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

ISSUED: DECEMBER 24, 1996

IN REPLY PLEASE
REFER TO OUR FILE
C-00967757

ELIZABETH SANTOS
212 SOUTH NINTH STREET
READING PA 19602

JLS

ELIZABETH SANTOS (COMPLAINANT)
v.
METROPOLITAN EDISON COMPANY (COMPLAINT-APPELLANT)

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Allison K. Turner. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1 56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)"

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

cc:ALJ TURNER/OFFICE OF ALJ/OTS/BFUS/LAW/PIO/OSA/CHAIRMAN/COMMISSIONERS/CON.SER/NEW FILING/OUR FILE/OCA

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Very truly yours,

John G. Alford
Secretary

DOCKETED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Elizabeth Santos (Complainant)	:	Docket No. C-00967757
v.	:	
Metropolitan Edison Company (Complaint-Appellant)	:	

INITIAL DECISION

Before
Allison K. Turner
Administrative Law Judge

I. SUMMARY OF THE CASE

This case results from an appeal filed on January 25, 1996 by Metropolitan Edison Company (Met Ed) of a decision of the Pennsylvania Public Utility Commission's (Commission, PUC) Bureau of Consumer Services (BCS). On December 22, 1995, BCS issued a decision on an informal complaint involving application of Section 1529.1 of the Public Utility Code (Code), 66 Pa.C.S. § 1529.1. Elizabeth Santos v. Met Ed., BCS No. 0274904, December 22, 1995. BCS ordered Met Ed to transfer to the landlord the entire account balance from Ms. Santos from the time that Ms. Santos became a customer of record to the time that the "foreign load" was detected, as well as from then on. Met Ed already had placed the account in the name of the landlord as of the time that the "foreign load" was detected. PP&L intervened in the proceeding, but limited its participation to legal issues.

Met Ed and PP&L seek to have the Commission establish a

uniform interpretation of back-billing under Section 1529.1 of the Code, 66 Pa. C.S. §1529.1. Uniformity of utility practices is often established by means of promulgating regulations or policy statements. However uniformity can also be established by decisional precedent. This latter approach is appropriate in this case, since it involves interpretation and application of a statute to various sets of facts.

a. Factual and Procedural Background

Elizabeth Santos was a tenant of a second-floor apartment in a tenant-occupied building located at 212 South Ninth Street, Reading, Pennsylvania 19602 ("the building"). N.T. 8. A barber shop and a church are located on the first floor of the building and the second floor houses two apartments, one of which was Ms. Santos'. N.T. 24, 25. From January 10, 1995 to May 10, 1995, Ms. Santos was Met Ed's customer of record for residential service to her apartment. N.T. 7-8. Her account was charged pursuant to, and in accordance with, Met Ed's Rate RS-Residential Service, as specified in Met Ed's Tariff Electric Number 47, which has been duly filed with and approved by the Commission. N.T. 21. During her tenure as Met Ed's customer of record, Ms. Santos made only one payment in the amount of $32.60 on February 15, 1995. N.T. 20. On May 10, 1995, Ms. Santos had an outstanding balance of $348.55, $40.06 of which was a final bill transferred from a prior address. N.T. 9, 20.

On May 9, 1995, Ms. Santos contacted Met Ed, indicating

that she believed there was foreign load on her meter. N.T. 8. She did not dispute the fact that she had received service from Met Ed and utilized electricity during the period of January 10, 1995 through May 10, 1995. She did dispute the amount of the usage for which she had been billed on May 10, 1995. Met Ed conducted an on-site investigation of Ms. Santos' claim of foreign load. N.T. 8. The company determined that a single meter, located at or near her residence, was registering usage for the barber shop, church and Ms. Santos' apartment. N.T. 8. Upon discovering the foreign load condition, the Company took the account out of Ms. Santos' name, effective May 10, 1995, N.T. 9, and placed the account in the name of her landlord, Loan Phan. N.T. 9-10. Loan Phan resides in the Allentown area and is not a Met Ed customer. N.T. 10, 17. Met Ed attempted to contact Loan Phan to apprise her of Met Ed's action, but was unable to reach her. N.T. 10. Consequently, Met Ed delivered a letter to a relative of Loan Phan, who indicated that he would see to it that she received it. N.T. 10.

On May 11, 1995, Ms. Santos filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS 0274904, alleging that she was paying for electric service to a barber shop and a church in addition to the service for her second-floor apartment in the building. She further alleged that she should not be held responsible for the outstanding balance of $348.55. See Met Ed 5. Under the Commission's regulations, Met Ed was afforded an opportunity to respond to the Informal Complaint,

but Loan Phan was not. N.T. 18.

The BCS Decision, dated December 22, 1995, ordered Met Ed to "transfer the entire balance that accumulated from the time that Ms. Santos became the customer of record to the time the foreign load was detected to the landlord's account". Met Ed 2.

During the pendency of the Informal Complaint, Loan Phan sold the building to Cesar S. Pomales. Hence, 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. N.T. 17. Ms. Santos' account was transferred into Mr. Pomales' name effective May 26, 1995. N.T. 17.

On February 28, 1996, Met Ed filed a formal Complaint at Docket Number C-00967757 appealing the BCS decision. Filed contemporaneously with the formal Complaint was a Motion to Join Indispensable Parties (Motion), in which Met Ed sought to join Loan Phan and Cesar S. Pomales in the action. The Motion was assigned to ALJ Turner for a ruling.

On March 18, 1996 the ALJ issued an Order denying the Motion to Join Indispensable Parties without prejudice, directing Met Ed to refile the Motion, simultaneously serving the parties it sought to have joined, endorsed with a Notice to Plead. Order Denying Without Prejudice Motion to Join Indispensable Parties at 2. Met Ed consequently 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 Complaint were assigned to ALJ Turner for ruling, hearing and disposition, and 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 granted by interim order pending any objections raised in writing or at hearing. Since none were raised, PP&L's intervention was formally approved by the Administrative Law Judge on June 13, 1996.

The hearing was held on June 13, 1996. Elizabeth Santos, Loan Phan and Cesar S. Pomales were not present at the hearing. The Bureau of Consumer Services 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 resulting in thirty-six pages of transcribed testimony and sponsored the admission of six Exhibits (Met Ed 1-6). PP&L did not participate in the hearing, since its intervention is directed at the legal issues.

On September 30, 1996 PP&L and Met Ed filed Main Briefs. No other party filed a brief. Provisions were made for Reply briefs, but none were filed.

II. FINDING OF FACT

1. Elizabeth Santos (Santos) resided at 212 S. 9th St. 2nd Flr., Reading, PA 19602, and was a residential customer of Metropolitan Edison Company (Met Ed) from January 10, 1995 until

May 10, 1995. N.T. 7-8, Met Ed 6

2. Met Ed is a corporation providing electric service for compensation in Pennsylvania.

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

6. Met Ed sent Santos a bill for $63.87 on May 10, 1995 with a payment due date of June 12, 1995. This bill was for 22 days of service between the last previous meter reading and May 10, 1995. N.T. 20, Met Ed 5

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.

9. Santos has moved out of 212 S. 9th St., leaving no forwarding address, and is no longer a customer of record on Met

Ed's system.

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

12. Both Loan Phan and Cesar Pomales were notified by the PUC at addresses for them provided by Met Ed of the following: that Met Ed had filed a Motion to Join them; that the Motion had been granted and they had become parties; that PP&L had intervened; that the hearing was to be held, and the time and date of it; and, of the date that briefs were to be filed. Neither has responded to any of these notifications in any way, nor did they participate in the hearing nor file a brief.

13. The Commission sent the same notifications to Santos at the only address available to it; most were received back as returned mail. Santos has a duty to inform the Commission of any change in address. 52 Pa. Code §1.53(b). Santos has not participated in the formal complaint proceeding in any way.

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

a. History and Background of Section 1529.1

Subchapter B, Discontinuance of Service to Leased Premises was added to Chapter 15 of the Public Utility Code (Code), Section 1521-1532, 66 Pa. C.S. §§1521-1532, by Act 1978, Nov. 26, P.L. 1245, No. 297, §1. Section 1533 (relating to Petition to Appoint Receiver) was added by Act 1979, July 20, P.L. , No. 57, §1. Section 1529.1 was added by Act 1993, July 2, P.L. 379, No. 54, §3. Act 1993 amended Sections 1521-1528 and Sections 1530-1533 of the Code. 66 Pa. C.S. §§1521-28,1530-33. Section 1529 was not amended, but Section 1529.1 was added. 66 Pa. C.S. §1529.1. By its terms, Subchapter B applies to utility service to residential units. 66 Pa. C.S. §1521

It is significant that Section 1529 was not amended as were all other sections of Subchapter B. The definition of "Landlord Ratepayer" was revised, but did not include owner/landlords covered by Section 1529.1. Subchapter B was intended to apply to situations where the landlord/ratepayer is the customer of record; the tenant pays the landlord an amount for utilities included in the rent; the landlord does not pay the utility bills; and, the utility initiates termination of service procedures as part of its collection actions. Sections 1521, 1523, 1524, 1526, 1527, etc. It is designed to protect tenant/consumers from loss of utility service where they have actually paid for this

service through their rent, but the funds for utility service have been misapplied. 66 Pa. C.S. §§1521, 1523-24, 1526-27, etc.

