BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ORDER GRANTING PETITION TO INTERVENE

Summary

PP&L is granted standing as an intervenor to participate in briefing on issues raised by conflicting interpretations of Act 54 of 1993, codified at Section 1529.1 of the Public Utility Code (Code), 66 Pa. C.S. §1529.1

Procedural History

On February 29, 1996, Metropolitan Edison Company (Met Ed) filed the complaint to appeal the informal decision at BCS 027904 disposing of the informal complaint Elizabeth Santos (Santos) had filed against it. Santos has not responded to the complaint or to any later pleadings.

KJR

On March 27, 1996, Met Ed filed a Motion to Join Indispensable Parties (Motion) naming two landlord/owners of the property where Santos is a tenant. Met Ed served the Motion with an attached notice to plead on each of them. The Motion was assigned to ALJ Allison K. Turner (ALJ) for preliminary ruling.

On April 25, 1996, the ALJ granted the Motion joining the two owners. They are now included on the Commission's service list.

The Office of Administrative Law Judge has scheduled an initial hearing for June 13, 1996, to be held in an available hearing room at the North Office Building in Harrisburg. On May 3, 1996, notice of the hearing was sent by first class mail to Met Ed, Santos and the two owners. No return mail has been received.

On June 3, 1996, Pennsylvania Power and Light Company (PP&L) filed a Petition to Intervene (Petition). Met Ed has represented to PP&L that it does not object to its intervention. Petition, ¶ 9. PP&L has served the petition on all four parties to the case by over-night mail.

Discussion

The Commission's rules permit intervention where the petitioner has an interest which may be directly affected which is not adequately represented by others, and as to which the petitioner may be bound by the action of the Commission in the proceeding. Participation by an intervenor may be limited. 52 Pa. Code §§5.71-5.76.

Here PP&L seeks to intervene for the limited purpose of briefing [1] the issues raised by conflicting applications of a

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[1] PP&L also seeks to participate in Exceptions and Reply Exceptions. These pleadings are filed before the Commission and are not within the purview of the ALJ. "... Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding...." 52 Pa. Code §5.75(b). Participants are entitled

specific section of the Code, i.e. Section 1529.1. Met Ed raises these issues specifically as to the Santos complaint. PP&L has had and has pending cases before the Commission subject to application of the same Code section. PP&L's participation will not expand the issues here, but will add its perspective on application of Section 1529.1. PP&L will most probably be bound by a Commission ruling on application of Section 1529.1 in similar cases which come before it.

It would be best to act on this petition before the hearing. The intervention rules discourage acting on petitions to intervene during a hearing without the opportunity for opposition. 52 Pa. Code §5.75(b). However, the normal response time to petitions is 20 days, unless another time is set. 52 Pa. Code §5.61(a). Here the hearing is only 8 days away, well before the end of the 20-day period in Section 5.61(a). It would be difficult to set a meaningful response time, receive responses, and rule before the hearing. Continuing the hearing to allow responses would be an undesirable delay.

Met Ed does not object to PP&L's intervention. The impact of PP&L's participation on the other parties can't be known in advance. In any event, they will be able to respond in Reply Briefs. However, this does not truly take the place of opportunity

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to file Exceptions for Commission review of an ALJ decision. 66 Pa. C.S. §335(b); 52 Pa. Code §5.533.

to object to the intervention itself.

Therefore, I will grant PP&L's petition subject to later opposition and possible denial.

ORDER

1. PP&L's Petition to Intervene in order to file briefs before the ALJ, is tentatively granted.

2. Parties other than Met Ed may oppose the intervention at the June 13, 1996 hearing, or within a reasonable longer period requested at the hearing.

3. If no opposition is made at hearing, then PP&L's intervention will be fully granted as requested without further action, at which time PP&L shall be added to the Commission's service list.

4. Once PP&L becomes an intervenor, it shall provide the ALJ copies of the BCS, ALJ and Commission decisions at each docket recited in ¶ 5 and ¶ 7 of its Petition.

Allison K. Turner
ALLISON K. TURNER
Administrative Law Judge

Dated: June 6, 1995

APPEARANCE SHEET **ALJ HEARING REPORT**

Docket No. C-00967757

Case Name Elizabeth Santos v. Metropolitan Edison Company (Complaint Appellant)

Location Harrisburg

Date June 13, 1996

ALJ Turner

Reporting Firm Commonwealth

CHECK THOSE BLOCKS WHICH APPLY:

Prehearing held	YES ___	NO ✓
Hearing held	YES ✓	NO ___
Testimony taken	YES ✓	NO ___
Transcript due	YES ✓	NO ___
Hearing concluded	YES ✓	NO ___
Further hearing needed	YES ___	NO ___
Estimated add'l days		
RECORD CLOSED	YES ✓	NO ___
DATE	Briefing letter to be sent 30 days after transc.	
Briefs to be Filed	YES ✓	NO ___
DATE		
BENCH DECISION	YES ~~✓~~	NO ___

REMARKS:

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
PLEASE PRINT CLEARLY
INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS	APPEARING FOR
Janet E. Arnold Ryan, Russell, Ogden & Seltzer Telephone No. (610) 372-4761	1100 Berkshire Blvd. P.O. Box 6219 City: Reading State: PA Zip: 19610	Met-Ed
Telephone No.	City: State: Zip:	
Telephone No.	City: State: Zip:	

☐ CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Judith A. Valencik
REPORTER CRC, Inc.

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

July 10, 1996

IN REPLY PLEASE
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INFO. CONTROL DIV.

TO ALL PARTIES OF RECORD

Re: C-00967757--Elizabeth Santos v
Metropolitan Edison Company

Ladies and Gentlemen:

The transcript of testimony in the above entitled proceeding was filed with the Commission on July 5, 1996.

All parties shall file main briefs August 5, 1996 and reply briefs, if any, shall be filed August 15, 1995. If briefs are not received within the allotted time, they shall not be accepted for filing, except by special permission of the presiding officer.

An original and nine (9) copies of each main and reply brief must be filed with the Secretary of the Commission, a copy must be served on the presiding Administrative Law Judge and three copies on each party of record.

The parties also shall serve on me a copy of each brief on a computer disk, either 3 1/2" or 5 1/4" in size, in WordPerfect (version 5.1).

Yours truly,

JLS

Stacey E. Freeman-McKamey
Secretary to
Allison K. Turner
Administrative Law Judge

pc: Elizabeth Plantz
Janice Zurat
Filing and Assignment

DOCKETED
JUL 15 1996

DOCKETED
JUL 15 1996

DOCUMENT
FOLDER

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

August 6, 1996

IN REPLY PLEASE
REFER TO OUR FILE

TO ALL PARTIES

RE: C-00967757 - Santos, Complainant v.
Metropolitan Edison, Complaint
Appellant

Ladies and Gentlemen:

Upon request made by counsel for Metropolitan Edison Company, and upon review of the Administrative Law Judge's docket, the filing deadline for Main Briefs in this case has been extended to September 30, 1996, and the deadline for Reply Briefs has been extended to September 16, 1996.

Very truly yours,

Allison K. Turner

Allison K. Turner
Administrative Law Judge

AKT/sfm

pc: Elizabeth Plantz, Administrative Support
Janice Zurat, Scheduling Officer
Filing and Assignments

JLS

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

August 7, 1996

IN REPLY PLEASE
REFER TO OUR FILE

TO ALL PARTIES

RE: C-00967757 - Santos, Complainant v.
Metropolitan Edison, Complaint
Appellant

Ladies and Gentlemen:

Upon request made by counsel for Metropolitan Edison Company, and upon review of the Administrative Law Judge's docket, the filing deadline for Main Briefs in this case has been extended to September 30, 1996, and the deadline for Reply Briefs has been extended to October 16, 1996.

Very truly yours,

Allison K. Turner

Allison K. Turner
Administrative Law Judge

AKT/sfm

pc: Elizabeth Plantz, Administrative Support
Janice Zurat, Scheduling Officer
Filing and Assignments

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

August 7, 1996

IN REPLY PLEASE REFER TO OUR FILE

JLS

TO ALL PARTIES

RE: C-00967757 - Santos, Complainant v. Metropolitan Edison, Complaint Appellant

Ladies and Gentlemen:

Upon request made by counsel for Metropolitan Edison Company, and upon review of the Administrative Law Judge's docket, the filing deadline for Main Briefs in this case has been extended to September 30, 1996, and the deadline for Reply Briefs has been extended to October 16, 1996.

Very truly yours,

Allison K. Turner

Allison K. Turner
Administrative Law Judge

AKT/sfm

pc: Elizabeth Plantz, Administrative Support
Janice Zurat, Scheduling Officer
Filing and Assignments

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

September 30, 1996

FEDERAL EXPRESS

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

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

Dear Secretary Alford:

Enclosed for filing is an original and nine copies of Pennsylvania Power & Light Company's Main Brief in the above-referenced proceeding. This filing should be date stamped as filed on September 30, 1996, pursuant to the attached overnight mail deposit receipt.

Respectfully submitted,

Jesse A. Dillon

Enclosure

cc: Certificate of Service

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

JLS

ELIZABETH SANTOS	:	
	:	
v.	:	DOCKET NO. C-00967757
	:	
METROPOLITAN EDISON COMPANY	:	

MAIN BRIEF OF PENNSYLVANIA POWER & LIGHT COMPANY

Jesse A. Dillon
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, Pennsylvania 18101
(610) 774-5013

Dated: September 30, 1996

TABLE OF CONTENTS

I. STATEMENT 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 ("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, 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. 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 moved to intervene in the proceeding, and the Administrative Law Judge permitted PP&L's intervention.

II. STATEMENT OF QUESTIONS INVOLVED

1. What Should Be The PUC's Proper, Uniform Interpretation Of Backbilling Under Section 1529.1 of the Public Utility Code?
2. Did Met Ed And/Or BCS Properly Apply Section 1529.1 Of The Public Utility Code In This Case?

III. SUMMARY OF TESTIMONY

As an intervenor, PP&L will defer to Met Ed for a detailed recitation of the testimony presented in this case. Suffice it to say that review of the transcript indicates there is no factual dispute that there was a substantial amount of "foreign load" on the meter serving Ms. Santos' apartment. Such foreign load consisted of the electrical usage of a barber shop and a one-room church. Tr. 8. Met Ed discovered the situation and confirmed the existence of the "foreign load" on May 10, 1995, although Ms. Santos had been a customer at this location since January 10, 1995. Tr. 7. Met Ed placed the account in the name of the owner as of May 10, 1995. Tr. 9. However, Met Ed did not transfer from Ms. Santos' account to the landlord's account any amounts for service prior to May 10, 1995, the date that Met Ed confirmed the existence of the "foreign load." Tr. 9. In apparent contravention of its own stated policy, BCS, however, did order Met Ed to transfer the amount of the account from January 10, 1995 to May 10, 1995 into the name of the owner. Ex. No. 2.

IV. SUMMARY OF ARGUMENT

Although capable of alternative interpretations, Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1, should be interpreted as suggested by Met Ed in order to ensure uniform and fair application of the tenant protections provided in the Public Utility Code. Met Ed properly applied Section 1529.1 in this case. As

requested by the ALJ, attached to this brief as Appendix "A" is a compilation of ALJ and PUC decisions on Section 1529.1.

V. ARGUMENT

A. On the Issue of Backbilling, Met Ed Properly Interpreted Section 1529.1 of the Public Utility Code

1. History and Background of Section 1529.1

Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1, enacted by Act 54 of 1993, 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. 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 of 1993 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.

This new section 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 the notice, utilities shall forth with 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) (first sentence). The section also provides that even if individually metered, unless notified to the contrary by 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) (second sentence). Finally, this section provides that if any landlord fails to provide 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).

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 this section of Act 54 of 1993. 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 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 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).

B. Met Ed Acted Reasonably And Consistent With All BCS Informal Opinions

1. BCS' Informal Opinion Interpreting Section 1529.1 Is Reasonable and Should be Adopted

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 192(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).

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 administrative interpretations of the Bureau of Consumer Services ("BCS"). Ex. No. 5. 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 or matters of safety compliance by public utilities. 66 Pa.C.S. § 308(d).

The PUC, in Boyce, Divilly and Reddy (See Appendix "A"), 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 results 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 informal opinion interpreting Section 1529.1, made it very clear that, in its opinion, utilities should place the account in the name of the landlord effective on the date that the utility becomes aware of the foreign load. Moreover, BCS made it clear 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.

BCS' informal opinion (and Law Bureau's position in the exceptions in the Angle decision attached in Appendix "A") is driven by a factor that was not even considered in the PUC's previous cases, namely the tenants' existing remedies under Section 1529 proper, not Section 1529.1. As explained by BCS and noted by Law Bureau, tenants have the right under Section 1529 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. BCS further noted that tenants are protected from retaliation under Section 1531.

