

CONTINUED

65-A

C-00967757

DOCUMENT
POLICY

JUL 21 1997

CONTENT OF MOTION:

2) the Complaint-Appeal and Exceptions of Met-Ed are respectively sustained and granted in part, consistent with this Motion;

3) the Decision of BCS to remove the amount of \$40.06 from the account transferred to the landlord is affirmed; and

4) the Office of Special Assistants shall prepare an appropriate Order consistent with this Motion.

MOTION BY:	Commissioner Rolka	Commissioner Chm. Quain - Yes
		Commissioner Hanger - Yes
SECONDED:	Commissioner Bloom	Commissioner Brownell - Yes

CONTENT OF MOTION:

The Law Bureau, with the assistance of the Bureau of Consumer Services, shall be directed to prepare a proposed Policy Statement, consistent with the body of this Motion, for presentation at a future Public Meeting.

X-CAL

JUL 10 1997

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania

ELIZABETH SANTOS
v.
METROPOLITAN EDISON CO.

PUBLIC MEETING-
JULY 10, 1997
APR-97-OSA-129*
DOCKET NO. C-00967757

MOTION OF COMMISSIONER JOHN HANGER

Met Ed filed the instant Complaint concerning the account of Ms. Santos, a tenant with electric service in her name. Her account and bill also provides "foreign load" service to a barber shop and church in the building. In December, 1995, BCS directed that Met-Ed place the entire account, including back-billing, in the landlord's name¹ pursuant to Chapter 15, Subchapter B of the Public Utility Code.

Both Met Ed and PP&L, an intervenor in this case, have essentially sought a uniform Commission interpretation of Section 1529.1. Both the ALJ and OSA recommendations are substantially, but not completely, accurate. Greater clarity is needed to minimize continuing problems concerning these issues.

First, it is important to understand some history of Subchapter B that helps explain the continuing controversy. Subchapter B, "Discontinuance of Service to Leased Premises" was added to the Code in 1978 to protect residential tenants from loss of utility service when their landlord ratepayer was subject to termination of service by the utility. It provided for identification of tenant occupied properties, notices to tenants of potential loss of service, and established the right of tenants to continue service upon payment of current bills directly to the utility. Section 1529 provides an explicit remedy for the tenant to recover such payments made to the utility directly from the landlord ratepayer or by deducting the amount from rent or other sums due to the landlord.

In 1993, Subchapter B was amended in various ways to make it more workable and improve enforcement. As part of the amendments, a new Section 1529.1 was added. Section 1529.1 applies to the foregoing circumstances in which tenants are provided a remedy to continue service notwithstanding imminent cessation of

¹ Ownership of the building changed during the informal complaint proceeding. All parties, including BCS and the ALJ in the formal complaint proceeding correctly allocated any landlord account responsibility to the appropriate landlord. In the formal complaint proceeding, both landlords were given the opportunity to participate, although neither did so. BCS also properly removed the amount of \$40.06 from the amount transferred to the landlord account because it was for service to tenant at a previous address.

landlord ratepayer service. The addition of Section 1529.1 did, for the first time, bring "foreign load" situations into the Subchapter by mandating that all utility service to residential buildings, as defined, which contain "one or more dwelling units, not individually metered" must be listed in the name of the landlord. This change was intended to extend the existing protections to those tenants whose utility service is dependent on continued service to another tenant as well as those who are dependent on continued utility service to their landlord.

In sum, the Subchapter attempts to protect residential tenants from the loss of utility service because another party has service terminated by the utility.

As to this case, it must be noted that there is no residential tenant potentially threatened by nonpayment of the bill by another tenant, so it is not the type of circumstances intended to be covered by Section 1529.1. Nevertheless, the plain language of the Subchapter is directly applicable and must be applied. The relevant section of 1529.1(b) applies when a "residential building contains one or more dwelling units not individually metered." The definition of "residential building" in Section 1521 is "a building containing one or more dwelling units occupied by one or more tenants." "Tenant" is defined only to include dwelling units. The fact the other tenants are not-residential excludes them from the protected class. Yet, the building still contains "one dwelling unit" and a black letter reading of the Subchapter applies to the situation in question.