Section 1529 allows such tenant/consumers who begin to pay for their utility service directly to either **deduct** that amount from their rent, or to pay the full rent amount and then seek **reimbursement** from the landlord. Where termination of service has occurred or is threatened, Section 1527 allows tenants to restore or maintain service by payment of the utility bill for the 30-day period preceding the discontinuance notice. Section 1527(b).

Therefore it is almost certain in situations covered by these sections of the Code that tenants will have to make double payments for at least one month of service. Section 1527 also provides that where tenants opt to make payments to the utility to retain or restore service, but do not meet its requirements, the utility shall refund these payments to the tenants in amounts actually paid. Section 1527(c). The Act 1993 amendments specifically include under 1527(c)'s refund provisions payments for continuing service where the tenant has not signed up independently with the utility. Section 1529 provides the tenant alternative remedies where double payments have been made, service is continued, and therefore there will be no refund available from the utility. 66 Pa. C.S. §§1529, 1527(b) and (c)

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. 66 Pa. C.S. §1529

Section 1529.1 of the Public Utility Code, 66 Pa.C.S. §1529.1, enacted by Act 54 of 1993 (Act 54), addresses long standing problems associated with the discovery of "foreign load" on tenant's utility bills. Foreign load situations occur when utility usage of other tenants or of the landlord is being billed to a tenant by virtue of the fact the services are not separately metered and flow through the meter serving the tenant. Prior to Act 54 of 1993, the Commission could do little to protect tenants, resolve these protracted problems or force landlords to eliminate foreign load, other than to require utilities to remove amounts representing the foreign load from tenants' utility bills. See. e.g., Columbia Gas of Pa. Inc. v. Pa. P.U.C., 112 Pa. Commw. 611, 535 A.2d 1246, 1248 (1988); Bureau of Consumer Services and Hanna Rebel v. Pennsylvania Gas and Water Co., 67 Pa. P.U.C. 380 (1988).

Act 54 changed this state of affairs. In enacting additional and refined protections for tenants under the landlord/tenant provisions of the Public Utility Code, the General Assembly provided a new section of the Public Utility Code requiring that utilities bill landlords for service to residential dwelling units unless the dwelling unit is "individually metered" and the tenant accepts responsibility for service. 66 Pa.C.S. § 1529.1. Essentially this provision places on owner/landlords in these circumstances the same duties as if they were landlord ratepayers

under Section 1521 of the Code. 66 Pa. C.S. §1521

New Section 1529.1 of the Code placed an immediate duty on landlords to notify public utilities whenever premises that are rented as residential dwelling units are not individually metered. 66 Pa.C.S. § 1529.1(a). This section also provides that upon receipt of such notice, utilities shall forthwith list the account for the premises in the name of the landlord and that the landlord thereafter shall be responsible for payment to the utility. 66 Pa.C.S. § 1529.1(b). The section also provides that even if individually metered, unless notified to the contrary by the tenant, utilities shall list dwelling unit accounts in the name of the owner who shall be responsible for payment. 66 Pa.C.S. § 1529.1(b). Finally, this section provides that if any landlord fails to provide the utility with the notice required by the statute, the landlord shall nonetheless be responsible for payment of utility services "as if the required notice had been given". 66 Pa.C.S. § 1529.1(c).

b. Commission Interpretation

In the case of Boyce v. Duquesne Light Co., Docket No. Z-00223698, Order entered September 1, 1994, the PUC provided its basic interpretation of Act 54. The PUC stated as follows:

> Section 1529.1 is designed to address the problem of "foreign load" similar to that of the Complainant where tenants who have a meter and are direct utility customers find that utility service for other tenants or for the landlord is being billed through their meter. Protracted disputes have occurred when the tenant is unwilling to pay for service to others or is unable to gain

reimbursement from the other tenants or when the utility is unable to convince the landlord to alter the wiring or piping in the facility to eliminate the foreign load.

It is clear that under Section 1529.1, only individually metered units may be billed directly to a tenant and that, upon documenting a foreign load problem as described above, a utility must bill the service to the landlord. In the instant proceeding, there is no dispute as to the fact that the Complainant's meter records the air conditioning load for all the tenants and not just the Complainant. As such, under Section 1529.1, the service may be charged to the landlord since it is no longer relevant or problematic that the utility cannot remove the foreign load directly. Moreover, no notice to the landlord is technically required as Section 1529.1 makes it the landlord's duty to have utility service in his or her name whenever the unit is not individually metered.

Boyce, at pp. 4-5. See also, R&B Reddy, Inc. v. Peoples Natural Gas Co., Docket No. C-00946080 (May 25, 1995); Sarah Divilly v. Duquesne Light Company, Docket No. C-00946235 (May 25, 1995).

Section 1529.1 is a serious and extensive exercise of the police power by the General Assembly in a way which works against the interests of owners of property. The PUC already has held that Section 1529.1 is constitutional.[1] See R&B Reddy, Inc. v. the Peoples National Gas Company, Docket No. C-00946080 (May 25, 1995). There are a panoply of reasons why the law is constitutional. These include: 1) Section 1529.1 does not impair any substantive obligations of leases; 2) Section 1529.1 is constitutional as it merely modifies remedies and imposes new procedures on enforcement

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[1] PP&L cites an initial decision to suggest that the PUC may not even have the ability to decide whether the law is constitutional. Ray R. Warfel v. PP&L, Docket No. C-00967875 (Initial Decision issued June 10, 1996).

of substantive rights; 3) At times of renewal and leases entered after September 1, 1993, leases became subject to Section 1529.1 as if Section 1529.1 were expressly incorporated in the terms of the leases; and 4) As a proper exercise of the police power, Section 1529.1 does not unconstitutionally impair existing contractual obligations.

Regarding interpretation of utility statutes, it is clear that the PUC has administrative discretion in interpreting public utility statutes enacted by the General Assembly and that such administrative interpretations are to be accorded great weight. See, e.g., Chappell v. Pa. P.U.C., 57 Pa. Commw. 17, 21, 425 A.2d 873, 875 (1981):"[T]he construction given a statute by those charged with its execution and application is entitled to great weight and should be disregarded or overturned only for cogent reasons and if such construction is clearly erroneous". Moreover, when a statute is not explicit, a Court may defer to an administrative agency's interpretation in order to ascertain legislative intent. See, e.g. Carol Lines, Inc. v. Pa. P.U.C., 83 Pa. Commw. 393, 396, 477 A.2d 601, 602 (1984) "When statutory language is not explicit, legislative intent may be ascertained through administrative interpretation. . . . Further, the construction of a statute by those charged with its administration and execution should not be disregarded unless clearly erroneous"; National Fuel Gas Distribution Corp. v. Pa. P.U.C., 137 Pa. Commw. 621, 637, 587 A.2d 54, 62 (1991); Chappell, at 21-22, 425 A.2d at

875-876; Park v. Chronister, 151 Pa. Commw. 562, 573, 617 A.2d 863, 869 (1992); see also Section 1921 (c)(8) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(c)(8) (providing that when a statute is not explicit the General Assembly's intent can be ascertained from administrative interpretations).

Section 1529.1 itself does not expressly proscribe or prescribe any remedy, including back billing of landlords for service prior to discovery of foreign load. Clearly it is not explicit, so the statutory construction Act may be applied. The utilities, namely PP&L, argue that by affirmatively choosing utility back-billing as an additional remedy, the PUC moves away from the concept of constructive notice. The ALJ disagrees. They argue that mandatory back billing would actually make Section 1529.1 worse for property owners than required under the law. While this is true, it is not necessarily illegal.

c. BCS Guidance to Utilities

In addition to the PUC decisions interpreting Act 54 of 1993, Met Ed, along with PP&L and all the other major utilities in the Commonwealth, had been provided with statements and drafts of BCS's administrative interpretations of the Commission's decisions and Act 54. Met Ed 1, 3 and 4. BCS is the bureau within the Commission charged with investigating and issuing final determinations on all informal consumer complaints; advising the Commission as the need for formal Commission action on any matters brought to its attention by the consumer complaints; and advising

the Commission on matters of safety compliance by public utilities. 66 Pa.C.S. § 308(d).