While PP&L concedes that the PUC's interpretation and the BCS' interpretation may conflict to some extent, PP&L believes that the BCS' interpretation, which considers factors the PUC may not yet have considered, is clearly preferable and more reasonable for several reasons. First, Section 1529.1 is a serious and extensive exercise of the police power by the General Assembly in a

way which after works against the interests of owners of property. While this law is perfectly constitutional[1], it is appropriate to construe narrowly the effects of its provisions on landlords where such construction has only minimal 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, the BCS' 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. However, the concern of the PUC obviously revolves 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." However, the BCS' interpretation that is supported by Met Ed and PP&L does not violate this subsection. The owner is still liable for such

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[1] The PUC already has held that Section 1529.1 is constitutional. See R&B Reddy, Inc. v. the Peoples National Gas Company, Docket No. C-00946080 (May 25, 1995). Further, 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). Finally, there are a panoply of reasons why the law is constitutional even if the PUC were to consider the issue again. 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 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.

payment as if the notice had been given. The remedy for such liability is not backbilling by a utility. Rather, the remedy for such amounts is left as between the actual parties to the lease under Section 1529. See Commissioner Rolka's Motion in Reddy and Divilly. Section 1529.1 itself does not expressly prescribe a specific additional remedy for these amounts. By affirmatively choosing utility backbilling as an additional remedy and moving away from the concept of constructive notice, the PUC is actually making Section 1529.1 worse for property owners than required under the law. Accordingly, expansive interpretation of a backbilling remedy under Section 1529.1 was not provided expressly by the General Assembly and should not be adopted by the ALJ or the PUC. This is especially true when the General Assembly already has provided another remedy.

Third, expansive interpretation of backbilling 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 on 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 backbilling 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 backbilling remedy.

2. BCS' Inexplicable Departure From Its Informal Opinion Presents Additional Reason For A Uniform Interpretation

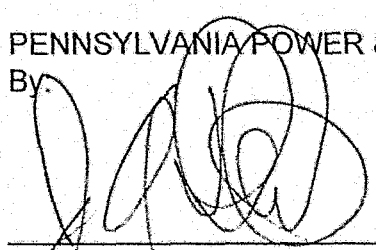
Whatever the ALJ and the PUC decides, a uniform interpretation of backbilling under Section 1529.1 is for preferable to the current situation of conflicting and inconsistent interpretations. Despite its clear, albeit informal, opinion, BCS did not follow its informal opinion in this case. PP&L is aware of similar inconsistent results in PP&L's informal complaint cases before BCS. As BCS chose not to be involved in this case (Tr. 4-5), PP&L could only speculate on the rationale for BCS' decision. In any event, the statute should be interpreted only one way by the PUC and applied only uniformly by the entire PUC. The ALJ and the PUC should make that clear in any decision in this case. Utilities, tenants and landlords should not be subject to arbitrary or conflicting interpretations or treatments. Whatever the decision, Section 1529.1 should have only one meaning on the issue of backbilling.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Administrative Law Judge and the Public Utility Commission should sustain the appeal of Metropolitan Edison Company against the informal complaint decision of the Bureau of Consumer Services.

Respectfully submitted,

PENNSYLVANIA POWER & LIGHT COMPANY
By



Jesse A. Dillon
Its Attorney

Dated: September 30, 1996
at Allentown, Pennsylvania

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pa. 17105-3265

Public Meeting held June 30, 1994

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
John M. Quain
Lisa Crutchfield
John Hanger

David P. Boyce

v.

Duquesne Light Company

Z-00223698

OPINION AND ORDER

History of the Proceeding

On November 29, 1993, David P. Boyce ("Complainant") filed a Formal Complaint against Duquesne Light Company ("Respondent") stating that for three (3) years, the apartment above his has been responsible for high summer electric bills due to the air conditioner in the apartment building that he resides in being connected to his (the Complainant's) electric meter.

The Respondent filed a timely Answer and a Motion to Dismiss for failure to join an indispensable party, the Complainant's landlord. The Administrative Law Judge ("ALJ") deferred ruling on the Motion to the Initial Decision.

On February 7, 1994, an initial hearing was held in Pittsburgh and, on March 22, 1994, ALJ Michael A. Nemec issued an Initial Decision sustaining the Complaint in part and setting a payment schedule with any Exceptions thereto due on or before April 11, 1994.

On April 13, 1994, the Complainant filed Exceptions to the Initial Decision and on April 22, 1994, a Secretarial Letter was sent to the Complainant informing him that the Exceptions were late filed and would not be considered.

On May 16, 1994, the Complainant filed a document entitled "Response To: Administrative Law Judge 'Exception' Decision", the gist of which is to request that his late filed Exceptions be considered by the Commission.

No Reply Exceptions have been filed.

Discussion

Based on the record in this proceeding, the ALJ made the following Findings of Fact:[1]

1. Complainant David P. Boyce resides at 5608 Ellsworth Avenue, Apartment 7, Pittsburgh, PA 15232, where he receives electric utility service from Duquesne Light Company.

2. Mr. Boyce has resided in the same apartment since December 31, 1990.

3. Three apartments, including that rented to Mr. Boyce, are served by the same air conditioning unit.

4. The electrical service for the compressor for the air conditioning unit is connected to the meter that registers electric service to Mr. Boyce's apartment.

5. The thermostat for controlling the air conditioner is located in an apartment other than the one rented by Mr. Boyce.

6. Mr. Boyce has been unsuccessful in obtaining the cooperation of other tenants in paying in full their respective shares of the electric bill.

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[1]Record references are omitted for clarity.

7. Mr. Boyce has also been unsuccessful in obtaining the cooperation of his landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, in either helping with the electric bill or in rewiring the electrical system to take the compressor off his meter.

8. Mr. Boyce's sole source of income is Supplemental Security Income in the amount of $612 per month. He also receives food stamps in a value of about $63.

9. Mr. Boyce's monthly expenses include rent of $350 (which includes heat); telephone of about $20; cable TV of about $30; a monthly bus pass of $40; food expense is covered by food stamps.

10. Mr. Boyce is a full-time student at the University of Pittsburgh where he has a double major in media communications and political science; he is required by his classes to have access to both a telephone and cable tv.

11. As of the hearing, the balance on Mr. Boyce's account for electric service was $556.98. His budget amount was $74 per month and Duquesne was willing to accept a payment plan of the budget plus $5 per month on the arrearage.

12. Duquesne's account records confirm Mr. Boyce's testimony regarding high cooling season bills.

Based on the foregoing, the ALJ sustained the Complaint in part in recommending a payment schedule. The ALJ also notes the potential financial responsibility of the owner of the building in which the Complainant resides.

In the Initial Decision, the ALJ questions the Complainant's efforts which are directed at the Respondent to resolve the problems the Complainant is experiencing. The ALJ observed that the Respondent does not own the building, did not create the problems inherent with serving three apartments by one air conditioning unit, and has no authority under our regulations or the Public Utility Code to rewire a privately owned building. The

ALJ also briefly discusses the issue of the potential financial responsibility of the owner of the Complainant's building as it arises as a result of amendments to the Public Utility Code by Act 54 of 1993, which became effective August 31, 1993, and whether the owner should be joined as an indispensable party to the proceeding. However, the ALJ concluded that the issues raised by the Complainant against the Respondent could be resolved without the presence of the property owner.

Section 1529.1 of the Public Utility Code as amended by Act 54, 66 Pa. C.S.A. §1529.1 states 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.

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.

In our opinion, it is clear that the record before us is adequate to determine that foreign load exists as a matter of fact and that the utility service should be placed in the landlord's name as a matter of law. However, it is also clear that the record does not adequately indicate what portion of the arrearage, if any, is the responsibility of the Complainant. Accordingly, we will remand this proceeding to the Office of Administrative Law Judge solely for a determination of the responsibility for the arrearages, if any; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of the Administrative Law Judge in the above captioned proceeding be, and is hereby, remanded to

the Office of Administrative Law Judge for consideration of the issues as discussed in the body of this Opinion and Order and the issuance of an Initial Decision Upon Remand.

2. That the Respondent be, and is hereby, directed to place the service to each of the apartments in the Complainant's building in the name of the Complainant's landlord and owner of the apartment building, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, until such time as each tenant is individually metered and is responsible only for electric service to their individual apartment.

3. That the Complainant's landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, be served a copy of this Opinion and Order.

BY THE COMMISSION,

John G. Alford

John G. Alford
Secretary

(Seal)

ORDER ADOPTED: June 30, 1994

ORDER ENTERED: SEP 1 1994

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

2 —

Public Meeting held May 25, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice-Chairman
John Hanger, Statement attached
David W. Rolka, Dissenting - Statement attached
Robert K. Bloom

R & B Reddy, Inc. C-00946080
v.
Peoples Natural Gas Company

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions filed to the Initial Decision of Administrative Law Judge ("ALJ") Larry Gesoff issued on December 22, 1994.

History of the Proceedings

On August 3, 1994, R & B Reddy, Inc. ("Complainant" or " R & B ") filed a complaint against Peoples Natural Gas Company ("Peoples") alleging that Peoples had (1) improperly refunded monies to the commercial tenants that had paid for gas service, (2) switched gas service into Complainant's name retroactively and (3) back-billed Complainant for gas used.

On August 23, 1994, Peoples filed an Answer and Motion to Dismiss.

A hearing was held before ALJ Gesoff on October 25, 1994. The record consists of 60 pages of transcript and three exhibits.

No briefs were filed in this proceeding. The Initial Decision of ALJ Gesoff was issued on December 22, 1994. Exceptions were filed on January 10, 1995 by the Law Bureau. Peoples filed its Reply Exceptions on January 23, 1995.

Findings of Fact

The ALJ made the following Findings of Fact which we adopt in the disposition of this complaint proceeding:

1. Raghunatha Reddy has worked for Mellon Bank for eighteen years and is President of R & B. His cousin is a 49 percent partner in R & B. Tr. 4.

2. In 1990, R & B purchased the building located at 400 Market Street, Elizabeth, Pennsylvania 15037. The building has a restaurant/pizza shop on the first floor and two apartment units on the second floor, a one bedroom apartment and an efficiency apartment. Peoples' gas service enters the building via one line. Gas is used to operate the water heater, which heats water for the three leased areas, and the furnace, which heats the three leased areas. The restaurant/pizza shop, which uses gas for its pizza oven and a range, controls the furnace thermostat. Tr. 5-6, 15.

3. In 1990, R & B opened an account with Respondent for gas service because it operated the restaurant/pizza shop for a couple of months. R & B closed the account, paid in full, because it leased the building and made tenants responsible for gas service. Tr. 7-9; Complainant's Ex. 1.

4. R & B reduced the rent the commercial tenant pays for the building at 400 Market Street from $1000 monthly to $650 because the commercial tenant is responsible for paying for hot water and heat for the entire building. Tr. 9-10.

5. June Volpe began service at 400 Market street in her name on July 14, 1993 and, as of September 1, 1993, the commercial at 400 Market Street was in her name. Tr. 14, 23.

6. When Peoples finaled [sic] Ms. Volpe's account, it applied her security deposit against the balance, leaving an outstanding balance of $166.17 which she paid. Tr. 57.

7. On November 19, 1993, Elizabeth Michaels, also known as Elizabeth Bucy, took service in her name at 400 Market Street. Tr. 24-25.

8. On or about July 12, 1994, Elizabeth Michaels, the owner of the restaurant/ pizza shop at 400 Market Street and the ratepayer of record, telephoned Peoples and requested a turn off of the gas service. She indicated that two upstairs tenants would be affected, and Peoples told her that the service would continue in her name because of the shared meter. Ms. Michaels said that the building was in Mr. Reddy's name, and Peoples told her that it would contact Mr. Reddy and correct her bill. Tr. 19-20.

9. By letter dated July 12, 1994, Respondent indicated Raghunatha Reddy that Ms. Michaels advised Respondent that the gas meter at 400 Market Street, Elizabeth, Pennsylvania, services two apartments and one business, and that a recently passed act requires any gas meter servicing more than one dwelling to be billed to the landlord. The letter also advises that because Elizabeth Michaels has been billed for gas usage at this property since November 19, 1993, Respondent will place the service in Mr. Reddy's name as of that date. Tr. 9-10, 14, 20-21; Complainant's Ex. 2.

10. On July 15, 1994, after receiving the July 12 letter, Mr. Reddy called

Peoples, told it that R & B owns the building, verified that one gas meter served the restaurant/pizza shop and two tenants, and indicated that the lease made the tenant responsible for the gas bill and that Peoples should not return monies to the tenant. Tr. 10, 21.

11. On July 15, 1994, Peoples spoke with counsel for Complainant who indicated that he believed R & B owned the building, not Mr. Reddy. Peoples verified with the local tax authority that R & B owns the property. Tr. 22.

12. When Peoples realized it should have billed R & B, it corrected Ms. Michael's billing back to November 19, 1993. As a result, Peoples credited her account in the amount of $1,690.60, $759.28 of which was her security deposit plus interest. The remainder represents payments she made. Tr. 25, 30-31.

13. Peoples prorated Ms. Volpe's bill from September 1, 1993 to November 9, 1993, the date she moved from 400 Market Street. As a result, Peoples credited Ms. Volpe's account in the amount of $712.08, $688.50 of which was her security deposit plus interest. The remainder represents payments she made. Tr. 24, 3031, 33.