The black letter of Section 1529.1 (b) does require that the utility transfer the account into the name of the landlord upon discovery of the foreign load and identification that the dwelling unit is not separately metered. Furthermore, Section 1529.1 (c) does explicitly require that the landlord "shall nonetheless be responsible for payment of the utility services" as of the effective date of the requirement to identify tenant occupied units, or September 1, 1993. The utility must switch the account into the name of the landlord and bill the landlord's account for any unpaid billing on the account.

Clearly, the utility must pursue collection of any unpaid amounts from the landlord and not from the tenant. The harder question is whether any adjustments must be made to reflect amounts already paid on the account by the tenant. Is the landlord still responsible for amounts already paid by the tenant? Must the utility refund such amounts paid by the tenant? The Subchapter does not give clear guidance. Nevertheless, understanding the intent and precise language of the Subchapter leads to a clear conclusion. The landlord has the duty to reimburse the tenant for amounts paid by the tenant that are the landlord's responsibility. The utility, however, is not the arbiter of such disputes, and need not refund amounts already paid on the account.

Met Ed argues that Section 1529 provides a statutory

directive. Section 1529 provides that "any tenant who has made a payment to a utility on account of non-payment of charges by the landlord ratepayer" may deduct such amounts from payments due the landlord or otherwise obtain reimbursement directly from the landlord. This section was not intended to be directly applicable because it was included in the Code in 1978, before the "foreign load" amendments were added in Section 1529.1. It refers to "payment to a utility on account of non-payment of charges by the landlord ratepayer." However, in "foreign load" situations, the tenant made the payments on her own account. Section 1529 was intended to apply to tenant payments towards the landlord ratepayer's bill in order to retain tenant utility service.

Nothing in the Subchapter imposes a utility duty to refund amounts paid by the tenant. Doing so would create a windfall for the tenant who would thereby be relieved of financial responsibility even for their own utility service for a period stretching back to September, 1993. Such a result becomes increasingly inappropriate as time goes on. Moreover, such an approach would in effect place a duty on the utility to discover all foreign loads. No such duty is in the Subchapter and is overbroad as a matter of policy. It would expose the utility to non-payment for account balances already collected over an extended period of time. In many situations, returning the entire account balance for a number of years to the landlord would likely result in uncollected amounts for the utility. Such unpaid landlord bills would subject the account to termination, leaving tenants at risk of loss of the very utility service that the Subchapter was intended to protect. In such situations, the Subchapter and the remedies in Section 1529 would be applicable.

Thus, while we decline to hold that Section 1529 is directly applicable, the remedies available to the tenant nevertheless remain the same. While a utility need not refund amounts already paid by the tenant on the account that is now recognized as the landlord's responsibility since 1993, the tenant may seek reimbursement from the landlord for any amounts paid on the landlord's behalf that were not in fact the tenant's responsibility under its lease. If the landlord does not voluntarily provide reimbursement, the tenant shall have the remedies in section 1529, including legal action in the appropriate court, or withholding future amounts due to the landlord. The utility need not be the arbiter of payment agreements between the landlord and tenant under a lease and should not refund to the tenant amounts already paid. The utility must, however, place the account in the landlord's name upon discovery of the foreign load and collect unpaid bills only from the landlord.

THEREFORE, I MOVE THAT:

1. The recommendation of the ALJ and OSA are adopted in part, as modified by this Motion; and
2. The Complaint-Appeal and Exceptions of Met Ed are

respectively sustained and granted in part, consistent with this Motion; and

3. The decision of BCS to remove the amount of \$40.06 from the account transferred to the landlord is affirmed; and

4. The Office of Special Assistants shall prepare an appropriate Order consistent with this Motion.

July 9, 1997

DATED

John Hanger

JOHN HANGER, COMMISSIONER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 7, 1997

C-00967757

ELIZABETH SANTOS
212 SOUTH NINTH STREET
READING PA 19602

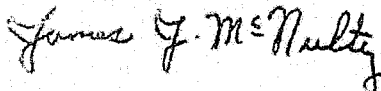
ELIZABETH SANTOS(Complainant)
V
METROPOLITAN EDISON COMPANY (Complaint Appellant)

Dear Sir:

This is to advise you that an Opinion and Order has been adopted by the Commission in public meeting held July 10, 1997 on the above entitled proceeding.

