

Tori L. Giesler, Esq.
(610) 921-6658
(610) 939-8655 (Fax)

610-929-3601

March 27, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

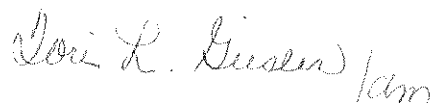
Re: Brookwine Associates, LLC v. Metropolitan Edison Company
Docket No. C-2015-2460955

Dear Secretary Chiavetta:

Enclosed please find the Motion for Summary Judgment of Metropolitan Edison Company with regard to the above-captioned matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

krak
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BROOKWINE ASSOCIATES, LLC

v.

METROPOLITAN EDISON COMPANY

:
:
:
:
:

Docket No. C-2015-2460955

NOTICE TO PLEAD

TO: Kurt A. Blake, Esquire
Blake & Gross
29 East Philadelphia Street
York, PA 17401

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Summary Judgment of Metropolitan Edison Company within **twenty (20) days** from the service of the Notice, the facts set forth by Metropolitan Edison Company in the Motion may be deemed to be true, thereby requirement no other proof. All pleading, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.


File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Tori L. Giesler, Esquire
Metropolitan Edison Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: March 27, 2015



Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BROOKWINE ASSOCIATES, LLC	:	
	:	
v.	:	Docket No. C-2015-2460955
	:	
METROPOLITAN EDISON COMPANY	:	

**MOTION FOR SUMMARY JUDGMENT OF
METROPOLITAN EDISON COMPANY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Metropolitan Edison Company (“Met-Ed” or the “Company”), by and through Tori L. Giesler, files this Motion for Summary Judgment (“Motion”) pursuant to Section 5.102(a) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.102(a), and in connection therewith avers as follows:

I. Introduction

1. Through this Motion, Met-Ed seeks the dismissal of the Complaint filed with the Commission at Docket C-2014-2460955 (“Formal Complaint”) by Brookwine Associates, LLC (“Complainant”) because, as a matter of law, there is no genuine issue of material fact regarding Met-Ed’s obligation to list an electric service account, including any and all arrearages, in the name of the Complainant after the Company determined the presence of foreign load on the electric meter serving the Complainant’s rental property located at 36 North Hartley Street, York, Pennsylvania 17401 (“Rental Location”).

2. The Complainant has not and cannot show that the Company committed any act or omission in violation of a Commission statute, regulation or order, or Met-Ed’s tariff. Therefore, as a matter of law, the Formal Complaint must be dismissed with prejudice. In support of this Motion, Met-Ed has attached hereto, and incorporates by reference herein, the Affidavit of Gina

Dietrich, Advanced Business Analyst for FirstEnergy Service Company's Corporate Compliance Department ("Affidavit").

II. Factual Background

3. Met-Ed is an electric distribution company that is certificated as a public utility in Pennsylvania and that provides retail residential electric service to the Rental Location. Dietrich Affidavit 5.

4. Complainant has represented itself to be the property owner and landlord of the Rental Location. Dietrich Affidavit 6.

5. On August 26, 2013, Tyanna Duncan ("Tenant") established electric service at the first floor of the Rental Location where Tenant resided ("Tenant's Apartment") under Account No. 100104996101 ("Tenant Account"). Dietrich Affidavit 7.

6. On May 28, 2014, the Tenant was the customer of record at the Tenant's Apartment. Dietrich Affidavit 8.

7. On May 28, 2014, the Tenant contacted the Company regarding a high bill and possible mixed metering at the Rental Location. Dietrich Affidavit 9.

8. On May 28, 2014, the Company generated an order directing a field technician to contact the property owner and go to the Rental Location to investigate the alleged mixed metering condition. Dietrich Affidavit 10.

9. On June 3, 2015, a Company representative spoke with Complainant's representative and scheduled an appointment to conduct a mixed metering investigation at the Rental Location for June 5, 2014. Dietrich Affidavit 11.

