**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelli Seliga :

:

v. : C-2015-2471759

:

West Penn Power Company :

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS**

**AND DISMISSING COMPLAINT**

Before

David A. Salapa

Administrative Law Judge

INTRODUCTION

A customer filed a complaint against her electric utility alleging that the utility transferred the account for the residence she leases to the property owner after the utility discovered foreign wiring. The customer requests that the Commission direct the utility to bill the property owner for all of the Complainant’s electrical usage during the period of alleged shared metering. This decision dismisses the complaint because the utility complied with relevant Commission statutes, regulations and orders when it transferred the customer’s account to the property owner and because the Commission lacks the authority to adjudicate the dispute between the customer and the property owner.

HISTORY OF THE PROCEEDING

On February 24, 2015, Kelli Seliga (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent). The complaint concerns a property at 140 Gressly Road, Ruffs Dale, Pennsylvania (service address), which was leased by the Complainant.

At paragraph 4 of the Commission’s formal complaint form, the Complainant has marked the boxes stating “incorrect charges are on my bill” and “Other (explain).”

At paragraph 5 of the Commission’s formal complaint form, the Complainant states that for the period of November 2013 through January 2015 she paid for electric service at the service address. Complainant alleges she discovered that she was paying for electric service for other areas of the building in addition to the portion in which her apartment is located. Specifically, the Complainant alleges she was also paying for electricity used by the downstairs apartment and the area encompassing the landlord’s business.

When the Complainant realized that she was paying for electricity used by other portions of the building, she reported it to Respondent. Respondent allegedly confirmed the Complainant’s report of shared metering at the Service Address and informed her that the unpaid portion of her account as of the date it discovered the shared metering would be transferred to an account in her landlord’s name. Complainant requests that the Commission order the Respondent to bill her landlord for the electric usage billed to her account between November 2013 and January 2015. The Complainant also expresses concern that the landlord may be engaging in shared metering with other tenants without their knowledge.

On April 2, 2015, the Respondent filed an answer with new matter and preliminary objections. The answer admits that the Respondent provided service to the Complainant at the Service Address. The answer denies that there are any incorrect charges on the Complainant’s bill. The answer denies that the Complainant has a reliability, safety or quality problem with her utility service.

The answer states that from November 2013 to January 2015 the Complainant made approximately six (6) payments totaling $603.12 for electric service provided by Respondent to the Complainant at the Service Address. Respondent admits that Complainant contacted Respondent on December 3, 2014 to report her belief that shared metering existed at the Service Address.

Respondent asserts that at all times it properly advised the Complainant that when shared metering is discovered at a location, Respondent must create a utility account in the owner’s name and transfer any open balances from the affected tenant’s account to the owner’s account pursuant to the Public Utility Code. 66 Pa.C.S. § 1529.1 (Act 54). Respondent further claims that it complied with Act 54 on February 6, 2015, when, after discovering that shared metering existed at the Service Address, it transferred the then-existing balance of $153.91 on the Complainant’s account to a separate account created in the name of the owner of the Service Address.

The new matter reiterates the relief sought by the Complainant, and states that the Respondent is only required to transfer any arrearages on the account to the Complainant’s landlord under Act 54. The new matter also asserts any dispute between the Complainant and her landlord over who is responsible for the amounts paid by the Complainant for the period from November 2013 through January 2015 is outside the Commissions jurisdiction.

Furthermore, Respondent alleges that even accepting as true all allegations in the formal complaint, Complainant has failed to demonstrate that Respondent has violated any law that the Commission has jurisdiction to administer, or of any regulation or order of the Commission. Therefore, Respondent states that the formal complaint is legally insufficient in that it fails to state a claim upon which the Commission can grant relief. The answer and new matter requests that the formal complaint be dismissed with prejudice, and that the Commission grant Respondent such other relief as is just and reasonable under the circumstances.

The preliminary objections contend that the complaint is legally insufficient, pursuant to 52 Pa.Code § 5.101(a)(4). The preliminary objections reiterate the assertions in the answer and new matter regarding the foreign wiring at the Complainant’s residence. The preliminary objections contend that the Respondent properly transferred the account for Complainant’s residence to the Complainant’s landlord and that its conduct is consistent with the Public Utility Code and Commission orders.