A copy of the Opinion and Order is enclosed for your files.

Very truly yours,



James J. McNulty
Acting Secretary

EMD

SEE ATTACHED LIST

DOCKETED
AUG 11 1997

DOCUMENT
FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 10, 1997

Commissioners Present:

John M Quain, Chairman
Robert K. Bloom, Vice Chairman, Concurring in result
John Hanger
David W. Rolka, Concurring in result
Nora Mead Brownell

DOCKETED
AUG 11 1997

Elizabeth Santos

v.

C-00967757

Metropolitan Edison Company

OPINION AND ORDER

**DOCUMENT
FOLDER**

BY THE COMMISSION:

Before us for consideration are the Exceptions filed by Metropolitan Edison Company ("Met-Ed") to the Initial Decision of Administrative Law Judge ("ALJ") Allison K. Turner, which was issued on December 24, 1996, in the above-captioned proceeding.

I. History of the Proceeding¹

On May 11, 1995, Elizabeth Santos ("Ms. Santos") filed an Informal Complaint against Met-Ed with the Commission's Bureau of Consumer Services ("BCS") alleging that, in addition to service to her apartment, she was being billed for electric service to a barber shop and church located in her building. The Complaint also alleged that Ms. Santos should not be held responsible for an outstanding of balance \$348.55.

¹ The procedural history of this case is derived primarily from pages 1 through 5 of the Initial Decision.

In a decision dated December 22, 1995, BCS directed Met-Ed to transfer the balance on Ms. Santos' account to the landlord's account. The amount to be transferred was to be the entire balance which had accumulated from the time that Ms. Santos became a customer of record to the time that the "foreign" electrical load was detected on the meter.

During the pendency of the Informal Complaint, Ms. Santos' landlord, Loan Phan, sold the building where she lived to Cesar S. Pomales. Accordingly, in compliance with the BCS Order, Met-Ed placed the account in the name of Cesar S. Pomales, the owner of the building at the time the BCS decision was issued. Ms. Santos' account was transferred to Mr. Pomales' name effective May 26, 1995.

On February 28, 1996, Met-Ed filed a Formal Complaint at Docket Number C-00967757 appealing the BCS decision. At the same time, Met-Ed filed a Motion to Join Indispensable Parties ("Motion"), in which it sought to join Loan Phan and Cesar S. Pomales in the action.

In an Interim Order issued on March 18, 1996, ALJ Turner denied the Motion without prejudice, and directed Met-Ed to refile the Motion, simultaneously serving the parties it sought to have joined, endorsed with a Notice to Plead. Met-Ed refiled its Motion on March 27, 1996, serving it upon Loan Phan and Cesar S. Pomales, endorsed with a Notice to Plead.

Neither Loan Phan nor Cesar S. Pomales responded to the Motion. The Motion and the Complaint were assigned to ALJ Turner for disposition. An initial hearing was scheduled for June 13, 1996.

On June 3, 1996, Pennsylvania Power & Light Company ("PP&L") filed a Petition to Intervene, which was tentatively

granted by ALJ Turner in an Interim Order dated June 6, 1996, pending any objections raised in writing or at the hearing. Since none were raised, PP&L's intervention was formally approved by the ALJ on June 13, 1996.

The hearing was held, as scheduled, on June 13, 1996. Ms. Santos, Loan Phan and Cesar S. Pomales were not present at the hearing. The BCS was notified of the hearing, and was in attendance, but did not formally intervene.

Met-Ed presented the testimony of one witness at the hearing and sponsored the admission of six Exhibits. PP&L's intervention in the proceeding was directed at the legal issues, therefore, it did not participate in the hearing.

