

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ELLEN SADIKY	:	
RAMI SADIKY	:	F-2022-3032215
	:	F-2022-3032253
v.	:	
	:	
PECO ENERGY COMPANY	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Decision sustains the Preliminary Objection filed by PECO Energy Company and dismisses the Complaints. The Complainants do not dispute that there was foreign wiring at the residence and that, under the Pennsylvania Public Utility Code, the tenant account balances and charges were properly transferred to them. Also, the *de minimis* relief sought by the Complainants is not available in this forum.

HISTORY OF THE PROCEEDINGS

On April 15, 2022, Ellen and Rami Sadiky, (“the Sadikys” or “Complainants”), filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO or “Respondent”) contesting the transfer of a balance and account from 1975 Beyer Avenue, 1st Floor, to a PECO account in their name. (Docket No. F-2022-3032215). On April 16, 2022, the Sadikys filed a Formal Complaint against PECO contesting the transfer of a balance and account from 1975 Beyer Avenue, 2nd Floor to an

account in their name. (Docket Number F-2022-3032253). These complaints are appeals from the Commission's Bureau of Consumer Services decisions, case numbers 3820452 and 3820453, respectively.

The Sadikys contend that although there was foreign load in the two apartment units that they own, and that the Public Utility Code provides that the accounts of units with foreign load are to be transferred to the landlord/owner, the amount that was transferred is not fair. They assert that the amount for which they are responsible should be reduced because the items giving rise to the foreign load used less in electricity than the amount transferred.

PECO file an Answer on May 19, 2022. PECO avers that after conducting a high bill investigation at the rental units on December 27, 2021, PECO discovered foreign load or wiring at the first and second floor units of the Complainants' rental property at 1975 Beyer Avenue in Philadelphia, Pennsylvania. PECO then transferred \$57.22 from the first-floor tenant's PECO account and \$315.79 from the second-floor tenant's PECO account and placed both accounts in a new PECO account in the name of the Complainants. PECO also states in its Answer that after an inspection on March 7, 2022 confirmed that the foreign wiring had been corrected, the accounts for the first and second floor units were finalized, taken out of the name of the Complainants and placed back into the names of the tenants. PECO further states that the company properly transferred the service and charges into the Complainants' name consistent with 66 Pa. C.S. §§ 1529.1(a), (c) and *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010).

On May 19, 2022, PECO filed in each matter a Motion to Consolidate the two complaints and a Preliminary Objection, which asserted that the complaints are legally insufficient and that the Complainants are unable to recover under the law. Both Motions to Consolidate and both Preliminary Objections contained a Notice to Plead that advised the Complainants that they had 20 days to file a response.

On May 25, 2022, the Complainants filed an Answer to the Motion to Consolidate in which they stated that they agreed that the complaints should be consolidated.¹ The Complainants did not file a response to the Preliminary Objection.

On June 24, 2022, a Motion Judge Assignment Notice assigned the motion to me.

On June 29, 2022, I issued an Order consolidating the Complainants.

This matter is ready for a decision on the Preliminary Objection filed by PECO.

FINDINGS OF FACT

1. The Complainants are Ellen Sadiky and Rami Sadiky.
2. The Respondent is PECO Energy Company.
3. On April 15, 2022 and April 16, 2022, Ellen and Rami Sadiky filed formal complaints against PECO challenging PECO's transfer of balances and accounts to them from two apartment units owned by the Complainants, 1975 Beyer Avenue, 1st Floor and 1975 Beyer Avenue, 2nd Floor ("service addresses).
4. The Sadikys are the landlords of the services addresses. (Complaints, PECO Preliminary Objection ("Preliminary Objection").
5. On December 27, 2021, PECO conducted a high bill investigation of the 1st Floor Unit after receiving a high bill complaint from the tenant on December 6, 2021. (Complaints, Preliminary Objection).
6. During the December 27, 2021 investigation of the high bill complaint for the 1st Floor Unit, the PECO technician discovered that there was foreign load to both the 1st Floor Unit and the 2nd Floor Unit. (Complaints, Preliminary Objection).

¹ A duplicate of Complainants' Answer to the Motion to Consolidate was filed on May 27, 2022.

7. Following discovery of the foreign load, PECO transferred the balances and accounts for both service address to the Complainants. (Complaints, Preliminary Objection).

8. On March 7, 2022, a PECO technician determined that foreign wiring no longer existed at the service addresses. (Complaints, Preliminary Objection).

9. On March 8, 2022, PECO advised the Complainants that foreign load no longer existed at the service addresses and the PECO service for the two units would no longer be in their names. (Complaints, Preliminary Objection).

10. On May 19, 2022, PECO filed a Preliminary Objection asserting that the Complaints were legally insufficient and that, under the law, the relief sought by the Complainants was unavailable in this forum.

11. The Complainants did not file a response to the Preliminary Objection.

DISCUSSION

The grounds for granting Preliminary Objections are found in Section 52 Pa. Code § 5.101(a). It states in pertinent part:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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.

