

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawood Ghauri

v.

PECO Energy Company

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F-2015-2491526

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

HISTORY OF THE PROCEEDING

This Initial Decision dismisses a complaint filed by a landlord who seeks to be relieved of responsibility for payment of an arrearage on a tenant's account that had been transferred to his account after a shared meter condition was discovered.

On July 1, 2015, Dawood Ghauri (Mr. Ghauri or Complainant) filed a Formal Complaint against PECO Energy Company (PECO) alleging that PECO placed the unpaid electric bill of one of his tenants on his account following the discovery of shared metering with another unit in the building. The Complainant avers that someone tampered with the wiring in the building, resulting in the shared meter condition. Mr. Ghauri argues that the shared meter arrangement occurred through no fault or negligence of his own and that, accordingly, he should not be held responsible for the outstanding charges. He avers that he paid an electrician \$650.00 to correct the problem. The Formal Complaint is a timely appeal of a BCS informal decision issued on June 1, 2015, at BCS Case No. 3289757.

On July 28, 2015, PECO filed an Answer and Preliminary Objections. PECO admits in its answer that it provides residential electric service to 1519 Arrott Street, Philadelphia, PA 19124. PECO avers that it received a complaint of high electric bills on February 12, 2014 from the tenant in the first floor apartment. On February 27, 2014, PECO sent a technician to inspect the property and discovered the shared wiring condition whereby a second floor unit was connected to the breaker panel of the first floor unit. PECO notified the Complainant of the shared wiring by correspondence dated March 4, 2014. PECO admits that it established an account for the Complainant on February 27, 2014 for the electric service in the building, and that the first floor tenant's then outstanding balance of \$504.48 was transferred to the Complainant's new account on June 23, 2014. PECO admits that it was notified by the Complainant on June 13, 2014 that the shared wiring condition had been corrected. PECO verified this on July 23, 2014 and closed the Complainant's shared meter account effective June 23, 2014. PECO further admits that on August 15, 2014, it transferred the entire outstanding balance of \$1,056.73 from the Complainant's shared meter account to an active account held by him for service at 2397 Pine Road, Huntingdon Valley, PA 19006.

In its Preliminary Objections (POs), PECO argues that, pursuant to 66 Pa.Code §§1529.1(a) and (c), and Pennsylvania case law interpreting this provision, public utilities, upon discovering the existence of a foreign load condition, are required to list the account, including any arrearages, in the name of the landlord. PECO seeks dismissal of the Formal Complaint on the basis of legal insufficiency.

On August 13, 2015, the Complainant filed a response to PECO's POs. In his response, Mr. Ghauri notes that he does not reside at the 1519 Arrott Street property and that PECO did not inspect the property to check for a foreign wiring condition before opening an account for service to the property. He further notes that he did not receive the first floor tenant's electric bill, which may have enabled him to gauge excessive usage due to the shared meter condition, and that he was in no way negligent in this matter. Mr. Ghauri argues that responsibility for the arrearage should fall to PECO as a business risk of providing electric service.

By Motion Judge Assignment Notice dated August 18, 2015, the POs were assigned to me. They are now ripe for disposition.

FINDINGS OF FACT

1. Complainant is Dawood Ghauri. Formal Complaint, ¶1.
2. Respondent is PECO Energy Company. Formal Complaint, ¶2.
3. Complainant owns rental property at 1519 Arrott Street, Philadelphia, PA 19125. Formal Complaint, ¶1.
4. PECO provides residential electric distribution service to the Complainant's property at 1519 Arrott Street. Formal Complaint, ¶1.
5. The wiring at 1519 Arrott Street was altered by someone other than the Complainant such that the electric service to the second floor unit was connected to the breaker serving the first floor unit and billed to the first floor unit. Formal Complaint, ¶4.
6. Upon discovery of the shared meter condition, the account for electric service to the first floor unit, including the outstanding arrearage, was transferred to the Complainant. Formal Complaint, ¶4.
7. The Complainant paid an electrician \$650.00 to correct the shared meter condition. Formal Complaint, ¶4.
8. PECO is holding the Complainant responsible for payment of the arrearage that accrued from the first floor unit for the time that the shared wiring condition existed. Answer to Preliminary Objections, ¶6.