On September 30, 1996 PP&L and Met-Ed filed Main Briefs. Provisions were made for reply briefs, but none were filed.

The Initial Decision was issued on December 24, 1996. Met-Ed filed Exceptions on January 13, 1997. PP&L filed a Letter In Lieu of Exceptions on January 13, 1997.

II. Discussion

At this point, we wish to emphasize that we are not required to consider expressly, or at great length, each and every contention raised by a party to our proceedings. University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217, 1222 (1984). Any exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

As noted in the foregoing procedural history, this case results from an appeal filed by Met-Ed of a decision issued by BCS on an informal complaint. Elizabeth Santos v. Met-Ed., BCS No. 0274904, December 22, 1995. The BCS decision involves the interpretation and application of Section 1529.1 of the Public Utility Code ("the Code"), 66 Pa. C.S. §1529.1. This Section addresses the problems associated with the discovery of utility service which is not related to serving a tenant ("foreign load") but for which the tenant is being billed.

We consider it appropriate and useful at this point to set forth the provisions of Section 1529.1 of the Code in their entirety, 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 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.

A. BCS Decision

Based upon the foregoing provisions, the BCS Decision directed Met-Ed to transfer Ms. Santos' entire account balance to the landlord, effective from the time she became the customer of record to the time that the foreign load on her electric service was detected on May 10, 1995.

Met-Ed disagreed with the BCS directive that it back-bill the landlord and filed its Complaint appealing the BCS decision. PP&L intervened but has limited its participation to the legal issues. Both Met-Ed and PP&L, in effect, seek the establishment of a uniform interpretation and application of back-billing under Section 1529.1 of the Code. (I.D., pp.1-2).

B. ALJ's Recommendation

Prior to reaching her recommended disposition of this case, ALJ Turner made 14 Findings of Fact which we shall adopt unless expressly, or by necessary implication, they are modified by this Opinion and Order. However, we do not consider it necessary to reproduce here all of the ALJ's findings. The following are those findings which we believe are most pertinent to the disposition of Met-Ed's Exceptions:

1. Elizabeth Santos (Santos) resided at 212 S. 9th St. 2nd Flr., Reading, PA 19602, and was a residential customer of Metropoli-

tan Edison Company (Met Ed) from January 10, 1995 until May 10, 1995. N.T. 7-8, Met Ed 6.

3. On May 9, 1995, Santos complained to Met Ed that she thought there was foreign load on her meter. N.T. 8.

4. On May 10, 1995, Met Ed personnel made an inspection of the premises at 212 S. 9th Street in Reading, PA and found a foreign load condition, in that services for both a small church and a barber shop were connected to the meter serving Santos. N.T. 8.

5. On that same day, Met Ed transferred the account from Santos to the then-owner of the property, Loan Phan. N.T. 9-10.

7. Met Ed sent Santos a final bill for \$348.55 which included all service recorded on her meter from January 10, 1995 through May 10, 1995, minus a single payment of \$32.60 Santos made on February 15, 1995. It also included \$40.06 which represents an unpaid bill from another address. Met Ed 5; N.T. 9, 20.

8. Santos has not paid this bill.

10. Loan Phan has sold the property in question to Cesar Pomales, and the account has now been put in his name, as of May 26, 1995. N.T. 17.

11. Met Ed notified Loan Phan by letter through a relative of the transfer of the electric account with Met Ed to her, N.T. 10, and subsequently notified Cesar Pomales that the account was in his name. N.T. 17.

14. Santos disputed Met Ed's bills to her, and on May 11, 1995, filed an informal complaint with the Public Utility Commission. The decision on this informal complaint directed Met Ed to place the Santos' account in the name of the landlord as of January 10, 1995, i.e., from the initiation of service to Santos at that location. BCS 0274904 dated December 22, 1995. Met Ed 2.

