



An Exelon Company

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May 27, 2015

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

RE: Benjamin Israel/I&B Real Estate v. PECO Energy Company
PUC Docket No.: F-2014-2458827

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's 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: Certificate of Service
Benjamin Israel/I&B Real Estate

SL/ab

REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Benjamin Israel/I & B Real Estate (“Complainant”) in the above-referenced matter on April 29, 2015. The Pennsylvania Public Utility Commission (“PUC”) served PECO with the Exceptions on May 26, 2015.

On December 13, 2014, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that he is the owner of a property located at 3140 North Broad Street, Philadelphia. The Complainant alleged that his tenant had contacted PECO regarding suspected foreign wiring. Once PECO found the foreign wiring condition, the Complainant alleges that he corrected it immediately and; therefore, he should be responsible for approximately \$50.00 attributable to the amount of electric used rather than his tenant’s entire balance. Respondent, PECO filed an Answer and Preliminary Objection on January 8, 2015, stating that PECO found foreign wiring at the Complainant’s rental property and transferred the tenant’s balance on the account at the time the foreign wiring was found pursuant to 66 Pa.C.S. § 1529.1. Complainant did not respond to PECO’s Preliminary Objection.

On April 2, 2015, Administrative Law Judge Marta Guhl (“ALJ Guhl”) issued an Initial Decision. The Initial Decision sustained PECO’s Preliminary Objections and dismissed Complainant’s formal complaint for failure to state a claim upon which relief can be granted. In her Initial Decision, ALJ Guhl held inter alia:

After the property owner corrects the foreign wiring and the correction work is verified by the utility, the utility must transfer the account back to the name of the tenant. However, the property owner remains responsible for any arrearage on the tenant's account. *Kopf v. PECO Energy Company*, Docket No. C-2012-2332993 (Order entered June 13, 2013) (*Kopf*); *Ace Check*. The rule applies even if the amount of usage attributable to foreign wiring is minimal. *Kopf*; *Ace Check*. Consequently, Complainant is

responsible for the tenant's account balance, including arrearages incurred at these premises but not at any other location, as of the date of discovery of the foreign load plus usage until such time as the foreign load was removed and the removal verified by the utility.

See Benjamin Israel/I & B Real Estate v. PECO Energy Company, F-2014-2458827, (Order entered, April 2, 2015).

In his Exceptions, Complainant states:

I wish to appeal on the grounds that PECO is charging my company (\$3,302.86) for charges that were the responsibility of the tenant, we never used this energy. PECO cannot charge us Electric consumption we never use.....If the total electric consumption for the common area (according to PECO bills) in the building, after the correction, is not more than an average of \$48.80 per month from April 2014 (after the correction) to present, then how can we be liable for such a large utility charge, that is the tenants responsibility and not ours.

As detailed in the Initial Decision, the complaint does not set forth that PECO 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 is required to transfer the service and the balance into the property owner's name until the condition is corrected.

The Complainant argues that he should be held responsible for only a *de minimis* amount of electric service attributable to the foreign wiring rather than the Complainant's balance found on the account at the time the foreign wiring condition was discovered. The Complainant's argument has been rejected by the Pennsylvania Public Utility Commission in clear precedent on this issue. As ALJ Guhl stated in her Initial Decision:

As to Complainant's position that the statute should not apply because the cost of electric service for the foreign load was *de minimus*, this position must be rejected. As a matter of law, there is no *de minimis* exception to 66 Pa.C.S. § 1529.1. *Joseph L. Ward v. PPL Utilities, Inc., Complaint Appellant*, Docket Number C-00992784, (Opinion and Order entered September 1, 2000). See also, *Randall Tasker v. PP&L, Inc., Complaint Appellant*, Docket

Number C-00003249, (Order entered August 29, 2000), *Edmund V. Corazzini v. UGI Penn Natural Gas, Inc.*, Docket Number F-2009-2101282, (Opinion and Order entered July 16, 2010) (*Corazzini*).

ALJ Guhl's Initial Decision is well-reasoned with ample support. Complainant's Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misstatement of facts or misapplication of the law. Complainant does not provide any argument regarding why the Initial Decision was incorrect or improper. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and does not challenge established law on this issue.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO's Preliminary Objections with a Notice to Plead and was given an opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d. 502, 175 Pa.Super. 114. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993).

Here, as noted by ALJ Guhl in the Initial Decision, it is clear from the pleadings that PECO has not violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff. As ALJ Guhl correctly concluded:

Here, the Respondent has not violated any statute, regulation or order which the Commission has jurisdiction to administer by transferring the account for the property at 3140 North Broad Street from the tenant to the Complainant, who is the property owner. Rather, the Respondent is complying with relevant statutes, regulations and orders.

Through his exceptions, the Complainant cannot attempt to revise current statutes and case law on the issue of 66 Pa.C.S. § 1529.1. Through his exceptions, the Complainant cannot attempt to raise what is essentially a landlord tenant dispute regarding the foreign wiring balance that should be attributable to him as opposed to the amount attributable to his tenant. That is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction.

ALJ Guhl's Initial Decision correctly applied the standard for resolving preliminary objections and assumed for decisional purposes that the factual allegations of the Complaint are true. None of the facts asserted in Complainant's formal complaint states a case against PECO Energy and as a matter of law. As such, it was proper and appropriate to dismiss the Complaint based on PECO Energy's preliminary objections without holding a hearing. Accordingly, ALJ Guhl's Initial Decision 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**

BENJAMIN ISRAEL/I & B REAL	:	
ESTATE	:	
	:	
COMPLAINANT	:	
	:	Docket No. F-2014-2458827
v.	:	
	:	
PECO ENERGY COMPANY,	:	
	:	
RESPONDENT	:	

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).

**Benjamin Israel/I & B Real Estate
PO Box 37
Fort Washington, PA 19034**

Dated at Philadelphia, Pennsylvania, May 27, 2015



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