14. Peoples published notice of the enactment of Act 54 in the newspaper and in a bill insert. Neither Mr. Reddy nor R & B received the bill insert because neither were Peoples customers of record at the time.

15. As a result of Act 54, Peoples billed R & B $5,659.77 for two accounts. One account is Ms. Volpe's; it is a final bill for $712.08 for service from September 1 to November 9, 1993. The second account is Ms. Michaels'; it is an active account which starts on November 19, 1993, and had a balance of $4,947.69 as of October 14, 1994. Tr. 18; Peoples Ex. A.

16. Complainant is a commercial customer because Peoples's tariff provides that multi-tenant accounts with one gas meter are charged commercial rates. Tr. 36-37.

17. Elizabeth Michaels returned to R & B $282 of the money Peoples refunded to her. R & B sought to collect $5,000 to $6,000 from her via small claims court. This amount represents rent, which she had not paid for the last three months of her lease, and natural gas use. Small claims court rendered a judgment of about $940 in favor of R & B. R & B appealed the judgement. The appeal will be heard in January 1995. Tr. 52-54.

18. R & B pursued a claim against Ms. Volpe in small claims court for rent and natural gas use. It received a judgment because she did not appear, but Ms. Volpe moved to New York and Mr. Reddy is not sure if R & B will collect on the judgement. Tr. 54.

19. The accounts of both Volpe and Michaels were both delinquent when closed. Tr. 57.

(Initial Decision, pp. 3-6)

Discussion

R & B owns the building at 400 Market Street which has a restaurant/pizza shop on the first floor and two apartments on the second floor. Peoples refunded to two previous restaurant/pizza shop tenants of R & B monies the commercial tenants had paid for gas service switched gas service into R & B's name retroactively and back-billed R & B for gas used. R & B asks the Commission to direct Peoples to credit it for the amounts the tenants paid. Peoples filed an Answer alleging that it is proper to charge Complainant because under Section 1529.1 of the Public Utility Code, 66 Pa. C.S. §1529.1, the owner of a multi-family,

single-metered dwelling is responsible for the payment of utility services commencing on or after September 1, 1993.

Complainant asserts that Peoples's actions were improper, that Section 1529.1 does not apply because gas at 400 Market Street is used predominantly for commercial purposes, and that Peoples interpreted Section 1529.1 to Ret a second chance to collect delinquent bills.

The ALJ ruled that (1) Peoples' actions were proper, (2) Section 1529.1 applies where residential dwelling units are in a building regardless of the existence of a commercial tenant in the same building and regardless of how much gas the commercial tenant consumes and (3) Peoples did not use Section 1529.1 as a collection device. The issues in the present proceeding concern 66 Pa. C.S. §1521 et seq. which is Subchapter B of Chapter 15 of the Public Utility Code.

Specifically, Subchapter B concerns the discontinuance of service to leased premises. The parties present two issues to consider which will be addressed separately.

> (1) Does Subsection B of Chapter 15 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the building at 400 Market Street because it contains residential dwelling units, or is it inapplicable because the building also contains commercial units and because the vast majority of gas consumed in the building is for commercial purposes?

Subchapter B applies here because the building at 400 Market Street contains one or more dwelling units occupied by one or more tenants. This conclusion stems from the obvious purpose of Subchapter B: to protect tenants from termination of their utility service if a landlord does not pay for the service.

This purpose is clear from the following summary of the sections of Subchapter B.

Subchapter B (Discontinuance of Service to Leased Premises) is contained within Chapter 15 of the Public Utility Code, 66 Pa. C.S. §1501, et seq. When first enacted, Subchapter B consisted of Sections 1521 to 1532, enacted by Act 1978, Nov. 26, P.L. 1245, No. 297, §1. Section 1533 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, §2. A brief summary of Subchapter B is necessary to understand how it is applicable in the present proceeding.

Section 1521 defines "landlord ratepayer," "residential building" and "tenant" as follows:

> "Landlord ratepayer." 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 one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.
>
> "Residential building." A building containing one or more dwelling units occupied by one or more tenants. The term does not include nursing homes, hotels and motels or any dwelling of which the landlord ratepayer is the only resident.
>
> "Tenant." Any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement, including, but not limited to, an oral or written lease with the

landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service.

Section 1522 (Applicability of subchapter) makes the Subchapter applicable to public utilities. Section 1523 (Notices before service to landlord terminated) requires notices before service to a landlord ratepayer can be terminated. Section 1524 (Request to landlord to identify tenants) requires a landlord ratepayer to provide the utility with the names and addresses of affected tenants if the utility proposes to terminate service. Sections 1525 (Delivery and contents of termination notice to landlord) and 1526 (Delivery and contents of first termination notice to tenants) provide the details of a Section 1523 notice. Section 1527 (Right of tenants to continued service) provides how affected tenants can apply to have service continued or resumed before or after a utility terminated service for nonpayment of charges by a landlord tenant. Section 1528 (Delivery and contents of subsequent termination notice to tenants) tells a utility how to send Section 1527 notices. Section 1529 (Right of tenant to recover payments) gives a tenant making a payment to a utility on account of nonpayment by a landlord ratepayer the right to recover the amount. Section 1529.1 (Duty of owners of rental property) requires the owner of a residential building with one or more dwelling units not individually metered to notify each public utility from whom service is received of the ownership and that the premises served are used for rental purposes, requires the public utility to list the account in the name of the owner when the notice is received and makes the owner responsible for payment of the utility service, even if the owner did not give the public utility the required notice. Section 1530 (Waiver of subchapter prohibited) makes void and unenforceable any waiver of a tenant's rights under Subchapter B.

Section 1531 (Retaliation by landlord prohibited) makes it unlawful for a landlord ratepayer to threaten or take reprisals against a tenant for exercising rights under Sections 1527 or 1529. Section 1532 (Penalties) provides for penalties if a landlord ratepayer violates Section 1524 (relating to request to landlord to identify tenants) or removes, interferes or tampers with a Section 1526 notice. Finally, Section 1533 (Petition to appoint receiver) allows a public utility, under certain circumstances, to petition the applicable court of common pleas to appoint a receiver to collect rent payments from the tenants and apply the payments to overdue and subsequent utility bills. The applicability of Subchapter B to the facts of this case is further demonstrated because R & B, the building at 400 Market Street and the residential tenants fall within the definitions in Section 1521.

Based on the above analysis, the ALJ reached the following conclusions:

> R & B is a "landlord ratepayer" because it is listed on Peoples' records as responsible for the payment of gas service provided to two residential units in a residential building. R & B's building is a "residential building" because it contains two dwelling units occupied by two tenants. The tenants in R & B's residential building are "tenants" because they are obligated to make rental payments to R & B for a dwelling unit in a residential building which is provided gas as an included service under the rental agreement and because they are not Peoples' ratepayers. These definitions make it clear that Subchapter B applies here even though it neither addresses nor applies to commercial tenants, and even though it does not address a building with commercial and residential tenants. Subchapter B applies even with the existence of a commercial tenant because one gas meter serves the building at 400 Market Street and because residential tenants occupy the building. Because of this, it

> does not matter that the restaurant/pizza shop uses much more gas than the residential tenants.
>
> * * *
>
> If Subchapter B does not apply here, residential tenants in buildings which also contain commercial tenants will not be protected from the loss of utility service when a landlord ratepayer does not pay for utility service. This interpretation of Subchapter B would negate the very protection it creates, an absurd result which the legislature did not intend when it enacted Subchapter B. See Section 1922 of the Statutory Construction Act, 1 Pa. C.S. §1922 (Presumptions in ascertaining legislative intent). (Initial Decision, pp. 10-11)

No party has excepted to the ALJ's determination that Subchapter B is applicable in the present proceeding. Therefore, we affirm the ALJ's ruling that Subchapter B is applicable to the present proceeding.

Because it has been determined that Subchapter B is applicable, it is necessary to address the second issue in this proceeding.

> (2) If Subsection B applies, was it proper for Peoples, under Section 1529.1, to refund gas payment monies to the commercial tenants and bill Complainant for those monies?

Section 1529.1 reads as follows:

> §1529.1 Duties 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.

The ALJ determined that Section 1529.1 requires the owner of residential buildings with dwelling units not individually metered to notify utilities of the situation and requires the utilities to make them landlord ratepayers under Subchapter B. (Initial Decision, p. 12)

The ALJ then determined that:

Peoples had to refund the monies it collected from the commercial tenants and had to bill R & B for those amounts. Section 1529.1(c) makes the owner of a residential building responsible for the payment of utility services even if the owner fails to notify the utility, pursuant to Section 1529.1(a), of the existence of a building with one or more dwelling units served by one meter.

> When Ms. Michaels informed Peoples that R & B owner the building at 400 Market Street, R & B became the billing responsible party back to September 1, 1993, the effective date of Section 1529.1. Subchapter B required Peoples to bill R & B for the gas used since that time. Peoples had to refund the monies it received from Ms. Volpe and Ms. Michaels because it had no right to them. (Initial Decision, p. 11)

The Law Bureau excepts to the above finding stating:

> ...[N]o direction is provided in section 1529.1 as to the recoupment of monies previously paid by the tenant for that account. Under the plain language of [Subchapter B], there is no authority for the utility to sua sponte issue refunds. (Law Bureau Exceptions, p. 4)

Furthermore, the Law Bureau asserts that the Legislature, by inserting Section 1529.1 into Subchapter B, has provided the tenant with an exclusive remedy for recoupment of money paid in 66 Pa. C.S. §1529.[1] The Legislature thus made it clear that any claim by the tenant must be collected from the landlord, not from the utility.

Finally, the Law Bureau argues that the ALJ's construction of Section 1529.1, allowing utilities to refund monies paid by tenant's on landlord's accounts, impermissibly impairs the obligation of contracts in violation of Article I, Section 10

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[1] The Law Bureau notes that a tenant, in resorting to Section 1529 self-help, is protected form reprisals by the landlord by 66 Pa. C.S. §1531 which prohibits landlord retaliation, and establishes civil remedies for the tenant. In the instant case, the Law Bureau asserts that the commercial tenants should have used the civil courts to recoup the monies that were paid on the landlord's utility account. (Law Bureau Exceptions, p. 5, fn. 1)

of the U.S. Constitution and Article I, Section 17 of the Pennsylvania Constitution. (Law Bureau Exceptions, p. 6-7)

In its Reply Exceptions, Peoples asserts that the applicability of 66 Pa. C.S. §1529 is not dispositive of the issue of recoupment presented in the instant case and the Law Bureau's reliance on it is misleading and misplaced. Further, Peoples contend that the refunding of monies paid by the tenants on the landlord's account was not illegal or prejudicial. Finally, Peoples assert that the proper judicial forum to hear R&B's grievance relative to the lease should be in a civil court and not with the Commission.

1. Impairment of Contracts

Article I, Section 10 of the U.S. Constitution provides that:

> No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts.

Article I, Section 17 of the Pennsylvania Constitution provides that:

> No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

The Pennsylvania Supreme Court has held that, whenever possible, interpretations of statutes which would create conflict with constitutional provisions must be avoided. Commonwealth v. Hude, 492 Pa. 600, 4215 A. 313 (1980). See also Commonwealth v. Staley, 476 Pa. 171, 381 A.2d 1280 (1978); Laurence County Foht, 33 Pa. Commonwealth Ct. 379, 381 A.2d 1348 (1978). Moreover,

under the Pennsylvania Statutory Construction Act, the Legislature is presumed not to intend to violate the Constitution of the United States nor the Commonwealth of Pennsylvania. 1 Pa. C.S. §1922(3).

The Law Bureau asserts that the ALJ's interpretation of Section 1529.1 as granting authority to a utility to refund to a tenant monies paid on a landlord's account conflicts with both the U.S. and Pennsylvania Constitutions. The Law Bureau argues that Complainant Exhibit No. 1 (lease agreement) established that the tenants of the pizza shop were given a reduction in rent in consideration of the fact that the tenant would be responsible for utility service. See also Tr. 7-10. Therefore, according to the Law Bureau, Peoples sua sponte refund to the tenants of the pizza shop impermissibly impairs the obligations of the tenants as parties to the lease agreement.

The Law Bureau contends that its interpretation that the Section 1529 remedy is applicable to situations arising under Section 1529.1 is preferable for two reasons, to wit: (1) it avoids the present situation where a utility inserted itself into a private contractual agreement, and (2) it does not conflict with the provisions of either the U.S. or Pennsylvania Constitutions.

As the Law Bureau stated:

> [It's] interpretation safeguards the integrity of a possible existing private contract between a landlord and tenant which may identify the party responsible for making utility service payments. The contract thus would be preserved so that any adjudication of the rights and responsibilities of each of the parties to the contract could then be undertaken in court. (Law Bureau Exceptions, p. 7)

On consideration of the Law Bureau's Exceptions, we shall deny them. The Law Bureau's reliance on Section 1529 as an exclusive statutory remedy is misplaced. Initially we observe that the statutory scheme of Section 1529.1 is in furtherance of the protection of the rights of tenants of multi-occupied properties to continued utility service in the event of owner default. Consequently, the Law Bureau's position which champions the rights of the landlord, or other person/entity to whom lease payments are due, does not advocate for the class of persons the statute seeks to protect.

