

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JYF Partners	:	
	:	
v.	:	C-2017-2628546
	:	
PECO Energy Company	:	

INITIAL DECISION GRANTING PRELIMINARY OBJECTIONS

Before
Steven K. Haas
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 it owns from the tenant to the owner after the utility discovered foreign wiring. The property owner requests that the Pennsylvania Public Utility Commission (Commission) direct the utility to eliminate or reduce the amount owed on the account for the rental property. 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 25, 2017, the Complainant, JYF Partners (JYF), filed a formal complaint against PECO Energy Company (PECO or Respondent) alleging that PECO placed an unpaid balance from a tenant's account onto its account following the discovery of a foreign load condition at the subject property. JYF requests that the Commission direct PECO to recalculate the bill and transfer the amount attributable to the tenant back to the tenant.

On October 30, 2017, PECO filed an answer and preliminary objections to JYF's complaint. In its answer, PECO admits that it transferred the balance from the tenant's account to JYF's active account upon discovery of the foreign load condition. PECO avers that a technician discovered that service to a separate shed on the subject property was connected to the tenant's meter and, accordingly, PECO transferred the tenant's balance in the amount of \$751.64 to an active account held by the Complainant. PECO avers that it acted properly in transferring the account balance to the Complainant. According to the answer, the Public Utility Code and Commission orders require electric utilities to transfer account balances from landlords to tenants when foreign wiring is discovered. 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 the property. The preliminary objections contend that the Respondent properly transferred the tenant's account balance to the Complainant and that its conduct is consistent with the Public Utility Code and Commission orders. 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.

The Commission assigned this proceeding to me as motion judge. As of the date of this decision, the Respondent has not filed an answer to the 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 JYF Partners.
2. The Respondent in this case is PECO Energy Company.

3. On September 25, 2017, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer to the complaint on October 30, 2017.
5. On October 30, 2017, 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 asserts in its preliminary objections that the complaint is legally insufficient pursuant to 52 Pa.Code § 5.101(a)(4), in that PECO's actions were required under the Public Utility Code. 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) (Equitable). 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.

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.Cmwlt. 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 the subject rental property. The Respondent discovered foreign wiring at the property and transferred the account balance from the 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 subject property 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 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, (Opinion and 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).

Here, the Complainant contends it should not be responsible for the entire account balance for the subject property. Rather, the Complainant apparently argues that the Commission should direct the Respondent to transfer the account balance from the Complainant back to the tenant or otherwise hold the tenant responsible for the outstanding account balance. The Complainant is incorrect.

The Commission has determined that 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).

The Complainant may be able to seek damages from the tenant for any amounts the tenant owes, pursuant to a lease, through the courts. Enforcement of the lease between the Complainant and the tenant, however, 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 on a going forward basis. However, the landlord remains responsible for any arrearage on the tenant's account up to the point the wiring issue is corrected. Kopf; Ace Check.

The Commission held in Ace Check that there is no de minimus exception to 66 Pa.C.S. § 1529.1. Upon discovering foreign wiring, the utility must transfer the account for the property from the tenant to the landlord, including any arrearages, even if the amount of usage attributable to foreign wiring is minimal. Kopf.

In prior decisions, the Commission has indicated that it disfavors granting motions dismissing complaints filed by pro se complainants. Carlock v. The United Telephone Company of Pennsylvania, Docket No. F-00163617 (Opinion and Order entered July 14, 1993) (Carlock); Brown v. PECO Energy Company, Docket No. C-2008-2055866 (Opinion and Order entered May 29, 2009) (Brown); Richmond v. PECO Energy Company, Docket No. F-2010-2187305 (Opinion and Order entered December 7, 2011) (Richmond). In Carlock, Brown, and Richmond, the Commission indicated that a complaint filed by a pro se complainant should not be dismissed until the complainant has the opportunity to orally explain his or her position at a hearing.

The complaints in Carlock, Brown, and Richmond did not raise the issue of the Commission's lack of authority to adjudicate landlord-tenant disputes in foreign wiring cases where the utility has transferred the account for the property from the tenant to the landlord. However, in Lightsey v. PECO Energy Company, Docket No. F-2014-2412353 (Order entered June 13, 2014) (Lightsey), the Commission sustained preliminary objections and dismissed the complaint where the complaint requested that the Commission order the utility to transfer a foreign wiring account balance from the landlord back to the tenant after the landlord corrected the foreign wiring. The Commission held that it lacked the authority to issue such an order.

Since the complaint in this case raises similar issues to those raised in the complaint in Lightsey, I find the decision in Lightsey to be more persuasive than the decisions in Carlock, Brown, and Richmond. In these circumstances, giving the Complainant the opportunity to explain his position at a hearing would be a fruitless exercise.

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-2017-2628546 be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections filed by PECO Energy Company at Docket No. C-2017-2628546 are sustained.
2. That the complaint of JYF Partners at Docket No. C-2017-2628546 against PECO Energy Company is dismissed.
3. That the proceeding at Docket No. C-2017-2628546 is marked closed.

Date: December 7, 2017

_____/s/
Steven K. Haas
Administrative Law Judge