PECO
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May 18, 2017

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

RE: Glenn DeHaven v. PECO Energy Company
PUC Docket No.: C-2017-2585680

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the ***Reply Exceptions of PECO Energy Company***.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab
Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GLENN DEHAVEN	:	
COMPLAINANT	:	
v.	:	
PECO ENERGY COMPANY,	:	**Docket No. C-2017-2585680**
RESPONDENT	:	

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

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Counsel for PECO Energy Company

DATE: May 18, 2017

REPLY EXCEPTIONS

PECO Energy Company ("PECO") hereby replies to the Exceptions filed by Glenn DeHaven ("Complainant") in the above-referenced matter on May 12, 2017. The exceptions were served on PECO on May 17, 2017.

On January 11, 2017, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant states that he has a rental property located at 184 Hibernia Road, Coatesville, PA. Complainant states that his tenants verbally agreed to and signed a part of the lease agreement that said they would be responsible for electric charges for an upper barn, a low voltage dog containment system and a small coy pond on the tenants' patio. Complainant states that the barn load is approximately $30.00 per month; the low voltage containment system is less than $5.00 a month and the coy pond pump is less than $15.00 per month. Complainant states that PECO entered his property without notifying him and found foreign wiring, which was his tenants' responsibility to pay. Complainant states that PECO billed him for $1,800 of foreign wiring charges and he will not be responsible for it. Complainant states that PECO ignored the lease agreement. Complainant states that PECO also ignored a court order issued by a judge when his tenants were evicted that says the tenants are responsible for the electric charges.

Respondent, PECO filed an Answer on February 3, 2017, stating that the Complainant's formal complaint should be dismissed pursuant to 66 Pa.C.S. §1529.1 and Ace Check Cashing, Inc. vs. Phila. Gas Works, Docket No. C-2008-2056428 (Final Order entered May 21, 2010). PECO filed a Preliminary Objection on February 3, 2017, requesting dismissal of the informal complaint as the company's actions were consistent with the law.

On April 3, 2017, Administrative Law Judge Joel H. Cheskis issued an Initial Decision in the matter of Glenn DeHaven v. PECO Energy, Co., C-2017-2585680 ("Initial Decision"). The

Initial Decision sustained PECO's Preliminary Objections and ordered dismissal of the formal complaint for failure to state a claim upon which relief can be granted. ALJ Cheskis' Initial Decision is well-reasoned with ample support from the record. 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 Commission should sustain the Initial Decision of ALJ Cheskis. The Complainant does not allege that the ALJ made an error of law or abused his discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Cheskis because he claims that his tenants had an outstanding balance from another service address. Complainant states that PECO applied his tenants' payments to the former address balance owed rather than the usage charges incurred at 184 Hibernia Road. Complainant asserts the most he should owe for foreign wiring is $893.52. Additionally, Complainant states that his tenants were responsible for the electric usage charges for the barn, coy pond and dog containment system pursuant to a lease agreement between the parties.

Preliminarily, the Complainant did not raise the tenants' former address balance issue in his formal complaint but is raising the issue for the first time in his Exceptions. In his formal complaint, the Complainant admitted that he owned the rental property; there was a foreign wiring condition found; but the condition was a part of a lease agreement between the parties, and in any event, the cost associated with the foreign load was *de minimis*. In his exceptions, the Complainant cannot now raise additional issues that were not plead in the formal complaint. In any event, PECO transferred the amount of usage charges the tenants incurred while at the

service address. Complainant was never held responsible for usage charges from a prior address. Nevertheless, as ALJ Cheskis stated, "Commission precedent requires that the entire balance, including arrearages, be transferred to the landlord. The specific amount of the $1,800 owed by Mr. DeHaven and the specific amount owed by his tenants is a matter for a court of common pleas."

Complainant alleges in his exceptions that he had a lease agreement with his tenants to pay the electric for the barn, coy pond and dog containment system. The Complainant believes he should be permitted to assign responsibility for the foreign wiring to his tenant through a lease agreement and circumvent 66 Pa. C.S. § 1529.1. However, consistent with 1-A Realty v. PPL Electric Utilities Corp., Docket Nos. F-2010-2166554 and F-2010-2166976 (Order entered April 12, 2012), this is not permissible. The landlord shall be responsible for payment for the utility services rendered to the rental property when in a foreign load is found.