(I.D., pp. 5-8)

The ALJ also reached eight Conclusions of Law which we find appropriate to reproduce in their entirety, as follows:

1. Section 1529.1 of the Public Utility Code provides in clear language that the owner is responsible for utility bills where the use of several tenants in a residential building is recorded on one meter and billed accordingly whether or not the owner has notified the utility providing the service. 66 Pa. C.S. §1529.1.
2. Section 1529.1 does not provide a remedy so the Commission may apply statutory construction to design a remedy or remedies. Id.; 1 Pa. C.S. §1921.
3. The remedy for tenants as against landlord owners provided in Section 1529 of the Code is not directly applicable to tenants and owners under Section 1529.1, but may be used as a guide in designing an appropriate remedy. 66 Pa. C.S. §1520; 1 Pa. C.S. §§1921, 1922, 1951, 1953
4. Elizabeth Santos had the duty to provide the Commission with a new address when she moved from the address where she lived when she filed her informal complaint. 52 Pa. Code §1.53(b).
5. Sufficient notice was given, or efforts to provide notice were made, to meet the notice requirements of due process to Elizabeth Santos, Loan Phan, and Cesar Pomales.
6. Effective constructive notice of Section 1529.1 was given to owners and utilities as of September 1, 1993.
7. The BCS draft policy which is not in final form is basically appropriate.
8. The decision at BCS N. 027904 is not based on an erroneous statutory interpretation.

(Id., pp. 22-23)

Based upon her Findings of Fact and Conclusions of Law, as well as the reasoning set forth on pages 18 through 22 of her Initial Decision, ALJ Turner recommended that the BCS decision on the Informal Complaint be affirmed with one modification. That modification would remove \$40.06 from the amount to be transferred to the landlord's account since it had been incurred by Ms. Santos at another address. (Id., pp. 23-24).

ALJ Turner, after careful consideration of Commission precedent, the BCS' previous guidance, and Met-Ed and PP&L's positions on the subject, recommended the following interpretation of the provisions of Section 1529.1 for our consideration:

- * Where the tenant has paid the utility bills for service rightfully the responsibility of the owner under Section 1529.1 of the code, the utility shall not be required to refund that amount to the tenant and back-bill the owner;
- * Where the tenant has accrued unpaid bills, the utility shall pursue collection from the owner, not the tenant;
- * Where the owner sells the building to a new owner, the utility shall proceed against the appropriate owner to collect unpaid bills for utility service rightfully the responsibility of the owner, and not against the tenant;
- * Unpaid balances for utility service rightfully the responsibility of the owner dating from September 1, 1993, the date of effective constructive notice to owners, may be transferred to the owner.

(Id., pp. 11-19 and 22)

In support of her conclusion that Section 1529.1 of the Code does not provide a remedy for aggrieved tenants, ALJ Turner provided the background and history of Public Law 379, No. 54 ("Act 54") which was enacted on July 2, 1993. Act 54 added Section 1529.1 to the Public Utility Code with an effective date of September 1, 1993. (I.D., pp. 8-11). Noting that Act 54 did not amend Section 1529 of the Code, but rather, it added Section 1529.1 to the Code, the ALJ concluded that Section 1529 does not provide a remedy for tenants aggrieved under situations arising under the provisions of Section 1529.1. In this regard, ALJ Turner stated that:

Section 1529 provides tenants a remedy against the landlord for monies they have paid directly to the landlord. It does not provide a remedy against the landlord for monies paid directly to the utility and not ever paid to the landlord.

(Id., pp. 9-10)

ALJ Turner recognized the importance of the requirement set forth in Section 1529.1(c) and concluded that,

Section 1529.1(c) is clear that owners are responsible for payment of utility services whether or not they have given the Notice to the utility required by Section 1529.1(a). This statutory language is clear and unequivocal. There is no room to apply statutory interpretation. Therefore, the Commission can require owners to pay for foreign load public utility service . . .

(I.D., pp. 19-20)

C. Met-Ed's Exceptions

Met-Ed contends that the ALJ's recommendation to essentially affirm the BCS decision on Ms. Santos' informal complaint, and also her recommended policy for back-billing under

the provisions of Section 1529.1 of the Code should be reversed. To support its position, Met-Ed has filed three Exceptions to the Initial Decision.