Also, Section 1529, which preceded the enactment of Section 1529.1, is placed after a sequence of events which outline a logical series of conditions precedent to guaranteed continuity of service in the event of landlord/owner default. See Section 1523 - Notices before service to landlord terminated; Section 1524 - Request to landlord to identify tenants; Section 1525 - Delivery and contents of termination notice to landlord; Section 1526 - Delivery and contents of first termination notice to tenants; Section 1527 - Right of tenants to continued service; Section 1528 - Delivery and contents of subsequent termination notice to tenants.

We find particularly instructive the steps to be taken pursuant to Section 1527. Here, the tenants may apply for continuation or resumption of service for the nonpayment of

charges by the landlord/owner. See 66 Pa. C.S. § 1527(a). Also, when the tenants pay such charges service is to be resumed and termination averted. See Section 1527(b). And, under subsection (c), when the utility receives payment from the tenants on behalf of the landlord/owner who is liable, the landlord/owner is notified and otherwise apprised of the amount credited on its behalf by the particular tenant.[2]

On the basis of the foregoing, we conclude that the right of set off established in Section 1529 and alleged by the Law Bureau to be an exclusive remedy in this matter, is a reasonable interpretation, though misplaced as an exclusive remedy for implementation of Section 1529.1.

On consideration of the overall statutory scheme, we conclude that the Law Bureau's interpretation would be inconsistent with the clear intent of Section 1529.1(b). This provision states that "[u]pon receipt of notice... 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 payment for the utility services rendered thereunto." (Emphasis added) This language, though perhaps harsh to the landlord/owner, leaves

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[2] Also, in subsection c there is an express directive to the utility to refund amounts to the tenants where there is a failure to satisfy the requirements of subsection b, or where the tenants elect to voluntarily terminate service.

little doubt that it is the intention of the General Assembly to place the burden of payment for utility service in master metered circumstances on the property owner. Under the Law Bureau's interpretation, the burden of payment and subsequent reimbursement through collection would shift from the landlord/owner to the tenant. The right of recovery through set off is more speculative than the direct reimbursement from the utility.

The issue of impairment of contract as suggested by the Law Bureau lacks merit. The Court in Suburban Water Company v. Oakmont Borough, 268 Pa. 243, 254, 110 A.778 782 (1920) held that changes in rates are not an impairment of the obligation of contract. Law Bureau has presented no authority where the impairment of contract related to other changes in conditions under which a utility may be providing service.

Also, we note that the Commonwealth Court in Crown American Corp. v. Pa. P.U.C., 76 Pa. Commonwealth Ct., 305, 463 A.2d 1257 (1983) affirmed this Commission finding that a rule prohibiting the master metering of electricity at new multi-tenant commercial locations was held a legitimate exercise of the state's police power. No impairment of contract was found to exist.

Finally, we hasten to add that Peoples' actions were consistent with the procedure to be followed when a utility improperly bills a customer - i.e., refund the money to the customer. However, in the present proceeding the "customer" consumed the gas but Act 54 required someone else be responsible for the bill.

While we find that Peoples' actions were not improper we would offer the following observations. Peoples could have avoided the instant Complaint and corresponding time and monies associated with defending its actions.

Peoples found itself in a situation where there was a delinquent account. It was aware that the billed tenants (Volpe and Michaels) had received a reduction in rent since the tenant "assumed responsibility for utility service" per phone conversations with Complainant. Peoples, as a "stakeholder" in the dispute had other alternatives available rather than directly refunding the money. Peoples could have filed a petition for declaratory relief requesting that the Commission advise Peoples how to proceed. Perhaps a more equitable solution could have been reached.

Conclusions of Law

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Sections 1521-1533 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the owner of a building containing one or more dwelling units occupied by one or more tenants, even if the building also contains a commercial tenant and even if the commercial tenant consumes the vast majority of the gas consumed at the premises.

3. It was not improper for Peoples to refund monies collected by it from Ms. Volpe and Ms. Michaels, the commercial tenants, for gas used at 400 Market Street back to September 1, 1993; THEREFORE;

IT IS ORDERED:

1. That the Complaint of R & B Reddy, Inc. against Peoples Natural Gas Company is dismissed consistent with this Opinion and Order.

2. That the Exceptions of the Law Bureau are denied, consistent with this Opinion and Order.

3. That the Initial Decision issued on December 22, 1994 is adopted, consistent with this Opinion and Order.

BY THE COMMISSION,

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: May 25, 1995

ORDER ENTERED: MAY 26 1995

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105

R & B REDDY, INC.
V.
PEOPLES NATURAL GAS COMPANY

PUBLIC MEETING-
MAY 25, 1995
MAR-95-OSA-101*
DOCKET NO. C-00946080

STATEMENT OF COMMISSIONER HANGER

Complainant is a landlord whose property includes two residential apartments and a first floor pizza restaurant which all operate under a single utility meter for service from Peoples Gas. In this case, the pizza shop was the direct utility customer for all gas service to the building.

Pennsylvania law requires that utility service to residential dwelling units must be billed to the landlord unless the dwelling unit is individually metered, in which case the tenant may be the utility customer of record. See, 66 Pa.C.S. Sec. 1521 et seq. This portion of the Public Utility Code was amended by the legislature by Act 54 in 1993. Act 54 was enacted to address problems associated with "foreign load" on tenants' utility bills. Foreign load occurs when utility service serving other tenants or the landlord is being billed to one tenant.

While the OSA Report properly resolves the issues raised in this case, there has been considerable confusion concerning appropriate responses to the rights and responsibilities established under the Act. Hopefully, this statement will help to produce greater clarity.

To date, the Commission has decided only one relevant case. The Commission's decision in Boyce v. Duquesne Light Company, No. Z-00223698, Order entered September 1, 1994 established the basic interpretation of the Act, but did not address many detailed points. In addition, the case of Divilly v. Duquesne Light Co., No. C-00946235, which is OSA-139 on today's agenda, raises similar issues as Reddy.

The ALJ, Law Bureau and OSA agree that the statute covers this case even though a commercial tenant is involved, and no parties filed exceptions on this matter. The statute not only protects residential tenants from paying for service to others, but also protects residential tenants from losing utility service due to nonpayment by other tenants. Since the residential tenants in the building could have lost service upon nonpayment by the pizza shop, the definitions in the statute properly address the purposes of the Act.

When Peoples learned that the master metered account in question had been in the tenant's name even though it served other tenants in a residential dwelling, it properly recognized a violation of the Act. Peoples transferred the account into the landlord's name, refunded sums already paid by the tenant in whose name the account had been billed, and proceeded to attempt to collect the balance from the landlord back to the September 1, 1993 effective date of the amendments to the Act.

Section 1529.1 (a) of the Act requires owners of rental residential buildings which contain dwelling units that are not individually metered to notify the utility of that fact. Section 1529 (b) provides that, once such notice is received, the utility must put the service into the landlord's name. Thus, Peoples acted properly in this regard. The Act does <u>not</u> require landlords to meter individually each apartment. It remains the landlord's choice either to be responsible for the bill directly by putting the bill in his name or to ensure that each unit is individually metered.

The gravamen of the instant dispute is whether Peoples should have refunded the monies collected from the tenants and then billed the landlord for the amount accrued. The ALJ held that Peoples was required to refund the amounts paid by the tenants, because it had no right to such payments. Law Bureau contends that Peoples was not permitted to interfere with the private contractual arrangement between landlord and tenant by refunding the amounts already paid by tenant and subsequently billing landlord. Peoples contends that Act 54 provides the authority to refund payments made by the tenant and to rebill the landlord for those services.

Section 1529.1 (c) makes clear that the landlord is responsible "for payment of the utility services as if the required notice had been given," even if the landlord failed to provide the required notice. This must be considered to be effective as of the effective date of the Act, September 1, 1993. The landlord is without question responsible for the bill, retroactive to the effective date of the Act.

What are the appropriate remedies? If the law says the landlord is responsible for the account, of course the utility may refund the amounts paid by a tenant when the tenant is not responsible for the account as a matter of law. Similarly, of course the utility may pursue collection against the landlord who is responsible for the bill.

Refund by the utility of payments previously made by the tenant followed by collection action against the landlord to collect the same amounts may be burdensome for the utility and is not the stated remedy under the Act. Section 1529 provides another remedy. Section 1529 provides that a tenant <u>may</u> obtain reimbursement directly from the landlord or deduct the amount paid from any rent or other amounts otherwise due to landlord. There is, however, nothing in the Act to indicate that Section 1529 is

imposed as an exclusive remedy. Refunds are, therefore, not precluded.

While not directly related to the instant case, many questions have been raised concerning application of the Act when foreign load is minimal. For example, an apartment may have been individually metered, but a small amount of foreign usage was mistakenly left on a tenant's line. Similarly, a small amount of usage may have intentionally been left on a meter because it would have been unreasonable and/or uneconomical to install a separate meter.

Although not specifically authorized by the Act, the landlord has a third option if he does not wish separately to meter his property or put the account in his own name. The landlord can attempt to arrive at an agreement with his tenant or tenants, although it is not the role of either regulated utilities or this Commission to enforce the terms of private leases. This option may be particularly useful when the amount of "foreign" load is small. Of course, the terms of a private lease agreement cannot permit other affected tenants in the building to experience any harm. For example, all tenant protections in the Act would still be effective if service termination is threatened when a tenant fails to pay the utility bill for the building as agreed.

In summary, utilities are obligated to begin correct landlord billing upon notice that the Act is applicable. The landlord has the choice either to put the account in his own name, to meter separately the account, or to arrive at an agreement with the affected tenants that is mutually agreeable. Once an account is properly placed in a landlord's name, it is appropriately the tenant's responsibility to collect any back amounts which may be due from the landlord. Utilities may take on the burden of helping to straighten out these affairs, but nothing in the Act requires such action. The Commission need not be involved in ordering refunds, however, as the basic statutory guideline of Section 1529 should be observed.

May 24, 1995
DATED

John Hanger
JOHN HANGER, COMMISSIONER

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

R & B REDDY, INC.
v.
PEOPLES NATURAL GAS COMPANY

PUBLIC MEETING - MAY 25, 1995
MAR-95-OSA-101* (REV)
DOCKET NO. C-00946080

SARAH DIVILLY
v.
DUQUESNE LIGHT COMPANY

MAY-95-OSA-139*
DOCKET NO. C-00946235

STATEMENT OF COMMISSIONER DAVID W. ROLKA

I disagree with the conclusion that rate refunds to the residential tenants were an appropriate remedy in this matter. By issuing refunds, and billing the landlord-building owners for the amounts previously paid by the residential tenants, Peoples and Duquesne implemented Section 1529.1 retroactively. The Companies rely on the following language as the basis for their actions:

> (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.

In my opinion, this language if applied retroactively to leases already in existence as of the effective date of the law, September 1, 1993, would constitute an unconstitutional impairment of existing contracts. I agree with the Law Bureau's Exceptions on this point. The utilities should not take any action such as issuing refunds to tenants and rebilling landlord-building owners which would retroactively modify the terms of the lease between a landlord and tenant. If Section 1529.1(c) can be enforced, such efforts should be left up to the actual parties to the lease. For these reasons, I do not support the staff recommendation in these cases.

May 24, 1995
DATED

DAVID W. ROLKA, COMMISSIONER

3 -

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 25, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka, Dissenting - Statement attached
Robert K. Bloom

Sarah Divilly C-00946235
v.
Duquesne Light Company

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions filed to the Initial Decision of Administrative Law Judge ("ALJ") Fred R. Nene issued on March 1, 1995.

HISTORY OF THE PROCEEDINGS

On September 20, 1994, Sarah Divilly ("Complainant") filed a complaint against Duquesne Light Company ("Duquesne" or "Respondent") alleging that Duquesne had (1) improperly refunded monies to the tenant that had paid for electric service, (2) switched electric service into Complainant's name retroactively and (3) back-billed Complainant for its electric used.

On October 21, 1994, Duquesne filed an Answer denying the allegations and stated in New Matter that it was acting in a manner required by law.

A hearing was held before ALJ Nene on December 12, 1994. The record consists of 45 pages of transcript plus two Complainant exhibits, and three Respondent exhibits.

No briefs were filed in this proceeding. The Initial Decision of ALJ Nene was issued on March 1, 1995. Exceptions were filed on March 17, 1995 by the Law Bureau.

