

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@outlook.com

February 10, 2016

RECEIVED

Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, Pa. 17105-3265

FEB 10 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: C-2015-2477321, 7512 BRENTWOOD ROAD PHILA PA. 19151
ELECTRIC
C-2015-2477331 104 WOODED LANE VILLANOVA PA. 19085
ELECTRIC
C-2015-2487879 104 WOODED LANE VILLANOVA PA. 19085
GAS

Dear Rosemary Chiavetta

Please find David Hatchigian response to the above three (3)

complaints. Any questions please call or e/m.

Respectfully submitted,


David Hatchigian

Enclosures (3)

Forward U.S.P.S. 3817

CC: Shawane Lee Counsel for PECO
Legal Department
2301 Market Street / 523-1
P. O. Box 8609
Philadelphia Pa. 19101-8699

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Hatchigian

v.

P.E.C.O. Energy Company

**Before
Cynthia Williams Fordham
Administrative Law Judge
C-2015-2477331
C-2015-2487879**

IT IS HEREBY ORDERED THAT the order of the Public Service Commission is reversed
and the record is remitted to the Commission for the Commission's reconsideration of the issues.

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SECRETARY'S BUREAU

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I. COMPLAINANT HAS STANDING TO APPEAL BASED ON A PERSONAL STAKE THAT IS SUBSTANTIAL, IMMEDIATE AND PECUNIARY.

"In simple terms, "standing to sue" is a legal concept assuring that the interest of the party who is suing is really and concretely at stake to a degree where he or she can properly bring an action before the court." In re Milton Hershey School, 867 A.2d 674, 683 (Pa. Commw. Ct. 2005), reversed on other grounds, 911 A.2d 1258 (Pa. 2006) (citing Baker v. Carr, 369 U.S. 186 (1962)(stating that the "gist" of standing is whether the party suing alleged such a "personal stake in the outcome of the controversy"). The usual standard for determining whether a party is the proper party to complain about agency action has been often articulated: In order to be aggrieved, a party must have a substantial interest in the subject matter of the litigation, the interest must be direct, and the interest must be immediate. William Penn Parking Garage, Inc., *supr*, 464 Pa. at 192, 346 A.2d at 280. The substantial interest requirement means that "there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." *Id.* at 195, 346 A.2d at 282. A direct interest "means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains." *Id.* Finally, the interest must "be 'immediate'

and 'not a remote consequence of the judgment.'" Id. at 197, 346 A.2d at 283 (quoting *Keystone Raceway Corp. v. State Harness Racing Commission*, 405 Pa. 1, 7-8, 173 A.2d 97, 100 (1961)).

A party is aggrieved when he or she is adversely, directly, immediately and substantially affected by a decision. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *ACS Enterprises, Inc. v. Norristown Borough Zoning Hearing Board*, 659 A.2d 651 (Pa.Cmwlth. 1995), appeal denied, 542 Pa. 674, 668 A.2d 1136 (1995). Section 908(3) of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. § 10908(3), provides that "[t]he parties to the hearing shall be ... any person affected by the application who has made timely appearance of record before the board."

Complaint #C-2015-2477331 relates to relocation of the electric service at 104 Wooded Lane, Villanova, PA to a chimney. Complaint #C-2015-2487879 concerns gas service at the same property. The owner and customer of record at 104 Wooded Lane, Villanova, PA is Kate King. Pursuant to Pa. R.A.P. 501, only a party "who is aggrieved by an appealable order ... may appeal therefrom." A party is aggrieved when he "is adversely, directly, immediately and substantially affected by a decision." *Sparacino v. Zoning Bd. of Adjustment, City of Phila.*, 728 A.2d 445, 448 (Pa.Cmwlth.1999) (emphasis added). "The core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge." *Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 554 Pa. 249, 256, 721 A.2d 43, 46 n. 6 (1998). See also *William Penn Parking, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975).

Here, it is well established that an adjoining property owner, who testified at the hearing before the zoning board in opposition to the zoning application, has sufficient interests in the adjudication and therefore has standing to appeal the Board's decision to the trial court. Aquaro

v. Zoning Board of Adjustment of City of Philadelphia, 673 A.2d 1055 (Pa.Cmwlt.1996). In this matter, the Sparacinos are the adjoining property owners and reported the Gillespies' construction of the shed to the Department. Later, the Sparacinos appeared at the Board's December 17, 1997 hearing and testified in opposition to the Gillespies' application for a variance. Frank Sparacino thus established on the record that he was a party in the Board's proceeding and was therefore aggrieved by the Board's decision granting the Gillespies a variance. Hence, the trial court erred in quashing Frank Sparacino's appeal for lack of standing.