In its first Exception, Met-Ed argues that the ALJ's Conclusion of Law No. 2, supra, is incorrect in its suggestion that the Code contains no remedy for tenants who are aggrieved by a foreign load situation. (Met-Ed Exc., pp. 5-9). Met-Ed agrees that, "Section 1529.1 of the Code does not, itself, provide a remedy for aggrieved tenants,..." (Id. p. 5). However, Met-Ed asserts that the remedy for tenants who have paid utility bills under foreign load circumstances is contained in Section 1529 of the Code, which provides, as follows:

§ 1529. Right of tenant to recover payment

Any tenant who has made payment to a utility on account of non-payment of charges by the landlord ratepayer pursuant to this subchapter may subsequently recover the amount paid to the utility either by deducting the amount paid from any rent or payment on account of taxes or operating expenses then or thereafter due from the tenant to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

(66 Pa. C.S. §1529)

Met-Ed further argues that the ALJ's reasoning and conclusion on this point is in error and observes that:

By its terms, Section 1529 provides tenants with a remedy where the tenant "has made a payment to a utility" when the landlord was responsible to make the payment. Hence, contrary to the ALJ's conclusion that Section 1529 provides a remedy where tenants have paid money to the landlord, Section 1529 actually provides tenants with a remedy where the tenants have paid monies to a utility.

the provisions of Section 1529.1 of the Code should be reversed. To support its position, Met-Ed has filed three Exceptions to the Initial Decision.

In its first Exception, Met-Ed argues that the ALJ's Conclusion of Law No. 2, supra, is incorrect in its suggestion that the Code contains no remedy for tenants who are aggrieved by a foreign load situation. (Met-Ed Exc., pp. 5-9). Met-Ed agrees that, "Section 1529.1 of the Code does not, itself, provide a remedy for aggrieved tenants,..." (Id. p. 5). However, Met-Ed asserts that the remedy for tenants who have paid utility bills under foreign load circumstances is contained in Section 1529 of the Code, which provides, as follows:

§ 1529. Right of tenant to recover payment

Any tenant who has made payment to a utility on account of non-payment of charges by the landlord ratepayer pursuant to this subchapter may subsequently recover the amount paid to the utility either by deducting the amount paid from any rent or payment on account of taxes or operating expenses then or thereafter due from the tenant to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

(66 Pa. C.S. §1529)

Met-Ed further argues that the ALJ's reasoning and conclusion on this point is in error and observes that:

By its terms, Section 1529 provides tenants with a remedy where the tenant "has made a payment to a utility" when the landlord was responsible to make the payment. Hence, contrary to the ALJ's conclusion that Section 1529 provides a remedy where tenants have paid money to the landlord, Section 1529 actually provides tenants with a remedy where the tenants have paid monies to a utility.

(Met-Ed Exc., p. 6)

We believe that Met-Ed's second and third Exceptions, and the arguments supporting them are so interrelated that they may be considered and disposed of together.

In its second Exception, Met-Ed asserts that the ALJ's Conclusion of Law No. 8, wherein she concluded that the BCS decision on Ms. Santos' informal complaint was not based upon an incorrect statutory interpretation, is in error. (Met-Ed Exc., pp. 9-16). In its third Exception, Met-Ed argues that the ALJ's proposed interpretation of Section 1529.1 of the Code, which is consistent with her Conclusion of Law No. 8, is also in error. (Id., pp. 16-19).

To support the foregoing Exceptions, Met-Ed offers rather lengthy legal and linguistic arguments which we believe may be summarized as follows:

The ALJ's recommendation to affirm, with slight modification, the BCS decision, and also her proposed policy for interpreting Section 1529.1 of the Code, contravenes the plain language of Section 1529.1(b) by requiring utilities to back-bill the owners of residential buildings for unpaid balances in situations where tenants have been billed for foreign load.

According to Met-Ed, Section 1529.1(b), cited supra, only mandates that, upon receiving notice that a building is not individually metered, a utility must place the account for service in the owner's name and bill the owner for service thereafter. Met-Ed argues that, contrary to ALJ Turner's recommendation, there is no provision for retroactive billing or collection in Section 1529.1. (Id., p. 15).