FINDINGS OF FACT

The ALJ made the following Findings of Fact which we adopt in the disposition of this complaint proceeding:

1. The Complainant, Sarah Divilly, is the landlord/owner of 1327 Jeffers Street, Pittsburgh, Pennsylvania 15204. Ms. Divilly rents two apartments in the house. (Tr. 5)

2. Ms. Divilly is in the business of renting property as a portion of her income. (Tr. 18)

3. Scott Deere entered into a lease agreement with Ms. Divilly on September 1, 1991, at which time he agreed to pay half of all utilities charged to the house at 1327 Jeffers Street, (Tr. 12-14, Attachment to Complaint)

4. Duquesne Light Company provides electric service to the Jeffers Street location.

5. Ms. Divilly never notified Respondent, Duquesne Light, that the two apartments were connected to a single meter. (Tr. 17)

6. Prior to May 1994, Ms. Divilly did not know of the existence of Act 54, also known as Section 1529.1 (66 Pa. C.S.A. §1529.1) and House Bill 678. This enactment requires multiple apartments in the same building to be individually metered. (Tr. 7, 37, 42)

7. On April 26, 1994, Duquesne Light was first notified, by a complaint from Mr. Deere, that 1327 Jeffers Street had two

apartments with one meter. (Tr. 25 - 26 36)

8. At the time Mr. Deere notified Duquesne Light that the apartments were not individually metered, he was delinquent on his electric bill in the amount of $339.40. (Tr. 38)

9. Duquesne Light refunded to Mr. Deere $278.71 on or about June 1, 1994 as a result of his complaint and Duquesne Light's knowledge of the situation. (Tr. 17, 38)

10. Ms. Divilly received a bill from Duquesne Light, due on June 9, 1994, with a balance of $738.35. This bill was for service to the Jeffers Street address dating back to September 16, 1993. (Tr. 9, 14, Complainant's Exhibit A)

11. Mr. Deere gave $260.00 from the $278.71 refund received from the Respondent to Ms. Divilly who, in turn, gave the $260.00 back to Duquesne Light toward satisfaction of the outstanding balance on the account. (Tr. 13) This payment was made on July 18, 1994. (Respondent Exhibit 3)

12. Duquesne Light's witness, a regulatory analyst, testified that Act 54 was and is being implemented by Duquesne Light by placing accounts that had been in the tenant's name into the landlord's name effective from September 1, 1993 until the wiring problem is corrected. (Tr. 25, Respondent's Exhibit 1)

13. Duquesne Light sent a letter dated May 16, 1994 to Ms. Divilly advising her that the service account would be placed into her name effective from September 16, 1993 until the two apartments at 1327 Jeffers Street were individually metered. (Tr. 25, 27, Respondent's Exhibit 2)

14. The account was terminated in the name of Sarah Divilly and placed into Scott

Deere's name on August 5, 1994 when Duquesne Light confirmed that the apartments had been individually metered. (Tr. 28-29)

15. To date, Ms. Divilly has made three payments toward the balance due: $260 received from Mr. Deere; $100; and $50, leaving a current balance of $548.90. (Tr. 13, 15, 28, Respondent's Exhibit 3)

(Initial Decision, pp. 2-4)

DISCUSSION

Ms. Divilly owns the building at 1327 Jeffers Street which has two apartments. Scott Deere, at all times material, was a tenant of Ms. Divilly, occupying one of the dwelling units. Duquesne refunded monies to Scott Deere that he paid for electric service after learning that Mr. Deere was a tenant. Duquesne acted based on Act 54, also known as Section 1529.1 (66 Pa. C.S.A. §1529.1). Duquesne initiated service on the landlord's name on June 9, 1994, and billed the landlord retroactively back to September 1, 1993.[1]

The Complainant, Ms. Divilly claims she should not be held responsible for bills incurred by Mr. Deere prior to her becoming aware of her responsibility under Act 54. She contends her responsibility should be limited to the period, May 16, 1994, the date she received actual notice, through August 5, 1994, the date Duquesne confirmed that the apartments had been individually metered.

In Duquesne's Answer and New Matter filed on October 21, 1994, the Respondent denied it was under any duty to

[1] Because of Respondent's billing cycle, the actual date was September 16, 1993

Duquesne opines that it was under a duty to list the electric service account for Complainant's rental property in the Complainant's name. Duquesne maintains that the Complainant was responsible for payment for electric service at the Complainant's rental property from September 1, 1993, the effective date of Act 54, until such time that each dwelling unit at Complainant's rental property was separately metered.

The ALJ noted the dispute arose due to the enactment of 66 Pa. C.S.A. §1529.1 which became law on September 1, 1993. The statute reads as follows:

> **1529.1 Duties 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 the 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 effected 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 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 of the 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.

The ALJ concluded the statute did not require actual notice be provided to the landlord. The statute requires the landlord/owner notify the utility that the residential building contains multiple dwelling units and only one meter. The ALJ noted that the duty to notify the utility is imposed on the landlord, regardless of whether the landlord knows of it or not. The ALJ opined that the landlord's responsibility for electric service provided to the Jeffers Street residence commenced on September 1, 1993, the effective day of the act and that the responsibility was effected by operation of law. The ALJ concluded that the Duquesne acted in compliance with the provision of the statute when it returned the tenant's money it received from him, for service provided after September 1, 1993. Initial Decision, p. 7. The ALJ further concluded Duquesne correctly listed the Jeffers Street residence electric account in the name of Ms. Divilly and held her responsible for service provided after the effective date of the act.

The ALJ addressed the propriety of Duquesne's action of returning to Mr. Deere the monies he had paid to it on account of Ms. Divilly's obligation concluding that this was not an issue in this case.

We will now consider the Exceptions of the Law Bureau.

EXCEPTIONS

In review of the matter before us, we find that the critical factor the Law Bureau argues is that Section 1529.1 of the Public Utility Code does not authorize the utility to refund to a tenant monies paid on accounts which became the responsi-

bility of the landlord as of September 1, 1993. The Law Bureau contends that the exclusive statutory remedy available to tenants is to recoup directly from the landlord pursuant to Section §1529, any payments made on such accounts.

The Law Bureau maintains that the ALJ correctly determined that Section 1529.1 does not require that the owner of a rental property "not individually metered" to receive actual notice of the landlord's responsibilities under the act before those responsibilities attach. "The responsibility was effected by operation of law." Initial Decision, p. 7.

The Law Bureau continues in its Exceptions, stating that ALJ Nene determined that Duquesne had no right to collect and hold monies paid to it by the tenant (emphasis added):

> Since the landlord/owner was responsible for paying utility bills incurred after September 1, 1993, Duquesne Light had no right to collect and hold monies paid to it by the tenant for service provided after that date. Duquesne Light, therefore, was acting in compliance with the statute when it returned to Mr. Deere the money it had received from him for service provided after September 1, 1993.

Initial Decision, p. 7.

The Law Bureau disagrees[2/] with the ALJ's conclusion that Duquesne's action was in compliance with the statute. The

---

2/ Although Law Bureau believes that Duquesne's action in refunding monies to the tenant was not in compliance with §1529.1, the Law Bureau does not believe that it was a violation of the statute. It is Law Bureau's understanding that Duquesne, in making the refund, was relying on advice given by the Commission's Bureau of Consumer Services. Because the statute is sufficiently confusing to engender differing yet reasonable interpretations of its intent and application, Duquesne should not be held to have violated the statute by its action.

Law Bureau contends there is no direction provided in Section 1529.1 as to the recoupment of monies previously paid by the tenant for a landlord's utility account. Under the plain language of this statute, there is no authority for the utility to sua sponte issue refunds to tenants.

The Law Bureau asserts that the General Assembly, by inserting Section 1529.1 into Subchapter B of Chapter 15 of the Public utility Code, has provided the tenant with an exclusive remedy for recoupment of moneys paid by the tenant on the landlord's behalf at Section 1529. Section 1529 reads as follows:

> 66 Pa. C.S. §1529. Right of tenant to recover payments.
>
> 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 any 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.

Furthermore, the Law Bureau asserts that the Legislature, by inserting Section 1529.1 into Subchapter B, has provided the tenant with an exclusive remedy for recoupment of money paid in 66 Pa. C.S. §1529. The Legislature thus made it clear that any claim by the tenant must be collected from the landlord, not from the utility.

Finally, the Law Bureau argues that the ALJ's construction of Section 1529.1, allowing utilities to refund monies paid by tenant's on landlord's accounts, impermissibly impairs the obligation of contracts in violation of Article I,

Section 10 of the U.S. Constitution and Article I, Section 17 of the Pennsylvania Constitution. (Law Bureau Exceptions, p. 6-7).

1. Impairment of Contracts

Article I, Section 10 of the U.S. Constitution provides that:

> No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts.

Article I, Section 17 of the Pennsylvania Constitution provides that:

> No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

The Pennsylvania Supreme Court has held that, whenever possible, interpretations of statutes which would create conflict with constitutional provisions must be avoided. Commonwealth v. Hude, 492 Pa. 600, 4215 A. 313 (1980). See also Commonwealth v. Staley, 476 Pa. 171, 381 A.2d 1280 (1978); Laurence County Foht, 33 Pa. Commonwealth Ct. 379, 381 A.2d 1348 (1978). Moreover, under the Pennsylvania Statutory Construction Act, the Legislature is presumed not to intend to violate the Constitution of the United States nor the Commonwealth of Pennsylvania. 1 Pa. C.S. §1922(3).

The Law Bureau asserts that the ALJ's interpretation of Section 1529.1 as granting authority to a utility to refund to a tenant monies paid on a landlord's account conflicts with both the U.S. and Pennsylvania Constitutions. The Law Bureau argues that credible record evidence established, that by entering into a lease agreement dated September 1, 1991, the tenant, agreed to pay half of all utility bills charged to the Jeffers Street house

(ALJ Finding of Fact No. 3, I.D.) Therefore, according to the Law Bureau, Duquesne is sua sponte refund to the tenant impairs the obligation of the tenant as party to the lease agreement.

The Law Bureau contends that its interpretation that the Section 1529 remedy is applicable to situations arising under Section 1529.1 is preferable for two reasons, to wit: (1) it avoids the present situation where a utility inserted itself into a private contractual agreement, and (2) it does not conflict with the provisions of either the U.S. or Pennsylvania Constitutions.

As the Law Bureau stated:

> [It's] interpretation safeguards the integrity of a possible existing private contract between a landlord and tenant which may identify the party responsible for making utility service payments. The contract thus would be preserved so that any adjudication of the rights and responsibilities of each of the parties to the contract could then be undertaken in court. (Law Bureau Exceptions, p. 8).

On consideration of the Law Bureau's Exceptions, we shall deny them. The Law Bureau's reliance on Section 1529 as an exclusive statutory remedy is misplaced. Initially we observe that the statutory scheme of Section 1529.1 is in furtherance of the protection of the rights of tenants of multi-occupied properties to continued utility service in the event of owner default. Consequently, the Law Bureau's position which champions the rights of the landlord, or other person/entity to whom lease payments are due, does not advocate for the class of persons the statute seeks to protect.

Also, Section 1529, which preceded the enactment of Section 1529.1, is placed after a sequence of events which outline a logical series of conditions precedent to guaranteed continuity of service in the event of landlord/owner default. See Section 1523 - Notices before service to landlord terminated; Section 1524 - Request to landlord to identify tenants; Section 1525 - Delivery and contents of termination notice to landlord; Section 1526 - Delivery and contents of first termination notice to tenants; Section 1527 - Right of tenants to continued service; Section 1528 - Delivery and contents of subsequent termination notice to tenants.

We find particularly instructive the steps to be taken pursuant to Section 1527. Here, the tenants may apply for continuation or resumption of service for the nonpayment of charges by the landlord/owner. See 66 Pa. C.S. § 1527(a). Also, when the tenants pay such charges service is to be resumed and termination averted. See Section 1527(b). And, under subsection (c), when the utility receives payment from the tenants on behalf of the landlord/owner who is liable, the landlord/owner is notified and otherwise apprised of the amount credited on its behalf by the particular tenant.[3/]

[3/] Also, in subsection c there is an express directive to the utility to refund amounts to the tenants where there is a failure to satisfy the requirements of subsection b, or where the tenants elect to voluntarily terminate service.

On the basis of the foregoing, we conclude that the right of set off established in Section 1529 and alleged by the Law Bureau to be an exclusive remedy in this matter, is a reasonable interpretation, though misplaced as an exclusive remedy for implementation of Section 1529.1.

On consideration of the overall statutory scheme, we conclude that the Law Bureau's interpretation would be inconsistent with the clear intent of Section 1529.1(b). This provision states that "[u]pon receipt of notice... 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 payment for the utility services rendered thereunto." (Emphasis added) This language, though perhaps harsh to the landlord/owner, leaves little doubt that it is the intention of the General Assembly to place the burden of payment for utility service in master metered circumstances on the property owner. Under the Law Bureau's interpretation, the burden of payment and subsequent reimbursement through collection would shift from the landlord/owner to the tenant. The right of recovery through set off is more speculative than the direct reimbursement from the utility.

The issue of impairment of contract as suggested by the Law Bureau also lacks merit. The Court in Suburban Water Company v. Oakmont Borough, 268 Pa. 243, 254, 110 A. 778 782 (1920) held

that changes in rates are not an impairment of the obligation of contract. Law Bureau has presented no authority where the Court has found impairment of contract related to other legislatively mandated changes in conditions under which a utility may be providing service.