The Commission reached the same conclusion in the matter Kopf v. PECO Energy supra. In George Kopf, the Complainant argued that he should not be responsible for his tenant Ms. DelRaso's balance and requested that the PUC order PECO to transfer the tenant's balance back to the tenant. Mr. Kopf argued in his formal complaint that his tenant, Ms. DelRaso agreed to pay for all utilities in the common areas pursuant to her lease agreement. ALJ Salapa granted PECO's Preliminary Objection and dismissed Mr. Kopf's formal complaint in a well-reasoned opinion wherein he stated:

> 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. Pa.C.S. § 1529.1(b); Ace Check Cashing, Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Order entered May 21, 2010).

> The Complainant apparently believes that the statute at 66 Pa.C.s. § 1529.1 does not apply to this case. The Complainant asserts that he has a lease with Ms. DelRaso that requires her to pay for the electricity used in the common areas and Ms. DelRaso has agreed to continue paying for the electricity used in the common areas. The Complainant argues that, since Ms. DelRaso agreed to pay for the electricity used in the common area, the Respondent improperly transferred her account to him and improperly refused to transfer the account back to Ms. Del Raso..... The Complainant is incorrect for two reasons.
>
> First, **the Public Utility Code does not authorize the Respondent to collect load charges from a tenant.** In Santos the Commission held that "the 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. **.....Second, the Complainant's lease with Ms. DelRaso, where she agreed to pay for the electricity used in the common areas, cannot supersede the provisions of 66 Pa.C.S. § 1529.1.**

Mr. Kopf filed Exceptions to ALJ Salapa's Initial Decision. The Commission reviewed and adopted ALJ Salapa's Initial Decision based on the Commonwealth Court decision 1-A Realty v. PPL Electric Utilities Corp. The Commission determined that:

> Under Section 1529.1 of the Code, the Commission's rulings related to it, and the Commonwealth Court's decision in *1-A Realty*, it is clear that tenants are not permitted to consent to having foreign load charges attributed to them. In this case, Ms. DelRaso could not accept utility service that was not exclusive to her rented apartment.

George Kopf v. PECO Energy Company, Docket Number C-2012 (Opinion and Order entered, June 13, 2013).

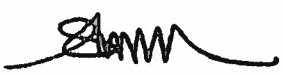
In the case at bar, as ALJ Cheskis stated, and the Commission agreed in George Kopf, the Public Utility Code does not permit PECO to collect foreign load charges from the Complainant's tenant. 66 Pa.C.S.A. § 1529.1. When PECO finds foreign load, the company is required to transfer the tenant's account, including any arrearages, into the landlord's name. See

66 Pa.C.S.A. § 1529.1. Second, the Complainant's lease agreement where the tenant agrees to accept responsibility for the barn, coy pond and dog containment system cannot supersede the provisions of 66 Pa.C.S.A. § 1529.1.

PECO properly transferred the utility account of the tenant including arrearages, to the Complainant's name. PECO's actions are consistent with Pennsylvania law. The record clearly demonstrates that the issue of foreign wiring and the balance transfer at the Complainant's rental property has been properly decided and dismissed. ALJ Cheskis correctly concluded that the Complainant's case should be dismissed as the complaint fails to state a claim upon which relief can be granted. Accordingly, ALJ Cheskis' decision to dismiss the Complainant's case against PECO 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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GLENN DEHAVEN **COMPLAINANT** **v.** **PECO ENERGY COMPANY,** **RESPONDENT**	: : : : : : : : : :	**Docket No. C-2017-2585680**

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: May 18, 2017

Shawane L. Lee

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

GLENN DEHAVEN	:	
COMPLAINANT	:	
v.	:	
PECO ENERGY COMPANY,	:	**Docket No. C-2017-2585680**
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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).

Glenn DeHaven
180 Hibernia Road
Coatesville, PA 19320

Dated at Philadelphia, Pennsylvania, May 18, 2017

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