Dan Helwig Inc. – Realtors®

May 22, 2012

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

RE: Daniel Helwig v. PECO Energy Company
Docket No. F-2012-2299753

Dear Secretary Chiavetta,

Enclosed is our response to your Preliminary Objection as received from Stevens & Lee. Please note that the letter was dated May 10, 2012 and we were given 10 days to respond. The letter was not sent certified or registered mail, so the start of the 10 days is uncertain. Additionally, the letter was received while I was on vacation from May 14-18 as specified in my letter of April 16, 2012. We hope that if this response exceeds the allowed 10 days, you will accept our explanation.

We have enclosed an Exhibit, Exhibit 1, which is a statement of policy that we feel is critical to the discussion of this matter. I have been a real estate broker for over 30 years and manage over 200 properties and have never had any experience with a situation of this nature. We realize that ignorance of a law is no excuse, however, we do think that PECO has a responsibility to provide rental property owners with this information to avoid such egregious situations.

If you have any questions or concerns, please do not hesitate to contact me at the number listed below.

Best Regards,

Daniel Helwig
Dan Helwig, Inc. Realtors

cc: Michael A. Gruin/w enclosures
Stevens & Lee

1415 Bethlehem Pike, Flourtown, PA 19031 (215) 233-5000 Fax (215) 233-5837

Response to Preliminary Objection made by PECO Energy Company

Docket No. F-2012-2299753

1. Admitted.

2. Denied.

3. Denied. Please refer to enclosed Exhibit 1:

Statement of Policy Pennsylvania Public Utility Commission. 52 PA. Code Ch 69 1529.1.
Resolution of Complaints Involving 66 PA.C.S. 1529.1 (Relating to Duties of Owners of Rental Property)

The pertinent portion is highlighted in the body of Exhibit 1 and is excerpted below:

I. Proposed Policy Defining "A Dwelling Unit, Not Individually Metered" To Exclude Situations Involving Minimal Foreign Load.

Since the enactment of section 1529.1, the Commission has been faced with several cases where there was more than one dwelling unit in a building, and although each dwelling unit was individually metered, there was foreign load attached to the meter of one dwelling unit. Although in some cases, the foreign load was characterized as de minimis[4], the ultimate resolution was to place that account in the building owner's name. Two reasons support this resolution: (1) the difficulty of developing a definition of de minimis foreign load that can be readily applicable to all situations; and (2) the adverse effect on one or more of the building's other tenants resulting from termination of service to the foreign load.

Such a strict interpretation of the law has proven harsh for small building owners who have been forced to rewire or replumb an entire building to separately meter such things as hall lights, an electric fan on a furnace, a water pump, and the like, to remove foreign load from an individual dwelling unit. This can be onerous where a building owner has already rewired a building to provide an individual meter for each dwelling unit.

The Commission's Bureau of Consumer Services (BCS) has employed in its informal proceedings a policy whereunder a dwelling unit would be considered to be individually metered where only minimal foreign load is registered by that unit's meter. Under this policy, wiring and piping for a unit would not need to be reconfigured to remove foreign load where, after a reasonable investigation of all circumstances, the foreign load was found to be minimal. Also, under this policy, where after a reasonable investigation the amount of foreign load is found to be minimal, the utility or BCS may determine that the account does not need to be transferred into the building owner's name. A customer who did not want to be responsible for the foreign load could

file civil suit against the building owner or could file a formal Commission complaint against the utility.

The Commission believes that under specific circumstances allowing minimal foreign load to be recorded by the meter (without affecting a dwelling unit's status of being individually metered) is not contrary to the intent of the statute. Therefore, the Commission proposes adopting a broader definition of "an individually metered dwelling unit," consistent with BCS usage, so as to include those units with meters that register minimal foreign load[5] .