10. On June 5, 2014, a Company field technician went to the Rental Location and determined that there was no mixed metering; however, a shared metering, also known as foreign

load, condition existed in that a hall and porch light were identified as being wired to the meter serving the Tenant's Apartment at the Rental Location. Dietrich Affidavit 12.

11. On June 13, 2014, the Company coded the Tenant Account for shared metering and transferred the Tenant's Account balance of \$2,880.89, consisting of usage from October 11, 2013 through May 9, 2014, to a newly created account in the Complainant's name under Account Number 100109054278 ("Shared Metering Account"). See Exhibit A.

12. On June 13, 2014, a written utility report was issued to the Complainant advising that a shared metering condition existed and the electric service was being placed in the Complainant's name until such time as the shared metering was corrected and advising that the balance of the Shared Metering Account was \$3,019.55, which was due by July 3, 2014. See Exhibit B.

13. On August 19, 2014, the Complainant contacted the Company to notify it that the shared metering condition had been repaired and the Company issued a written utility report advising that an appointment needed to be scheduled so that it could verify that the shared metering condition had been corrected. See Exhibit C.

14. On September 11, 2014, the Company performed a field visit and determined the shared metering condition was corrected. Dietrich Affidavit 16.

15. On September 16, 2014, the shared metering coding was removed from property and a written report was issued advising that the Tenant could call and reinstate service in her name. See Exhibit D.

16. On November 4, 2014, electric service was properly terminated at the Service Location due to nonpayment and that same day, the Tenant contacted the Company to place service

in her name. Service was established in the Tenant's name effective November 5, 2014. Dietrich Affidavit 18.

17. On November 4, 2014, a representative from York Property Management contacted the Company on behalf of the Complainant seeking an explanation of the balance transfer which was attributed to the Tenant's unpaid arrearage from usage at the Service Location and also confirmed that the shared metering coding had been removed from the Rental Location records. Dietrich Affidavit 19.

18. On December 6, 2014, the past due balance of \$3,268.84 of the Shared Metering Account was transferred to an active account of Complainant, account number 100110263959. Dietrich Affidavit 20.

19. On or about December 22, 2014, the Complainant filed the Formal Complaint with the Commission. On January 5, 2015, the Formal Complaint was served upon the Company. The Formal Complaint admits to the presence of foreign load and alleges only that "a single watt light bulb burning continuously for a month would only use approximately \$7.20 of electricity on average. We would be willing to round that figure to an even \$10.00 per month and just to be safe, double it to \$20.00 per month and reimburse Met Ed \$20.00 per month times the (14) months that Tyanna Duncan was a tenant for a total of \$280.00 to be reimbursed to Met-Ed. We feel this is a more than fair solution as we can not be responsible for a tenant not paying their utility bills." (Letter dated December 18, 2014 attached to Formal Complaint.)

20. On January 26, 2015, Met-Ed filed an Answer and New Matter to the Formal Complaint. Dietrich Affidavit 22.

21. By letter dated March 10, 2015, the Complainant untimely filed a Reply to New Matter in which no facts were denied. Dietrich Affidavit 23.

III. Argument

A. Legal Standard for Summary Judgment

22. The Commission's regulations at 52 Pa. Code § 5.102(a) permit any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. Unlike a motion for judgment on the pleadings, upon which the Commission's judgment is restricted to the pleadings, a motion for summary judgment may be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code § 5.102(c). The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

23. The Commission's preliminary motion practice is analogous to Pennsylvania civil practice regarding preliminary objections. See *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994). When deciding whether a motion for summary judgment should be granted, the Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortg. Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Sanchez v. Phila. Housing Auth.*, 611 A.2d 346 (Pa. Cmwlth. 1992). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

24. The Public Utility Code, 66 Pa.C.S. § 101 *et seq.* ("Code") provides that "...any person...may complain in writing, setting forth any act or thing done or omitted to be done by any

public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or any regulation or order of the Commission.” See 66 Pa.C.S. § 701.

