

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Glenn DeHaven
v.
PECO Energy Company**

**Public Meeting held February 8, 2018
2585680-OSA**

Docket No. C-2017-2585680

MOTION OF CHAIRMAN GLADYS M. BROWN

On January 11, 2017, Glenn DeHaven filed a formal Complaint against PECO alleging that PECO improperly billed him for \$1,800 of electric usage that was accrued by his tenants. Mr. DeHaven added that he is not responsible for the bill because electric usage is part of the tenants' lease. In its answer, PECO averred that a PECO technician visited the property and found foreign wiring in a rear barn, fish pond, and trough heater connected to the tenants' meter. The tenants' balance of \$1,893.52 was transferred to Mr. DeHaven's account following the discovery of the foreign load.

On February 3, 2017, PECO filed a Preliminary Objection arguing that the Commission has found that a landlord must pay the utility for any account balance, including arrearages, once foreign load is found. PECO added that, 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 with any dispute regarding the financial responsibility of the parties being a matter to be resolved in the Court of Common Pleas, not the Commission.

The ALJ noted that the Mr. DeHaven acknowledged the existence of foreign load in the Complaint. ALJ Cheskis granted PECO's preliminary objection and dismissed Mr. DeHaven's Complaint without a hearing finding that, even when accepting as true all well pleaded material facts in the Complaint, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to Mr. DeHaven, the tenants' account was not individually metered and had to be transferred to the landlord, Mr. DeHaven, pursuant to 66 Pa. C.S. § 1529.1.

Mr. DeHaven filed Exceptions arguing that he should not be responsible for the portion of the tenants' balance which was accrued prior to their moving into his property, \$1,036.69. He also reiterated that the lease agreement put responsibility for the foreign load on the tenants.

Once a foreign load is discovered by the electric distribution company (EDC), the EDC is required, pursuant to Section 1529.1 of the Code, 66 Pa. C.S. § 1529.1, to list the account associated with the foreign load in the name of the owner of the property. In particular, Section 1529.1 of the Code provides:

§ 1529.1. Duty of owners of rental property

(a) **Notice to public utility.**—It is the duty of every owner of a residential building or mobile home park, which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

(b) **History of account.**—Upon receipt of the notice provided in this section, if the mobile home park or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

(c) **Failure to give notice.**—Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa. C.S. § 1529.1.

The phrase “not individually metered” as used in Section 1529.1 means that the meter for the unit is registering a foreign load. *Shank v. PPL Electric Utilities Corporation*, Docket No. C-2009-2087300 (Opinion and Order entered August 31, 2009). The Commission has determined that the presence of foreign load prevents a dwelling unit from being deemed “individually metered” as that term is used in 66 Pa. C.S. § 1529.1. *Elizabeth Santos v. Metropolitan Edison Company*, Docket No. C-00967757 (Order entered August 7, 1997) *Santos*. The Commission has established that Section 1529.1 is clear in that only individually metered units may be billed directly to a tenant and that, upon the documenting of the presence of foreign load, a utility must bill the service to the landlord. *See David P. Boyce v. Duquesne Light Company*, Docket No. Z-00223698 (Opinion and Order entered September 1, 1994).

Once a foreign load is verified on the tenant’s service, the property owner is financially responsible for the tenant’s entire account. *See Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010) (*Ace Check*). There is no *de minimus* exception. *Ace Check*. Only after the landlord corrects the foreign load, as verified by the utility, must the utility re-list the account back to the name of the tenant; however, the

landlord remains responsible for any arrearage on the tenant's account that existed prior to when the utility verified that the foreign load was corrected. *Kopf; Ace Check*. The utility must pursue collection of any unpaid amounts from the landlord, and not from the tenant. *Santos*.

Mr. DeHaven's Exception regarding the lease agreement with the tenants should be denied. The Commission has no jurisdiction over lease agreement disputes between landlords and tenants. *Ace Check; Afshari v. PPL Electric Utilities Corporation*, Docket No. C-20055547 (Order entered April 9, 2008).

However, this is the first time in my tenure on the Commission that the issue of landlord liability for usage not connected to the landlord's property has been expressly challenged. With regard to the \$1,036.69 of usage which the tenants accrued prior to moving into Mr. DeHaven's property, logic dictates that this is usage which is wholly unrelated to Mr. DeHaven's property, usage which was not at all affected by the electric wiring of Mr. DeHaven's property, and therefore, usage for which Mr. DeHaven bears no responsibility. It should be noted that Section 1529.1 of the Code states, in pertinent part, "[i]n 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**." To hold this landlord responsible for usage which accrued at property other than the premises, which he does not own, is an unreasonable construction of the statute. As such, this matter should be returned to the Office of Administrative Law Judge to determine the amount of usage which accrued prior to the tenants' moving into Mr. DeHaven's property. That amount should be removed from Mr. DeHaven's bill as Section 1529.1 does not transfer responsibility for a tenant's prior outstanding balance at another premises to a new landlord at a new premises. The prior outstanding balance remains the responsibility of the tenant.

THEREFORE, I MOVE:

1. That, consistent with this Motion, the ALJ's Initial Decision be reversed, in part, and remanded for fact finding regarding the amount of the tenants' arrearage not related to Mr. DeHaven's property.
2. That Mr. DeHaven is not to be billed for usage which did not accrue at his premises.
3. That the Office of Special Assistants draft and Opinion and Order consistent with this Motion.

February 8, 2018

Date



Gladys M. Brown, Chairman