Also we note that the Commonwealth Court in Crown American Corp. v. Pa. P.U.C., 76 Pa. Commonwealth Ct. 305, 463 A.2d 1257 (1983) affirmed this Commission's finding that a rule prohibiting the master metering of electricity at new multi-tenant commercial locations was improper. The Court held that our Order was a legitimate exercise of the state's police power. No impairment of contract was found to exist.

Finally, we hasten to add that Duquesne's actions were consistent with the procedure to be followed when a utility improperly bills a customer - i.e., refund the money to the customer. However, in the present proceeding the "customer" consumed the gas but Act 54 required someone else be responsible for the bill.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Sections 1521-1533 of the Public Utility Code, 66 Pa. C.S. §1521-15533, apply to the owner of a building containing one or more dwelling unit occupied by one or more tenants.

3. It was not improper for Duquesne to refund monies collected by it from Mr. Deere the tenant, for electric used at 1327 Jeffers Street back to September 1, 1993; **THEREFORE:**

IT IS ORDERED:

1. That the Complaint of Sarah Divilly against Duquesne Light Company is dismissed consistent with this Opinion and Order.

2. That the Exceptions of the Law Bureau are denied, consistent with this Opinion and Order.

3. That the Initial Decision issued on March 1, 1995 is adopted, consistent with this Opinion and Order.

BY THE COMMISSION,

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: May 25, 1995

ORDER ENTERED: MAY 26 1995

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

R & B REDDY, INC.	PUBLIC MEETING - MAY 25, 1995
v.	MAR-95-OSA-101* (REV)
PEOPLES NATURAL GAS COMPANY	DOCKET NO. C-00946080
SARAH DIVILLY	MAY-95-OSA-139*
v.	DOCKET NO. C-00946235
DUQUESNE LIGHT COMPANY	

STATEMENT OF COMMISSIONER DAVID W. ROLKA

I disagree with the conclusion that rate refunds to the residential tenants were an appropriate remedy in this matter. By issuing refunds, and billing the landlord-building owners for the amounts previously paid by the residential tenants, Peoples and Duquesne implemented Section 1529.1 retroactively. The Companies rely on the following language as the basis for their actions:

> (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.

In my opinion, this language if applied retroactively to leases already in existence as of the effective date of the law, September 1, 1993, would constitute an unconstitutional impairment of existing contracts. I agree with the Law Bureau's Exceptions on this point. The utilities should not take any action such as issuing refunds to tenants and rebilling landlord-building owners which would retroactively modify the terms of the lease between a landlord and tenant. If Section 1529.1(c) can be enforced, such efforts should be left up to the actual parties to the lease. For these reasons, I do not support the staff recommendation in these cases.

May 24, 1995
DATED

DAVID W. ROLKA, COMMISSIONER

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

4-

ISSUED: September 18, 1995

IN REPLY PLEASE
REFER TO OUR FILE
C-00946351

JESSE A DILLON ESQUIRE
PENNSYLVANIA POWER & LIGHT COMPANY
TWO NORTH NINTH STREET
ALLENTOWN PA 18101

Stephen R. Stoltzfus (formerly John F. Hershey) v. Pa. Power & Light

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Michael C. Scnierle. 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.

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.

Very truly yours,

John G. Alford
Secretary

Encls.
Certified Mail
Receipt Requested
JEP

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Stephen R. Stoltzfus	:	
v.	:	Docket No. C-00946351
Pennsylvania Power and Light Company	:	

INITIAL DECISION

Before
Michael C. Schnierle
Administrative Law Judge

History of the Proceedings

On November 21, 1994, John F. Hershey[1] filed a complaint against Pennsylvania Power & Light Company. In his complaint, Mr. Hershey alleged as follows:

> 3. **What is your complaint?** service address - P.O. Box 150 Kirkwood, PA 17536
>
> Upon inspection of the property at the above address on September 19, 1994, by Ronald Wimer, from Pennsylvania Power & Light Company, I was informed that the landlord was in violation of Act 54. He informed me that the landlord would need to pay back electric bills of approximately $1600.00 retroactive to September 1, 1993, the date Act 54 became effective and put the electric meter service in his name immediately without any rent adjustment. Our position is that this is a wrong interpretation of Act 54. I am enclosing for your review copies of both leases for the tenants involved in this property. The one tenant is

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[1] When Mr. Hershey filed the complaint, it was not clear whether he was filing the complaint on his own behalf or behalf of another person. At the hearing held on April 11, 1995, it was determined that the true party in interest is Stephen R. Stoltzfus. By order dated June 2, 1995, the caption was amended to show Stephen R. Stoltzfus as the complainant.

paying below market rent with the understanding as per lease that they are responsible for some additional heating and electric usage.

The complaint was served upon PP&L.

PP&L filed an answer to the complaint and a motion to join an indispensable party. In its motion, PP&L averred that the tenants who were paying the electric bill at the property in question were indispensable parties. PP&L moved that the tenants be joined as parties to this proceeding. PP&L noted that the tenants, Frank and Karen Sade, were represented by counsel, H. Allison Wright, Esq., who had filed an appearance in this case. PP&L's motion went unanswered. By order dated January 10, 1995, I joined the tenants, Frank and Karen Sade, as indispensable parties. On January 27, 1995, the Sades filed an answer to the complaint.

In its answer, PP&L averred that Karen Sade contacted it on August 26, 1994 regarding foreign load wiring. PP&L further averred that on September 19, 1994 its representatives met with Ms. Sade and Mr. Hershey. PP&L admitted that it has placed the subject electric account in the name of the landlord. PP&L argued that it was required to take that action by Act 54 of 1993, as codified at 66 Pa. C.S. §1529.1 (hereinafter , "Act 54" or "§1529.1"). Further, PP&L averred that its interpretation of Pa. C.S. §1529.1 is consistent with the interpretation applied to that statute by the Pennsylvania Public Utility Commission. PP&L denied that the interpretation applied by it and by the Commission is wrong.

By letter dated January 18, 1995 the parties were notified that a hearing would be held on March 24, 1995. By motion

filed March 1, 1995, the Sades requested a continuance of the hearing. The hearing was continued to April 11, 1995 and the parties were so notified by letter dated March 9, 1995. On April 10, 1995 I received a telephone call from counsel for the Sades. She informed me that she had been unable to contact them for a long period, and did not intend to appear at the hearing.

The hearing was held on April 11, 1995. Mr Stoltzfus represented himself, and PP&L was represented by counsel. The Sades did not appear, and were not represented. Four witnesses testified. The record consists of a transcript of 78 pages, and 15 exhibits.[2]

After the hearing, Mr. Stoltzfus employed counsel who filed a brief on his behalf. PP&L filed a main and reply brief.

Findings of Fact

1. Stephen R. Stoltzfus lives at 1788 Noble Road, Kirkwood, PA. For 20 years, he has owned and operated a farm at 1780 Noble Road. He needed more farmland to feed his cattle, so in 1987 he rented the adjoining farm. That farm had a farmhouse that was divided into two dwelling units. He had no use for the farmhouse, so he sublet it through a property manager, John Hershey. Mr. Hershey's duties include locating renters, preparing

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[2] Although the court reporter listed Exhibit C-1 as marked but not admitted (Tr. 3), the discussion concerning that exhibit shows clearly that it was admitted. (Tr. 30-31). Also, PP&L's counsel neglected to move for admission of its exhibits R-9 through R-14. By motion dated May 18, 1995 he moved those exhibits into the record. No objection was filed; by order dated June 1, 1995, I admitted them into the record.

and presenting the lease, and overall management. (Tr. 9-11, 32, 35). The owner of the farm is Jill Vasco. Mr. Stoltzfus originally leased the farm for five years in 1987, and renewed the lease for another five years. (Tr. 21-22).

2. In 1991, one of the two dwelling units was rented to Frank and Karen Sade, and Karen Sade's parents, Joseph and Grace Burns; the other unit was rented to Ross Anderson. Mr. and Mrs Burns moved from the house in 1992. The Sades signed a lease which specifically provided that they would be responsible for heating the entire house and for some electric costs for the farm. The circumstances surrounding the utilities were explained to them by Mr. Hershey. They signed the lease. The lease ran from September 1, 1991 to September 1, 1992, with automatic 30 day renewals, unless canceled on 60 days notice. (Tr. 13-14, 16, 33-34; Exh. C-1).

3. The Sades' unit and one half of the second unit of the house were heated by a fuel oil furnace. The Sades were responsible for paying for the oil; also, the electricity needed to run the furnace flowed through their meter. The upstairs part of the second unit had its own electric heat. The other dwelling unit had its own electric meter. Besides the electricity for the furnace, the electricity used for lights and a water pump in the barn, and for an electric fence charger, went through the Sades' meter. Mr. Stoltzfus seldom used the barn except in cold weather. The water pump is used to provide water to the cattle in freezing weather. The electric consumption of the farm was so small as to

make it impractical to install a meter for that electricity alone (Tr. 14-18).

4. When PP&L investigated the Sades' complaint, they learned that besides the furnace, barn and fence electricity, some additional "foreign load" was on the Sades' meter. This additional load consisted of two ceiling fans (with lights) in the second unit, the water pump for the entire house, and an outside light. The outside light was on a shed used only by the owner of the property, Jill Vasco, but the light switch was in the Sades' unit.[3] Mr. Stoltzfus did not know that the ceiling fans and outside light were connected through the Sades' meter until PP&L informed him of that fact. He is not an electrician (Tr. 16, 18-21). Neither Mr. Stoltzfus nor Mr. Hershey was aware of Act 54 before their encounter with PP&L in this case in September 1994. (Tr. 69, 36).

5. Mr. Stoltzfus does not have electricity in his own home (Tr. 17).

6. After PP&L told Mr. Stoltzfus that he was responsible for the electricity billed to the Sades since September 1993, Mr. Stoltzfus and Mr. Hershey spoke to the Sades. In September 1994, Mr. Stoltzfus explained to the Sades that he was not aware of the outside light and ceiling fans connected to their meter. He offered them $250 to compensate them for the electricity used by the light and fans. He also offered to assume payment for

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[3] In my opinion it is straining the concept of "foreign load" to consider this light foreign load for the Sades. Although they did not have use of the shed because Jill Vasco, the property owner, retained the key, only the Sades had access to the light switch.

the electricity in exchange for an increase in the rent of $100 per month. The Sades signed an agreement to this effect. The day after they signed the agreement, they disavowed it, apparently after speaking with PP&L and an attorney. Mr. Stoltzfus never paid them the $250. The rent was never increased. Mr. Stoltzfus was advised, apparently by the Sades' attorney, that raising the rent could be a retaliatory action under the Public Utility Code. He did not attempt to raise the rent in retaliation, but because he now had to pay the utility bills. (Tr. 24-29).

7. The Sades have since moved from the house. Mr. Sade is living in Peach Bottom, PA, and Ms. Sade is living in Glendale, Arizona. (Tr. 34).

8. PP&L first became involved in this situation when it received a call from Karen Sade on August 26, 1994, questioning the possibility of foreign wiring in her apartment. PP&L contacted the Sades on September 15 and Mr. Hershey on September 16 to arrange a meeting for September 19 at the property. On September 19, PP&L received a telephone call from Legal Services, which informed PP&L that it would be providing an attorney for the Sades. PP&L conducted an investigation of the property on September 19, and found the situation to be as described in Findings of Fact 3 and 4. PP&L discussed Act 54 with the Sades and Mr. Hershey. The Sades wanted PP&L to rebill the electricity in Mr. Stoltzfus' name effective September 1, 1993 (the effective date of Act 54). (Tr. 42-43). On the next day, Karen Sade called PP&L and stated that she had signed an agreement with Mr. Stoltzfus, in which she agreed

that he would assume responsibility for the electric bill starting in September 1994 and that the rent would increase by $100 beginning October 1. A few days later, PP&L was contacted by the Sades' attorney, who informed PP&L that her clients had been offered $250 to settle the matter. (Tr. 44-45). On September 22, PP&L sent letters to both parties describing the results of its investigation. Also on that date, PP&L rebilled Mr. Stoltzfus for the Sades' electricity since September 1, 1993. (Tr. 44-45; Exh. R-2, R-3).

9. In September 1994, the Sades and Mr. Stoltzfus were exploring the possibility of taking legal action against each other. (Exh. R-4, R-5, R-6).

10. The Sades were chronic nonpayers of their electric bill. While they were PP&L customers, they had 12 payment arrangements, each of which they broke. As a result of its investigation, on October 26, 1994 PP&L credited the Sades account for $1,846.75, after which the Sades still owed PP&L money, which they never paid. The $1,846.75 credit included the amount rebilled to Mr. Stoltzfus, $1,686.22, plus $163.53 in late charges. Mr. Stoltzfus has not paid the rebilled amount. He now owes $1,770.14, which includes $83.94 in late-payment charges. PP&L is willing to waive the late-payment charges, because the amount is disputed. Mr. Stoltzfus is current in the charges that have been levied since the account was put in his name. (Tr. 50-52; Exh R-7, R-8).

