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April 19, 2023

VIA E-FILING

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

RE: Carruth Investments v. PECO Energy Company
Docket No. F-2023-3039444

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the *Preliminary Objections of Respondent, PECO Energy Company*.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel, PECO Energy Company

Encl.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CARRUTH INVESTMENTS, LLC	:	
Complainant	:	
	:	
v.	:	DOCKET NO. F-2023-3039444
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 20 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Khadijah Scott, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Khadijah Scott
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated: April 19, 2023



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-6841
Khadijah.Scott@exeloncorp.com

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**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code §5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On March 31, 2023, PECO Energy Company (“PECO Energy”) was served with a formal complaint filed by Carruth Investments, LLC (hereafter “Complainant”). See, Formal Complaint.

2. In its Complaint, the Complainant disputes the balance transfer of its tenant that occurred as a result of foreign wiring that was identified at its rental property. It acknowledges that foreign wiring existed at the property, but contends that it only agreed to pay the average usage at the property while it is empty, approximately \$40.00. However, the tenant’s outstanding balance of \$767.06 that was transferred to its account is as a result of over usage, and should be credited back to its account.

3. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

4. The Complainant states that the transferred balance of the tenant is excessive.
5. The Complainant requests that PECO Energy credit the excessive portion of the balance.
6. PECO Energy files the instant Preliminary Objection.
7. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).
8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.¹
9. A complaint must be able to recover under the law to survive a preliminary objection.²
10. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.³
11. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁴
12. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

¹ 2006 Pa. PUC Lexis 111, *7.

² *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

³ *Id.* at 7-8.

⁴ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

13. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n, 817 A.2nd 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

15. The Commission has held that a landlord must pay the utility for any account balance, including arrearages, once a foreign load or wiring has been found. 66 Pa. C.S. §§ 1529.1(a), (c); and Ace Check Cashing Inc. v. Phila. Gas Works, Final Order, (May 21, 2010). See also, Santos v. Metro. Edison Co., No. C-00967757 (Pa. P.U.C. Aug. 7, 1997).

16. It is undisputed that the Complainant is the owner of the rental property at issue.

17. The Complainant does not dispute that foreign wiring existed at the property.

18. The Complainant avers that it is being held responsible for its tenant's balance that was transferred to its account. The Complainant disputes responsibility for the balance transferred to it arising from the foreign wiring condition because it asserts that the foreign wiring would not have created such a high bill.

19. As previously explained by the Legislature and this Commission, 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 landlord is responsible for paying the utility bills until the foreign load is corrected. Santos at 16. Once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account

back in the name of the tenant and the arrearage, if any, will remain the landlord's responsibility. Id.

20. There is no *de minimus* exception. 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. Edmund v. Corazzini v. UGI Penn Natural Gas, Inc., No. F-2009-2101282, Opinion and Order adopted July 15, 2010 at 7.

21. The Complainant does not allege that the property is not a rental property or that it is not responsible for the property.

22. The Complainant does not allege that PECO Energy incorrectly determined a foreign wiring condition at the property.

23. The Complainant does not allege that PECO Energy delayed investigating the tenant's foreign wiring concerns.

24. The Complainant does not disagree that foreign wiring was found. Indeed the Complainant admitted to the foreign wiring condition.

25. The Complainant's formal Complaint simply alleges that foreign wiring was found at the property and it feels that it should not be held responsible for the tenant's full balance arising from the foreign wiring condition and that PECO Energy should credit a portion of the balance back to its account.

26. Indeed, 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 specific light bulbs and hold the tenants responsible for the remaining balance).

27. 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.

28. 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*.

29. As stated above, the landlord shall be responsible for payment for the utility services rendered to the rental property.

30. PECO Energy properly transferred the tenant's utility account, including arrearages, to the Complainant's name.

31. PECO Energy's actions are consistent with Pennsylvania law.

32. Accordingly, PECO Energy requests that the Commission dismiss the Complaint for legal insufficiency.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's Complaint.

Respectfully submitted,



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
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VERIFICATION

I, Khadijah Scott, 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: April 19, 2023

Khadijah Scott

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CERTIFICATE OF SERVICE

I, Khadijah Scott, hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objections in the above matter upon all interested parties by *E-mailing* a copy to:

CARRUTH INVESTMENTS LLC
7244 CASTOR AVENUE
BOX 5034
PHILADELPHIA, PA 19149
Via email: denise@carruthinvestments.com

Dated: April 19, 2023



Khadijah Scott
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