52 Pa. Code § 5.101(a).

A preliminary objection will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General v. State Emps.' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

The Commission must view the Complaint in this case in the light most favorable to the Complainants and should dismiss the Complaint only if it appears that Complainants would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994); *see also, Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Therefore, a preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1, addresses the duties of the property owner and the utility 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 . . . 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 . . . 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 . . .

(c) Failure to give notice.--Any owner of a residential building . . . 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.

66 Pa.C.S. § 1529.1.

A utility has an affirmative duty to investigate a foreign load or high bill complaint, and if the utility discovers the presence of a foreign load, the utility is required pursuant to Section 1529.1(b) to list the account in the landlord's name and hold the landlord responsible for the payment for utility services rendered to the account. *See Ace Check Cashing, Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (*Ace Check Cashing*).

The Commission has implemented Section 1529.1 is as follows:

Upon the finding of foreign load, the utility would list the account, including any arrearages, in the name of the landlord. The landlord had the responsibility to pay the utility bills until the foreign load was corrected. Once the foreign load was corrected by the landlord and verified by the utility, the utility would place the account back in the name of the tenant. However, the arrearage, if any, was to remain with the landlord. There was no *de minimus* exception, and any dispute regarding the financial responsibilities of the parties [as between landlord and tenant] was a matter to be resolved in the Court of Common Pleas and outside this Commission's jurisdiction.

Ace Check Cashing at pp. 5-6.

In the Complaints, the Sadikys admit that there was foreign load at both units. (Complaints). They also state that PECO transferred the balances and bills to their PECO account and that the unit accounts were removed from the Sadikys' account once the foreign load was corrected. As the only relief sought, the Complainants ask the Commission to accept their calculations and assertion that the foreign load items did not use as much electricity as reflected in the balances transferred to them and reduce the amount charged to them.

PECO contends in its Preliminary Objection that there are no genuine issues of fact and therefore a hearing is not required. PECO references *Ace Check Cashing* and notes that the Commission has held that a landlord must pay the utility for any account balances, including arrearages, once a foreign load or wiring had been found. PECO further asserts that there is no *de minimis* standard for transfer of the balances and that any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction, citing *Corazzini v. UGI Penn Natural Gas, Inc.*, No. F-2009-2101282 (Opinion and Order entered July 15, 2010).

The Complainants cannot prevail at a hearing. The Commission has clearly held that where foreign load is found, the entire tenant account balance will be transferred to the landlord. 66 Pa.C.S. §§ 1529.1(a), (c); and *Ace Check Cashing*. There is no dispute that upon

discovering the existence of a foreign load, a public utility is required to list the account, including any arrearages, in the name of the landlord. 66 Pa.C.S. §§ 1529.1(a), (c). *See also Santos v. Metro. Edison Co.*, No. C-00967757 (Pa. P.U.C. Aug. 7, 1997). The Sadikys acknowledge this in their Complaints.

As PECO correctly notes, there is no *de minimis* exception. There is no such exception in the *Ace Cash Checking* decision. Also, as more recently held by the Commission in *Reviello v. PPL Electric Utilities Corporation*, Docket Number F-2017-2636807 (Opinion and Order entered January 17, 2019), even if the consumption charges that related specifically to the foreign load “constituted an inconsequential amount as compared to the total consumption charges incurred exclusively by the tenant,” the utility is correct in pursuing payment of the total arrearage from the landlord/owner of the property. *Id.* at 14-15.

Any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission’s jurisdiction. *Corazzini v. UGI Penn Nat’l Gas*.

The Preliminary Objection will be sustained, and the Complaints dismissed.

CONCLUSIONS OF LAW

1. A party may file preliminary objections alleging that there is legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(4).

2. All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emps’ Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlt. 1997).

3. Foreign load was found at the services addresses and therefore PECO Energy Company properly transferred the entire account balances to the landlords, the

Complainants. 66 Pa.C.S. §§ 1529.1(a), (c); and *Ace Check Cashing Inc. v. Phila. Gas Works*, (Opinion and Order entered May 21, 2010).

4. There is no *de minimis* exception; Any dispute between the Sadikys and their tenants regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission’s jurisdiction. *Corazzini v. UGI Penn Nat’l Gas, Inc.*, No. F-2009-210128 (Opinion and Order entered July 15, 2010).

ORDER

THEREFORE,

IT IS ORDERED

1. That the Preliminary Objection filed by PECO Energy Company in the matter of *Ellen Sadiky and Rami Sadiky v. PECO Energy Company* at Docket Number F-2022-3032215 and Docket F-2022-3032253 is sustained.

2. That the Complaints in the matter of *Ellen Sadiky and Rami Sadiky v. PECO Energy Company* at Docket Number F-2022-3032215 and Docket Number F-2022-3032253 are dismissed.

3. That this matter be marked closed.

Date: August 10, 2022

_____/s/
Darlene D. Heep
Administrative Law Judge