4. Denied. In view of the information presented in item number 3, we feel that the load described was minimal and that the account should have never been placed in Mrs. Delizarriturri's name. Her electrician Matt Duff of Duff Electric and her plumber Steve Rex of Rex Plumbing & Heating will substantiate that claim. We also suggest that you confer with Ms. Peg O'Donnell of the PECO High Bill Complaint Department who came out to investigate the claim. Although Mrs. Delizarriturri was not notified about Ms. O'Donnell's visit on January 10, 2012, she was there when Ms. O'Donnell came to confirm resolution of the foreign wiring and piping on February 16, 2012. Mrs. Delizarriturri's impression was that Ms. O'Donnell was very apologetic and sympathetic to Mrs. Delizarriturri. We believe Ms. O'Donnell too will confirm that the foreign load would be considered *de minimis.* We ask that Ms. O'Donnell be deposed on this matter.

Mrs. Delizarriturri complied with what she thought she must do and took care of the minimal foreign wiring issue. Rather than incur the expense of putting in a new boiler to heat a 36 square foot area in the shared entry vestibule, she resolved the foreign piping issue by having the piping removed. In the winter there will be no heat in the vestibule to the discomfort of those living in both dwellings in the building.

5. Admited.

6. Admitted.

7. Admitted.

8. Admitted. We disagree with the huge arrearages being placed into Mrs. Delizarriturri's account. Additionally, after reading the highlighted information in Exhibit 1, page 3 Roman Numeral I, paragraph 3, excerpted below, we feel that none of the bill should ever have been placed in Mrs. Delizarriturri's name.

The Commission's Bureau of Consumer Services (BCS) has employed in its informal proceedings a policy whereunder a dwelling unit would be considered to be individually metered where only minimal foreign load is registered by that unit's meter. Under this policy, wiring and piping for a unit would not need to be reconfigured to remove foreign load where, after a reasonable investigation of all circumstances, the foreign load was found to be minimal. Also, under this policy, where after a reasonable investigation the amount of foreign load is found to be minimal, **the utility or BCS may determine that the account does not need to be transferred into the building owner's name**. A customer who did not want to be responsible for the foreign load

could file civil suit against the building owner or could file a formal Commission complaint against the utility.

Mrs. Delizarriturri was unaware of this clause in the Code when she made her offer of paying a percentage of the bill.

9. Denied. Again, See Exhibit 1 page 3 Roman Numeral I, paragraph 3 excerpted below:

The Commission's Bureau of Consumer Services (BCS) has employed in its informal proceedings a policy whereunder a dwelling unit would be considered to be individually metered where only minimal foreign load is registered by that unit's meter. **Under this policy, wiring and piping for a unit would not need to be reconfigured to remove foreign load where, after a reasonable investigation of all circumstances, the foreign load was found to be minimal.** Also, under this policy, where after a reasonable investigation the amount of foreign load is found to be minimal, **the utility or BCS may determine that the account does not need to be transferred into the building owner's name**. A customer who *did not* want to be responsible for the foreign load could file civil suit against the building owner or could file a formal Commission complaint against the utility.

As a small building owner, Mrs. Delizarriturri cannot afford to go to court in a matter that could be resolved in another manner without additional expense. She has already spent a considerable amount of money correcting the foreign wiring and piping issues that according to the information excerpted in our item number 3 above did not need to be reconfigured at all.

10. Denied. We now feel that PECO improperly transferred the tenant's utility account, including arrearages, into the landlord's name.

11. Denied. We assert that there is room for discretion in a case where the foreign load would be considered *de minimis*. See Exhibit 1. The wiring was a low wattage fluorescent lamp on a timer and was located on the stairway to the basement, and a receptacle for an abandoned alarm system. The receptacle was used for a light that would be displayed in the first floor apartment if there was unknown entry into the basement. This was a safety feature.

The piping issue was a small heat register in the entrance foyer to the duplex, a common area measuring 36 square feet.

12. Denied. The relief suggested was to show Mrs. Delizarriturri's desire to settle this matter swiftly and equitably. Now, we assert that as stated in 9 above:

The utility or BCS may determine that the account does not need to be transferred into the

building owner's name.

13. Denied. We assert that the Complainant has just cause to seek proper remedy of the situation by PECO .

Wherefore, I, Daniel Helwig, property manager for Roslyn Delizarriturri, respectfully request that your Honorable Commission reconsider our case.

Respectfully submitted,

Daniel Helwig
Dan Helwig, Inc. Realtors
1415 Bethlehem Pike
Flourtown, PA. 19031
Wk: 215-233-5000 x11
Fax: 215-233-5837

Roslyn Delizarriturri
Property Owner
6303 Sunnybrook Rd. 1st & 2nd floor
Flourtown, PA 19031
215-948-3787

EXHIBIT 1

STATEMENTS OF POLICY

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[28 Pa.B. 5497]

[L-980137]

Resolution of Complaints Involving 66 Pa.C.S. § 1529.1 (Relating to Duties of Owners of Rental Property)

The Pennsylvania Public Utility Commission (Commission) adopted a proposed policy statement for comment. The proposed policy statement sets forth generic policy determinations that will be applied to resolve issues common to many foreign load complaints. The proposed policy also sets forth Commission notice and service procedures for processing informal and formal foreign load complaints. Foreign load is utility service usage that is registered by a customer's meter, but is provided to another dwelling unit, or a common area of a building. The contact persons are Patricia Krise Burket, Law Bureau, (717) 787-3464 and David Lewis, Bureau of Consumer Services, (717) 783-5187.

Commissioners Present: **John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; David W. Rolka; Nora Mead Brownell; Aaron Wilson, Jr.**

Public Meeting held
September 17, 1998

Resolution of Issues Common to Complaints Involving 66 Pa.C.S. § 1529.1 (relating to duty of owners of rental property); Doc. No. L-00980137

Proposed Policy Statement

By the Commission:

The term "foreign load" describes a situation where a ratepayer's meter registers usage for utility service provided to another person or other persons, or for use in a common

area shared by others, for example, hallway lighting, furnace fan, laundry room appliances. Consequently, a ratepayer whose meter registers foreign load usage may be billed and pay for utility service that he or she did not use.

Cases involving foreign load are not new to this Commission. Typically, a customer who files a complaint alleging the existence of foreign load has first called the utility questioning a high bill, and upon investigation, the utility discovers the foreign load wired to the customer's meter.

Prior to 1993, these complaints were generally resolved by the Commission's directing the utility to remove the charges attributable to the foreign load from the bill, and to issue a bill for the foreign load in the building owner's name until the foreign load situation was corrected. The direction was given by the Commission under its statutory power to reform contracts under 66 Pa.C.S. § 508 (relating to power of the Commission to vary, reform and revise contracts). See *Columbia Gas of Pennsylvania, Inc. v. Pa. Public Utility Commission,* 535 A. 2d 1246 (Pa. Cmwlth. 1988). Under this arrangement, the tenant had the responsibility to contact the utility to discover a possible foreign load, and to prosecute a Commission complaint to have the charges attributable to the foreign load removed from his or her bill.

In 1993, the Public Utility Code was amended to include section 1529.1, 66 Pa.C.S. § 1529.1[1] . This section transfers the responsibility for foreign load from the tenant to the building owner[2] . This is accomplished by placing a duty on the building owner to disclose to the utility the existence of foreign load. This is a more equitable arrangement as a building owner is in a better position to know about the existence of a foreign load situation than a tenant in the building. Section 1529.1 reads 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 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 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 the section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

Numerous complaints involving foreign load have been filed since the enactment of section 1529.1. Because the complaints involve recurring issues, we believe that it is appropriate to develop a policy statement to provide guidance to interested parties on these issues[3] .

I. Proposed Policy Defining "A Dwelling Unit, Not Individually Metered" To Exclude Situations Involving Minimal Foreign Load.

Since the enactment of section 1529.1, the Commission has been faced with several cases where there was more than one dwelling unit in a building, and although each dwelling unit was individually metered, there was foreign load attached to the meter of one dwelling unit. Although in some cases, the foreign load was characterized as de minimis[4] , the ultimate resolution was to place that account in the building owner's name. Two reasons support this resolution: (1) the difficulty of developing a definition of de minimis foreign load that can be readily applicable to all situations; and (2) the adverse effect on one or more of the building's other tenants resulting from termination of service to the foreign load.

Such a strict interpretation of the law has proven harsh for small building owners who have been forced to rewire or replumb an entire building to separately meter such things as hall lights, an electric fan on a furnace, a water pump, and the like, to remove foreign load from an individual dwelling unit. This can be onerous where a building owner has already rewired a building to provide an individual meter for each dwelling unit.

The Commission's Bureau of Consumer Services (BCS) has employed in its informal proceedings a policy whereunder a dwelling unit would be considered to be individually metered where only minimal foreign load is registered by that unit's meter. Under this policy, wiring and piping for a unit would not need to be reconfigured to remove foreign load where, after a reasonable investigation of all circumstances, the foreign load was found to be minimal. Also, under this policy, where after a reasonable investigation the amount of foreign load is found to be minimal, the utility or BCS may determine that the account does not need to be transferred into the building owner's name. A customer who did not want to be responsible for the foreign load could file civil suit against the building owner or could file a formal Commission complaint against the utility.

The Commission believes that under specific circumstances allowing minimal foreign load to be recorded by the meter (without affecting a dwelling unit's status of being individually metered) is not contrary to the intent of the statute. Therefore, the Commission proposes adopting a broader definition of "an individually metered dwelling unit," consistent with BCS usage, so as to include those units with meters that register

minimal foreign load[5] .

II. Proposed Policy Allowing a Tenant To Notify the Utility of Willingness to Accept Financial Responsibility for Foreign Load Service.

Under section 1529.1(b), a utility is not required to place an account for an individually metered dwelling unit in the name of the building owner where the tenant has notified the utility to the contrary. Thus, the operation of the statute is effectively superseded by the tenant's notifying the utility of a willingness to accept financial responsibility for a utility account even if charges for foreign load are billed to the account.

Accordingly, for purposes of applying section 1529.1(b), the Commission proposes to adopt a policy expressly recognizing the tenant's prerogative to agree to be billed for foreign load.

This policy is consistent with past decisions where the Commission has recognized that a tenant may agree to accept financial responsibility for a foreign load that was disclosed. *See Kim Blackwell v. Equitable Gas Company*, 55 Pa. PUC 647 (1982) (tenant, who was listed as the account holder and collected from other tenants moneys to pay the building's utility account, was financially responsible for a joint utility bill for three apartments). Compare *Bureau of Consumer Services and Hannah Rebel v. Pennsylvania Gas & Water Company*, 67 Pa. PUC 380 (1988) (residential tenant who was the utility account holder was not responsible for natural gas service provided to two storefronts and a water heating system for the entire building as she did not have notice, nor agree to accept responsibility for the commercial foreign load).

A problem could arise when a tenant who is financially responsible for the foreign load service wanted to move or discontinue service, thereby jeopardizing the benefits enjoyed by all tenants. However, this problem would be remedied by the utility treating the tenant's account as the building owner's account for purposes of providing notice of a termination of service to other tenants consistent with 66 Pa.C.S. § 1523 (notices before service to landlord terminated). There would be no additional burden on the utility as the notice that is statutorily required to be given would be the same as if the building owner[6] had requested to discontinue service. Furthermore, if the tenant requested discontinuance of service or if the account is threatened with termination for nonpayment, the foreign load account should be placed back into the building owner's name so as to avoid the loss of service to any other tenants.

III. Proposed Policy On the Transfer of the Tenant's Account and the Date of Transfer of Financial Responsibility for the Account.

To remove any uncertainty as to the procedure expected for the transfer of utility accounts that include charges for foreign load, the Commission expects that upon discovery of a foreign load that had not been disclosed to the tenant and for which the tenant had not accepted financial responsibility, the utility will notify the building owner

and place the utility account for that dwelling unit in the building owner's name. The account is to remain in the building owner's name until the foreign load is removed, or until the tenant notifies the utility of an agreement to accept responsibility for the account.

The building owner has the responsibility of notifying both the utility and the tenant when the foreign load is removed from the tenant's meter. At that time the account may be placed back into the tenant's name. A tenant who wishes to dispute the matter may file a claim against the building owner in civil court in accordance with appropriate landlord/tenant laws, or can pursue Commission dispute resolution processes through Chapter 56.

IV. Proposed Policy Requiring the Same Tariff Rate to Be Charged for a Residential Account Transferred into the Name of the Building Owner.

The situation has arisen in Commission cases where a building owner that had a tenant's individually metered residential account transferred into his name because of the presence of foreign load charges on the account was charged for service at a commercial rate.[7] The Commission believes that under these circumstances, it is unfair for the building owner to be charged the higher commercial rate rather than the lower residential rate for service. Charging the higher rate imposes a financial hardship on the building owner who will more than likely charge the tenant higher rent to compensate for the higher utility rate. No one is benefited by this action. Accordingly, the Commission proposes that where an individually metered residential account contains charges for foreign load and the service is placed in the name of the building's owner, service should be billed at the residential, not the commercial rate.

V. Proposed Policy Regarding Refunds to Tenants; Responsibility for Unpaid Tenant Balance on an Account Transferred to Building Owner; Responsibility for Account When a Building is Sold to a New Owner; and Establishment of a Date for Backbilling Building Owner.

Issues relating to billing, customer refunds and back billing of owners of buildings have also been a source of much Commission litigation. ALJ Allison K. Turner in her Initial Decision in *Metropolitan Edison Co. v. Elizabeth Santos,* C-00967757, formulated rules at the request of utility complainant Metropolitan Edison Company and intervenor Pennsylvania Power & Light Company. In our proposed policy statement, the original text of the ALJ's rules has been expanded to limit the rules so that it is clear that they are not applicable to factual situations that do not involve foreign load.

Under the statute and Commission expectations, the utility is relieved of the duty to refund amounts paid by a tenant to the utility for service that was rightfully the responsibility of the building owner because of the presence of foreign load charges. This also eliminates the need for the utility to rebill and attempt to collect these same amounts from the building owner. In the case of the sale of the involved building, the possibility that a new building owner would be held responsible for foreign load that he himself is

unaware of until a utility investigation discovers it is eliminated. The Commission will use a reasonableness standard in applying this policy as it would be incredible, except under extraordinary circumstances, for a long-term building owner not to be aware of the existence of a foreign load until the utility discovers it.

The Commission believes that this fairly balances the competing interests of the parties involved and proposes to adopt them as policy that will be applied in all such cases. Under this policy, the utility can transfer unpaid balances to the building owner from the date that the building owner had effective constructive notice of the foreign load.

VI. Proposed Policy Requiring Notice of a BCS Informal or Formal Complaint to Be Sent to Essential Parties.

In his Initial Decision in *Reber v. UGI Utilities, Inc.*, Dkt. No. C-00967802, Order dated January 15, 1997, ALJ Michael C. Schnierle expressed concern over the lack of notice to the building owner when a tenant had filed an informal complaint with the BCS. The Commission agrees that the outcome of an informal complaint involving foreign load may adversely affect a building owner who may be held responsible for a tenant's utility account. Fairness dictates that the building owner should be provided with notice of the informal complaint filed by the tenant and that the building owner be afforded the opportunity to be included in the complaint's investigation.

Accordingly, whenever an informal or formal complaint alleging the presence of foreign load is submitted, the proposed policy statement provides that the complainant must provide the name, address and telephone number of his or her building owner so that a copy of the complaint can be provided to the building owner. Upon petition, a building owner will be granted intervenor status as an essential party to the complaint. Documents provided to the Commission are served on or provided to the building owner regardless of whether the building owner has requested to participate in the Commission proceeding. The Commission will provide copies of a BCS determination on an informal complaint, and all orders issued in a proceeding to all parties including the building owner.

These procedures apply equally to notification to the tenant where a building owner initiates the complaint process.

