Objection and (i) dismiss the Formal Complaint in its entirety because the Complainant has not stated a claim for which relief may be granted and (ii) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: February 19, 2014



Danielle Jouenne, Esquire
Brian C. Wauhop, Esquire
Alan Michael Seltzer, Esquire
Buchanan Ingersoll & Rooney P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(215) 665-4016

Attorneys for
Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LISA MORYKAN

v.

METROPOLITAIN EDISON COMPANY

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Docket No. C-2014-2403154

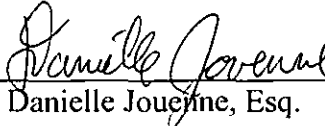
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail

Lisa Morykan
1624 Twin Pine Road
Stroudsburg, Pennsylvania 18360

Dated this 19th day of February, 2014.



Danielle Jouehne, Esq. / BW

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FEB 19 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU