

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephanie Lane	:	
	:	
v.	:	F-2022-3033589
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision grants the Respondent’s preliminary objection and orders dismissal of the complaint because Commission precedent provides that when foreign load is found in a multi-dwelling unit, the financial responsibility of the parties for the usage incurred is a matter to be resolved in the Court of Common Pleas and is outside the Commission’s jurisdiction. As a result, the complaint is legally insufficient, and it is appropriate to grant the preliminary objection and dismiss the complaint.

HISTORY OF THE PROCEEDING

On July 1, 2022, Stephanie Lane (Complainant) filed a formal complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In her complaint, Ms. Lane averred that she should not be responsible for utility charges incurred by a tenant at a rental property owned by Ms. Lane at 332 Sharon Ave., first

¹ The complaint is a timely appeal of a decision of the Commission’s Bureau of Consumer Services (BCS) at BCS case number 3839659.

floor front unit A, Sharon Hill, PA 19079 (service address). Ms. Lane averred that after she was notified of a foreign load issue it was immediately resolved. Ms. Lane requested that she not be required to pay for a tenant's electric service and that she be charged a lesser amount such as \$300 for the electric usage in the common areas of the service address.

On July 27, 2022, PECO filed an answer to Ms. Lane's Complaint. In its answer, PECO admitted or denied the various averments contained in Ms. Lane's Complaint. In particular, PECO admitted that in January 2022, Ms. Lane's tenant contacted PECO with foreign wiring concerns. PECO also admitted that a PECO inspector determined that hallway lights and a socket in the basement were connected to the meter for the first-floor front unit at the service address. PECO acknowledged that on January 28, 2022, it established service in Ms. Lane's name at 332 Sharon Ave., front first, Sharon Hill, PA 19079 and transferred \$1,593.20 of accrued charges from the account of the first-floor front tenant to the Complainant's account number at the service address. PECO also indicated that on April 6, 2022, it verified that the foreign load for the service address had been corrected, the Complainant's account was finalized, and the account was placed back in the name of the tenant.

PECO denied that its actions constitute incorrect charges on Ms. Lane's bill because Commission precedent requires PECO to transfer charges for service to the landlord's account upon a finding of foreign load. PECO attached various documents to its Answer in support of its position that Ms. Lane's Complaint should be dismissed.

Also on July 27, 2022, PECO filed a preliminary objection. In its preliminary objection, which was accompanied by a Notice to Plead, PECO summarized the Complaint and averred that Ms. Lane's Complaint should be dismissed because it is legally insufficient. PECO cited the Commission's standard for dismissing a complaint on a preliminary basis for legal insufficiency and as discussed further below, detailed the Commission precedent regarding foreign load. PECO noted in particular that a landlord must pay the utility for any account balance, including arrearages, once a foreign load or wiring has been found. PECO attached a copy of Ms. Lane's Complaint to its preliminary objection in support of its position.

Ms. Lane's Answer to PECO's Preliminary Objection was due no later than August 16, 2022. 52 Pa.Code §§ 5.101(f)(1), 1.12(a), 1.56(a)(1) and (b). Ms. Lane did not file an Answer to PECO's preliminary objection.

On August 22, 2022, the Commission issued a Motion Judge Assignment Notice informing the parties that I had been assigned as the Presiding Officer in this proceeding and would be responsible to resolve any issues which may arise during the preliminary phase of this proceeding.

PECO's Preliminary Objection is ready to be ruled upon. For the reasons discussed further below, PECO's Preliminary Objection will be granted, and Ms. Lane's Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Stephanie Lane.
2. The Respondent in this case is PECO Energy Company.
3. The service address is 332 Sharon Ave., Sharon Hill, PA.
4. On July 1, 2022, Stephanie Lane filed a formal complaint against PECO averring that there are incorrect charges on her bill because she is being charged for usage of a tenant after hallway lights and a socket in the basement of the service address were found connected to the tenant's meter.
5. Ms. Lane did not deny the existence of foreign load at the service address.
6. On July 27, 2022, PECO filed an answer to Ms. Lane's Complaint denying that there are incorrect charges on Ms. Lane's bill because Commission precedent requires that PECO transfer charges to the landlord's account upon a finding of foreign load.

7. Also on July 27, 2022, PECO filed a preliminary objection arguing that Ms. Lane's complaint should be dismissed because it is legally insufficient since Commission precedent requires that a landlord must pay the utility for any account balance, including arrearages once a foreign load or wiring has been found.

8. Ms. Lane did not file an answer to PECO's Preliminary Objection.

DISCUSSION

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice. Equitable Small Transp. Intervenors v. Equitable Gas Co., 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (Equitable). PECO filed a preliminary objection arguing that Ms. Lane's complaint should be dismissed because it is legally insufficient because Ms. Lane has failed to state a claim for which relief can be granted. The Commission's Rules provide, in relevant part:

(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 a proceeding.

52 Pa. Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. Cnty. of Allegheny v. Commonwealth, 490 A.2d 402 (Pa. 1985); Commonwealth of Pa. v. Bell Tel. Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Ms. Lane and should dismiss the complaint only if it appears that Ms. Lane would not be entitled to relief under any circumstances as a matter of law. Equitable; *see also*, Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res., 406 A.2d 1020 (Pa. 1979).

In civil practice, a preliminary objection based on legal insufficiency is referred to as a demurrer. Preliminary objections in the form of a demurrer will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. Cnty. Life Support Sys., Inc. v. Commonwealth, 689 A.2d 1014 (Pa. Cmwlth. 1997). Any doubt must be resolved in favor of overruling a demurrer. Id.; *see also*, Hoffman v. Misericordia Hosp. of Phila., 267 A.2d 867 (Pa. 1970).

Furthermore, Section 703 of the Public Utility Code provides that “the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” 66 Pa.C.S. § 703(b).

In this case, Ms. Lane noted in her formal complaint that she should not be responsible for service charges incurred by a tenant. In her complaint, Ms. Lane wrote, in part:

Tenants should be responsible for their own utilities. The amount issued to pay does not equal to a few common lights used at night. . . . I should not be penalized for a tenant not paying their bill. Once I was notified of the issue, it was immediately resolved. . . .^[2]

² Complaint ¶ 4.

Ms. Lane requested that she be relieved of the obligation to pay any service fees relating to her tenant's usage and suggested that a bill of \$300 would be "feasible."³

In response to Ms. Lane's Complaint, PECO argued in its preliminary objection that Ms. Lane failed to allege: that the property is not a rental or that she is not the owner of the property; that PECO incorrectly determined a foreign wiring condition at her property; that PECO delayed investigating her tenant's foreign wiring concerns; or that PECO transferred an incorrect amount to her account. PECO averred that Ms. Lane "disputes responsibility for the entire balance transferred to her arising from the foreign wiring condition because she asserts that the foreign wiring would not have created such a high bill."⁴ PECO argued that Ms. Lane's argument is inconsistent with the Commission's current foreign load policy which requires a utility to list an electric service account, including any arrearages, in the name of the owner upon the finding of foreign load and imposes on the owner the responsibility for paying the utility services to the premises until the shared metering has been corrected. PECO argues that therefore, the Complaint is legally insufficient and fails to state a claim upon which the Commission can grant relief. 52 Pa. Code § 5.101(a)(4).

PECO's preliminary objection will be granted, and Ms. Lane's Formal Complaint will be dismissed because, even when accepting as true all well pleaded, material facts, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Ms. Lane, it is clear and free from doubt that Ms. Lane is not entitled to relief under any circumstances as a matter of law.

Section 1529.1 of the Public Utility Code governs the payment of utility services in rental properties when a foreign load is discovered. This Section reads as follows:

³ Complaint ¶ 5.

⁴ Preliminary Objection ¶ 18.

§ 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.