The PUC, in Boyce, Divilly and Reddy seemed to indicate that utility bills can be transferred into the name of the owner as early as September 1, 1993, the effective date of Act 54 of 1993, and service rebilled from that date. This approach may result in the owner receiving a substantial bill for utility service already provided, to and billed to, the tenant. Under this approach, utilities also may have to refund any such amounts to tenants who already paid them.

The BCS, in its most recent draft interpretation of Section 1529.1, opined that utilities should place the account in the name of the landlord effective on the date that the utility receives constructive notice of the foreign load. Met Ed 4, ¶2. Moreover, BCS opined that no refunds or credits should be given for the period from September 1, 1993 to the date the utility becomes aware of the foreign load.

In its draft guidelines, BCS does not definitively discuss the tenants' remedies under Section 1529.1 of the Code, although it does indicate that a tenant may contest changing the account to the landlord's name in Common Pleas Court or with the PUC [2] Id., ¶3. BCS states that tenants "should not be told

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[2] PP&L notes that in Angle v. Metropolitan Edison Company, etc., C-00956597-599, the Law Bureau filed Exceptions based on the theory that the tenants could pursue existing remedies in Common Pleas Court, and thus a refund

unequivocally" that they have the right under Section 1529.1 to withhold rent payments to the landlord to offset any amounts paid to the utility on the landlord's behalf since September 1, 1993, the effective date of Act 54 of 1993. Id. BCS' draft guidelines set forth a graduated approach to applying Act 54 in recognition of the time elapsed since it became effective.

d. Utilities' Arguments

The utilities concede that the PUC's interpretation and their version of BCS' interpretation conflict to some extent, but contend that their interpretation of the BCS' guidelines, which includes factors the PUC may not yet have considered, is clearly preferable and more reasonable for several reasons.

PP&L urges that it is appropriate to construe narrowly the effects of Section 1529.1's provisions on owners where such construction has only minimally adverse affects on tenants' rights. Given the existing remedies of tenants provided by Section 1529 proper, there is no reason to grant additional remedies for the period prior to actual utility notice of the foreign load.

Second, they contend their position is logically consistent with the statute's use of the concept of constructive notice. As Section 1529.1 is a notice-driven statute, it is logical to use the date the utility received constructive notice. This date should be considered to be publication of the statute.

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ordered by the Commission is not necessary.

The ALJ opines that in developing a rational approach to the back billing issue, the **crucial issue is the date of constructive notice to the owner,** rather than to the utility, because the statute makes the owner responsible from that date whether or not the utility was given notice.

The utilities concede that conflicts obviously revolve around Section 1529.1(c). This section provides that any owner who fails to voluntarily give the notice required "shall nonetheless be responsible for payment of the utility services as if the required notice had been given." Met Ed and PP&L argue that their approach does not violate this subsection. The owner would still be liable for payment as if the notice had been given. The remedy for such liability is not back-billing by a utility. Rather, the remedy to recover such amounts is left as between the actual parties to the lease under Section 1529. They cite Commissioner Rolka's Motion in Reddy and Divilly.

In Summary, the utilities argue that "expansive" interpretation of a back-billing remedy under Section 1529.1 was not provided expressly by the General Assembly; should not be adopted by the ALJ or the PUC; and that this is especially true when the General Assembly already has provided another remedy.

Their final argument is that expansive interpretation of back-billing is not necessary to effectuate the purpose of Section 1529.1. This section was designed to address the:

> ...protracted disputes [that] have occurred

> when the tenant is unwilling to pay for service to others or is unable to gain reimbursement from the other tenants or when the utility is unable to convince the landlord to alter the wiring or piping in the facility to eliminate the foreign load.

Boyce at pp. 4-5.

Section 1529.1 fully and completely addresses the "protracted dispute" on a going forward basis without the "expansive" back-billing remedy. From the date of discovery of the foreign load, the "protracted dispute" is clearly and unambiguously resolved. Thus, the purpose of Section 1529.1 is fully served without having a back-billing remedy.

Conclusion

The ALJ agrees that a uniform interpretation of back-billing under Section 1529.1 would be preferable to ostensibly conflicting and inconsistent interpretations. However, the ALJ notes that different factual situations may call for different solutions in various Commission decisions. Such decisions should follow a discernible rationale. In any event, the statute should be interpreted consistently by the PUC and applied consistently, allowing for some flexibility justified by circumstances. The PUC should clarify for the benefit of the utilities and its staff the legal interpretation of Section 1529.1 it intends to follow. Met Ed's complaint-appeal should be sustained to this extent. BCS should continue to develop its policy on the application of 66 Pa. C.S. §1529.1 on the basis set forth in its draft policy dated

March 4, 1996.

Publication of a statute is constructive notice to those effected by it, allowing a reasonable period for dissemination. Heckert v. Dep't of State, Bureau of Professional and Occupations Affairs, 476 A.2d 481 (1984) (Heckert) at 482-483 (the statute in question included a two-year grace period); Cf. Pennsylvania Department of Transportation v. McGowan, 450 A.2d 232 (1982) at 234 (filing of plan in the county office for the recording of deeds constitutes constructive notice of condemnation to all affected landowners). Section 1529.1 does not include a grace period, but Heckert **does not require** such a statutory period, nor any specific time period. Suffice it to say that Section 1529.1 was adopted July 2, 1993 to become effective in sixty (60) days. The 60 days could be considered the period for dissemination, or 60 to 90 days could be allowed after the effective date of September 1, 1993. It seems fair to find that all owners had constructive notice of the statute as of September 1, 1994, and that all owners purchasing and renting property subsequently conducted these transactions under constructive notice of the statue. Likewise, the utilities had constructive notice of their responsibilities under the statute.

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 from September 1, 1993 forward (or whatever date is to be found for effective constructive notice). In my view, Section 1529 does not apply directly in these factual situations, because it gives a tenant a remedy against a **landlord rate-payer**, and Section 1529.1 applies to "every **owner** of a residential building or mobile home park . . . " Landlord ratepayer as a term is specifically defined in Section 1521, and has significant meaning in Sub Chapter B. The definition does not include the word **owner.** Conversely, Section 1529.1 omits the term **landlord ratepayer** and uses only **owner.**

I do agree with the utilities that the lack of a specified remedy in Section 1529.1 allows the Commission to craft a remedy. Since the statute is silent, no remedy is directed. The remedy should be equitable to all stake holders, including the utility. Specifically, if possible, the utility should not be left holding the bag if both the tenant and the owner ignore or walk away from the debt to it. The ALJ agrees that in situations where the utility must repay to the ratepayer money actually paid to the utility and then go after the landlord, this transaction amounts to a refund. It is the least viable option available. However Met Ed's characterization of the BCS's ruling in this case as directing it to make a refund to Santos is off-base. E.g., Met Ed Br. at 25. Met Ed also argues that the BCS

decision violates the plain language of Section 1529. The utilities cannot have it both ways - - if the language is clear, then statutory construction is impermissible.

BCS directed Met Ed to transfer the account balance to the owner, and Santos' one payment had been credited to the account. Met Ed was not directed to refund any money to Santos. In fact BCS left Santos' one payment completely undisturbed. BCS merely directed Met Ed to proceed against the owner for the remainder of the balance. Met Ed 2

However, BCS did not pull out Santos' previous balance. The present owner should not be required to pay Santos' debt incurred at another location. The BCS decision is basically correct, and should be disturbed only for a slight modification.

As BCS notes in its draft policy statement, Met Ed 4, the equities of these situations change the further forward in time we advance from the effective date of Section 1529.1. If a foreign load situation is discovered this year or next year where the tenant has regularly paid for all consumption, how does the tenant make him or herself whole?

The ALJ recommends against adoption of a one-size-fits-all rule for Section 1529.1 cases. The Commission has reviewed enough cases at this point to fashion a rule in several sections. The ALJ has made an attempt at such a rule, and sets it forth for the Commission's 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 as far back as the date of effective constructive notice to owners may be transferred to the owner.

CONCLUSIONS OF LAW

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.

ORDER

1. The complaint-appeal of Met Ed docketed at C-00967757 Elizabeth Santos, Complainant v. Metropolitan Edison Company, Complaint-Appellant is hereby sustained in part and denied in part, consistent with the discussion contained in the Initial Decision, and the case shall be marked closed.

2. The BCS decision at BCS No. 0274904, December 22, 1995 is affirmed but modified to remove $40.06 from the account

amount transferred to owner Cesar Pomales because it was a debt incurred at another address.

