

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John Coppola	:	
	:	
v.	:	C-2022-3035355
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Respondent’s Preliminary Objections and orders dismissal of the Formal Complaint. The Complainant acknowledges that there was foreign wiring at the residence. Also, the *de minimis* relief sought by the Complainant is not available in this forum.

HISTORY OF THE PROCEEDING

On September 16, 2022, John Coppola (Complainant or Mr. Coppola) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent) contesting the transfer of a balance and account from 6927 Paschall Ave, 1st floor, Philadelphia, PA 19142 (Service Address) to a PECO account in his name. The Complaint is an appeal from the Commission’s Bureau of Consumer Services (BCS) decision at case number 3825510.

Mr. Coppola contends that, although there was foreign load in the apartment unit he owns, he should not be financially responsible for “tenant usage.” He asserts that the foreign load was corrected within the week it was reported and the tenant should be financially responsible for her own usage. As relief, the Complainant requested that he be relieved of liability for service provided to and consumed by the tenant.

On October 5, 2022, PECO filed an Answer denying the material allegations in the Complaint. In the Answer, the Respondent requested dismissal of the Complaint in its entirety averring that it had properly determined that there was a foreign load condition at the Complainant’s rental property and transferred the service and charges into the Complainant’s name, including any arrearages. PECO also averred that as the landlord, the Complainant is responsible for paying the utility bill until the foreign load is corrected. Furthermore, the Respondent indicated that to the extent any dispute regarding the financial responsibility of the parties exists, that matter is outside the Commission’s jurisdiction.

Also on October 5, 2022, PECO filed preliminary objections (Preliminary Objections) to the Complaint. The Preliminary Objections seek dismissal of the Complaint in its entirety for legal insufficiency because: (1) there are no issues of fact; (2) PECO acted in accordance with the Public Utility Code and relevant caselaw; and (3) any dispute between the landlord and tenant regarding the financial responsibilities of the parties is outside the Commission’s jurisdiction and is a matter to be resolved in the Court of Common Pleas.

The Respondent’s Preliminary Objections were endorsed with a Notice to Plead, advising the Complainant he had twenty days to file a written answer to the objections or a judgment may be entered against him. The Complainant did not respond to the Preliminary Objections filed by the Respondent.

A Hearing Notice dated November 8, 2022, was issued assigning this matter, including the Preliminary Objections, to me. The matter is now ready for disposition.

FINDINGS OF FACT

1. The Complainant in this proceeding is John Coppola, who resides at 1742 Delsea Drive, Deptford, NJ.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant owns and is the landlord for the Service Address, which is a rental property located at 6927 Paschall Ave, 1st floor, Philadelphia, PA 19142.
4. On February 16, 2022, PECO inspected the Service Address and found foreign wiring.
5. On February 16, 2022, PECO established service in the Complainant's name for the Service Address and transferred accrued charges in the amount of \$890.44 for the Service Address to the Complainant's account.
6. On February 17, 2022, PECO advised the Complainant that it had found foreign wiring at the Service Address.
7. On March 9, 2022, PECO verified that the foreign wiring issue had been corrected.
8. On March 9, 2022, the account for service at the Service Address was placed back into the name of the tenant residing at the Service Address.
9. The Complainant is seeking relief from liability for service provided to and consumed by the tenant at the Service Address.
10. On September 16, 2022, the Complainant filed a Formal Complaint against PECO Energy Company relating to billing for service to the Service Address.

11. On October 5, 2022, PECO filed an Answer responding to the allegations in the Complaint.

12. On October 5, 2022, PECO filed Preliminary Objections asserting that the Complaint was insufficient and that under the law, the relief sought by the Complainant was unavailable from the Commission.

13. The Complainant did not respond to PECO's Preliminary Objections.

DISCUSSION

The filing of preliminary objections is permitted under Commission regulations. 52 Pa. Code §§ 5.101(a)(1)-(6). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

Legal Standard for Granting Preliminary Objections

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. *County 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 Gen. 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 Complainant and should dismiss the Complaint only if it appears that Complainant 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. 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.

PECO avers that the Complaint should be dismissed under 52 Pa. Code § 5.101(a) (4) relating to legal insufficiency of the pleading and subsection (1) relating to the Commission's jurisdiction.

Legal Insufficiency of the Complaint

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 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 5-6.

In the Complaint, Mr. Coppola admits that there was a foreign load at the Service Address. Complaint ¶ 5.

PECO contends in its Preliminary Objections 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 not *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. Prelim. Obj. (citing *Corazzini v. UGI Penn Nat. Gas, Inc.*, Docket No. F-2009-2101282 (Opinion and Order entered July 15, 2010)).

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); *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.*, Docket No. C-00967757

(Opinion and Order entered Aug. 7, 1997). The Complainant acknowledged that the foreign load existed. Therefore, he cannot prevail at a hearing.

Relief from Charges for Tenant Usage

As a creature of legislation, the Commission possesses only the powers and authority the State Legislature has specifically granted to it in the Public Utility Code (the Code). 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Auth. v. Pa. Pub. Util. Comm'n*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell Tel. Co. of Pa.*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Dep't of Highways v. Pa. Pub. Util. Comm'n*, 182 A.2d 267 (Pa. Super. 1962); *City of Erie v. Pa. Elec. Co.*, 383 A.2d 575 (Pa. Cmwlt. 1978).

The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlt. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

As the only relief sought, the Complainant asks the Commission to relieve him from liability for service consumed by the tenant at the Service Address.

As PECO correctly notes, there is no *de minimis* exception to the rule 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. 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) (*Reviello*), 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. *Reviello* 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. Gas Co.*, Docket No. F-2009-2101282 (Opinion and Order entered July 15, 2010)

In light of the Commission’s lack of jurisdiction to award the sole requested relief, the Preliminary Objections will be sustained, and the Complaint dismissed.

CONCLUSIONS OF LAW

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

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. Upon discovery of the foreign load, PECO Energy Company properly transferred the account balance to the landlord, the Complainant. 66 Pa.C.S. §§ 1529.1(a), (c); *Ace Check Cashing Inc. v. Phila. Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010).

4. Any dispute between the Complainant and his tenant regarding the financial responsibility for electric service provided to each of them is outside this Commission’s jurisdiction and is a matter to be resolved in the Court of Common Pleas. *Corazzini v. UGI Penn Nat. Gas, Inc.*, Docket No. F-2009-210128 (Opinion and Order entered July 15, 2010).

ORDER

THEREFORE,

IT IS ORDERED

1. That the Preliminary Objections filed by PECO Energy Company in the matter of John Coppola v. PECO Energy Company at Docket Number C-2022-3035355 are granted.
2. That the Complaint in the matter of John Coppola v. PECO Energy Company at Docket Number C-2022-3035355 is dismissed.
3. That this matter be marked closed.

Date: November 21, 2022

_____/s/
Arlene Ashton
Administrative Law Judge