BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Brookwine Associates, LLC	:	
	:	
v.	:	C-2015-2460955
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This decision dismisses a formal Complaint filed by Brookwine Associates, LLC (Brookwine or Complainant), because Complainant has not proved by a preponderance of the evidence that Metropolitan Edison Company (Respondent or Met-Ed) violated the Public Utility Code (Code) or the rules and regulations of the Commission. I note from the outset that the facts of this case are not in dispute (See, Stipulated Findings of Fact, below). The sole issue is one of law.

HISTORY OF THE PROCEEDING

On December 22, 2014, Complainant filed a formal Complaint against Met-Ed disputing responsibility for a foreign load high bill allegedly incurred at Complainant's rental address at 36 North Hartley Street, York, Pennsylvania.

Met-Ed filed an Answer and New Matter to the Complaint on January 26, 2015, denying the allegations set forth in the Complaint.

On March 10, 2015, Complainant filed an untimely Answer to New Matter.

By notice dated March 13, 2015, the Commission scheduled this matter for an initial telephonic hearing on April 27, 2015, at 10:00 a.m., and assigned the case to me.

On March 27, 2015, Met-Ed filed a Motion for Summary Judgment in this case. No Answer to the Motion was filed.[1]

On April 24, 2015, a Cancel/Reschedule Notice was issued cancelling the April 27, 2015 hearing and rescheduling the case for July 7, 2015

On July 7, 2015, a telephonic hearing convened originating from the Commission's office in Harrisburg, Pennsylvania. Participating in the call were Kurt A. Blake, Esquire, counsel for Brookwine, and Tori L. Giesler, Esquire, counsel for Met-Ed. A six-page transcript was compiled, but no testimony was taken nor evidence offered. Instead, in an off-the-record discussion, counsel agreed to attempt to simplify this matter by discussing a Joint Stipulation of Facts.

On August 6, 2015, the parties filed a Joint Stipulation of Facts.

On November 3, 2015, I issued a further Order asking that the parties provide me with a proposed briefing schedule, and asking that the parties specifically consider and address the case of *1-A Realty v. Pennsylvania Public Utility Commission*, 63 A.3d 480; 2013 Pa. Commw. LEXIS 4 (January 4, 2013), which the Commission follows as precedent in "foreign load" cases.

Counsel for both parties subsequently apprised me that Main Briefs would be filed on December 4, 2015, with Reply Briefs due on December 23, 2015.

On December 4, 2015, Met-Ed filed its Main Brief. To date, Brookwine has not filed a Main Brief or a Reply Brief. I must note that I contacted the office of Complainant's counsel multiple times over the intervening months in an attempt to ascertain whether a brief

[1] The Motion was held in abeyance because of the unavailability of Complainant's counsel due to a family tragedy.

would be filed, and though I left several messages and on at least one occasion spoke with a receptionist, my calls were never returned.

STIPULATED FINDINGS OF FACT

The parties have stipulated to the facts in this case:

1. Met-Ed is an electric distribution company that is certificated as a public utility in Pennsylvania and that provides retail residential electric service to Complainant's rental property located at 36 North Hartley Street, York, Pennsylvania 17401 ("Rental Location").

2. Complainant has represented itself to be the property owner and landlord of the Rental Location.

3. On August 26, 2013, Tyanna Duncan ("Tenant") established electric service at the first floor of the Rental Location where Tenant resided ("Tenant's Apartment") under Account No. 100104996101 ("Tenant Account").

4. On May 28, 2014, the Tenant was the customer of record at the Tenant's Apartment.

5. On May 28, 2014, the Tenant contacted the Company regarding a high bill and possible mixed metering at the Rental Location.

6. On May 28, 2014, the Company generated an order directing a field technician to contact the property owner and go to the Rental Location to investigate the alleged mixed metering condition.

7. On June 3, 2015, a Company representative spoke with Complainant's representative and scheduled an appointment to conduct a mixed metering investigation at the Rental Location for June 5. 2014.

8. On June 5, 2014, a Company field technician went to the Rental Location and determined that there was no mixed metering; however, a shared metering, also known as foreign load, condition existed in that a hall and porch light were identified as being wired to the meter serving the Tenant's Apartment at the Rental Location.

9. On June 13, 2014, the Company coded the Tenant Account for shared metering and transferred the Tenant's Account balance of $2,880.89 ("Transferred Balance") to a newly created account in the Complainant's name under Account Number 100109054278 ("Shared Metering Account").

10. The Transferred Balance consisted of usage from October 11, 2013 through May 9, 2014, which represented consumption accrued only during the Tenant's residence at the Rental Location.

11. On June 13, 2014, a written utility report was issued to the Complainant advising that a shared metering condition existed and the electric service was being placed in the Complainant's name until such time as the shared metering was corrected and advising that the balance of the Shared Metering Account was $3,019.55, which was due by July 3, 2014.

12. On August 19, 2014, the Complainant contacted the Company to notify it that the shared metering condition had been repaired and the Company issued a written utility report advising that an appointment needed to be scheduled so that it could verify that the shared metering condition had been corrected.

13. On September 11, 2014, the Company performed a field visit and determined the shared metering condition was corrected.

14. On September 16, 2014, the shared metering coding was removed from the property and a written report was issued advising that the Tenant could call and reinstate service in her name.

15. On November 4, 2014, electric service was properly terminated at the Service Location due to nonpayment of the Shared Metering Account.

16. Also on November 4, 2014, the Tenant contacted the Company to place service in her name.

17. Service was established in the Tenant's name effective November 5, 2014.

18. On November 4, 2014, a representative from York Property Management contacted the Company on behalf of the Complainant seeking an explanation of the balance transfer which was attributed to the Tenant's unpaid arrearage from usage at the Service Location and also confirmed that the shared metering coding had been removed from the Rental Location records.