11. PP&L took the position it did, i.e., that it would have to rebill Mr. Stoltzfus for the consumption since September

1993 based on interpretations of Act 54 provided by the Bureau of Consumer Services. (Tr. 56-67). BCS originally interpreted Act 54 to require that a landlord of a single meter building be billed for consumption from the effective date of the Act, September 1, 1993. That interpretation was in effect when PP&L rebilled Mr. Stoltzfus. (Exhs. R-10, R-12, R-13). Later, BCS adopted an interpretation that required rebilling only after the date when the utility becomes aware of a particular foreign load situation. (Exh. R-11). PP&L is willing to follow whichever policy is the correct one.[4] (Tr. 67).

12. In September 1994, PP&L notified its customers of Act 54 through bill inserts. (Tr. 62-63; Exh. 14).

Discussion

Although this case is not the first Commission case interpreting Act 54, it turns on an issue that appears to be one of first impression. As noted in the findings of fact, Mr. Stoltzfus, although he was a landlord to the Sades, was not the owner of the property. Section 1529.1 of the Public Utility Code provides:

> **1529.1 Duties of owners of rental property**
>
> **(a) Notice to public utility.**-It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

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[4] As discussed later in this decision, the Commission has since decided that the first BCS interpretation was correct.

> **(b) History of the 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 thereunder. 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 of the 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.

Notably, Subchapter B of Chapter 15 of the Code defines "Landlord Ratepayer" but not "owner." "Landlord ratepayer" is defined as:

> **"Landlord ratepayer."** 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 one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.

66 Pa. C.S. §1521. Before Mr. Stoltzfus was involuntarily listed as the ratepayer on the Sades' unit as a result of this dispute, he

was not a landlord ratepayer because he was not the responsible party on PP&L's records. While he may have been a landlord, and is now, unquestionably, the landlord ratepayer, Section 1529.1 applies not to landlords, or landlord ratepayers, but to "owners." PP&L argues that he is the "owner" of the Sades' rental unit.[5] I disagree.

PP&L argues that the term "owner" means the person with the possessory right to the premises and having the ability and/or duty to fix any non-individually metered situation uncovered. In support of this argument, PP&L contends that the term "owner" can mean more than simply the person holding title to the property. Specifically, PP&L cites Sayre Land Co. V. Pa. Pub. Util. Com., 196 Pa. Superior Ct. 417, 175 A.2d 307 (1961), aff'd 409 Pa. 356, 185 A.2d 325 (1962) for the proposition that a tenant in possession can be an owner until the end of his term. I find these arguments unconvincing.

A general rule of statutory construction is that, except for certain technical words and phrases, words and phrases shall be construed according to their common and approved usage. 1 Pa. C.S. §1903. As noted in PP&L's reply brief, the primary definition of the term "owner" is the "person in whom is vested the ownership,

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[5] PP&L, in its reply brief, disparages Mr. Stoltzfus' argument that he is not the owner because the argument appeared for the first time in his brief. (PP&L Reply Brief at 8). PP&L's comment is unfair. Mr. Stoltzfus filed and tried this case pro se. When PP&L, at the close of the hearing, requested an opportunity to file a brief, I explained to Mr. Stoltzfus that he might want to employ a lawyer to file a brief for him. (Tr. 69-76). Mr. Stoltzfus apparently did employ a lawyer, who filed a brief for him, and who recognized and raised the issue.

dominion or title of property." (PP&L Reply Brief at 10). Clearly, under this definition, Jill Vasco, and not Mr. Stoltzfus, is the owner of the building at issue.

Moreover, a presumption of statutory construction is that the General Assembly intends the entire statute to be effective and certain. 1 Pa. C.S. §1922(2). Whenever possible each word in a statutory provision is to be given meaning and is not to be treated as surplusage. Matter of Employees of Student Services, Inc., 495 Pa. 42, 432 A.2d 189 (1981). Here, it is obvious that the legislature could have used the word "landlord" in Section 1529.1 if it intended to impose the duties described therein upon whomever was receiving rent from the subject property. It did not do so, despite the fact that in adopting Act 54, it amended the definition of "landlord ratepayer" in §1521 at the same time that it was enacting §1529.1. The legislature's failure to use the term "landlord" in §1529.1 suggests that it intended the term "owner" to be interpreted narrowly to encompass only those persons who hold title to the property.

The facts in this case illustrate a practical reason for interpreting the term "owner" to include only the title holder to the property. The building at issue is a farmhouse located on a farm that was leased by Mr. Stoltzfus for grazing cattle. Rather than allow the farmhouse to stand vacant, he offered it for rent through a property manager. The lease that he made with the Sades disclosed those foreign utility loads of which Mr. Stoltzfus was aware. The Sades agreed to accept responsibility for that electric

usage. Mr. Stoltzfus, who is not an electrician, and does not have electricity in his own home, had no reason to know of the additional foreign loads of the ceiling fans and the shed light, whereas the owner would be more likely to the aware of these conditions. If the law requires that someone be held responsible for the foreign load, it would be more equitable to impose that responsibility on the owner rather than a mere lessee.

I do not find controlling the case cited by PP&L. Sayre Land Co. V. Pa. Pub. Util. Com., 196 Pa. Superior Ct. 417, 175 A.2d 307 (1961), aff'd 409 Pa. 356, 185 A.2d 325 (1962) concerned the proper interpretation of a different section of the Public Utility Code, the definition of "public utility" itself. The Court's ruling in Sayre was based upon considerable appellate precedent directly on the issue (i.e., whether the lessor or the operator-lessee of utility property is to be considered the "owner" of the property for regulatory purposes). Here, the landlord, whether owner or lessee, is not subject to Commission regulation, and there is no appellate precedent directly on point.

Several other observations must be made regarding PP&L's arguments regarding the term "owner." First, it is circular reasoning to define the term "owner" as the person or entity having the duties under §1529.1. Second, if the term "owner" includes a tenant in possession (PP&L Reply Brief at 11), then the Sades would be the "owners."

PP&L also suggests that Mr. Stoltzfus acknowledged being the owner by his "voluntary assumption" of the electric bill in

October 1994. I disagree with this characterization of Mr. Stoltzfus' actions in this matter. After its investigation, PP&L sent Mr. Stoltzfus a letter stating that it was rebilling the Sades' electric service to him as of September 1, 1993. That letter was dated September 22, 1994, and also informed Mr. Stoltzfus that he could file a complaint with the Commission. (Exh. R-3). This complaint was filed on November 22, 1994, after Mr. Stoltzfus apparently tried, without success, to amicably settle the Sades' complaint. Considering that PP&L did not ask Mr. Stoltzfus whether he wanted to assume responsibility for these billings, it is hardly accurate to say that Mr. Stoltzfus voluntarily assumed billing responsibility for this account.

PP&L also insinuates that Mr. Stoltzfus may not in fact be a mere lessee of the property because he did not produce a copy of his lease with Jill Vasco. (PP&L Reply Brief at 9). This argument is without foundation in the record. While Mr. Stoltzfus did not produce his lease with Jill Vasco, his testimony is sufficient to support my finding that he is a lessee of the property, and not the owner. I found Mr. Stoltzfus to be a credible witness, and PP&L produced no evidence to the contrary.

Because I have decided that Mr. Stoltzfus is not the party responsible for the Sades' electric bill under §1529.1, I need not decide any of the other issues presented in this case. I will, however, discuss some of them briefly for the information of the Commission and the parties.

Mr. Stoltzfus has argued that he should not be subject to

§1529.1 because the Sades agreed in the lease to pay for the electricity used by the barn and portions of the other rental unit.[6] While this argument is appealing from the standpoint of equity, it fails because the Code provides that any waiver of a tenant's rights under Subchapter B of Chapter 15 of the Code is void and unenforceable. 66 Pa. C.S. §1530. Although §1530 was in the Code before §1529.1, it nevertheless appears to void any lease provision that makes a tenant responsible for utility service in a non-individually metered situation.[7]

The Sades accused Mr. Stoltzfus of retaliating against them because Mr. Stoltzfus attempted to raise their rent after PP&L put the electric service in his name. (Exh. R-4). PP&L, in its answer (see Exh. A to PP&L's answer) and in cross-examination (Tr. 27-29) seemingly echoed that accusation. The Sades cited 66 Pa. C.S. §1531 as the legal basis for their accusation. That section does not support their claim. That section, by its terms, only creates a rebuttable presumption that an attempt to increase the rent is a reprisal against a tenant who has exercised his rights under Sections 1527 or 1529. No mention is made of a tenant "exercising his rights" under §1529.1. Sections 1527 or 1529 apply

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[6] At this point, I am overlooking the additional foreign load found by PP&L (the ceiling fans and outside light). I will discuss that issue briefly later in this decision.

[7] In Boyce v. Duquesne Light Co., Docket No. Z-00223698 (Order entered March 1, 1995), the ALJ opined that the enforceability of such a lease (making the tenant responsible for the utility bill), as between the tenant and landlord, was beyond the Commission's jurisdiction. Although the Commission may lack jurisdiction to decide this issue, §1530 appears to govern it.

to the situation where a tenant pays a landlord's utility bill to avoid termination of service, and then tries to collect from the landlord by withholding rent. The "right of the tenant" under §1529.1 is completely different; it is the right not to pay for service. It would be grossly inequitable in situations such as this, where the tenant has agreed, after disclosure of foreign load, to pay for the utility service, to require the landlord to pay for that service while prohibiting the landlord from adjusting the rent to compensate for the change in responsibility for the utility bill. This is particularly true, considering that, as discussed previously in this decision, the lease provision requiring the tenant to pay for the service is unenforceable.

Assuming that §1531 did apply to §1529.1, I would find that Mr. Stoltzfus rebutted the presumption that his proposal to raise the rent was retaliatory. He testified that he proposed to raise the rent because PP&L was requiring him to pay for the electricity that had been the Sades' responsibility under the lease. (Tr. 27-28). The proposed increase in the rent ($100) was less than the typical electric bill. (Exh. R-8). Moreover, as noted by PP&L in its main brief, the lease provided for an initial term of one year followed by 30 day renewals. (PP&L Main Brief at 15). The lease required 60 days notice to terminate. Obviously, the Public Utility Code notwithstanding, Mr. Stoltzfus could have changed the rent by simply giving 60 days notice of his intent to terminate the lease.

Although I expressed to the parties my concern that

application of §1529.1 to an existing lease might be an unconstitutional impairment of contract, I need not rule on that issue because I have decided the case on statutory grounds. Constitutional issues are to be reached only if a case cannot be decided on other grounds. Barasch v. Bell Telephone Co. of Pa., 529 Pa. 523, 605 A.2d 1198 (1992). Furthermore, I note that after the hearing here, the Commission decided that §1529.1 does not act as an unconstitutional impairment of contract. Reddy v. The Peoples Natural Gas Co., Docket No. C-00946080 (Order entered May 26, 1995).[8] There, and in an earlier case, the Commission also ruled that the utility bill must be put in the name of the owner as of August 31, 1993. See also, Boyce v. Duquesne Light Co., Docket No. Z-00223698 (Order entered March 1, 1995).

Two further comments regarding this case are in order. One concerns Mr. Stoltzfus' actions, and one concerns PP&L's actions.

The Sades, in their answer, attempted to portray Mr. Stoltzfus as having acted deceptively and in bad faith in this matter. PP&L's cross-examination of Mr. Stoltzfus, at times, appeared designed to establish a similar picture. (Tr. 18-21, 23-

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[8] In reaching its conclusion, the Commission cited Crown American Corp. V. Pa. Pub. Util. Com., 76 Pa. Commonwealth Ct. 305, 463 A.2d 1257 (1983). I am doubtful whether that case supports the proposition for which the Commission cited it. In Crown, the tariff provision applied to prohibit master metering only in new construction; older buildings were exempted from the requirement. Crown, 76 Pa. Commonwealth Ct. At 307, 308, n. 3. If the rule involved in Crown applied here, the Sades would be entitled to no relief because the farmhouse, as well as their lease, predated the rule.

29). There was, however, no evidence that Mr. Stoltzfus acted deceptively or in bad faith. While the Sades, in their answer to the complaint, denied that they were responsible for additional electric usage in accordance with the lease, they did not appear at the hearing. Mr. Stoltzfus submitted credible evidence, in the form of his testimony and the lease, that shows that the Sades had entered into a lease that made them responsible for additional utility usage beyond their own. Although PP&L, during its inspection, found foreign load beyond that which was mentioned in the lease, that load was limited to two ceiling fans, and (depending on how one reads the lease and how one defines foreign load) one outside light and a water pump. Considering that Mr. Stoltzfus is not an electrician, does not have electricity in his own home, and rented the farm primarily for grazing his cattle, it is ridiculous to suggest that he deliberately concealed the connection of two ceiling fans, an outside light (the switch for which was in the Sades' apartment), and the water pump to the Sades' meter.

Further, it is ridiculous to suggest that Mr. Stoltzfus willingly violated §1529.1. PP&L, by its own testimony, did not send notices about this change in the law to its customers until September 1994, after the complaint by the Sades against Mr. Stoltzfus. (Tr. 63-63; Exh. R-14). It is not even clear that Mr. Stoltzfus would have received one of these notices, a bill insert, since he does not have electricity in his home.