Allison K. Turner

ALLISON K. TURNER
Administrative Law Judge

Dated: December 11, 1996

Act 294

Case Identification:	**C-00967757; Elizabeth Santos (Complainant) v. Metropolitan Edison Company (Complaint-Appellant)**
Initial Decision By:	**ALJ Allison K. Turner**
Deadline for Return to OSA:	**January 9, 1997**

This decision has not been reviewed by OSA.

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JAN 3 1997
OFFICE OF SPECIAL ASSISTANTS

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I want full Commission review of this decision.

_____ Commissioner

_____ Date

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Commissioner

1-2-97
Date

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DOCUMENT FOLDER

JAN 16 1997

Act 294

Case Identification: C-00967757; Elizabeth Santos (Complainant) v. Metropolitan Edison Company (Complaint-Appellant)

Initial Decision By: ALJ Allison K. Turner

Deadline for Return to OSA: January 9, 1997

This decision has not been reviewed by OSA.

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I want full Commission review of this decision.

_____ _____
Commissioner Date

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_____ January 3, 1997
Commissioner Date

Act 294

Case Identification:	**C-00967757; Elizabeth Santos (Complainant) v. Metropolitan Edison Company (Complaint-Appellant)**
Initial Decision By:	**ALJ Allison K. Turner**
Deadline for Return to OSA:	**January 9, 1997**

This decision has not been reviewed by OSA.

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~~I want~~ full Commission review of this decision.

John Hanger

Commissioner

Date

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~~Commissioner~~

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Act 294

Case Identification:	**C-00967757; Elizabeth Santos (Complainant) v. Metropolitan Edison Company (Complaint-Appellant)**
Initial Decision By:	**ALJ Allison K. Turner**
Deadline for Return to OSA:	**January 9, 1997**

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ _____
Commissioner Date

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David W. Rolka /je 1-6-97
Commissioner Date

Act 294

Case Identification: C-00967757; Elizabeth Santos (Complainant) v. Metropolitan Edison Company (Complaint-Appellant)

Initial Decision By: ALJ Allison K. Turner

Deadline for Return to OSA: January 9, 1997

This decision has not been reviewed by OSA.

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X Robert K. Bloom
Commissioner

1/7/97
Date

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Commissioner

Date

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DOCUMENT FOLDER

JAN 10 1997

DATE: February 19, 1997

SUBJECT: C-00967757

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: Joyce G. McGrady, Supervisor
New Filing Section

ELIZABETH SANTOS (COMPLAINANT)
VS
METROPOLITAN EDISON COMPANY
(COMPLAINT-APPELLANT)

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

METROPOLITAN EDISON COMPANY
PP&L LETTER IN LIEU OF FORMAL EXCEPTIONS

Reply Exceptions have been received from:

cc: Annette Shelley

Pennsylvania Power & Light Company
Two North Ninth Street • Allentown, PA 18101-1179 • 610/774-5151

Jesse A. Dillon
Counsel
610/774-5013

FAX: 610/774-6726

January 13, 1997

FEDERAL EXPRESS

Mr. John G. Alford, Secretary
Administrative Law Judge
Pennsylvania Public Utility Commission
North and Commonwealth Streets
Harrisburg, Pennsylvania 17105-3265

Re: Letter In Lieu of Exceptions --
Elizabeth Santos
v. Metropolitan Edison Company
Docket No. C-00967757

Dear Secretary Alford:

Enclosed are an original and nine (9) copies of this Letter In Lieu of Exceptions and Certificate of Service filed by Pennsylvania Power & Light Company ("PP&L"), a party to the above-referenced proceeding. Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on January 13, 1997, which is the date it was deposited with an overnight express delivery service as shown on the delivery receipt attached to the mailing envelope. In addition, please date and time-stamp the enclosed extra copy of this letter and return it to me in the envelope provided.

As explained in PP&L's Main Brief in this proceeding, PP&L intervened and participated in this proceeding in search of a uniform interpretation of the issues involving in "backbilling" under the foreign load provisions of Act 54 of 1993, most specifically Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1. At pages 21 to 22 of the Administrative Law Judge's Initial Decision dated December 24, 1996, the ALJ recommends adoption of a rule which attempts to balance the various

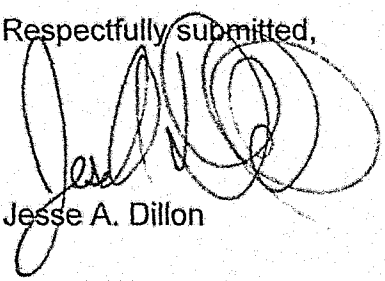
interests involved and fashion a uniform course of conduct regarding backbilling when foreign load is discovered.

PP&L does not agree with all of the reasoning contained in the ALJ's Initial Decision. Specifically, for the reasons explained in PP&L's Main Brief, PP&L disagrees with the ALJ's conclusions regarding the availability of tenants of remedies under Section 1529 of the Public Utility Code, 66 Pa.C.S. § 1529. However, regardless of PP&L's disagreements, PP&L does not except to the adoption of the rule proposed by the ALJ at pages 21-22 of her initial decision.

PP&L would have preferred a rule providing for no transfers of any balances incurred prior to the date that foreign load is confirmed. However, PP&L recognizes that, in formulating a remedy, the 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. A uniform policy in this regard followed by the PUC, the PUC's Office of Administrative Law Judges and the PUC's Bureau of Consumer Services would be most helpful and efficient.

Copies of this Letter in Lieu of Exceptions have been served on all parties to the proceeding in accordance with the Commission's regulations.

Respectfully submitted,



Jesse A. Dillon

Enclosure

cc: Administrative Law Judge Allison K. Turner
All Parties of Record

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Copies of this Letter in Lieu of Exceptions have been served on all parties to the proceeding in accordance with the Commission's regulations.

Respectfully submitted,

Jesse A. Dillon

Enclosure

cc: Administrative Law Judge Allison K. Turner
All Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Elizabeth Santos	:	
	:	
v.	:	Complaint Docket No. C-00967757
	:	
Metropolitan Edison Company	:	

CERTIFICATION OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of §1.54 (relating to service by a participant):

VIA FIRST CLASS MAIL

The Honorable Allison K. Turner
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth & North Streets
Harrisburg, PA 17105

John G. Alford, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Janet E. Arnold
Ryan, Russell, Ogden & Seltzer
1100 Berkshire Boulevard
P.O. Box 6219
Reading, PA 19610-0219

Elizabeth Santos
212 South 9th Street, 2nd Floor
Reading, PA 19602

Loan Phan
801 Hamilton Street, No. 1
Allentown, PA 18103

Cesar S. Pomales
212 South 9th Street
Reading, PA 19602

Dated this 13th day of January, 1997.

Jesse A. Dillon

LAW OFFICES
RYAN, RUSSELL, OGDEN & SELTZER
1100 BERKSHIRE BOULEVARD
SUITE 301
READING, PA. 19610

610-372-4761
FAX 610-372-4177

SAMUEL B. RUSSELL
W. EDWIN OGDEN
ALAN MICHAEL SELTZER
JEFFREY A. FRANKLIN
JANET E. ARNOLD

HAROLD J. RYAN (1972)
JOHN S. McCONAGHY (1981)

January 13, 1997

VIA UPS OVERNIGHT

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

Re: Elizabeth Santos v.
Metropolitan Edison Company, Appellant
Docket No. C-00967757

Dear Mr. Alford:

Enclosed for filing are an original and nine copies of the Exceptions of Metropolitan Edison Company. Please note that a copy has been served upon all parties of record as evidenced by the enclosed Certificate of Service.

Please contact me with any questions.

Very truly yours,

RYAN, RUSSELL, OGDEN & SELTZER

Janet E. Arnold

JEA/dms
Enclosures

cc: As per Certificate of Service

19

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: COMPLAINT OF ELIZABETH SANTOS	:	
	:	Complaint Docket
v.	:	No. C-00967757
METROPOLITAN EDISON COMPANY, APPELLANT	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served true and correct copies of the Exceptions of Metropolitan Edison Company upon the parties listed below, in accordance with the requirements of 52 Pa. Code §1.37:

Via UPS Overnight Service, addressed as follows:

Cesar S. Pomales
212 South 9th Street
Reading, PA 19602

Jesse Dillon, Esq.
Pennsylvania Power and Light Company
Two North Ninth Street
Allentown, PA 18101-1179

Mike Smith
Bureau of Consumer Services
PA Public Utility Commission
Barto Building, 7th Floor
Harrisburg, PA 17120

Administrative Law Judge Turner
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, PA 17120

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, PA 17120

Dated: January 13, 1997

Janet E. Arnold
RYAN, RUSSELL, OGDEN & SELTZER
1100 Berkshire Boulevard, Suite 301
Reading, Pennsylvania 19610
(610) 372-4761

Attorneys for
Metropolitan Edison Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: COMPLAINT OF ELIZABETH SANTOS	:	
	:	Complaint Docket
v.	:	No. C-00967757
METROPOLITAN EDISON COMPANY, APPELLANT	:	

EXCEPTIONS OF METROPOLITAN EDISON COMPANY

Metropolitan Edison Company ("Met-Ed" or the "Company"), by and through its attorneys, Janet E. Arnold and Ryan, Russell, Ogden & Seltzer, hereby files the following Exceptions to the Initial Decision of Administrative Law Judge Turner, issued December 24, 1996, pursuant to Section 5.533 of the Commission's regulations, 52 Pa. Code § 5.533:

I. INTRODUCTION

This case arises under sections 1529 and 1529.1 of the Public Utility Code, ("the Code"), 66 Pa.C.S. §§ 1529, 1529.1. Section 1529.1, added to the Code in 1993 by Public Law 379, No. 54, is commonly referred to as "Act 54" (referred to in the Initial Decision as "Act 1993"). Initial Decision at p. 8. Act 54 was designed to address the problem of "foreign load" where tenants who have a meter, and are direct utility customers, find that utility service for other tenants or for the landlord is being billed through their meter. David P. Boyce v. Duquesne Light Co., (Docket Z-00223698, Order Entered September 1, 1994) at pp. 4-5. Essentially, Act 54 is a tenant protection statute, enacted to insure that tenants pay only for utility service that they use.

In order to protect tenants in foreign load situations, Act 54 establishes and imposes duties upon both owners of rental property and public utilities. Act 54 imposes a duty upon property

owners to provide notice to public utilities of the fact that a building is rental property and is not individually metered. 66 Pa.C.S. §1529.1(a). In addition, as of the effective date of Act 54, ie.: September 1, 1993, the owners of all buildings not individually metered are responsible for payment of utility service, whether or not the building owner actually provides the mandated notice. 66 Pa.C.S. §1529.1(c). Section 1529.1(b) articulates the duties of public utilities under Act 54, requiring that when a public utility discovers that a building is not individually metered, it must list the account in the name of the owner.

To assist in the disposition of Act 54 cases before the Commission, the Commission's Bureau of Consumer Services ("BCS") has issued policy statements regarding the proper interpretation of Act 54. At a PEA meeting on March 7, 1995, the BCS issued a position paper to PEA members which stated that the utilities should place the account in the owner's name the date the utility becomes aware of a foreign load situation, i.e. that a tenant's residence is not individually metered. Met-Ed Exhibit 1. This policy statement also states that tenants are not entitled to refunds of monies paid for utility services. Rather, tenants should utilize the remedy provided by §1529 of the Code. Met-Ed Exhibit 1.

In 1996, the BCS clarified its interpretation of Act 54, consistent with its 1995 position paper. On March 4, 1996, the BCS issued a draft policy in response to complaints and concerns regarding the proper application of Act 54. In this draft policy statement, the BCS states that utility services at a residential building where all of the units are not individually metered must be listed in the landlord's name. However, pursuant to 66 Pa. C. S. § 1529.1(b), the effective date of the listing should be the date on which the utility received notice that a building is not individually metered. Met-Ed Exhibit 4. The BCS further stated that service does not have to be backdated to

the effective date of Act 54 (i.e. September 1, 1993) and refunds do not have to be issued. Met-Ed Exhibit 4.

In this case, contrary to both the plain language of Act 54 and the BCS policies, both the BCS and the Administrative Law Judge have held that a utility is obligated to hold a property owner responsible for the payment for utility service from the effective date of Act 54, i.e.: September 1, 1993. These rulings not only contravene the clear and unambiguous language of Act 54 and violate several of the rules of statutory construction, but also have the potential to impose unwarranted financial and operational burdens upon public utilities. Imposing such burdens on utilities where no such burdens are imposed by the Public Utility Code is unlawful and contrary to the public interest. The Initial Decision should therefore be reversed.

II. FACTUAL BACKGROUND

Elizabeth Santos was a tenant of a second-floor apartment in a tenant-occupied building located at 212 South Ninth Street, Reading, Pennsylvania 19602 ("the building"). N.T. 8. A barber shop and a church are located on the first floor of the building and the second floor houses two apartments, one of which was Ms. Santos'. N.T. 24,25. From January 10, 1995 to May 10, 1995, Ms. Santos was Met-Ed's customer of record for residential service to her apartment. N.T.7-8, 21. During her tenure as Met-Ed's customer of record, Ms. Santos made only one payment in the amount of $32.60 on February 15, 1995. N.T. 20. On May 10, 1995, Ms. Santos had an outstanding balance of $348.55, $40.06 of which was a final bill transferred from a prior address. N.T. 9,20.

On May 9, 1995, Ms. Santos contacted Met-Ed, indicating that she believed there was foreign load on her meter. N.T. 8. She did not dispute the fact that she had received service from Met-Ed and utilized electricity during the period of January 10, 1995 through May 10, 1995. On

May 10, 1995, Met-Ed conducted an on-site investigation of Ms. Santos' claim of foreign load. N.T. 8. The company determined that a single meter, located at or near her residence, was registering usage for the barber shop, church and Ms. Santos' apartment. N.T. 8. Upon discovering the foreign load condition, the Company took the account out of Ms. Santos' name, effective May 10, 1995 and placed the account in the name of the owner of the building. N.T. 9-10.

On May 11, 1995, Ms. Santos filed an Informal Complaint with the BCS at BCS Number 0274904, alleging that she was paying for electric service to a barber shop and a church in addition to the service for her second-floor apartment in the building. She further alleged that she should not be held responsible for the outstanding balance of $348.55.

The BCS Decision, dated December 22, 1995, ordered Met-Ed to "transfer the entire balance that accumulated from the time that Ms. Santos became the customer of record to the time the foreign load was detected to the landlord's account". Met-Ed Exhibit 2. On February 28, 1996, Met-Ed filed a formal Complaint at Docket Number C-00967757 appealing the BCS Decision. On June 3, 1996, Pennsylvania Power & Light Company ("PP&L") filed a Petition to intervene, which was granted by the ALJ.

An evidentiary hearing was held on June 13, 1996. Met-Ed, the only party present, presented the testimony of one witness, resulting in thirty-six (36) pages of transcribed testimony and the admission of six exhibits.

Both Met-Ed and PP&L filed briefs in the case, encouraging the Commission to act in accordance with the plain language of Act 54, and reverse the BCS Decision.

III. EXCEPTIONS

A. The Public Utility Code Expressly Provides A Remedy For Tenants

Met-Ed takes exception to Conclusion of Law No. 2, where the ALJ held that:

> Section 1529.1 does not provide a remedy so the Commission may apply statutory construction to design a remedy or remedies.

Initial Decision at p. 22. This Conclusion of Law is erroneous in two respects. First, although technically correct insofar as Section 1529.1 of the Code does not, itself, provide a remedy for aggrieved tenants, this Conclusion of Law suggests that the Code contains no remedy at all, which is not correct. Second, this Conclusion of Law holds that the Commission may utilize the rules of statutory construction to create a remedy where one is not provided for by the statute. This holding is contrary to well-established law, and encourages the Commission to exceed its authority.

1. THE PUBLIC UTILITY CODE PROVIDES A REMEDY FOR AGGRIEVED TENANTS

In support of her conclusion that Section 1529.1 does not provide a remedy for aggrieved tenants, the ALJ engages in a lengthy recitation of the background and history of Act 54. The ALJ correctly notes that Act 54 amended Sections 1521 through 1528 and Sections 1530 through 1533 of the Code, and added Section 1529.1. Initial Decision at p. 8. The ALJ also correctly notes that Section 1529 was not amended by Act 54. Id.

However, the ALJ goes on to evaluate Section 1529, and incorrectly concludes that, because Section 1529 was not amended by Act 54, it does not provide a remedy for situations arising

under the terms of Act 54. Id. First, the ALJ opines that Section 1529 does not apply to tenants aggrieved under Section 1529.1 because:

> "Subchapter B was intended to apply to situations where the landlord ratepayer is the customer of record; the tenant pays the landlord an amount for utilities included in the rent; the landlord does not pay the utility bills; and, the utility initiates termination of service procedures as part of its collection actions." Initial Decision at p. 8.

Further, the ALJ states 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 money paid directly to the utility and not ever paid to the landlord." Initial Decision at pp. 9 - 10.