25. Section 703 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). See also, 52 Pa. Code § 5.21(d).

26. Here, the pleadings, the Affidavit, and the exhibits attached thereto demonstrate that Met-Ed has committed no violation of the Code or any regulation or order of the Commission. There are no genuine issues of material fact regarding the legality of Met-Ed’s establishing the Shared Metering Account in the Complainant’s name and therefore Met-Ed is entitled to relief as a matter of law.

B. A Determination of Shared Metering Obligates a Utility to Establish an Electric Service Account in the Name of the Property Owner

27. Pursuant to Section 1529.1, 66 Pa.C.S. § 1529.1, a utility is required to list an electric service account, **including** any and all arrearages, in the name of the property owner upon the finding of foreign load at a residential rental service location and imposes on the owner the responsibility for paying the utility services to the premises until the shared metering condition has been corrected. *Ace Check Cashing, Inc. v. Philadelphia Gas Works, Eddie and Jennifer West*, Docket No. C-2008-2056428 (Final Order entered May 21, 2010) (“*Ace Check Cashing*”).

28. Under Code Section 1529.1:

If [a] ... 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[.]

66 Pa.C.S. § 1529.1.

29. In *Ace Check Cashing*, the Commission held that utilities are required to list the account, including any arrearages, in the name of the property owner upon the finding of foreign load. The property owner has the responsibility to pay the utility bills until the foreign load is corrected. Once the foreign load is corrected by the property owner and verified by the utility, the utility is required to place the account for the service location back in the name of the tenant. However, the arrearages, if any, are required to remain with the property owner

30. In *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757 (Final Order entered August 7, 1997), the Commission held that upon discovery of foreign load, the utility must place the electric service account in the property owner's name and collect any unpaid bills only from the property owner. As a result, the Complainant is responsible for the Tenant's delinquent account balance, including arrearages.

31. Further, the circumstances presented by the Complainant are similar to other foreign load complaints which the Commission has dismissed based on legal insufficiency. Most recently, the Commission dismissed the complaint of JLJ Enterprises, LLC which presented a fact set nearly identical to those undisputed facts raised in the Formal Complaint. *See, JLJ Enterprises, LLC v. Metropolitan Edison Company*, Docket No. F-2014-2440049 (Opinion and Order entered March 26, 2015) ("*JLJ Enterprises*"). *See also, Lisa Morykan v. Metropolitan Edison Company*, Docket No. C-2014-2403154 (Final Order Entered May 21, 2014).

32. Applied here, in accordance with 66 Pa.C.S. § 1529.1 and well-established Commission precedent, the Company was legally *obligated* to: (i) transfer the entirety of the Tenant Account balance to the Shared Metering Account after the Company confirmed the existence of a shared metering condition at the Rental Location; and (ii) hold the Complainant

responsible for the electric service bills for the Tenant Account until the foreign load was confirmed as corrected.

C. A Determination of Shared Metering Requires the Company to List the Entire Tenant Account Balance with the Owner

33. As set forth above, the Complainant has admitted to the existence of the shared metering condition found during the Company's investigation at the Rental Location. Rather than deny the existence of the shared metering condition, the Complainant's argument appears to be that it should only be held responsible for the portion of the Shared Metering Account balance that is related to foreign load on the Tenant's Meter. Dietrich Affidavit 21; Letter dated December 18, 2014 attached to Formal Complaint.

34. However, the Commission's foreign load policy does not recognize a *de minimus* exception and instead requires a utility to list an electric service account, including any and all arrearages, in the name of the property owner upon the finding of foreign load, and imposes on the property owner the responsibility for paying the utility services to the premises until the shared metering has been corrected. *Ace Check Cashing; JLJ Enterprises*.

35. The record demonstrates that the Company fully complied with the Code and Commission precedent in handling this foreign load situation after it confirmed the existence of shared metering at the Rental Location. Giving the Complainant the benefit of all reasonable inferences and the benefit of the doubt as to the existence of a genuine issue of material fact, as the Commission must for the purposes of summary judgment, the Complainant has failed to allege or demonstrate that the Company has committed or omitted an act in violation of a Commission statute, regulation, order, or the Company's tariff.

