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August 9, 2018

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

RE: Kenneth Groschopp v. PECO Energy Company
PUC Docket No.: C-2017-2594740

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

REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Kenneth Groschopp (“Complainant”) in the above-referenced matter. The exceptions were never served on PECO from the Complainant or the Commission. PECO recently identified the Exceptions on the docket.

On March 4, 2017, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant states that he owns a rental property located at 1015 DeKalb Street, Norristown, PA. The Complainant states that a former tenant left the rental property with an outstanding balance of over \$5,500. The Complainant states that PECO determined that a single hallway light was connected to the tenant’s meter. The Complainant states that PECO required him to rewire the light to the common area electric panel. The Complainant states that PECO transferred the full amount of the \$5,500 balance into his name and is demanding payment. The Complainant requests that the PUC determine the monthly portion of the bill that is attributed to the common area light. The Complainant states that the remaining balance should be recovered from the tenant.

Respondent, PECO filed an Answer on March 27, 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 March 27, 2017, requesting dismissal of the informal complaint as the company’s actions were consistent with the law.

On May 15, 2017, Administrative Law Judge David A. Salapa issued an Initial Decision in the matter of Kenneth Groschopp v. PECO Energy. Co., C-2017-2594740 (“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 Salapa's 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 Salapa. 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 Salapa because he claims there is a PUC Statement of Policy that was issued in 1998 acknowledging the financial hardship of foreign load considered to be minimal. The Complainant additionally states the calculation of the \$5,439.05 balance transferred to him from his tenant is not clear.

Preliminarily, the Complainant did not raise the calculation of the balance 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 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 the case at bar, consistent with Ace Check Cashing, Inc. vs. Philadelphia Gas Works, Docket No. C-2008-2056428, the Commission cannot consider what the Complainant proposes (i.e., to determine the portion of the foreign wiring that is attributable to the hallway light and hold the tenant responsible for the remaining balance). In Ace Check Cashing, Inc., the Commission reversed the Initial Decision in Afshari v. PPL Electric Utilities Corporation,

Docket No. C-20055547 (Order entered April 9, 2008) (Afshari) relating to foreign load situations. In the Commission's decision, they stated:

The key determination in *Afshari* is that, when foreign load is found, per operation of Subsection (c), the landlord shall be responsible only for the portion of the tenant's arrearage that is related to foreign load. However, Commission precedent, such as *Elizabeth Santos v. Met Ed*, Docket No. C-00967757 (Order entered August 7, 1997), holds that Subsection (c) operates to place both current bills and all arrearages in the landlord's name if the landlord failed to provide the notice required by Subsection (a). In interpreting Subsection (c), the decision in *Afshari* sought to avoid an unreasonably harsh result for the landlord in that it does not require the owner to be responsible for the tenant's potentially large arrearages, especially where the foreign load is *de minimis*. However, the approach in *Afshari* lessens the incentive for the landlord to correct the foreign load situation that is due to a wiring, plumbing or piping problem for which the landlord is responsible. While the language in Subsection (c) can be viewed as ambiguous enough to allow some latitude for Commission interpretation, a determination that the landlord's financial responsibility for arrearages is strictly limited to the foreign load portion of the arrearage is problematic. This is because the statutory remedy for failure to provide notice provided in Subsection (c) refers back to Subsection (b) which clearly mandates that the landlord "shall thereafter be responsible for the payment for the utility services rendered [to the rental property]."

More recently, the Commission reached the same result in the matter Vito Satiro v. PECO Energy Company, Docket No. F-2015-2510660 (Opinion and Order entered, June 9, 2016). In that case, Mr. Satiro argued that the hallway light attached to his tenant's meter was *de minimis* and that he should not be responsible for his tenant's \$1,439.98 balance. Mr. Satiro averred that his tenant had vacated the apartment without paying rent. Administrative Law Judge Joel H. Cheskis granted PECO Energy's Preliminary Objection and dismissed Mr. Satiro's formal complaint in a well-reasoned opinion wherein he determined that PECO acted reasonably by transferring the entire amount of the tenant's arrearage to Mr. Satiro regardless of whether the amount of foreign load was *de minimis*. Id. at 9. The Commission upheld ALJ Cheskis' Initial Decision and stated:

We explained our foreign load policy in detail in *Ace Check Cashing*. Specifically, we concluded that upon discovering foreign load, the utility must list the account, including any arrearages, in the landlord's name and the landlord must assume the responsibility of paying the utility bills at the service address until the foreign load is corrected. After the foreign load is corrected by

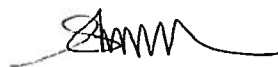
the landlord and verified by the utility, the utility is to place the account back into the tenant's name. *Id.* At 7. However, the landlord remains responsible for any arrearages on the tenant's account. *Id.* At 7-8. This rule applies even if the amount of usage attributable to foreign load is considered *de minimis*.

See Vito Satiro, *supra*.

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. To the extent any dispute regarding the financial responsibility of the parties exists, that is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction. Edmund v. Corazzini v. UGI Penn Natural Gas, Inc., No. F-2009-2101282, Opinion and Order adopted July 15, 2010 at 7.

ALJ Salapa 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 Salapa's 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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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: August 9, 2018



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KENNETH GROSCHOPP	:	
	:	
Complainant	:	
v.	:	DOCKET NO. C-2017-2594740
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

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).

Kenneth Groschopp
3437 Mill Road
Collegeville, PA 19426

Dated at Philadelphia, Pennsylvania, August 9, 2018



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