Moreover, the ALJ states that Section 1529 provides "alternative remedies where double payments have been made." Initial Decision at p. 9.

The ALJ's analysis and ruling are erroneous in several respects. First, the ALJ's conclusion that Section 1529 provides a remedy for tenant monies paid to a landlord is not correct. 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. Moreover, Section 1529 says nothing about providing a remedy for tenants only where double payments have been made. Hence, the ALJ's analyses on these points are flawed.

Most importantly, however, the plain language of Section 1529 clearly indicates that it provides a remedy for aggrieved tenants under Act 54. Section 1529 of the Code provides:

> Any tenant who has made a 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 from any rent or payment on account of taxes or operating expenses then or thereafter due from the tenants to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the landlord ratepayer.

66 Pa. C. S. § 1529. The language in this Section is unambiguous. By its terms, this Section provides a remedy for all provisions of Subchapter B, which encompass Sections 1521 through 1533 of the Code, and includes all of the Code Sections added or amended by Act 54, including Section 1529.1. The Section allows tenants to recover monies paid to utilities "on account of non-payment of charges by the landlord ratepayer."

The term "landlord ratepayer" is defined within Subchapter B as follows:

> "One or more individuals or an organization listed on a gas, electric, steam, sewage or water utility's records as the party responsible for payment of the gas, electric, steam, sewage or water service provided to" a residence.

66 Pa. C. S. § 1521.

Section 1529.1(a) defines the party responsible for the payment of electric bills where foreign load is involved. Section 1529.1(a) provides that the owner of a building that is not individually metered is the party responsible for payment. Hence, contrary to the ALJ's holding, the fact that Section 1529 was not amended by Act 54 is simply immaterial. Section 1529 does, indeed, provide a remedy for tenants aggrieved under Act 54.

The Commission has recognized this in two recent cases. In Sarah Divilly v. Duquesne Light Co. (Docket No. C-00946235, Order Entered May 26, 1995) and R & B Reddy, Inc. v. People's Natural Gas Co. (Docket No. C-00946080, Order Entered May 26, 1995), the Commission acknowledged that Section 1529 is a remedy that is available to tenants in situations

where Act 54 applies. Of course, as the Commission recognized, Section 1529 is not the exclusive remedy available to tenants, as there are many others available to tenants under statutory and common law. However, the Commission clearly ruled that Section 1529 is a remedy available to tenants. R & B Reddy at p. 16; Divilly at p. 12. Thus, contrary to the ALJ's ruling, Section 1529 does provide a remedy under Act 54, and the ALJ's ruling in this regard should have reversed.

2. THE COMMISSION CANNOT CREATE STATUTORY PROVISIONS

In the Initial Decision, the ALJ ruled that section 1529.1 of the Code does not provide a remedy for tenants, so the Commission may apply rules to statutory construction to create a remedy. Initial Decision at p. 22, Conclusion of Law 2. This Conclusion of Law is completely contrary to law, as it suggests that the Commission has the power to create statutory provisions.

It is well settled that the Commission has only the powers, and can only consider such matters as are expressly, or by necessary implication, given it by the Legislature. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super. 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980). The Public Utility Code, 66 Pa. C.S. §101, et seq., gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. Brockway Glass at 514.

By holding that the Commission may apply the rules of statutory construction to fashion a remedy that does not otherwise exist within the four corners of the statute, the ALJ suggests that the Commission may exceed its authority as articulated under the Code. Neither courts nor administrative agencies have the power to add to a statute, by interpretation, a requirement which the Legislature did not see fit to include. Commonwealth v. Rieck Corp., 213 A.2d 277, 419 Pa. 52

(1965); Latella v. Unemployment Compensation Board, 459 A.2d 464, 74 Pa. Commw. 14 (1983); Altieri v. Allentown Officers and Employment Retirement Board, 81 A.2d 884, 368 Pa. 176 (1951).

If the Legislature had intended to provide tenants with a remedy in addition to that provided for in section 1529, such a remedy would have been clearly articulated in the statute. Yet no such language exists. Any attempt to create new provisions by utilizing the rules of statutory construction would impermissibly add provisions to Act 54, and would exceed the powers of the Commission as specifically set forth in the Code. The ALJ's ruling on this issue should therefore be reversed.

B. Contrary To The ALJ'S Ruling, The Decision Of The BCS Was Based Upon An Incorrect Interpretation Of Act 54

Met-Ed takes exception to Conclusion of Law No. 8, where the ALJ holds that:

> The Decision at BCS No. 0274904, is not based on an erroneous statutory interpretation.

Initial Decision at p. 23. This Conclusion of Law is directly contrary to the plain language of Act 54.

1. THE ALJ'S DECISION CONTRAVENES THE PLAIN LANGUAGE OF ACT 54.

The Initial Decision orders Met-Ed to transfer the balance of Ms. Santos' account to the owner's account. Initial Decision at p. 23. Hence, the ALJ has ordered Met-Ed to act retroactively, reaching back prior to the date on which Met-Ed discovered the foreign load. The Decision is contrary to the plain language of §1529.1, and has the effect of rendering the clearly articulated duties in that Section completely ineffective.

Section 1529.1 is divided into three distinct sections, 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 services received of their ownership and the fact that the premises served are used for rental purposes.

(b) History of the Account

Upon receipt of the notice provide in the 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 thereunder. In the case of individually metered 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 of the utility services to the premises. (Emphasis added).

(c) Failure to Give Notice

Any owner of a residential building or a mobile home park failing to notify effective 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.

Each of these sections imposes separate and distinct duties and obligations upon building owners and public utilities.

Sections (a) and (c) impose duties upon owners of residential buildings containing one or more dwelling units that are not "individually metered." Section (a) imposes a duty upon building owners to notify public utilities (a) that the building is used for rental purposes, and (b) that it is not "individually metered," i.e.: the building is master-metered or there are apartments with

foreign load. Met-Ed Exhibits 1,3,4; U.G.I. Utilities, Inc. v. Heckman, Berks County Court of Common Pleas, 4125-95 A.D. (August 14, 1996).

Section (c) provides that an owner of a building will be responsible for the payment of utilities services even if the owner has not complied with the requirements set forth in Section (a). Thus, building owners cannot escape their duties simply by failing to provide the mandated notice.

Section (b) articulates the role of public utilities in situations where foreign load is discovered. Section (b) mandates that, when a utility discovers that a dwelling unit is not individually metered, it must list the account in the name of the owner of the building. In plain and unambiguous language, the section imposes a duty upon public utilities to "forthwith" list a tenant's account in the name of the building owner upon receipt of notice that a dwelling unit is not individually metered.

The rules of statutory construction mandate that words and phrases be construed according to the rules of grammar and according to their common and approved usage. 1 Pa. C.S. §1903. Where the words of a statute are clear and free from all ambiguity, the letter of the statute cannot be disregarded under the pretext of pursuing its spirit. 1 Pa. C.S. §1921(b). The mandates of Section 1529.1 are clear. First, this Section provides that a public utility lists an account for a building not individually metered in the name of the owner "upon receipt" of notice that the building is not individually metered. The use of the prepositional phrase of "upon receipt" clearly indicates that a utility must have actually received notice that a building is not individually metered before it is required to list the account for the premises in the owner's name. Indeed, the word "receipt" is defined as "the state of being received." Random House College Dictionary (1973). Therefore, this language indicates that a utility must have actually received notice of the fact that a building is not individually metered before the duty to place the account for that building in the owner's name arises.

Once a utility becomes aware that a residence is not individually metered, it must put the account in the name of the building owner. This action must be taken by the utility "forthwith", meaning immediately and without delay. See: Black's Law Dictionary, Fifth Edition, West Publishing Company, 1979. The section further mandates that the owner shall "thereafter" be responsible for the payment for utility services rendered to the building. The use of the term "thereafter", meaning "after the time last mentioned", "after that time" and "from then on", clearly indicates that the utility must require the building owner to be responsible for the payment for utility services after the utility discovers that the building is not individually metered. See Black's Law Dictionary, Fifth Edition, West Publishing Company, 1979; Webster's Third New International Dictionary, Unabridged, 1971.

Hence, the plain language of §1529.1(b) mandates that, once a utility becomes aware that a residential dwelling is not individually metered, it must put the account for the premises in question in the name of the owner without delay, and from that point forward, hold the owner responsible for utility services.

In terms of the duties imposed upon utilities, the statute is forward-looking. It does not require utilities to reach back in time, prior to when the utility became aware of the foreign load condition. Hence, Section 1529.1 does not impose any duty upon utilities to refund monies paid by tenants, transfer outstanding balances or retroactively bill the owner for utility services. Indeed, §1529.1(b) is completely silent on that issue.