Contrary to ALJ Fordham's framing of the issue as one of King's exclusive right to bring each claim, Complainant Hatchigian has a unique, personal and contractual stake in the feasibility and overall cost of property owner King's electrical improvement and thus need not directly counter Ms. Lee's definition of "customer" under 66 Pa.C.S. § 1403 (See Order, p. 7, citing William Penn Parking v City of Pittsburgh, 346 A.2d 269 (1975)) to address PECO's underlying contention that "the Complainant has no direct, immediate and substantial interest in the proceeding." is not supported by the relevant facts or by the Commission's recent decisions. For example, in Waddington v. Pennsylvania Public Utility Com'n, 670 A.2d 199 (Pa. Cmwlt., 1995)(Cited at p. 8 of the Order), the Commission held that the record established "that Blue & White had a direct economic interest in the service provided by Waddington as evidenced by the fact that Blue & White made a competitive bid on the October 26, 1991 charter trip for which Waddington was observed operating her business in conjunction with Fullington." As already acknowledged by the Commission, the owner and customer of record at 104 Wooded Lane, Villanova, PA is Kate King. As owner and customer of record she would normally have exclusive standing to bring a claim but instead has transferred power of attorney to the Complainant in order to maximize her ability to effectuate the subject electrical and mechanical

improvements to the property. (See Owner Kate King's POA, attached to this appeal as Ex. "A") Along with the poa, she has accepted all liability for damage that could occur by the chimney electrical installation and upgraded the gas service.

The Radnor Township currently requires licensed installers to pull permit and refuses to issue any permit without proof of training to perform electrical and mechanical work of the category in question. (Ex. "B") Furthermore, Owner King, has granted an effective Power of Attorney in order to accomplish the improvement, and pursuant to the National Electrical Code, if appeal is denied, will have no realistic choice but to obtain a new contractor to accomplish the improvement to perform the improvement in question and navigate the appropriate administrative channels. The burden to establish an adverse impact sufficient to establish standing is not an onerous one; one need only show "a perceivable adverse impact on the interest other than the common interest of all citizens in having others comply with the law." Larsen, Matter of, 616 A.2d 529, 532 Pa. 326 (Pa., 1992), citing Mosside Assoc., Ltd. v. Zoning Hearing Bd., 70 Pa.Cmwlth. 555, 563, 454 A.2d 199, 203 (1982).

Therefore, for purposes of the instant appeal, Hatchigian is in every practical sense the "aggrieved" party since, as a result of the Commission's ruling to deny permission for the subject improvements, he cannot develop the premises consistent with owner King's proposal to move the electric facilities to a brick chimney. (Complaint #C-2015-2477331) and upgrade the gas service at the property to accommodate the generator King plans to to install (Complaint #C-2015-2487879) He has contracted to provide the owner services as a licensed union-certified electrical and mechanical specialist to relocate the electrical and install the owner's emergency generator at the owner's written request. (Exhibit "A") The pecuniary loss and the contractual obligation to the property owner are Hatchigian's; see Beers, 534 Pa. at 611, 633 A.2d at 1161

(in order to be aggrieved a party must have a substantial, direct and immediate interest in the subject matter of the litigation). Any party who is aggrieved by an appealable order may appeal therefrom. Pa.R.A.P. 501. Here, the fact that it is Hatchigian, the holder of King's power of attorney (rather than owner King herself) who filed this appeal, does not render the instant matter unjusticiable.

The potential injuries articulated by Complainant are in no sense speculative and under the circumstances alleged, he meets the substantial interest standard in that there exists "some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." *William Penn*, 464 Pa. at 195. Hatchigian's interest is personal to Hatchigian and the adverse effect will be to vitiate his ability to fulfill existing contractual obligations to the property owner, Kate King. (See Ex. "A") In addition, a direct interest "means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains." *Id.*; Ex. "A". The harm to Hatchigian's contractual interest may be described as directly caused by the refusal to permit the subject improvements.

Finally, the interest must "be 'immediate' and 'not a remote consequence of the judgment.'" *Id.* at 197, 346 A.2d at 283 (quoting *Keystone Raceway Corp. v. State Harness Racing Commission*, 405 Pa. 1, 7-8, 173 A.2d 97, 100 (1961)). Regarding this prerequisite to standing, the potential injury to Hatchigian is concurrent with the Commission's ruling. There will be no lapse of time before the loss of his contractual interest occurs.

