

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

JYF Partners
v.
PECO Energy Company

Public Meeting held April 5, 2018
2628546-ALJ
Docket No. C-2017-2628546

JOINT MOTION OF CHAIRMAN GLADYS M. BROWN
AND COMMISSIONER JOHN F. COLEMAN, JR.

On September 25, 2017, the Complainant, JYF Partners (JYF), filed a formal Complaint against PECO Energy Company (PECO) alleging that PECO placed an unpaid balance from a tenant's account onto its account following the discovery of a foreign load condition at the subject property. JYF requests that the Commission direct PECO to recalculate the bill and transfer the amount attributable to the tenant back to the tenant. PECO filed an Answer and Preliminary Objections to JYF's Complaint. In its Answer, PECO admits that it transferred the balance from the tenant's account to JYF's active account upon discovery of the foreign load condition. PECO avers that a technician discovered that service to a separate shed on the subject property was connected to the tenant's meter and, accordingly, PECO transferred the tenant's balance in the amount of \$751.64 to an active account held by the Complainant. The Answer requested that the Commission dismiss the Complaint as legally insufficient. The ALJ granted the Preliminary Objections and dismissed the Complaint without a hearing.

Based on the allegations made in the Complaint, the subject premise is a single-family home individually metered for the tenant's use, with a shed in the yard that the landlord used for storage. Section 1529.1 of the Public Utility Code provides, relevantly:

- (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.

The legal question at issue is whether a single-family home with a detached structure (e.g. garage, shed, etc.) is a “residential building which contains one or more dwelling units, not individually metered.” Here we appear to have one dwelling, but two buildings, on the same meter. “Residential building” is defined as a “building containing one or more dwelling units occupied by one or more tenants.”¹ Again, “building” is used in the singular. At its core, the case appears to turn on whether a single-family home is a “residential building” consistent with Section 1521 of the Public Utility Code.²

We are not reasonably certain that the General Assembly intended for Section 1529.1 to be applied as proposed by PECO to this customer, and therefore do not agree with the granting of PECO’s Preliminary Objections. For example, as an alternative to PECO’s interpretation, the General Assembly may have intended, by the “one or more” language to address buildings that had a single residential tenant and other, non-residential tenants.

Section 1529.1 establishes very important protections for tenant ratepayers. The Commission has developed a lengthy body of precedent in applying this provision, and we are very familiar with examples of customers being improperly assigned responsibility for the utility use of other tenants, residential or not, or for common areas within buildings. In such cases, it is difficult, if not impossible, for a tenant to recognize whether foreign load exists without the assistance of an electrician. Accordingly, we have repeatedly held that Section 1529.1 establishes a bright line rule placing financial responsibility on landlords for foreign load, even when the landlord may not have been the original party responsible for the situation, or the load in question is alleged to be “de minimis.” Our decisions may appear to render a harsh result at times, but we are confined by the statutory provisions of Section 1529.1 of the Public Utility Code.

This case, involving load from an entirely separate structure, which allegedly was reserved for the exclusive use of the landlord, does not appear to present the same policy concerns in prior cases addressed by this Commission, and may not fit within the provisions of Sections 1521 and 1529.1 of the Code.

Accordingly, we believe it appropriate to remand this matter to the Office of Administrative Law Judge for evidentiary hearings for fact finding verifying the nature of the service to this address and so that the parties can address the legal and policy concerns we have identified.³

¹ 66 Pa.C.S. § 1521.

² Separately, PECO’s tariff does define residential service as “Single phase service in the entire territory of the Company to the dwelling and appurtenances of a single private family.” PECO Rate R Residence Service.

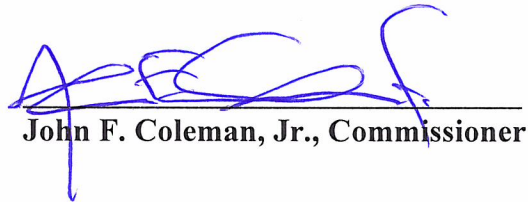
³ If the Complainant is a business partnership, it must be represented by an attorney. 52 Pa. Code § 1.21.

THEREFORE, WE MOVE THAT:

1. The ALJ's Initial Decision be reversed consistent with this Motion.
2. This matter be remanded to the Office of Administrative Law Judge for further hearings.
3. The Office of Special Assistants draft an Opinion and Order consistent with this Motion.

April 5, 2018
Date


Gladys M. Brown, Chairman


John F. Coleman, Jr., Commissioner