2. THE ALJ's DECISION IMPERMISSIBLY RENDERS THE DUTIES SET FORTH IN § 1529.1(B) SUPERFLUOUS.

In an attempt to harmonize the separate duties imposed upon building owners and utilities in Section 1529.1, the ALJ suggests that the crucial issue is the date of constructive notice to the owner, i.e.: the effective date of Act 54, rather than to the utility, because Section 1529.1(c) makes the owner responsible from that date whether or not the utility was actually given notice. Initial Decision at p. 17. However, the ALJ's conclusion fails to recognize that each distinct section of Section 1529.1 imposes different duties upon different parties, each with distinct time lines. For example, a building owner's duty to pay for utility service commenced with the effective date of the Act. 66 Pa. C. S. § 1529.1(c). A utility's duty to bill an owner for such services, however, commences when the utility actually receives notice of the foreign load condition. 66 Pa. C. S. § 1529.1(b). The ALJ's attempt to harmonize each duty has the effect of changing the express language of the statute and actually vitiates the clear language of Section 1529.1(b).

The rules of statutory construction mandate that "every statute shall be construed, if possible, to give effect to all its provisions". 1 Pa. C.S. §1921(a). The unambiguous language of Act 54 imposes duties upon both public utilities and building owners. Each subsection of §1529.1 establishes a separate and distinct duty. Section 1529.1(a) establishes a duty for every owner of a residential rental property that is not individually metered to notify a public utility of the fact that the building is used for rental purposes. Subsection (c) mandates that, where a building owner fails to give the required notice, the owner will nevertheless be responsible for utility services as if the required notice had been given. Hence, building owners cannot escape the requirements of Act 54 by failing to give the mandated notice.

As previously discussed, §1529.1(b) imposes duties upon both utilities and building owners. Under §1529.1(b), it is the duty of a public utility to list the account for a building not individually metered in the name of the owner upon receipt of notice that the building is not individually metered. From that point on, i.e "thereafter", the owner is responsible for the payment for utility services to the building. Hence, Act 54 establishes clearly defined duties for both owners of building that are not individually metered as well as the utilities serving such buildings.

The ALJ's interpretation, imposing a duty upon a public utility to reach backward in time from the date when the utility received notice that a building is not individually metered, renders the requirements of §1529.1(b) superfluous and ineffectual. If the utility has a duty to act retroactively and transfer an outstanding balance to the owner's account, imposing a further duty on a utility to put the account in the name of the owner when the utility receives actual notice that the building is not individually metered would be redundant. If the utility must make the owner responsible for utility charges retroactively, there is simply no need to impose a duty upon a utility beginning when the utility actually receives notice that a building is not individually metered. Indeed, the ALJ's interpretation renders §1529.1(b) redundant and of no effect.

This interpretation is directly contrary to the rules of statutory construction, which require that statutes be construed to give effect to all provisions. 1 Pa. C.S. §1921. In order for the duties established by §1529.1(b) to be meaningful and effective, that portion of the statute must be interpreted consistent with its plain language, mandating that a public utility place an account in the name of the owner upon receipt of notice that the building is not individually metered and bill the landlord for service rendered to that building after that time.

3. THE INITIAL DECISION IMPERMISSIBLY ADDS PROVISIONS TO ACT 54

By ordering Met-Ed to transfer the balance of Ms. Santos' account to the landlord's account, the ALJ has ordered Met-Ed to take action that was not compelled by the statute. Act 54 does not contain any provisions requiring utilities to retroactively pursue collection activities. In fact, Act 54 is totally silent on the issue of outstanding debt or credit.

As previously discussed, the Commission has only the powers, and can only consider such matters as are expressly, or by necessary implication, given it by the Legislature. Act 54 imposes upon both building owners and utilities certain mandatory duties and requirements. Nowhere in Act 54 is there a provision allowing the Commission to order a utility to retroactively pursue collection from a building owner. The statute's only operational mechanism, Section 1529.1(b), mandates solely that, upon receipt of notice that a building is not individually metered, the utility must place the account for service in the name of the owner and bill the owner for utility service thereafter. No provision for retroactive billing or collection exists.

By ordering Met-Ed to transfer the account balance into the name of the owner, the ALJ has impermissibly added a requirement that appears nowhere in the provisions of Act 54. Neither courts nor administrative agencies have the power to add, by interpretation, to a statute, a requirement which the Legislature did not see fit to include. Commonwealth v. Rieck Corp., 213 A.2d 277, 419 Pa. 52 (1965); Latella v. Unemployment Compensation Board, 459 A.2d 464, 74 Pa. Commw. 14 (1983); Altieri v. Allentown Officers and Employment Retirement Board, 81 A.2d 884, 368 Pa. 176 (1951). If the Legislature had intended to impose an obligation upon public utilities to act retroactively from the time they receive notice of a foreign load condition, that duty would have been clearly articulated in the language of the statute. Yet no such language exists.

Act 54 does not contain any language which allows the Commission or the BCS to order a utility to retroactively bill the landlord. By ordering such action, the ALJ has gone beyond the language of the statute, essentially creating a requirement which the Legislature did not see fit to include. The ALJ has therefore suggested that the Commission exceed its powers given it by the Legislature.

The ALJ sums up her desire to create an additional remedy under Act 54 when she asks: "if a foreign load situation is discovered this year or next year where the tenant has regularly paid for all consumption, how does the tenant make himself or herself whole?" Initial Decision at p. 21. First, as previously discussed, Section 1529 of the Code does, in fact, provide a remedy for tenants in that position. In addition, there are numerous remedies available under landlord/tenant law and the common law. Consequently, aggrieved tenants have several legal avenues from which to seek relief. The ALJ's approach, which creates duties and remedies not found in the statute, is not only unlawful but also unnecessary, and should be reversed.

C. *Any Policy Adopted By The Commission Must Be Consistent With The Plain Language Of Act 54.*

In the Initial Decision, the ALJ suggests adoption of a uniform policy to govern the disposition of Act 54 cases before the Commission. The ALJ suggested policy has four elements:

1. 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;

2. Where the tenant has accrued unpaid bills, the utility shall pursue collection from the owner, not the tenant;

3. 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; and

4. Unpaid balances for utility service rightfully the responsibility of the owner dating as far back as the date of effective constructive notice to owners may be transferred to the owner. Initial Decision at p. 22. Met-Ed encourages the adoption of a uniform policy for the disposition of Act 54 cases, but hastens to add that such a policy must be consistent with the plain language of Act 54.

For example, the ALJ suggests, as a part of her proposed policy statement, that, where the tenant has accrued unpaid bills, the utility shall pursue collection from the owner, not the tenant. Initial Decision at p. 22. To the extent that this would require a utility to reach backwards in time from the date the utility received notice of the foreign load condition, this proposed policy is contrary to the plain language of Act 54 and must be rejected.

In addition, the ALJ's proposed policy has the potential to impose unnecessary and unjustifiable burdens on public utilities. The ALJ suggests that utilities must pursue collection of unpaid balances from owners, potentially retroactive to the effective date of Act 54 in 1993. The ALJ's proposal in this regard poses two significant problems for utilities. First, often times, as in this case, the owner of a building is not a customer of the utility serving the building. The ALJ's suggested policy would require a utility to retroactively bill a landlord that is not that utility's customer. Pursuing retroactive collection activities against a building owner with whom the utility

has no contractual privity would be substantially more difficult, and certainly more open to challenge, than acting consistent with the plain language of Section 1529.1 and placing the account in the name of the building owner at the time the utility receives notice of a foreign load condition.

Second, the ALJ is mandating that utilities must retroactively pursue collection on unpaid accounts from the landlord retroactive to the effective date of Act 54. Although Section 1529.1(c) imposes a duty on the landlord to pay for utility service as of the effective date of the Act, Section 1529.1(b) imposes a duty upon utilities to begin billing the landlord only when the utility receives actual notice of a foreign load condition. 66 Pa. C. S. § 1529.1(b), (c). Under the terms of the Act, there is a time period from the effective date of the Act to the time when the utility receives actual notice of the foreign load condition where the landlord is responsible for payment of the utility bills but the utility does not yet have the authority to bill the landlord. Although the ALJ's proposed policy suggests one way for the Commission to address this time period, the ALJ's policy nevertheless impermissibly adds provisions to Act 54, while ignoring the fact that the Code already provides a remedy for aggrieved tenants. The Commission cannot, under the guise of interpreting Act 54, impose duties upon utilities that do not appear within the four corners of Act 54. To the extent that the plain language of the statute must result in the Commission directing tenants to seek recompense from another forum, that issue can be addressed only by the legislature.