The preliminary objections contend that the complaint fails to state a claim that the Respondent has violated a provision of the Public Utility Code, Commission regulation, or Commission order. Therefore, the complaint has failed to state a claim upon which relief can be granted. The preliminary objections request that the Commission dismiss the complaint.

By notice dated April 27, 2015, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainant has not filed an answer to the preliminary objections. The preliminary objections are ready for decision. For the reasons set forth below, I will sustain the preliminary objections and dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Kelli Seliga.

2. The Respondent in this case is West Penn Power Company.

3. On February 24, 2015, the Complainant filed a complaint with the Commission against the Respondent.

4. The Respondent filed an answer with new matter to the complaint on April 2, 2015.

5. On April 2, 2015, the Respondent filed preliminary objections.

6. The Complainant did not file an answer to the Respondent’s preliminary objections.

DISCUSSION

The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. 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.

Here, the Respondent’s preliminary objections assert that the complaint is legally insufficient pursuant to 52 Pa.Code § 5.101(a)(4), in that the complaint fails to allege that the Respondent violated the Public Utility Code, Commission regulations or orders or its tariff provisions. I agree.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C‑00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment 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 follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. County of Allegheny v. Commonwealth of Pennsylvania, 490 A. 2d 402 (Pa. 1985); Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission regulation at 52 Pa.Code § 5.21(a) states that a person may file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa.Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary and authorizes preliminary objections to be filed in response to a complaint.

The regulation at 52 Pa.Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa.Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n, 563 A.2d 557 (Pa. Cmwlth. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm’n, 563 A.2d 548 (Pa. Cmwlth. 1989); S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm’n, 540 A.2d 1006 (Pa. Cmwlth. 1988); White Oak Borough Authority v. Pa. Pub. Util. Comm’n, 103 A.2d 502 (Pa. Super. 1954).

Viewing the complaint in this case in the light most favorable to the Complainant, the Complainant notified the Respondent that she suspected foreign wiring at the service address. The Respondent investigated, and discovered foreign wiring at the service address. The Respondent transferred the account for the service address, including any unpaid balance existing at the time it discovered the foreign wiring, to the property owner. The property owner is responsible for paying the unpaid balance and electric bill for the service address until the property owner corrects the foreign wiring.

Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objection, the Respondent contends that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent concludes that the complaint is legally insufficient. I agree.

In order to be legally sufficient, a complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa.Code § 5.22(a)(4). 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 140 Gressly Road, Ruffs Dale, Pennsylvania from the Complainant to her landlord. Rather the Respondent is complying with relevant statutes, regulations and orders.

This complaint involves foreign wiring. Foreign wiring refers to a situation where a ratepayer’s, in this case the Complainant’s, meter registers usage for utility service provided to a person or persons other than the ratepayer.

In 1993, the General Assembly amended the Public Utility Code to include 66 Pa.C.S. § 1529.1 in order to address foreign wiring issues. Prior to 1993, the Commission resolved foreign wiring high bill complaints by directing the utility company to remove the charges attributable to the foreign wiring from the customer’s bill and to issue a bill for the foreign wiring in the property owner’s name. The statute at 66 Pa.C.S. § 1529.1 places the burden of dealing with a foreign wiring problem onto the property owner and not on the tenant. The policy behind the change is that the owner is in a better position to know about the existence of the foreign wiring than a tenant. This section states:

§ 1529.1. Duty of owners of rental property

1. *notice to public utility.--* It is the duty of every owner of a residential building or mobile home park, which contains one or more dwelling units, **not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.**
2. *history of account.--* Upon receipt of the notice provided in this section, if the mobile home park or 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. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the** **payment for utility services to the premises.**
3. *failure to give notice.--* **Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.**

(Emphasis added)

The phrase “not individually metered” as used in the statute means that the meter for the unit is registering foreign wiring. Shank v. PPL Electric Utilities Corporation, Docket No. C-2009-2087300 (Order entered August 31, 2009). The Commission has held that the presence of foreign wiring prevents a dwelling unit from being deemed “individually metered” as that term is used in 66 Pa.C.S. § 1529.1. Boyce v. Duquesne Light Company, Docket No. Z-00223698, (Order entered September 1, 1994) (Boyce); Santos v. Metropolitan Edison Company, Docket No. C-00967757, (Order entered August 7, 1997) (Santos).