VII. Policy Issues Related to the Restructuring of the Electric and Gas Industries.

With the enactment of Chapter 28 electric industry restructuring, and the possibility of gas industry restructuring, consideration must be given to the mechanics of identifying foreign load, and assigning financial responsibility for the residential account where the utility service is unbundled. When electric or natural gas service is unbundled, the consumer purchases electric generation or natural gas from a supplier and that generation or natural gas is transported or delivered by an electric or natural gas distribution company.

To stimulate comment on these issues, the proposed policy statement includes provisions for the processing of foreign load complaints where the tenant has been receiving unbundled utility service. These provisions include, inter alia, the identification of start dates for building owner financial responsibility for the natural gas or electric generation and transmission and distribution accounts, the preservation of the tenant's choice of supplier if responsibility for the accounts are returned to the tenant, and the establishment of building owner responsibility for unpaid balances on a tenant's unbundled service accounts.

The Commission encourages comment on the proposed policy statement following this order as Annex A and invites interested parties to provide alternative interpretative language. The Commission recognizes that it may not have addressed all of the issues that are commonly raised in foreign load complaint proceedings. However, to the extent that other generic issues can be resolved as policy, comments should identify these issues and offer appropriate policy solutions; *Therefore,*

It is Ordered that:

1. The proposed policy statement re: resolution of issues common to complaints involving 66 Pa.C.S. § 1529.1 (relating to duty of owners of rental property) as set forth in Annex A to the order is hereby promulgated for comment.

2. This order and Annex A shall be published in the *Pennsylvania Bulletin,* as written under 45 Pa.C.S. § 727 (relating to matter not required to be published). Interested persons may submit written comments, an original and 15 copies, to Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, and shall have 30 days from the date that the order and Annex are published in the *Pennsylvania Bulletin* to submit comments. Commentators are strongly encouraged, if suggesting changes or additions to the proposed policy statement, to supply alternative interpretive language. A diskette containing the comments in electronic format should also be provided to the Commission.

3. A copy of this order and Annex A, and any accompanying statements of the Commissioners, be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional electric distribution companies, all jurisdictional natural gas and Class A water utilities, all licensed electric generation suppliers, the Public Utility Law Project, the Pennsylvania Gas Association, the Pennsylvania Electric Association, the National Association of Water Companies, the Pennsylvania Residential Property Owners Association and be made available to all other interested parties.

4. The Secretary submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-199. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

RESOLUTION OF GENERIC ISSUES INVOLVING 66 PA.C.S. § 1529.1

§ 69.271. Purpose.

(a) The term "foreign load" describes a situation where an individually-metered dwelling unit's utility meter registers usage for service provided to another person or other persons in the building, for example, a shared water heater or space heating system, or for use in a common area of the building such as hallway lighting, a furnace fan or laundry room appliances.

(b) In enacting 66 Pa.C.S. § 1529.1 (relating to duty of owners of rental property), the Legislature has transferred the responsibility for foreign load from the residential tenant to the building owner. Sections 69.272--69.278 and this section (relating to resolution of generic issues involving 66 Pa.C.S. § 1529.1 and this section) set forth generic policy determinations that will be applied to resolve certain issues common to many foreign load complaints. These sections also set forth Commission notice and service procedures for use in processing informal and formal foreign load complaints.

§ 69.272. Definitions.

The following words and terms when used in § 69.271, this section and §§ 69.273--69.278, have the following meanings, unless the content clearly indicates otherwise:

Acceptable foreign load--The foreign load that has been disclosed in writing to a tenant and for which the tenant has notified the utility that the tenant will accept financial responsibility. See § 69.273(b) (relating to transfers of account and financial responsibility for the account notice prior to discontinuation of service).

Bundled utility service--Electric, natural gas, water and steam service provided by a jurisdictional public utility.

Distribution company--A company that delivers, transports or transmits electric generation, or natural gas to an end use customer.

Foreign load--A situation where a ratepayer's meter registers usage for utility service provided to a dwelling unit or dwelling units occupied by a person or persons other than the ratepayer, or for use in a common area of a building, for example, hallway lighting, furnace fan and laundry room appliances.