66 Pa.C.S. § 1529.1.

The Commission has established that the presence of "foreign load" prevents a dwelling unit from being deemed "individually metered" as that term is used in Section 1529.1. Boyce v. Duquesne Light Co., Docket Number Z-00223698 (Opinion and Order entered September 1, 1994) (Boyce); Santos v. Metro. Edison Co., Docket Number C-00967757 (Opinion and Order entered August 7, 1997) (Santos). "Foreign load" exists where tenants have a meter and are direct utility customers and where utility service for other tenants or for the landlord is being billed through their meter. Boyce at 4-5. "Foreign load" is utility service, which is not related to serving a tenant, but for which the tenant is being billed. Santos at 4.

The Commission addressed Section 1529.1 in Ace Check Cashing Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (Ace Checking). In Ace Checking, the Commission reversed its then-existing policy in foreign load cases articulated in Afshari v. PPL Electric Utilities Corporation, Docket No. C-20055547 (Opinion and Order entered April 9, 2008) (Afshari), that allowed a hearing to determine the amount of electric usage attributable to the foreign load. In reversing this policy, the Commission stated:

First, the Commission does not have subject matter jurisdiction over a financial dispute between two non-utility parties. In Afshari, the Commission recognized that a dispute involving foreign load is not between the property owner and the utility but is one between the tenant and the property owner. Even so, the Commission still chose to exercise jurisdiction over the dispute. While the Commission has jurisdiction over the regulation of utility companies and utility service, the Commission does not have jurisdiction to adjudicate every dispute that involves a utility, e.g., personal injury case, discrimination case, etc., and does not have the authority to settle disputes on every contract to which a public utility is a party. Accordingly, the Commission does not have subject matter jurisdiction over a dispute between a property owner and a tenant – two non-utility parties. While such a dispute, arguably, may involve utility rates, when the charges owed to the utility for past service are settled, the only issue to be decided is financial responsibility for the charges. That matter should be handled by the courts.

Ace Checking at 4-5. The Commission further added:

After review and consideration of the record of this proceeding and the legal implications it raises, we conclude that the Commission's current foreign load policy [in Afshari] contradicts a plain reading of 66 Pa.C.S. § 1529.1 and is inconsistent with long-standing Commission precedent that holds the property owner financially responsible for a tenant's entire account once foreign load is verified on the tenant's service. The ultimate dispute here is financial responsibility for an established amount of charges for past utility service between a landlord and a tenant. The dispute does not concern the utility or the utility's service and, therefore, its resolution does not require the Commission's regulatory expertise.

Id. at 6. The Commission justified its reversal of Afshari, in part, because of its concerns over lack of jurisdiction over a non-party in foreign load cases – usually the tenant – noting that these disputes are generally between a landlord and a tenant. Id. at 4-5; *see also*, Corazzini v. UGI Penn Nat. Gas, Inc., Docket No. F-2009-2101282 (Opinion and Order entered July 16, 2010) (the landlord may seek damages from his tenant through the courts but that is a private matter that is outside the Commission’s jurisdiction). In another more recent case involving facts similar to those at issue here, Vito Satiro v. PECO Energy Company, Docket No. F-2015-2510660, (Opinion and Order entered June 9, 2016), the Commission affirmed a utility’s duty to investigate a foreign load complaint and, an obligation to transfer the account to the name of the property owner, if a foreign load situation is suspected.

Accepting as true all well pleaded, materials facts contained in the complaint, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Ms. Lane, as is required when disposing of PECO’s preliminary objection, applying Section 1529.1 and Ace Checking to the facts presented in this case, Ms. Lane would not be entitled to relief under any circumstances as a matter of law; therefore, her complaint should be dismissed. Granting PECO’s Preliminary Objection is free and clear of doubt and dismissing the complaint is clearly warranted by the record.

Ms. Lane claims only that she should not be held responsible for the tenant’s unpaid portion of her utility bill. Ms. Lane did not deny the existence of foreign load but only the amount transferred to her account. This is precisely the issue, however, that the Commission lacks jurisdiction to hear. The Commission has made it clear in Ace Checking that Section 1529.1 of the Public Utility Code divests the Commission of jurisdiction to hear these issues and that the proper forum for determining who owes how much of an outstanding balance when foreign load is found is the Court of Common Pleas, regardless of the amount being disputed.

