



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

CHARLES E. THOMAS, III
Direct Dial: 717-255-7611
cet3@tntlawfirm.com

September 17, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Cheryl Zack v. Service Electric Telephone, LLC
Docket No. C-2013-2388009

Dear Secretary Chiavetta:

Enclosed for electronic filing are the Replies of Service Electric Telephone, LLC to the Exceptions of Complainant Cheryl Zack in the above-referenced matter. Copies of the Replies are being served in accordance with the attached certificate of service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Charles E. Thomas, III

Encl.

cc: Certificate of Service (w/encl.)
Craig Brady (w/encl.)

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cheryl Zack

v.

Service Electric Telephone, LLC

:
:
:
:
:

Docket No. C-2013-2388009

**REPLIES OF SERVICE ELECTRIC TELEPHONE, LLC
TO EXCEPTIONS OF COMPLAINANT CHERYL ZACK**

AND NOW, comes Service Electric Telephone, LLC (“SET”), by its attorney, and, pursuant to 52 Pa. Code § 5.535, files these Replies to the Exceptions of Complainant Cheryl Zack (“Complainant”) to the Initial Decision Granting Motion for Summary Judgment of Administrative Law Judge David A. Salapa in the above-captioned complaint matter. In support, SET avers as follows:

I. INTRODUCTION

1. This proceeding concerns a Formal Complaint filed with the Pennsylvania Public Utility Commission (“Commission”) on October 11, 2013 by Complainant against SET, alleging various issues with Complainant’s telephone and cable television services.

2. On June 12, 2014, SET filed a Motion for Summary Judgment requesting that the complaint be summarily dismissed.

3. By Initial Decision dated August 7, 2014, and issued pursuant to Secretarial Letter dated August 15, 2014, Judge Salapa granted SET’s motion for summary judgment, concluding that Complainant failed to allege that SET provided unreasonable service or violated the Public Utility Code or Commission regulations and that no genuine issue of material fact existed for a hearing on the complaint. *See* I.D. at 8 (Conclusions of Law Nos. 2 & 3).

4. On September 8, 2014, Complainant filed Exceptions to the Initial Decision. By Secretarial Letter dated September 8, 2014, the Commission extended the deadline for SET to file Reply Exceptions until September 17, 2014.

5. SET now files these Replies in opposition to Complainant's Exceptions and submits that such Exceptions should be denied.

II. REPLIES TO EXCEPTIONS

6. Complainant has filed a three page letter deemed to be Exceptions, the substance of which is that SET did, in fact, provide service to Complainant. Exceptions at 1. Complainant also makes vague claims about SET providing "poor utility service, customer practices and relations" and failing to "provide any useful or satisfactory solutions." Exceptions at 2 and 3. Complainant also requests compensation for "phenomenally unnecessary stress, harassment, definitely senior abuse, and fraud, abuse of a senior citizen's finances (and home) and just all over poor utility service, customer practices and relations." Exceptions at 2-3.

7. As a preliminary matter, the purported Exceptions fail to observe the requirements of 52 Pa. Code § 5.533, including the failure to identify the finding of fact or conclusion of law from which exception is taken. Rather than address the Initial Decision, Complainant merely restates arguments she asserted at the telephone prehearing conference and in her pleadings.

8. Notwithstanding the failure to comply with the directives of 52 Pa. Code § 5.333, Complainant's Exceptions are unreasonable, without merit, and should be dismissed. Complainant's Exceptions present no sufficient reason for granting Complainant any relief whatsoever or overturning the presiding officer's well-reasoned Initial Decision. Moreover, the Exceptions are neither supported by fact or law and, therefore, should be denied.

9. Despite her contentions, Complainant (nor her mother) has never been a customer

of record of SET, and she certainly was not an SET customer when the alleged unreasonable telephone service occurred. I.D. at 5 (Finding of Fact No. 9). The documentation offered in this proceeding by Complainant fails to demonstrate that SET ever provided service to Complainant. Significantly, the bills Complainant references on page 1 of her Exceptions were not bills issued by SET. Rather, those bills identified Service Electric Cable TV & Communications (“Service Cable”) as the company from which Complainant took service and with which she was having the alleged service issues. I.D. at 7; *see also* SET Motion for Summary Judgment, Exhibit B. No other information was provided by Complainant disputing this fact, despite having full and fair opportunity to do so. I.D. at 7. SET, however, is not affiliated with Service Cable in any way, as the companies are separate and distinct entities under completely different ownership and control. I.D. at 5 (Finding of Fact No. 10).

10. Consequently, the Initial Decision correctly concluded:

[T]he un rebutted fact is that [SET] did not provide telephone service to the Complainant or her mother during the time period when the alleged unreasonable service occurred. Therefore, the Complainant’s complaint fails to allege that [SET] provided unreasonable service or violated any statute, regulation or order with regard to the Complaint.

The Complainant’s complaint fails to allege that [SET] has provided unreasonable service or violated the Public Utility Code or Commission regulations. Since no factual issue exists, a hearing on the complaint is unnecessary. I will grant [SET’s] motion for summary judgment and dismiss the Complainant’s complaint.

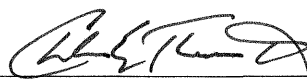
I.D. at 8.

11. Complainant’s Exceptions simply present no substantive challenge to the un rebutted facts of record and offer nothing to suggest a factual issue exists. As such, it was proper for Judge Salapa to grant summary judgment in favor of SET, and the Initial Decision should be adopted in its entirety by this Commission.

12. Finally, with respect to Complainant's request for compensation, it is well established that the Commission is without authority to award compensation or damages. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977); *see also David and Nancy Horowitz v. PECO Energy Company*, Docket No. C-2013-2382740, Initial Decision dated December 30, 2013, *adopted by* Final Order entered February 6, 2014. The Commission is a creation of the General Assembly and only possesses the power and authority that the legislature has specifically granted to it in the Public Utility Code. Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold, supra*. Nothing in the Public Utility Code grants the Commission the power to award damages, particularly the compensation sought by Complainant in this case. *Id.* at 974; *Horowitz, supra*. Accordingly, Complainant's Exceptions in this regard must be denied.

WHEREFORE, for the foregoing reasons, Service Electric Telephone, LLC respectfully requests that Exceptions of Complainant Cheryl Zack should be denied and the Pennsylvania Public Utility Commission should adopt the Initial Decision Granting Motion for Summary Judgment of Administrative Law Judge David A. Salapa.

Respectfully submitted,



Charles E. Thomas, III, Esq. (PA ID # 201014)
THOMAS, NIESEN & THOMAS, LLC
212 Locust Street, Suite 600
P.O. Box 9500
Harrisburg, PA 17108-9500
Tel: 717-255-7611
cet3@tntlawfirm.com

Attorney for Service Electric Telephone, LLC

DATED: September 17, 2014

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Cheryl Zack

v.

Service Electric Telephone, LLC

:
:
:
:
:

Docket No. C-2013-2388009


CERTIFICATE OF SERVICE

I hereby certify that I have this 17th day of September, 2014, served a true and correct copy of the foregoing Replies of Service Electric Telephone, LLC to Exceptions of Complainant Cheryl Zack, upon the persons and in the manner set forth below:

FIRST CLASS MAIL, POSTAGE PREPAID

Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Cheryl L. Zack
825 W. Tilghman Street
Allentown, PA 18102



Charles E. Thomas, III (PA ID # 201014)