Moreover, the adverse consequence to Mr. Hatchigian is substantial, immediate and pecuniary and does not fit the court's definition of "remote" harm. *William Penn*, *supra*, 464 Pa. at 191, 346 A.2d at 280 (1975). See *MEC Penn. Racing, Inc. v. State Horse Racing Com'n*, 827 A.2d 580 (Pa. Commw. Ct., 2003); *Pittsburgh Palisades Park, LLC, v. Pennsylvania State Horse*

Racing Commission, No. 525 M.D. 2003 (Pa. Commw. 3/4/2004) (Pa. Commw. 2004) citing *Cashdollar v. Com., State Horse Racing Com'n*, 600 A.2d 646, 143 Pa.Cmwlth. 650 (Pa. Cmwlth. 1991) ("Inasmuch as Palisades Park is one of several corporations seeking what would be one of the only two remaining thoroughbred racing licenses in Pennsylvania, it has standing to assert this claim. It has an interest "distinguishable from the interest shared by other citizens ... immediate rather than remote ... [and there is] a sufficient causal connection between the challenged action and the asserted injury.") *Society Hill v. Philadelphia Bd. of License*, 905 A.2d 579 (Pa. Commw. Ct. 2006) Complainant Hatchigian has identified a relationship to the owner readily distinguishable from the public at large and defined a real, concrete interest specific to him in performing on the owner's behalf.

As Appellant's personal, contractual and professional stake in this action is really and concretely at issue as to render him eligible to properly bring a claim before the Commission, accordingly the Commission inappropriately ruled that the Complainant did not have standing to file the complaint because he was not the customer of record. In sum, the Commission has jurisdiction over the parties and the subject matter of this dispute, the Complainant has shown sufficient facts to support his standing to appeal the Commission's ruling and that he possesses a real, concrete pecuniary interest in the subject matter of this proceeding which is direct, immediate, and substantial, and, therefore, Complainant's appeal with respect to the standing issue should be granted and a hearing directed to adjudicate the substance of his claim.

Additionally, the commission's grant of authority to sue will not prejudice P.E.C.O or impose any burden to defend on P.E.C.O. beyond that required by virtue of a claim brought by the owner herself.

Based on the foregoing, the order of the Public Service Commission should be reversed and the record remitted with directions to reconsider the issues.

Respectfully submitted,


February 10, 2016

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT B

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@verizon.net

October 5, 2015

Kevin Halferty
United Inspection Agency
716 N. Bethlehem Pike
Suite 300
Lower Gwynedd, Pa. 19002
215-542-9977/215-540-9721 fax
E-Mail: info@unitedinspectionagency.com
Website: www.unitedinspectionagency.com

RE: 104 WOODED LANE, VILLANOVA PA. 19085
RT 30 & 320

Dear Patty

Please be informed that I had installed a new service at the above address and had Kevin Halferty from United Inspection Agency inspect the new service. After inspection was completed and certificate sent to P.E. Copy enclosed. P.E. by way of Gene Brown refused to energize the new service claiming he required the bracket to be removed from the chimney above the service and relocated on the barge board and cites 4.4.1.1 Overhead Service- All Customers, 6.2 OVERHEAD SERVICES , 6.2.4 SERVICE MASTS Copy enclosed. I complied with Mr. Brown request and returned to the job cite and removed the P.E. bracket and relocated the bracket to the 63 year old barge board. Now I have discovered that the service cable is rubbing against the corner brick and starting to deteriorate the insulation on the cable. I believe as an Electrician for some forty five (45) years it is only a matter of time before the wind will cause a phase to phase fault causing the cable to short circuit and catch fire. We now have a illegal condition in violation with N.E.C.

October 5, 2015

page 2 of 2

Please find three reports. One from Registered Architect Mark Wearther and James E. Giegerich P.E. United Inspection saying that the better option would be to install bracket above service cable on brick chimney. It is well established law in the Commonwealth of Pennsylvania that some one doing electrical work must be trained in and have expertise in doing so. Mr. Gene Brown is not trained in the expertise of doing electrical work and has made a incorrect decision that will be a problem. Please be advised that David Hatchigian will not be responsible for any damage caused by the relocation of the service bracket. Any questions please call or e/m .

Thank you.

Sincerely yours,

David Hatchigian

Forward U.S.P.S. 3817

Enclosures (6)



1.000

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
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MEVIN HALBERTY	
UNITED INSPECTION AGENCY	
716 N. BETHLEHEM PIKE	
SUITE 30	

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PS Form 3817, January 2001

LOWER GWYNEDD PD 19002

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@verizon.net

October 6, 2015

Honorable Cynthia W. Fordham
Suite 4063
801 Market Street
Philadelphia Pa. 19107

Re: C-2015-2477331 104 Wooded Lane Villanova Pa. 19085

Dear Judge Fordham

I thought about what you had asked me and decided to let the Underwriter aware of the hazardous condition that exists. Thank you for raising the question.

Respectfully,

David Hatchigian

CC: Shawane L. Lee Esquire
Exelon Business Services
2301 Market Street S23-1
P.O. Box 8699
Philadelphia Pa. 19103

Enclosures (8)



U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
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