36. As explained above, as a matter of law, the Company was required to transfer the Tenant Account balance to the Shared Metering Account after the Company confirmed the

existence of the shared metering condition at the Rental Location. Having complied with applicable Pennsylvania law, there is no basis upon which the Complainant is entitled to any relief in connection with the Formal Complaint.

IV. Conclusion

37. The Company fully complied with the Public Utility Code and Commission precedent in handling the foreign load and shared metering condition found at the Service Location. Under these circumstances, the Complainant's assertion that it is not responsible for the entire outstanding balance associated with the Tenant's Account which were transferred to the Complainant's Account is unsupported. Accordingly, the Complainant has failed to demonstrate that the Company has committed or omitted an act in violation of a Commission administered statute, regulation or order, or the Company's Commission-approved retail electric tariff.

38. In accordance with Section 5.102(d)(1) of the Commission's regulations, 52 Pa. Code § 5.102(d)(1), there are no genuine issues of material fact in the above-captioned proceeding and the Company is entitled to judgment in its favor as a matter of law.

39. The Complainant is seeking relief from paying all or part of the balance which was transferred from the Tenant's Account to Complainant's Account as a result of a confirmed presence of foreign load. The Company is obligated to remove service from the name of the tenant and transfer into the name of the property owner, including any balance or arrearage accrued at the service location, upon confirmation of foreign load pursuant to Section 1529.1 of the Code, 52 Pa. Code § 1529.1. Any dispute regarding a balance in a shared metering complaint is a matter between the property owner and the tenant, and therefore, beyond the Commission's jurisdiction to decide. *See Morykan, supra; see also JIJ Enterprises; Edmund V. Corazzini v. UGI Penn Natural Gas, Inc.*, Docket No. F-2009-2101282 (Order entered July 16, 2010).

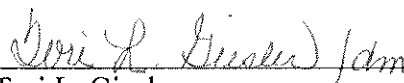
40. The Complainant has not alleged violations relating to the Company's provision of electric service.

41. Accordingly, and assuming all of the well-pleaded facts contained in the Formal Complaint are true, the Complainant has not stated a claim within the Commission's jurisdiction to adjudicate because, as a matter of law, the acts complained of relate to a private dispute between a property owner and tenant. The Commission cannot grant relief in a private dispute between a property owner and tenant. *See* 66 Pa.C.S. § 701.

WHEREFORE, for the foregoing reasons, Metropolitan Edison Company respectfully requests that the Pennsylvania Public Utility Commission grant this Motion for Summary Judgment, dismiss the Formal Complaint of Brookwine Associates, LLC, and grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: March 27, 2015



Tori L. Giesler
Attorney No. 207742
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6658
tgiesler@firstenergycorp.com

Counsel for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BROOKWINE ASSOCIATES, LLC	:	
	:	
v.	:	Docket No. C-2015-2460955
	:	
METROPOLITAN EDISON COMPANY	:	

**AFFIDAVIT OF GINA DIETRICH
IN SUPPORT OF METROPOLITAN EDISON COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

I, Gina Dietrich, being duly sworn according to law, depose and say the following:

1. My name is Gina Dietrich, and my business address is 2800 Pottsville Pike, Reading, PA 19612.
2. I am employed by FirstEnergy Service Company as an Advanced Business Analyst for FirstEnergy's Corporate Compliance Department.
3. As an Advanced Business Analyst in the Corporate Compliance Department, I am responsible for addressing and responding to informal and formal complaints filed against Metropolitan Edison Company ("Met-Ed" or "Company") and its affiliated Pennsylvania electric distribution companies.
4. As part of my job responsibilities, I am familiar with, and regularly review, Met-Ed's business records relating to shared metering investigations, customer contacts with the Company, and the documents supplied by customers and maintained by Met-Ed in connection with the filing of informal and formal complaints with the Pennsylvania Public Utility Commission ("Commission").