Foreign wiring exists where a tenant has a meter, is a utility customer and utility service for another tenant or for the landlord is being billed through the tenant’s meter. Boyce. In other words, foreign wiring is utility service which is not related to serving a tenant, but for which the tenant is being billed. Santos. 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.C.S. § 1529.1(b); Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010) (Ace Check); 1-A Realty v. Pa. Pub. Util. Comm’n, 63 A.3d 480 (Pa. Cmwlth. 2013).

After the landlord 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 landlord 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.

Here, the complaint alleges that the Respondent transferred the account for the service address to an account in the Complainant’s landlord’s name when it discovered foreign wiring. When it transferred the account it transferred the outstanding account balance to the landlord as well. The Complainant’s landlord is responsible for the account balance, including arrearages, as of the date of discovery of the foreign wiring plus usage until the Complainant’s landlord removes the foreign wiring and the Respondent verifies the removal. Respondent has therefore complied with the requirements of 66 Pa.C.S. § 1529.

The Complainant contends that Respondent should also bill the landlord for all of electricity used by the Complainant from November 2013 through January 2015. The statute at 66 Pa.C.S. § 1529 does not authorize the Respondent to bill the landlord for past electric service where the Complainant has already paid for that service. Similarly, the statute does not authorize the Commission to order the Respondent to bill the landlord for past electric service where the Complainant has already paid for that service.

However, the Complainant may seek damages from the Complainant’s landlord through the courts for any amounts she paid for electric service other than her own usage at the service address. Enforcement of the lease or other agreement between the Complainant and her landlord is outside the Commission’s jurisdiction. Corazzini v. UGI Penn Natural Gas, Inc., Docket No. F-2009-2101282 (Order entered July 16, 2010).

The Complainant also appears to suggest that the landlord has, through shared metering, fraudulently benefitted from the reduced rate Complainant receives under the Respondent’s universal service program. The Respondent utility company and/or the universal service program administrator may, at their discretion, investigate the Complainant’s allegations and take appropriate action.

In prior decisions, the Commission has indicated that it disfavors granting motions dismissing complaints filed by pro se complainants. Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Order entered July 14, 1993) (Carlock); Brown v. PECO Energy Company, Docket No. C-2008-2055866 (Order entered May 29, 2009) (Brown); Richmond v. PECO Energy Company, Docket No. F-2010-2187305 (Order entered December 7, 2011) (Richmond). In Carlock, Brown, and Richmond, the Commission indicated that a complaint filed by a pro se complainant should not be dismissed until the complainant has the opportunity to orally explain his or her position at a hearing.

The complaints in Carlock, Brown, and Richmond did not raise the issue of the Commission’s lack of authority to adjudicate landlord-tenant disputes in foreign wiring cases where the utility has transferred the account for the property from the tenant to the landlord. However, in Lightsey v. PECO Energy Company, Docket No. F-2014-2412353 (Order entered June 13, 2014) (Lightsey), the Commission sustained preliminary objections and dismissed the complaint where the complaint requested that the Commission order the utility to transfer a foreign wiring account balance from the landlord back to the tenant after the landlord corrected the foreign wiring. The Commission held that it lacked the authority to issue such an order.

Since the complaint in this case raises similar issues to those raised in the complaint in Lightsey, I find the decision in Lightsey to be more persuasive than the decisions in Carlock, Brown, and Richmond. In these circumstances, giving the Complainant the opportunity to explain her position at a hearing would be a fruitless exercise.

Since the Complainant’s complaint does not set forth any violation of a Commission regulation, statute or order by the Respondent, it is legally insufficient. I will sustain the Respondent’s preliminary objection and enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. The Complainant’s complaint fails to state a claim upon which relief can be granted.

3. The Public Utility Code 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.C.S. § 1529.1(b).

4. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2015-2471759 be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by West Penn Power Company at Docket No. C-2015-2471759 are sustained.

2. That the complaint of Kelli Seliga at Docket No. C-2015-2471759 against West Penn Power Company is dismissed.

3. That the docket at Docket No. C-2015-2471759 is marked closed.

Date: May 14, 2015 /s/

David A. Salapa

Administrative Law Judge