DISCUSSION

Complainant avers that the electricity usage in the second floor unit registered on the electric meter of the first floor unit. He argues that this condition occurred through no fault or negligence of his own and that, accordingly, he should not be held responsible for payment of the outstanding charges. He believes that PECO should be responsible for the arrearage as a business risk of providing electric service. PECO argues that the law requires it to place the account of the burdened tenant in the landlord's name when this type of shared meter situation is identified.

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa.PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003).

Commission regulations regarding preliminary objections are as follows:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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.

* * *

52 Pa. Code § 5.101(a).

Only the facts in the Complaint can be presumed to be true in order to determine whether recovery is possible. The issue here is whether the Complainant alleges a violation that the Commission may adjudicate and for which the Commission may provide a remedy. If so, then the POs will be denied. If not, the POs will be granted and the Complaint denied.

The POs state that, even if all of the facts of the Complaint are proven to be true, the remedy sought cannot be granted. I agree.

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996), 1996 Pa. Commw. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002), 2002 Pa. Commw. LEXIS 580. All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148.

Therefore, only the facts in the Complaint can be presumed to be true in order to determine whether recovery is possible. Complainant avers that there was foreign load on the first floor tenant's meter, and that the tenant's arrearage was transferred to the Complainant's account and not transferred back after the foreign load was corrected. He states that this condition occurred through no fault or negligence on his part.

The law regarding shared meters or foreign load is well settled: The express language of Section 1529.1 provides that the owner of a rental property is responsible for the payment of all utility services provided to the property when foreign wiring is discovered.¹

In interpreting this provision, the Commission has determined that well-established precedent “holds the property owner financially responsible for a tenant’s entire account, once foreign load is verified on the tenant’s service.” *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) at 6. *See also, Santos v. Metropolitan Edison Co.*, 1997 Pa. PUC LEXIS 184 at 21 (finding that, upon discovery of foreign load, the utility must switch the account into the name of the landlord and bill the landlord’s account for any unpaid billing on the account). The Commission’s foreign load policy was explained in detail in *Ace Check Cashing, supra*. Upon finding foreign load, the utility must list the account, including any arrearages, in the landlord’s name. The landlord is

¹ § 1529.1. **Duty of owners of rental property.**

(a) 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.

(b) 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.

(c) 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.

66 Pa.C.S. § 1529.1

responsible for paying the utility bills until the foreign load is corrected. After the foreign load is corrected by the landlord and verified by the utility, the utility is to place the account back into the tenant's name. *Id.* at 7. However, the landlord remains responsible for any arrearages on the tenant's account. *Id.* at 7-8.

Specifically, the Commission has held:

The phrase "not individually metered" is defined as "the utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or occupant. *Del Vecchio v. PPL Elec. Util. Corp.*, Docket No. Z-01464793 (Pa. PUC 2005); see also *Cosme v. PECO Energy Co.*, Docket No. C-2010-2171497 (Pa. PUC 2012).

A-1 Realty v. Pa. Pub. Util. Comm'n, Docket No. 63 A.3d 480, (Pa. Cmwlth. 2013), 2013 Pa. Commw. LEXIS 4, appeal denied 74 A.3d 1033 (Pa. 2013), 2013 Pa. LEXIS 1985.

In the seminal case of *A-1 Realty v. Pa. Publ. Util. Comm'n*, Docket No. 885 C.D. 2012 (January 4, 2013), 2013 Pa. Commw. LEXIS 4, ("*A-1 Realty*"), the Commonwealth Court affirmed the PUC's order adopting an Initial Decision which dismissed a complaint for a similar issue. In *A-1 Realty*, lots for the placement of mobile homes were leased by the owner of the park, and wiring for communal street lighting was connected to the nearest lot's electric box, at an estimated cost of \$6.54 to \$9.67 per box per month. The lot owner gave tenants to whose property the street lights were wired a \$10.00 monthly rental discount to compensate them for the additional electric expense. When two lot lessors contacted the electric distribution company (EDC) to determine whether the \$10 would be sufficient to cover a month's lighting, the EDC investigated, discovered the foreign load, and transferred the lot lessors' electric bills into the name of the lots' owner. The foreign load was corrected, but the EDC refused to return the arrearage to the tenants' accounts. The lot owner filed a complaint with the PUC, which found that the EDC's actions were consistent with the law.