Individually metered dwelling unit--A dwelling unit where utility service usage registered by the utility meter is exclusive to that unit. The recording by a dwelling unit's meter of usage for an acceptable foreign load will not affect the individually metered status of a dwelling unit.

Supplier--A company that provides electric generation or natural gas to an end-user.

Unbundled utility service--A service under which natural gas or electric generation is purchased from a supplier which is transported or delivered or transmitted to an end-use customer by a distribution company.

§ 69.273. Transfers of the account and financial responsibility for the account; notice prior to discontinuance of service.

(a) Upon discovery of a foreign load that had not been disclosed to the tenant and for which the tenant had not accepted financial responsibility, the utility should notify the building owner and place the utility account for that dwelling unit in the building owner's name. The building owner is responsible for notifying both the utility and the tenant when the foreign load is removed from the tenant's meter. The account should remain in the building owner's name until the foreign load is removed. At that time the account may be placed back into the tenant's name. A tenant who wishes to dispute the matter may file a claim against the building owner in civil court in accordance with appropriate landlord/tenant laws, or pursue Commission dispute resolution processes through Chapter 56 (relating to standards for billing practices for residential utility service).

(b) A utility is not expected to place a utility account in the building owner's name where the owner has disclosed the foreign load in writing to the tenant, and the tenant has notified the utility of its acceptance of responsibility for the foreign load. If, after the disclosure of the foreign load, the tenant does not agree to be responsible for the foreign load, the building owner has the duty to contact the utility, and maintain financial responsibility for the account.

(c) If the tenant, who has accepted financial responsibility for disclosed foreign load wishes to discontinue service or when the utility threatens termination of the a tenant's account for nonpayment, the tenant's account should be treated the same as the building owner's account in that notice upon discontinuance or for termination for nonpayment should be provided consistent with 66 Pa.C.S. § 1523 (notices before service to landlord terminated). When the tenant's account is discontinued or terminated, the utility is

expected to place the account into the building owner's name.

§ 69.274. Account to be charged at the residential rate.

When an individually metered residential account contains charges for foreign load and the service is placed in the name of the building owner, service should be billed at the residential, and not the commercial rate.

§ 69.275. Refunds to tenants not required.

When the tenant has paid the utility bills for service rightfully the responsibility of the building owner because of the presence of foreign load charges, the utility is not expected to refund that amount to the tenant and back-bill the building owner.

§ 69.276. Responsibility for unpaid tenant balances on accounts; date for backbilling building owner/building owner.

(a) When the tenant has accrued unpaid bills for service rightfully the responsibility of the building owner because of the presence of foreign load charges, the utility should pursue collection from the building owner, not the tenant.

(b) When the building owner sells the building, the utility should proceed against the individual that owned the building during the time that the unpaid utility charges were incurred to collect unpaid bills for utility service rightfully the responsibility of the building owner because of the presence of foreign load charges.

(c) Unpaid balances for utility service rightfully the responsibility of the building owner because of the presence of foreign load that accrued since the date the building owner received constructive notice of the foreign load should be transferred to the building owner.

§ 69.277. Proposed policy requiring notice to the building owner of informal and formal complaints alleging foreign load.

(a) Procedures for informal complaints under Chapter 56 (relating to standards and billing practices for residential utility service) alleging the presence of foreign load are as follows:

(1) A tenant filing an informal complaint involving foreign load provides to the Bureau of Consumer Services (BCS) investigator the name, address and telephone number of the building owner.

(2) The BCS provides a copy of the informal complaint to the utility and the building owner with a cover letter stating that participation in the BCS investigation is in the building owner's best interest and that failure to participate could result in a decision that could be adverse to the building owner's interest.

(3) The BCS investigator will make a reasonable effort to contact the building owner.

(4) A copy of each document received by the BCS investigator will be provided to each party, regardless of whether they chose to participate in the investigation on the informal complaint.

(5) The BCS will provide a copy of the investigator's decision to each party, and advise each party of the opportunity to file a formal complaint if a party disagrees with the BCS investigator's decision.