D. PP&L's Position

PP&L, in its Letter In Lieu of Exceptions, gives qualified support to the ALJ's recommendation stating, on page 2, that:

[T]he ALJ has attempted to balance the interests of competing parties in order to arrive at a fair result. PP&L can abide by the policy adopted by the ALJ and actually encourages its adoption in place of the uncertainty and conflicting interpretations to date.

E. Analysis

Met Ed filed the instant Complaint concerning the account of Ms. Santos, a tenant with electric service in her name. Her account and bill also provides "foreign load" service to a barber shop and church in the building. In December 1995, BCS directed that Met-Ed place the entire account, including back-billing, in the landlord's name pursuant to Chapter 15, Subchapter B of the Code.

Both Met-Ed and PP&L, an intervenor in this case, have essentially sought a uniform Commission interpretation of Section 1529.1. The ALJ's recommendation is substantially, but not completely accurate. Greater clarity is needed to minimize continuing problems concerning these issues.

First, it is important to understand some history of Subchapter B that helps explain the continuing controversy. Subchapter B, "Discontinuance of Service to Leased Premises" was added to the Code in 1978 to protect residential tenants from loss of utility service when their landlord ratepayer was subject to termination of service by the utility. It provided for identification of tenant occupied properties, notices to tenants

of potential loss of service, and established the right of tenants to continue service upon payment of current bills directly to the utility. Section 1529 provides an explicit remedy for the tenant to recover such payments made to the utility directly from the landlord ratepayer or by deducting the amount from rent or other sums due to the landlord.

Turning to Met-Ed's first Exception, Met-Ed argues that Section 1529 includes a statutory directive. Section 1529 provides that "any tenant who has made a payment to a utility on account of non-payment of charges by the landlord ratepayer" may deduct such amount from payments due the landlord or otherwise obtain reimbursement directly from the landlord. This section was not intended to be directly applicable because it was included in the Code in 1978, before the "foreign load" amendments were added to Section 1529.1. It refers to "payment to a utility on account of non-payment of charges by the landlord ratepayer." However, in "foreign-load" situations, the tenant made the payments on her own account. Section 1529 was intended to apply to tenant payments towards the landlord ratepayer's bill in order to retain tenant utility service.

Nothing in the Subchapter imposes a duty to refund amounts paid by the tenant. Doing so would create a windfall for the tenant who would thereby be relieved of the financial responsibility even for their own utility service for a period stretching back to September 1993. Such a result becomes increasingly inappropriate as time goes on. Moreover, such an approach would, in effect, place a duty on the utility to discover all foreign loads. No such duty is in the Subchapter and is overbroad as a matter of policy. It would expose the utility to non-payment for account balances already collected over an extended period of time. In many situations, returning the entire account balance of a number of years to the landlord would likely result in uncollected amounts for the utility. Such

unpaid landlord bills would subject the account to termination, leaving tenants at risk of loss of the very utility service that the Subchapter was intended to protect. In such situations, the Subchapter and the remedies in Section 1529 would be applicable.

Thus, while we decline to hold that Section 1529 is directly applicable, the remedies available to the tenant nevertheless remain the same. While a utility need not refund amounts already paid by the tenant on the account that is now recognized as the landlord's responsibility since 1993, the tenant may seek reimbursement from the landlord for any amounts paid on the landlord's behalf that were not in fact the tenant's responsibility under its lease. If the landlord does not voluntarily provide reimbursement, the tenant shall have the remedies in Section 1529, including legal action in the appropriate court, or withholding future amounts due to the landlord. The utility need not be the arbiter of payment agreements between the landlord and tenant under a lease and should not refund to the tenant amounts already paid. The utility must, however, place the account in the landlord's name upon discovery of the foreign load and collect unpaid bills only from the landlord.

Accordingly, we shall grant Met-Ed's first Exception.

Met-Ed's second and third Exceptions focus on Section 1529.1.