On appeal, the Commonwealth Court found that the Public Utility Code does not permit a utility customer to circumvent the wording of the statute by agreement. The Court stated:

[I]f the mobile home park . . . 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.

66 Pa.C.S. § 1529.1(b) (emphasis added by the Court).

The phrase "not individually metered" is defined as "the utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants." *Del Vecchio v. PPL Elec. Util. Corp.*, Docket No. Z-01464793 (Pa.PUC 2005); *see also Cosme v. PECO Energy Co.*, Docket No. C-2010-2171497 (Pa. PUC 2012); *Albright v. UGI Penn Natural Gas Co., Inc.*, Docket No. F-2009-2139408 (Pa.PUC 2012).

Based upon the above conclusion, we must review Section 1529.1(b) of the Code to determine whether it permits tenants to accept utility service which is not exclusive to their homes. Section 1529.1(b) of the Code specifically states: "if the mobile home park . . . 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 . . .**" (Emphasis added). It is well established that "shall" is mandatory for purposes of statutory construction when a statute is unambiguous." *Dep't of Transp. v. McCafferty*, 563 Pa. 146, 163, 758 A.2d 1155, 1164 (2000). Thus, tenants are not permitted to accept utility service which is not exclusive to their homes.

A-1 Realty at 6.

Just as the PUC properly determined that the utility was obligated under the Code to list the lot lessors' accounts in the lot owner's name in *A-1 Realty*, the Respondent here was also obligated to list the account in the Complainant's name as soon as the foreign load was identified. The Respondent's action was required by statute.

In *A-1 Realty*, as in the present case, the Complainant sought to have the arrearage transferred back to the tenants following correction of the foreign load. There is no provision in the law to support a transfer back of the arrearage.

While this conclusion may seem harsh, the intent of the statute is to prevent landlords from taking unfair advantage of tenants by placing responsibility for payment of electricity used in areas not specific to the leased premises upon that tenant. The statute shifts the duty to pay for the meter that registers the foreign 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 back in the tenant's name. Any arrearage would include the foreign usage and, accordingly, 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 the arrearage from the tenant's account prior to the transfer to the Complainant's account must remain with the Complainant.

While recovery of amounts in dispute may be pursued in another forum, they cannot be granted by the Commission.

The actions of the Respondent were legally sound. Accordingly, the Complainant has failed to state a claim upon which relief can be granted, and therefore, the Preliminary Objections are granted and the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this case. 66 Pa.C.S. § 1529.1.
2. Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa.PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994).
3. When considering preliminary objections, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003).
4. Legal insufficiency of a pleading is a proper basis for a preliminary objection. 52 Pa. Code § 5.101(a)(4).
5. In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complaint, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa.Comm. LEXIS 849; *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa.Cmwlth. 1996), 1996 Pa.Comm. LEXIS 11. Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002), 2002 Pa.Comm. LEXIS 580.
6. All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically

admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997) 1997 Pa.Comm. LEXIS 148.

7. 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. 66 Pa.C.S. § 1529.1(b) (emphasis added by the Court).

8. The phrase "not individually metered" is defined as "the utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants." *A-1 Realty v. Pa. Publ. Util. Comm'n*, Docket No. 885 C.D. 2012 (January 4, 2013), 2013 Pa. Comm. LEXIS 4, citing *Del Vecchio v. PPL Elec. Util. Corp.*, Docket No. Z-01464793 (Pa.PUC 2005); *see also Cosme v. PECO Energy Co.*, Docket No. C-2010-2171497 (Pa.PUC 2012); *Albright v. UGI Penn Natural Gas Co., Inc.*, Docket No. F-2009-2139408 (Pa.PUC 2012).

9. It is well established that "shall" is mandatory for purposes of statutory construction when a statute is unambiguous." *Dep't of Transp. v. McCafferty*, 563 Pa. 146, 163, 758 A.2d 1155, 1164 (2000).

10. There is no provision in the law to support a transfer back of the arrearage.

11. The Complaint failed to state a claim upon which relief can be granted.