(b) Procedures for formal complaints alleging the presence of foreign load are as follows:

(1) The tenant provides the name, address and telephone number of the building owner in the formal complaint.

(2) The complainant sends or serves a copy of the complaint on the building owner when it is filed with the Commission. When a complaint is not served on the building owner, the Commission presiding officer will direct that the service be completed prior to the first prehearing conference, and that proof of this service be provided to the Commission and the respondent utility.

(3) Upon petition, a building owner will be granted intervenor status as an essential party to the complaint.

(4) The complainant and respondent utility serves a copy of each document that is filed with the Commission on the building owner, regardless of whether the building owner has been granted intervenor status.

(5) A copy of each Commission order issued in regard to the proceeding will be served on the building owner, regardless of whether the building owner has been granted intervenor status.

(c) These procedures apply equally to the tenant when a building owner initiates the complaint process.

§ 69.278. Foreign load issues after restructuring of the electric and gas industries.

(a) Foreign load investigations should be conducted by the distribution company. A charge should not be assessed for a foreign load investigation, or for meter testing.

(b) When the tenant is receiving bundled natural gas or electric service, the procedures outlined in §§ 69.273--69.277 apply.

(c) When a tenant is receiving unbundled utility service, the following procedures apply:

(1) Upon complaint of a tenant, the distribution company notifies the tenant, the building owner, and the tenant's supplier of the identified foreign load within 5 business days of its discovery.

(i) The distribution company places the tenant's account for transmission and distribution charges in the building owner's name, and the supplier places the tenant's electric generation or natural gas account for the dwelling unit in the building owner's name. These accounts remain in the building owner's name until the foreign load is removed.

(ii) The building owner has the duty to notify the tenant, the distribution company and the supplier when the foreign load has been removed. At that time, the accounts may be placed back into the tenant's name. A tenant who wishes to dispute the matter may file a claim against the building owner in civil court in accordance with appropriate landlord/tenant laws, or pursue Commission dispute resolution processes through Chapter 56 (relating to standards and billing practices for residential utility service).

(2) When a tenant's existing contract or agreement for electric generation or natural gas supply expires during the period that the account is in the building owner's name, and the building owner intends to remove the foreign load so that financial responsibility for the utility service may be transferred back to the tenant, the building owner may consult with the tenant on the choice of suppliers, or the building owner may obtain supply from the provider of last resort so that the tenant can choose a supplier when the tenant is again financially responsible for the utility service.

(d) When the tenant has paid the utility bills for service rightfully the responsibility of the building owner because of the presence of foreign load charges, the distribution company or the supplier is not expected to refund that amount to the tenant and back-bill the building owner.

(e) When the tenant has accrued unpaid bills for service rightfully the responsibility of the building owner because of the presence of foreign load charges, the distribution company and the supplier should pursue collection from the building owner, not the tenant.

(1) The supplier may transfer to the building owner unpaid balances for electric generation or natural gas supply accrued since the effective date of an existing tenant-supplier agreement or contract, but no earlier than the date of constructive notice of the foreign load to the building owner. The supplier may transfer to the building owner unpaid balances on previous tenant-supplier agreements or contracts, accrued since the date of each prior agreement or contract, but no earlier than the date of constructive notice of the foreign load to the building owner.

(2) The distribution company may transfer to the building owner unpaid balances for transmission and distribution charges accrued since November 1, 1997, but no earlier than the date of constructive notice of the foreign load to the building owner.

(3) Unpaid balances for bundled electric or natural gas service accrued prior to November 1, 1997, but no earlier than the date of constructive notice of the foreign load to the building owner may be transferred to the building owner.

(f) When the foreign load has been disclosed to the tenant and the tenant agrees to accept the foreign load and has chosen to receive unbundled service, the tenant's account should be treated the same as the building owner's account in that notice upon discontinuance of service or for termination of service for nonpayment should be provided consistent with 66 Pa.C.S. § 1523 (relating to notices before service to landlord terminated). Both the distribution company and the supplier should supply the appropriate notices to both the building owner and the tenants.

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