PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Richard Dina
v.
PECO Energy Company

Public Meeting held February 8, 2018
2592410-OSA

Docket No. F-2017-2592410

MOTION OF CHAIRMAN GLADYS M. BROWN

On March 2, 2017, Richard Dina filed a Complaint alleging that PECO improperly transferred his tenants' account and arrearage to his name when foreign load was found on the tenants' meter. The Complaint was dismissed on a Preliminary Objection when the ALJ found 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. Dina, the tenants' account was not individually metered and had to be transferred to the landlord, Mr.Dina, pursuant to 66 Pa. C.S. § 1529.1.

Mr. Dina filed Exceptions arguing that he should not be responsible for a portion of the tenants' balance which was accrued prior to their moving into his property. He also reiterated that the tenants agreed to the foreign load in exchange for free basement storage.

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.
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> (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. Dina's Exception regarding the 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, with regard to the usage which the tenants accrued prior to moving into Mr. Dina's property, logic dictates that this is usage which is wholly unrelated to Mr. Dina's property, usage which was not at all affected by the electric wiring of Mr. Dina's property, and therefore, usage for which Mr. Dina bears no responsibility. To hold this landlord responsible for usage which accrued at property which he does not own is unreasonable. 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 unreasonably punitive. 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. Dina's property. If that amount has not been paid off by the tenants, it should be removed from Mr. Dina's bill.

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. Dina's property.

2. That Mr. Dina 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