19. On December 6, 2014, the past due balance of $3,268.84 of the Shared Metering Account was transferred to an active account of Complainant, Account Number 100110263959.

20. On or about December 22, 2014, the Complainant filed the Formal Complaint with the Commission.

Met-Ed and Brookwine agreed that the Joint Stipulation of Facts resolves all factual disputes associated with this matter, and they agreed that these facts should be entered into the record of this proceeding.

DISCUSSION

In this proceeding, Complainant bears the burden of proving that he is entitled to relief. 66 Pa.C.S. § 332(a).

To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., PA Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. PA Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993), 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

In sum, Complainant alleged that it had been improperly billed for charges incurred by one of its tenants prior to and during tenancy. Ultimately, the parties stipulated to the facts of this case as set forth, above. Thus, the determination to be made is one of law, not facts.

As Complainant has not filed a brief, Complainant has not established a case on the points of law at issue, and has failed to prove that it is entitled to relief. 66 Pa.C.S. § 332(a)

The failure of Complainant to argue its case notwithstanding, I agree with Met-Ed's position as stated in its Brief with respect to the state of the law. Section 1529.1 of the Code governs foreign load cases and provides as follows:

> **§ 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.

Pursuant to Section 1529.1, a utility is required to list an electric service account, including any and all arrearages, in the name of the property owner upon the finding of foreign load at a residential rental service location and imposes on the owner the responsibility for paying the utility services to the premises until the shared metering condition has been corrected. Met-Ed Brief at 14, citing *Ace Check Cashing, Inc. v. Philadelphia Gas Works, Eddie and Jennifer West*, Docket No. C-2008-2056428 (Final Order entered May 21, 2010) (Ace Check Cashing). Met-Ed also correctly argued that upon discovery of foreign load, the utility must place the electric service account in the property owner's name and collect any unpaid bills only from the property owner. Met-Ed Brief at 14-15, citing *Elizabeth Santos v. Metropolitan Edison Company*, Docket No. C-00967757 (Final Order entered August 7, 1997). Thus, the Complainant is responsible for the tenant's delinquent account balance, including arrearages. See also *Susan Afshari v. PPL Electric Utilities Corporation and Kim and Mike Fantazier, Indispensable Party*, Pa. P.U.C. Docket No. C-20055547 (Order entered June 21, 2007).

As Met-Ed points out, Complainant admitted to the existence of the shared metering condition found during the Company's investigation at the rental location. However, Complainant

claimed that it should only be held responsible for the portion of the shared metering account balance that is related to foreign load on the tenant's meter. Again, Met-Ed is correct when it states that the Commission's foreign load policy does not recognize a *de minimus* exception but instead requires a utility to list an electric service account, including any and all arrearages, in the name of the property owner upon the finding of foreign load, and imposes on the property owner the responsibility for paying the utility services to the premises until the shared metering has been corrected. Met-Ed Brief at 16. The Commission has determined that there is no *de minimus* exception, and that any dispute regarding the financial responsibilities of the parties is a matter outside of the Commission's jurisdiction. See *1-A Realty v. PPL Electric Corp*., Docket Nos. F-2010-2166554; F-2010-2166976, (Order entered, April 12, 2012) at 36-37, *aff'd 1-A Realty v. Pa. PUC*., 63 A.3d 480, 483 (Pa. Commw. Ct. 2013).

As the party seeking a finding that Met-Ed violated the Code, Commission regulations, or its Commission-approved tariff in transferring the tenant's balance, the Complainant has the burden of proof in this matter. Complainant's case consists of the undisputed facts that provide a timeline of events leading to the transfer of the balance, but there has been no showing of or explanation how the transfer was in violation of any applicable law or regulation. See Met-Ed Brief at 17.

In compliance with 66 Pa.C.S. § 1529.1 and Commission precedent, Met-Ed was legally obligated to: (1) transfer the entirety of the tenant account balance to the shared metering account after the Company confirmed the existence of a shared metering condition at the rental location; and, (2) hold the Complainant responsible for the electric service bills for the tenant's account until the foreign load was confirmed as corrected. Met-Ed Brief at 15. That is what Met-Ed did.

Complainant has failed to meet its burden of showing that Met-Ed has violated any provision of the Public Utility Code or the rules and regulations of the Commission. As there are no genuine issues of material fact in this case, Met-Ed is entitled to judgment in its favor as a matter of law.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa. C.S. §§ 332(a), the burden of proof in this proceeding is on the Complainant.

3. When acting in accordance with the provisions of 66 Pa. C.S. § 1529.1, a utility must place the tenant's account in the landlord's name upon discovery of the foreign load and collect unpaid bills only from the landlord. The utility must then pursue collection of any unpaid amounts from the landlord and not from the tenant. *1-A Realty v. Pa. Pub. Util. Comm'n*., 63 A.3d 480 (Pa. Cmmw. Ct. 2013); *Susan Afshari v. PPL Electric Utilities Corporation and Kim and Mike Fantazier, Indispensable Party*, Pa. P.U.C. Docket No. C-20055547 (Order entered June 21, 2007).

4. The Complainant has not met its burden of proving that it is entitled to relief. 66 Pa. C.S. §§ 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Brookwine Associates, LLC against Metropolitan Edison Company at Docket No. C-2015-2460955 is dismissed.

2. That the Stipulation of Facts entered into by the parties and filed on August 6, 2015, is admitted into the record.

3. That the docket in this case is closed.

Date: July 21, 2017

/s/
Dennis J. Buckley
Administrative Law Judge