In 1993, Subchapter B was amended in various ways to make it more workable and improve enforcement. As part of the amendments, a new Section 1529.1 was added. Section 1529.1 applies to the foregoing circumstances in which tenants are provided a remedy to continue service notwithstanding imminent cessation of landlord ratepayer service. The addition of Section 1529.1 did, for the first time, bring "foreign load"

situations into the Subchapter by mandating that all utility service to the residential buildings, as defined, which contain "one or more dwelling units, not individually metered" must be listed in the name of the landlord. This change was intended to extend the existing protections to those tenants whose utility service is dependent on continued service to another tenant as well as those who are dependent on continued utility service to their landlord.

In sum, the Subchapter attempts to protect residential tenants from the loss of utility service because another party has service terminated by the utility.

As to this case, it must be noted that there is no residential tenant potentially threatened by nonpayment of the bill by another tenant, so it is not the type of circumstances intended to be covered by Section 1529.1. Nevertheless, the plain language of the Subchapter is directly applicable and must be applied. The relevant section of 1529.1(b) applies when a "residential building contains one or more dwelling units occupied by one or more tenants." "Tenant" is defined only to include dwelling units. The fact that the other tenants are non-residential excludes them from the protected class. Yet, the building still contains "one dwelling unit" and a black letter reading of the Subchapter applies to the situation in question.

The black letter of Section 1529.1(b) does require that the utility transfer the account into the name of the landlord upon discovery of the foreign load and identification that the dwelling unit is not separately metered. Furthermore, Section 1529.1(c) does explicitly require that the landlord "shall nonetheless be responsible for payment of the utility services" as of the effective date of the requirement to identify tenant occupied units, or September 1, 1993. The utility must switch the account

into the name of the landlord and bill the landlord's account for any unpaid billing on the account.

Clearly, the utility must pursue collection of any unpaid amounts from the landlord and not from the tenant. The harder question is whether any adjustments must be made to reflect amounts already paid on the account by the tenant. Is the landlord still responsible for amounts already paid by the tenant? Must the utility refund such amounts paid by the tenant? The Subchapter does not give clear guidance. Nevertheless, understanding the intent and precise language of the Subchapter leads to a clear conclusion. The landlord has the duty to reimburse the tenant for amounts paid by the tenant which are the landlord's responsibility. The utility, however, is not the arbiter of such disputes, and need not refund amounts already paid on the account.

Accordingly, we shall deny the second and third Exceptions of Met-Ed to the extent that they are inconsistent with our interpretation of the pertinent statute as outlined herein.

III. Conclusion

Based upon our review of the record as developed in this proceeding, we determine that the ALJ's proposed Conclusions of Law Nos. 2 and 3 should be reversed, consistent with this Opinion and Order. In this regard, we will grant the first Exception filed by Met-Ed. We have set forth herein our interpretation of the provisions of Section 1529.1. Accordingly, we conclude that the second and third Exceptions filed by Met-Ed are not meritorious and must be denied; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Metropolitan Edison Company on January 13, 1997, at Docket No. C-00967757, are granted, in part, and denied, in part, consistent with this Opinion and Order.

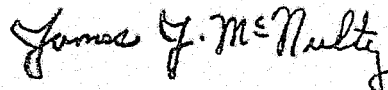
2. That the Initial Decision of Administrative Law Judge Allison K. Turner, which was issued on December 24, 1996, at Docket No. C-00967757, is adopted as modified by this Opinion and Order.

3. That the Complaint-Appeal filed by Metropolitan Edison Company filed on February 28, 1996, at Docket No. C-00967757, is sustained, in part, and denied, in part, consistent with this Opinion and Order.

4. That the decision of the Bureau of Consumer Services on the informal complaint of Elizabeth Santos, at BCS No. 0274904, is affirmed, as modified, to remove the amount of \$40.06 from the account transferred to owner Cesar Pomales.

5. That the record in this proceeding at Docket No. C-00967757 be, and hereby is, marked closed.

BY THE COMMISSION,



James J. McNulty
Acting Secretary

(SEAL)

ORDER ADOPTED: July 10, 1997

ORDER ENTERED: AUG - 7 1997