PECO acted reasonably by transferring the entire amount of the arrearage pursuant to Section 1529.1 and Ace Checking, regardless of what amount may be attributable to the portion of service associated with the hallway lights and basement socket. The Commission has no jurisdiction as a matter of law over the issue Ms. Lane raised in her complaint. Ms.

Lane's argument that she did not incur any benefit from the tenant's usage, does not warrant denying PECO's Preliminary Objection and holding a hearing before the Commission. Furthermore, the Commission stated in Ace Checking that there is "no de minimus exception," noting that the reason for the change in policy was to incent the landlord to correct the foreign load situation. Ace Checking at 8. Commission precedent requires that the entire balance, including arrearages, be transferred to the landlord. These arguments may be relevant to a proceeding before a Court of Common Pleas but do not justify a hearing before the Commission.

Ms. Lane has not averred in her complaint any underlying issues that PECO may have violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff that warrant a hearing. Ms. Lane's only dispute is that she should not have to pay for electric usage by the tenant. That is an issue that the Commission does not have jurisdiction over but must be resolved by the Court of Common Pleas. A hearing in this case is not necessary in the public interest and therefore PECO's preliminary objection will be granted, and Ms. Lane's complaint will be dismissed. Ms. Lane may be able to pursue her claim against her tenant in the County Common Pleas Court.

CONCLUSIONS OF LAW

1. Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa.Code § 5.101.
2. Commission preliminary objection practice is comparable to Pennsylvania civil practice. Equitable Small Transp. Intervenor v. Equitable Gas Co., 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).
3. For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. Cnty. of Allegheny v. Commonwealth, 490 A.2d 402 (Pa. 1985); Commonwealth of Pa. v. Bell Tel. Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988).

4. 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. Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res., 406 A.2d 1020 (Pa. 1979).

5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

6. In civil practice, a preliminary objection based on legal insufficiency is referred to as a demurrer. Preliminary objections in the form of a demurrer will be sustained only in cases which are free and clear of doubt and where dismissal is clearly warranted by the record. Cmty. Life Support Sys., Inc. v. Commonwealth, 689 A.2d 1014 (Pa. Cmwlth. 1997).

7. Upon receipt of the notice provided in Section 1529.1(a), 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. 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. 66 Pa.C.S. § 1529.1(b).

8. The Commission does not have jurisdiction to adjudicate every dispute that involves a utility, e.g., personal injury case, discrimination case, etc., and does not have the authority to settle disputes on every contract to which a public utility is a party. Accordingly, the Commission does not have subject matter jurisdiction over a dispute between a property owner and a tenant – two non-utility parties. While such a dispute may involve utility rates, when the charges owed to the utility for past service are settled, the only issue to be decided is financial responsibility for the charges. That matter should be handled by the courts. Ace Check Cashing Inc. v. Phila. Gas Works, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010); Satiro v. PECO Energy Co., Docket No. F-2015-2510660 (Opinion and Order entered

June 9, 2016); Corazzini v. UGI Penn Nat. Gas, Inc., Docket No. F-2009-2101282 (Opinion and Order entered July 16, 2010).

9. Even when accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, and viewing the complaint in the light most favorable to Ms. Lane, it is clear that Ms. Lane will not be entitled to relief under any circumstances as a matter of law. 66 Pa.C.S. § 1529.1; Ace Check Cashing Inc. v. Philadelphia Gas Works, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the preliminary objection filed by PECO Energy Company at Docket Number F-2022-3033589 on July 27, 2022, is hereby granted.
2. That the formal complaint filed by Ms. Lane at Stephanie Lane v. PECO Energy Company at Docket Number F-2022-3033589 on July 1, 2022, is hereby dismissed.
3. That this matter be marked closed.

Date: September 20, 2022

_____/s/
Arlene Ashton
Administrative Law Judge