As the electric utility industry enters into the new era of competition and customer choice, cost effective operations and revenue assurance will be critical to each utility's ability to continue to provide safe, reasonable and adequate to its customers. Placing unnecessary burdens upon utilities in an attempt to assist parties who have legal remedies available to them elsewhere can

only hamper a utility's ability to continue to provide quality service to its customers. Such a result is contrary to the public interest.

WHEREFORE, Metropolitan Edison Company respectfully requests that this Commission reject the Initial Decision in this matter, and sustain the Complaint of Metropolitan Edison Company.

Respectfully submitted,

Dated: January 13, 1997

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DOCUMENT FOLDER

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: April 11, 1997	2. BUREAU AGENDA NO.: APR-97-OSA-129*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: June 5, 1997
6. APPROVED BY: Director: C. W. Davis Supervisor: Russel Albert	DOCKETED JUN 10 1997
7. PERSONS IN CHARGE: Paul Aleva 7-3012	
8. DOCKET NO.: C-00967757	

9. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Elizabeth Santos v. Metropolitan Edison Company

(b) On February 28, 1996, Metropolitan Edison Company ("Met-Ed") filed a Formal Complaint appealing a decision by the Bureau of Consumer Services ("BCS"), which had been issued on December 22, 1995, on the informal complaint of Elizabeth Santos. The BCS decision involved the application of Section 1529.1 of the Public Utility Code, 66 Pa. C.S. §1529.1, as that section addresses the issue of foreign utility service being billed through a tenant's meter. On June 3, 1996, Pennsylvania Power & Light Company ("PP&L") filed a Petition to Intervene which was granted by Administrative Law Judge ("ALJ") Allison K. Turner. One hearing in this matter was held on June 13, 1996. Main Briefs were filed by Met-Ed and PP&L. The Initial Decision of ALJ Turner was issued on December 24, 1996. Met-Ed filed Exceptions and PP&L filed a Letter In Lieu of Exceptions on January 13, 1997.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed Opinion and Order which grants, in part, and denies, in part, the Exceptions filed by Met-Ed, and which adopts the Initial Decision of the ALJ as modified by the proposed Opinion and Order.

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

CONTENT OF MOTION: Postponement to Public Meeting of June 13, 1997, for the Commission's further consideration.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

ELIZABETH SANTOS
v.
METROPOLITAN EDISON COMPANY

PUBLIC MEETING - JUNE 12, 1997
APR-97-OSA-129*
DOCKET NO. C-00967757

MOTION OF COMMISSIONER DAVID W. ROLKA

This proceeding is another case involving interpretation and application of Act 54 of 1993, and more specifically, Section 1529.1, 66 Pa. C.S. § 1529.1. To this point, we have decided these matters on a case-by-case basis. I believe that we have reached the point in time where it is appropriate for us to develop a proposed Policy Statement to provide guidance to interested parties in matters involving 66 Pa. C.S. § 1521, et seq. To accomplish this goal, I would direct the Law Bureau, with the assistance of the Bureau of Consumer Services ("BCS"), to develop a proposed Policy Statement for presentation at a future Public Meeting which addresses the following issues.

1. Foreign Load

Commissioner Hanger's Motion in the Santos case accurately identifies the intent of the 1993 amendments to the Act as an attempt to protect residential tenants from the loss of utility service because another party has service terminated by the utility. Section 1529.1(b) requires the utility to transfer an account into the name of the landlord when a foreign load is discovered and the dwelling is not separately metered.

The area in landlord-tenant utility matters which has sparked the most controversy concerns foreign load. Since passage of the 1993 amendments, we have been presented with several cases where there was more than one dwelling unit in a building; each dwelling unit was individually metered; but, there may be a foreign load attached to the meter of one dwelling unit. Although in some cases, the foreign load was characterized as de minimus, the ultimate resolution was to place that account into the landlord's name. The underlying rationale for doing so was twofold: (1) it is virtually impossible to define a de minimus foreign load; and (2) termination of service to that account could affect the service received by other tenants.

In the past, Law Bureau has advanced the position that, in its current form, the inflexibility of Section 1529.1 makes for harsh situations for small landlords insofar as they face the possibility of being forced to rewire or replumb an entire building to separately meter such

things as hall lights, the electric fan on a furnace, a water pump, etc. This can be onerous where a landlord has already separately-metered the dwelling units within the building. Additionally, the BCS draft internal policy regarding this issue as it may arise in informal complaint proceedings finds it illogical to expect a landlord to spend a substantial amount of money to correct a situation where the amount of foreign load is minimal and would have a negligible effect on a bill. For this reason, BCS would prefer to proceed on the basis that, after a reasonable investigation of the extent of the foreign load, BCS or the utility company in question may choose not to require transfer of the account to the landlord's name.

Section 1529.1(b) states, "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." (Emphasis added). This language could be construed to allow a bill which contains a foreign load to be in the name of the tenant provided that that tenant notifies the utility of his/her desire to be the billing-responsible party. Such an interpretation would preserve the terms of a lease wherein the landlord discloses the presence of the foreign load to the tenant and the tenant agrees to be responsible for the service. The problem which could arise under this interpretation is that, should the tenant with the foreign load fail to pay for service or voluntarily choose to discontinue service, any other tenants residing on the premises could lose service.

A broad interpretation of Section 1529.1 could be utilized provided certain conditions are met. The landlord should be required to disclose any foreign load, no matter how small, to the tenant, in writing, prior to that tenant accepting responsibility for the bills. In turn, the tenant would have the option to accept the billing responsibility and would so notify the utility. By accepting responsibility for an account which includes a foreign load which serves to benefit all tenants of the building, the responsible tenant's account could be viewed in the same vein as if it were the account of the landlord/owner, thereby invoking the notice provisions contained in 66 Pa. C.S. § 1523. This would place no additional responsibilities upon the utility. Furthermore, in the event the tenant voluntarily requests discontinuance of service or the account is threatened with termination for non-payment, the utility should place the account back into the landlord's name which would avoid any loss of service

There is one other aspect of adhering to a rigid interpretation of Section 1529.1 which requires further consideration. If a landlord is required to be responsible for an account containing a foreign load--even where the landlord has taken reasonable steps to individually meter the separate dwelling units--the landlord could be charged at the higher commercial rate. This could place an undue financial hardship on the landlord which ultimately will affect a tenant by necessitating higher rental rates to help defray the cost. Such a result also counters the argument that the landlord has the option of paying the bill and recovering the amount from the tenant through a private agreement. This negatively affects both parties. Is this fair, particularly

in circumstances where, absent a strict application, the tenant would have service placed in his/her name and be charged at the residential rate for the same service?

2. **Billing/Back-Billing**

The Formal Complaint filed by Metropolitan Edison Company ("MetEd") in this case requests that we establish a uniform interpretation and application of back-billing under Section 1529.1. That request is shared by Pennsylvania Power & Light Company ("PP&L") through its intervention in this proceeding. In her Initial Decision, ALJ Turner fashioned rules in this respect for the Commission's consideration as follows:

> 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 as far back as the date of effective constructive notice to owners may be transferred to the owner.

This attempt to balance the interests of competing parties arrives at a fair result to all concerned. It relieves the utility of the duty to refund amounts paid by a tenant between the effective date of the statute and discovery of an improper foreign load and then rebilling and seeking collection of those same amounts from the landlord. It properly suggests placement of the bill in the landlord's name upon discovery and notice to the landlord of the improper foreign load and from that point forward unless and until the landlord corrects the improper foreign load, thereby permitting placement of the account back into the tenant's name. As the BCS draft internal policy points

out, tenants who wish to dispute the matter may be told that they can file a claim against the landlord in civil court in accordance with appropriate landlord-tenant laws, or that they can file a complaint with the Public Utility Commission. Of course, an improper foreign load could be identified as one which fails to comply with the conditions outlined in 1. Foreign Load, above.

3. Joinder of Additional Parties

In the Initial Decision in Reber v. UGI Utilities, Inc., Docket No. C-00967802 (Final Order dated January 15, 1997), ALJ Schnierle highlighted the Complainant's claim that she was not notified when her tenant filed an informal complaint with the BCS. ALJ Schnierle goes on to suggest that BCS should develop procedures for joining third parties in complaints involving Section 1529.1. I fully support the ALJ's recommendation and would include such procedures in the proposed Policy Statement, but the procedures should be applicable to joinder of either the landlord or the tenant, whichever the circumstances warrant.

THEREFORE, I move that:

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

July 19, 1997
DATE

DAVID W. ROLKA, COMMISSIONER