5. Met-Ed is an electric distribution company that is certificated as a public utility in Pennsylvania and that provides retail residential electric service to the Rental Location.

6. Brookwine Associates, LLC (“Complainant”) has represented itself to be the property owner and landlord of 36 North Hartley Street, York, Pennsylvania 17401 (“Rental Location”).

7. On August 26, 2013, Tyanna Duncan (“Tenant”) established electric service at the first floor of the Rental Location where Tenant resided (“Tenant’s Apartment”) under Account No. 100104996101 (“Tenant Account”).

8. On May 28, 2014, the Tenant was the customer of record at Tenant’s Apartment.

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15. On August 19, 2014, the Complainant contacted the Company to notify it that the shared metering condition had been repaired and the Company issued a written utility report advising that an appointment needed to be scheduled so that it could verify that the shared metering condition had been corrected. See Exhibit C.

16. On September 11, 2014, the Company performed a field visit and determined the shared metering condition was corrected.

17. On September 16, 2014, the shared metering coding was removed from property and a written report was issued advising that the Tenant could call and reinstate service in her name. See Exhibit D.

18. On November 4, 2014, electric service was properly terminated at the Service Location due to nonpayment and that same day, the Tenant contacted the Company to place service in her name. Service was established in the Tenant's name effective November 5, 2014.

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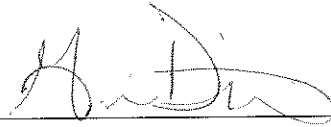
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21. On or about December 22, 2014, the Complainant filed the Formal Complaint with the Commission. On January 5, 2015, the Formal Complaint was served upon the Company. The Formal Complaint admits to the presence of foreign load and alleges only that "a single watt light bulb burning continuously for a month would only use approximately \$7.20 of electricity on average. We would be willing to round that figure to an even \$10.00 per month and just to be safe, double it to \$20.00 per month and reimburse Met Ed \$20.00 per month times the (14) months that Tyanna Duncan was a tenant for a total of \$280.00 to be reimbursed to Met-Ed. We feel this is a more than fair solution as we can not be responsible for a tenant not paying their utility bills." (Letter dated December 18, 2014 attached to Formal Complaint.)

22. On January 26, 2015, Met-Ed filed an Answer and New Matter to the Formal Complaint.

23. By letter dated March 10, 2015, the Complainant untimely filed a Reply to New Matter in which no facts were denied.

24. I am authorized to submit this Affidavit for and on behalf of Met-Ed and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief.



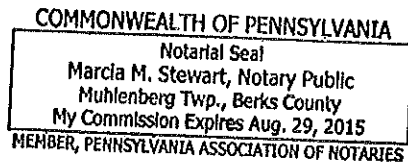
Gina Dietrich

Sworn and subscribed before me this 27th
day of March, 2015.

Marcia M. Stewart

Notary Public

My Commission Expires on: 8/29/15



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BROOKWINE ASSOCIATES, LLC	:	
	:	
v.	:	Docket No. C-2015-2460955
	:	
METROPOLITAN EDISON COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion for Summary Judgment of Metropolitan Edison Company to the Formal Complaint of Brookwine Associates, LLC upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 5.61 (relating to service by a participant).

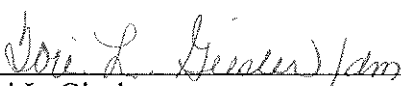
Service by First Class Mail, postage prepaid, as follows:

Samuel L. Alwine, Partner
Brookwine Associates, LLC
468 Mathias Road
Littlestown, PA 17340

and

Kurt A. Blake, Esquire
Blake & Gross, LLC
29 East Philadelphia Street
York, PA 17401

Dated: March 27, 2015



Tori L. Giesler
METROPOLITAN EDISON COMPANY
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6658
tgiesler@firstenergycorp.com