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September 10, 2014

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

RE: Gilma Merkert v. PECO Energy Company
PUC Docket No.: F-2014-2413585

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Reply Exceptions* with regard to the matter referenced above.

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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long, sweeping underline.

Shawane Lee
Counsel for PECO Energy Company

cc: Gilma Merkert (via First Class Mail)
Susan D. Colwell, Adm. Law Judge (via First Class Mail)

sl/LO

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Gilma Merkert (“Complainant”) in the above-referenced matter on August 23, 2014. On March 19, 2014, Complainant filed a formal complaint against PECO Energy at docket number F-2014-2413585. In her formal complaint, Complainant claims that she owns a rental property located at 4814 North 5th Street, Philadelphia, PA. Complainant alleges that PECO Energy improperly held her responsible for a balance attributed to foreign wiring found at the property. The Complainant claims the ratepayer, Henry Washington, who disputed the foreign wiring, is not her tenant and has no lease agreement with her. The Complainant additionally states that her tenant, Todd Nesbitt, agreed to pay 90% of the electric bill because there is only a single meter at the property. Respondent, PECO Energy filed an Answer on April 16, 2014, 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).

On July 28, 2014, Administrative Law Judge Susan D. Colwell (“ALJ Colwell”) issued an Initial Decision in the matter of Gilma Merkert v. PECO Energy Company, F-2014-2413585 (“Initial Decision”). The Initial Decision dismissed Complainant’s formal complaint. ALJ Colwell’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 Colwell. The Complainant's own testimony supports the fact that PECO Energy properly found foreign wiring at the property and transferred the balance. The Complainant admitted during her testimony that she owned the rental property at issue and had tenant, Todd Nesbitt, living at the premises. Tr. 7. The Complainant admitted that there is a basement at the property that is used as a studio/efficiency apartment. Tr. 51-55. The basement studio/efficiency contains electric appliances and lighting. Tr. 55. The Complainant admitted that Mr. Nesbitt does not rent the basement studio/efficiency. Tr. 9. However, she permits a man named Luis DeArmas to use the basement studio/efficiency to keep his things. At the time PECO Energy went to the property to investigate foreign wiring, there was someone (not tenant Todd Nesbitt) sleeping in the studio. Tr. 56. This is a classic case of foreign wiring.

The Complainant disputes the fact that Todd Nesbitt's father (Henry Washington) had the utility service in his name and he has no lease agreement with her. Irrespective of who has the lease agreement or the name of the ratepayer on the account, the tenant had electric service for the premises and was paying for the basement studio/efficiency to which he had no access and was not renting. This is foreign wiring. The Complainant testified that she had an agreement with Todd Nesbitt that he would pay 90% of the electric bill because the property had a single meter. However, as ALJ Colwell correctly determined, the law does not permit a landlord and tenant to agree to foreign wiring. See 1-A Realty v. PPL Electric Utilities Corp., Docket Nos. F-2010-2166554 and F-2010-2166976 (Order entered April 12, 2012).

In the Complainant's Exceptions she argues that her tenant, Todd Nesbitt, agreed to pay for the electric despite the foreign wiring condition. Specifically, in her exceptions the Complainant states:

The Judge should know that is not separate unit. It was the house-except for the basement. Todd Nesbitt was aware that he only rented all the upper level – if you have the chance to see the lease it says what he was renting. He was aware of only one meter for the whole house. However, he agreed to pay 90% of the electric and 95% of the water. You can see that on the lease.

The Complainant's exceptions state that she should not be responsible for the balance attributable to the foreign wiring because her tenant agreed to pay for the portion of the utilities, including the foreign load. Consistent with 1-A Realty v. PPL Electric Utilities Corp., Docket Nos. F-2010-2166554 and F-2010-2166976 (Order entered April 12, 2012), at 20, the Commission determined that a tenant could not waive rights pertaining to foreign load charges, and that there is no exception to the requirements of Section 1529.1 based on private agreements between landlords and tenants. Id. The Commonwealth Court affirmed the Commission's decision and concluded that tenants are not permitted to accept utility service which is not exclusive to their homes. 1-A Realty, supra, 63 A.3d at 484.

As stated in 1-A Realty, the landlord shall be responsible for payment for the utility services rendered to the rental property when in a foreign load is found and tenants are not permitted to consent to having foreign load charges attributed to them. More recently, the Commission reached the same result in the matter George W. Kopf Jr. v. PECO Energy Company, Docket No. C-2012-2332993 (Order entered, June 13, 2013). In that case, Mr. Kopf argued that his tenant, by her lease agreement, agreed to pay for all utilities to the common areas. Administrative Law Judge David Salapa granted PECO Energy's Preliminary Objection and dismissed Mr. Kopf's formal complaint in a well-reasoned opinion wherein he determined that the tenant's "lease does not supersede and has no effect on the Respondent's obligation to comply with Section 1529.1 of the Code." Id. at 9.

In the case at bar, PECO Energy properly transferred the utility account of the tenant's father, Henry Washington, including arrearages, to the Complainant's name. PECO Energy's actions are consistent with Pennsylvania law. 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 ALJ Colwell 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 Colwell correctly decided:

While this may seem harsh, the intent of the statute is to prevent landlords from taking unfair advantage of tenants by placing responsibility on the tenant for payment of electricity used in areas other than those specific to the lease. The statute shifts the duty to pay for the meter which registers the public area usage to the landlord, and it does not shift responsibility for electricity already used back to the tenant even when the meter account is placed in the tenant's name. Any arrearage would include the usage for the basement unit, and thus, responsibility for it remains with the landlord. This represents a policy decision reached by the legislature and memorialized and enforced through the Public Utility Code. Accordingly, the statute requires that arrearage from the tenant's account prior to the transfer to the Complainant's account must remain with the Complainant.

Gilma Merkert v. PECO Energy Company, F-2014-2413585 (Order entered, 7/28/14).

Through her exceptions, the Complainant cannot attempt to raise what is essentially a landlord tenant dispute, regarding the foreign wiring balance that should be attributable to her as opposed to the amount attributable to her tenant pursuant to a lease agreement between the parties. That is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction. ALJ Colwell correctly concluded that the Complainant's case should be dismissed because PECO Energy acted according to the law by transferring the arrearages and account to the Complainant. Accordingly, ALJ Colwell'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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