

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christine McSorley	:	
	:	
v.	:	C-2016-2565864
	:	
PECO Energy Company	:	

**INITIAL DECISION SUSTAINING PRELIMINARY OBJECTIONS  
AND DISMISSING COMPLAINT**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

A property owner filed a complaint against an electric utility alleging that the utility transferred the account for a rental property she owns from the tenant to the property owner after the utility discovered foreign wiring. The property owner requests that the Commission direct the utility to transfer the account for the rental property back to the tenant. This decision dismisses the complaint because the utility complied with relevant Commission statutes, regulations and orders when it transferred the account for the rental property to the property owner.

**HISTORY OF THE PROCEEDING**

On September 8, 2016, Christine McSorley (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint concerns a property at 3037 Tyson Avenue, Apartment 1, Philadelphia, Pennsylvania, owned by the Complainant. The complaint alleges that the Respondent discovered foreign wiring at the property and transferred the account for the property from the Complainant's tenant to the Complainant.

The complaint asserts that the foreign wiring involved only two light bulbs. The complaint alleges that the Complainant has decreased the rent paid by the tenant in order to cover the additional electric costs incurred by the tenant for the additional electricity used by the light bulbs.

The complaint contends that the statute requiring transfer of the account from her tenant to the Complainant discriminates against low income tenants because any discounted rates under the Respondent's customer assistance program (CAP) received by the tenant are not applicable to the Complainant. Therefore the electric rates paid by the tenant will increase. This undermines the purpose of the CAP.

In addition, the complaint argues that if the Complainant fixes the foreign wiring, the Complainant will have to spend \$2,000.00 to rewire the building where the tenant's apartment is located, have another electric meter installed at the building and pass those costs on to her tenant through increased rents. The complaint requests that the Commission order the Respondent to transfer the account for the property to the Complainant's tenant.

On September 26, 2016, the Respondent filed an answer and preliminary objections. The answer admits that the Respondent provides service to 3037 Tyson Avenue. The answer states that on May 4, 2016, the Respondent's employee conducted a high bill investigation in response to a high bill complaint from the Complainant's tenant, and discovered that a basement light and stairway light were connected to the tenant's electric meter.

The answer admits that on May 9, 2016, the Respondent transferred the account for 3037 Tyson Avenue to the Complainant's name after it discovered the foreign wiring. The answer asserts that the Respondent acted properly in transferring the account for 3037 Tyson Avenue to the Complainant. According to the answer, the Public Utility Code and Commission orders require the Respondent to transfer an account from a landlord to a tenant when the Respondent discovers foreign wiring. The answer requests that the Commission dismiss the complaint.

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 regarding the foreign wiring at 3037 Tyson Avenue. The preliminary objections contend that the Respondent properly transferred the account for 3037 Tyson Avenue to the Complainant and that its conduct is consistent with the Public Utility Code and Commission orders.

The preliminary objections point out that the complaint states that the Complainant's property is a residential rental property and the Complainant is the owner. The preliminary objections argue that the complaint does not contend that the Respondent incorrectly determined a foreign wiring condition existed at the property. The complaint does not allege that the Respondent delayed investigating the tenant's foreign load concerns. The complaint does not allege that the Respondent transferred an incorrect amount to the Complainant's account. The complaint does not contend that the Respondent delayed its investigation to verify that the foreign wiring had been corrected.

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 November 2, 2016, 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 either the Respondent's the new matter or its 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 Christine McSorley.
2. The Respondent in this case is PECO Energy Company.

3. On September 8, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer to the complaint on September 26, 2016.
5. On September 26, 2016, 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.Cmwlt. 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.Cmwlt. 1989); Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 548 (Pa.Cmwlt. 1989).

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 owns residential rental property at 3037 Tyson Avenue. The Respondent discovered foreign wiring at the property and transferred the account for the property from the Complainant's tenant to the Complainant.

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 3037 Tyson Avenue from the Complainant's tenant to the Complainant. 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 tenant'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

(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.**  
(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 (Opinion and 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. David P. Boyce v. Duquesne Light Company, Docket No. Z-00223698, (Final Order entered September 1, 1994) (Boyce); Elizabeth Santos v. Metropolitan Edison Company, Docket No. C-00967757, (Opinion and 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 (Opinion and Order entered May 21, 2010) (Ace Check); 1-A Realty v. Pa. Pub. Util. Comm’n, 63 A.3d 480 (Pa.Cmwlth. 2013).

The Complainant apparently believes that the statute at 66 Pa. C.S. §1529.1 does not apply to this case. The Complainant asserts that she has decreased the rent paid by the tenant in order to cover the additional costs incurred by the tenant for the additional electricity used by the two light bulbs that constitute the foreign wiring. The Complainant contends that the Respondent should transfer the account back to her tenant and collect the foreign load charges from her. The Complainant is incorrect for two reasons.

First, the Public Utility Code does not authorize the Respondent to collect foreign wiring charges from a tenant. In Santos the Commission held that “[t]he utility must . . . place the account in the landlord’s name upon discovery of the foreign load and **collect unpaid bills only from the landlord.**” (emphasis added) Santos at 14. The Commission also stated, “[c]learly, the utility must pursue collection of any unpaid amounts **from the landlord and not from the tenant.**” (emphasis added) Santos at 16. Allen L. Jones v. Pennsylvania Power & Light Company, Docket Number C-00971013, (Opinion and Order entered February 25, 1999).

Second, any lease or other agreement between the Complainant and her tenant where the tenant agrees to pay for the electricity used in the common areas, cannot supersede the provisions of 66 Pa. C.S. §1529.1. Any agreement or lease between the Complainant and her tenant has no effect on the Respondent’s obligation to comply with 66 Pa. C.S. §1529.1. The Complainant may seek damages from her tenant for any amounts the tenant owes, pursuant to the agreement or lease, through the courts. Enforcement of the agreement or lease between the Complainant and her tenant is outside the Commission’s jurisdiction. Corazzini v. UGI Penn Natural Gas, Inc., Docket No. F-2009-2101282 (Opinion and Order entered July 16, 2010). Kopf

v. PECO Energy Company, Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013) (Kopf).

Only after the landlord corrects the foreign wiring and the correction work is verified by the utility, must the utility transfer the account back to the name of the tenant. However, the landlord remains responsible for any arrearage on the tenant's account. Kopf; Ace Check. This rule applies even if the amount of usage attributable to foreign wiring is minimal. Kopf; Ace Check. The Complainant is, therefore, responsible for her tenant's account balance, including arrearages, as of the date of discovery of the foreign wiring plus usage until the Complainant removes the foreign wiring and the Respondent verifies the removal.

Since the Complainant's complaint does not set forth any violation of a Commission regulation, statute or order, 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. 52 Pa.Code § 5.101(a)(4).

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-2016-2565864 be dismissed without hearing. Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n, 563 A.2d 557 (Pa.Cmwlth. 1989).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PECO Energy Company at Docket No. C-2016-2565864 are sustained.
2. That the complaint of Christine McSorley at Docket No. C-2016-2565864 against PECO Energy Company is dismissed.
3. That the docket at Docket No. C-2016-2565864 is marked closed.

Date: November 4, 2016

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/s/  
David A. Salapa  
Administrative Law Judge