The allegations of retaliation against Mr. Stoltzfus are

equally ridiculous. As previously discussed, §1531, which concerns retaliation, does not even apply to §1529.1. Moreover, Mr. Stoltzfus offered to give the Sades $250 for the electricity assumed to have been used by the fans and outside light connected to their meter of which he himself was unaware. In return, he asked that they retain responsibility for the electric bill before the PP&L inspection. Considering the lease provision making them responsible for certain additional service, this was not an unreasonable attempt by Mr. Stoltzfus to settle this case without litigation. The same can be said regarding Mr. Stoltzfus' offer to accept responsibility for the electric bill in exchange for a rent increase of $100. As previously noted, the proposed increase was somewhat less than the typical electric bill.

Finally, although the Sades, in their answer, claimed that they were seriously harmed by the foreign load on their bill, the evidence shows otherwise. PP&L's records show that the Sades were chronic nonpayers. They seldom, if ever, paid their electric bill. It is difficult to see how, if at all, they were harmed by Mr. Stoltzfus.

In short, this case is not like the cases cited in PP&L's brief as typical of the situations that gave rise to §1529.1. In Columbia Gas of Pa., Inc. V. Pa. Pub. Util. Com., 112 Pa. Commonwealth Ct. 611, 535 A.2d 1246 (1988) and Bureau of Consumer Services and Rebel v. Pa. Gas and Water Co., 67 Pa. P.U.C. 380 (1988), the tenants were not informed of the foreign load, and did not agree to pay for it. Here, Mr. Stoltzfus made a reasonable

effort to disclose to the tenant the extent of the foreign load. Although it was later determined by an electric company inspection that there was additional foreign load, the additions were minor. When Mr. Stoltzfus learned of the additions, he offered a settlement to the tenants to make them whole. I find no evidence of bad faith on the part of Mr. Stoltzfus.

I also find no bad faith on the part of PP&L. PP&L has attempted to comply with the Commission's interpretations of §1529.1, as those interpretations have evolved over time.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter of, and the parties to, this case under 66 Pa. C.S. Chapter 15.

2. Mr. Stoltzfus is not the "owner" of the property at issue here, as that term is used in 66 Pa. C.S. §1529.1.

3. PP&L should not have put the Sades' electric service in Mr. Stoltzfus' name upon complaint of the Sades', because 66 Pa. C.S. §1529.1 imposes no duty on him.

4. Mr. Stoltzfus did not violate 66 Pa. C.S. §1531 by attempting to settle without litigation the Sades' complaint against him, because §1531 does not apply to §1529.1.

Order

THEREFORE, IT IS ORDERED:

1. That the complaint of Stephen R. Stoltzfus v. Pennsylvania Power and Light Company at Docket No. C-00946351 is

sustained.

2. That Pennsylvania Power and Light Company shall remove Stephen R. Stoltzfus' name from the electric service account for the property at issue here, and shall refund to him any money paid by him on that account since his name was placed on it on October 28, 1994.

Date: Sept. 12, 1995

Michael C. Schnierle
Administrative Law Judge

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RONALD L. ANGLE	:	
v.	:	Docket No. C-00956597
METROPOLITAN EDISON COMPANY	:	
RONALD L. ANGLE	:	
v.	:	Docket No. C-00956598
PENNSYLVANIA-AMERICAN WATER COMPANY	:	
RONALD L. ANGLE	:	
v.	:	Docket No. C-00956599
PFG GAS, INC.	:	

INITIAL DECISION

Before
Michael C. Schnierle
Administrative Law Judge

History of the Proceedings

On February 21, 1995, Ronald L. Angle filed these complaints. Each complaint contains the same allegation: "[f]ailure to supply service to our tenant (Act 54 dispute) Service address: 121 Garabaldi Ave. Roseto PA 18013." Each complaint requests that service be placed in the tenant's name. Each complaint was served on the named utility and the utility filed an answer to it. Metropolitan Edison Company (Met-Ed) also filed a motion for more specific pleading.

On July 3, 1995, I was assigned to preside over these cases. By order signed July 24, 1995, I consolidated the three

cases for hearing and decision, denied Met-Ed's motion for more specific pleading, and directed the Secretary to amend the complaint caption of the complaint at Docket No. C-00956599 (that complaint named Union Gas Company as the respondent; the correct respondent is PFG Gas, Inc.; which is the corporate successor to Union).

A telephonic hearing was held, pursuant to written notice, on August 29, 1995. Mr. Angle represented himself, and each utility was represented by counsel. The hearing resulted in a transcript of 125 pages; three exhibits were admitted into evidence.

Findings of Fact

1. Ronald L. Angle lives at Box A, Portland, PA. He owns a two story brick building ("the house") at 121-123 Garibaldi Avenue, Roseto, PA. (Tr. 16-17; Met-Ed Ex. 1,2 and 3). The house was built around 1910 or 1915. (Tr. 33).

2. The house is divided into two units. About 90 percent of the house is occupied by a five bedroom home. A small room in the front of the house is occupied by a post office. (Tr. 17-19, 35-36, 80-81). Before Mr. Angle bought the house in 1980, it was owned by the local postmaster. He had a large family, which required a large home. He converted one room into a post office. The present occupant of the home no longer is the postmaster. The Roseto post office does not have a postmaster. The post office is now operated as a branch; the postmaster is located in Bangor, PA, the adjoining large town. The Roseto post office is occupied only

a few hours per day by a postal employee who sells stamps and collects the mail. The post office is rented to the United States Postal Service; the rest of the house is rented to a residential tenant. (Tr. 17-19). The post office has been rented to the Postal Service during the entire term of Mr. Angle's ownership. (Tr. 33).

3. There is one electric service to the house. Electric service for the post office runs through the same meter as service for the residential tenant. The post office has a fluorescent light and a few outlets. (Tr. 19-20, 94-95). Electric service is provided by Met-Ed. (Tr. 94-94).

4. The gas service is like the electric service. One meter serves both the post office and the residential tenant. The house has gas fired hot water heat. There is one boiler for the entire house. (Tr. 20-21; 36-37). There are radiators in the home and in the post office, all of which are connected to the common boiler. (Tr. 37). The gas service also supplies the hot water heater, which supplies the entire house. (Tr. 36). Gas service is supplied by PFG, Inc. (Tr. 47).

5. The water service also has one meter that serves the entire house. The post office has a separate sink and toilet. (Tr. 20, 77). Water service is provided by Pennsylvania-American Water Company (PAWC). (Tr. 77).

6. As long as Mr. Angle has owned the house, he has rented it to residential tenants with the understanding that they would pay for the utilities for the entire property. He has

explained to each tenant the utility situation, and the hours of operation of the post office. He has included the requirement to pay the utilities in the lease for the residential tenant. In setting the rent, he takes into account the cost of the utilities for the post office. (Tr. 21). The lease for the post office requires that the utilities be provided to the post office. That has always been the arrangement with the Postal Service. The lease with the Postal Service is a long term lease and cannot be changed. (Tr. 21-22). The most recent lease with the Postal Service was signed in April 1994, and runs for six years. (Tr. 22, 24).

7. Starting April 1, 1994, the home was rented to Denise Churm. (Tr. 23-25). She had signed a lease, like all prior residential tenants, requiring her to pay for all of the utilities. (Tr. 23). She had financial problems, including a "boyfriend who ripped her off." (Tr. 24, 107-108). She moved to Virginia owing rent to Mr. Angle. (Tr. 27). She moved in February 1995. (Tr. 61).

8. According to PFG, its customer of record was Scott Dayson. In response to an inquiry from Mr. Dayson, PFG sent an employee to the house who inspected it and discovered that both the home and the post office were on the same meter. (Tr. 50-51). Ordinarily, PFG does not require a tenant to show it a lease as a condition of obtaining service. (Tr. 54). PFG has no record of Denise Churm as a customer. (Tr. 56).

9. On August 25, 1994 PFG sent Mr. Angle a letter explaining that because both units were on the same meter, he would

have to put the service in his name, pursuant to Act 54 of 1993, (now 66 Pa.C.S. §1529.1) (hereinafter, "Act 54" or "§1529.1"). (Tr. 51). In response to PFG's letter of August 25, 1994, Mr. Angle proposed to avoid the requirement of Act 54 by making the radiators in the post office inoperable by turning them off and removing the handles. Mr. Angle also proposed to install electric heaters in the post office. He made no proposal regarding the hot water heater. (Tr. 52). When Mr. Angle first proposed this, Joseph Adams, PFG's collection manager, gave him the impression that the proposal was acceptable. (Tr. 52-53). According to Mr. Angle, Mr. Adams made this suggestion to him in January 1995. (Tr. 111-112). The gas service was placed in Mr. Angle's name on November 14, 1994. The gas bill for November 14, 1994 through December 14, 1994 was sent to Mr. Angle. He returned it to PFG unpaid, with a note written on it. The note said that they then had electric heat in the post office, and would not pay for gas service, since they had not requested it. (Tr. 62). When Mr. Angle attempted to substitute electric heaters for the hot water radiators in the post office, he apparently did not expect that the electric utility, Met-Ed, would learn of the situation and similarly require him to put the electric service in his own name. (Tr. 70-71). On February 27, 1995, PFG sent Mr. Angle a letter explaining that simply turning off the radiators and removing the handles was insufficient to allow the gas service to be put in the tenant's name. (Tr. 53). PFG has taken this position because heated water circulates through the radiators even when they are turned off.

because the radiators can be turned on with a simple tool such as a pair of pliers, and because natural gas still flows to the boiler. (Tr. 53, 67, 69, 74-75). Mr. Angle acknowledged that water flows in the radiators even when they are turned off. (Tr. 112). Over the time between August 1994, when this controversy erupted and February 27, 1995, Mr. Angle had many discussions regarding these matters with Mr. Adams of PFG. (Tr. 63-64, 66-67, 76).

10. Over Mr. Angle's objection, PFG put the gas account in his name on November 14, 1994. (Tr. 62). PFG did not bill Mr. Angle for any consumption before that date. (Tr. 54, 62). As of the hearing, Mr. Angle owed PFG $1,087.67. (Tr. 54). Mr. Angle refuses to pay for the gas consumption during the time that Ms. Churm was the tenant, based on his lease with her, and based on his claim that PFG initially agreed with him that he could avoid Act 54 by shutting off the radiators. (Tr. 59-61, 109-110).

11. PAWC put the water service in Mr. Angle's name on March 24, 1994. He was not billed for service before that date. On the day of the hearing, his account was paid in full. (Tr. 87-88). Although Mr. Angle's name is on the bill, the billing address is that of the residential tenant of the house. (Tr. 88-89). PAWC does not require a copy of the lease as a condition of initiating service. (Tr. 90). PAWC believes that Act 54 of 1993 requires, under the circumstances presented here, that the water service be in the owner's name. (Tr. 82-87).

12. Met-Ed's rate payer of record in 1994-95 also was

Scott Dayson. Met-Ed received a billing inquiry from Mr. Dayson on January 30, 1995; on February 8 Mr. Dayson requested a final bill, because he was moving out of the home. (Tr. 95, 102). Met-Ed visited the property on February 8, 1995. On February 10, 1995, Met-Ed contacted Mr. Angle and explained Act 54 to him, and told him that service would be put in his name. (Tr. 96, 104-105). Met-Ed followed the telephone call with a letter dated February 14, 1995. (Tr. 105).

13. Mr. Angle does not know who Scott Dayson is; he presumes that he was Ms. Churm's boyfriend. (Tr. 107).

14. Mr. Angle has a new residential tenant in the house, who is paying all the utility bills. When Mr. Angle receives the gas and electric bills, he gives them to the tenant who pays them. (Tr. 109-110). (As previously noted, although Mr. Angle's name is on the water bill, the bill is sent directly to the residential tenant of the house. (Tr. 88-89).

Discussion

There are only two issues that must be decided here. The first is an issue of law: did Ms. Churm waive the requirement of 66 Pa.C.S. §1529.1 by signing a lease that made her responsible for the utilities for the post office. The second issue is whether Mr. Angle should be absolved of responsibility for the gas bill between November 1994 and February 1995 because PFG's employee advised him that he could avoid having the bill placed in his name if he turned off the radiators in the post office.

The statute at issue here is 66 Pa.C.S. §1529.1, which

reads as follows:

> **1529.1 Duties 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 the 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 thereunder. 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 of the 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.

Unquestionably, this rule applies to the house in question. Mr. Angle argues, however, that the tenant may waive her rights under this statute by signing a lease agreeing to pay all of the utilities. Mr. Angle is in error.

Ms. Churm did not waive the statute because the statute cannot be waived. Act 54 of 1994 added Section 1529.1 to

Subchapter B of Chapter 15 of the Public Utility Code. This is significant because Subchapter B also contains Section 1530:

> **§ 1530. Waiver of subchapter prohibited.**
>
> Any waiver of a tenant's rights under this subchapter shall be void and unenforceable.

Thus, the lease provision making Ms. Churm responsible for the utilities is void and unenforceable. Accordingly, Mr. Angle is not entitled to relief from the gas bill from November 1994 through February 1995 because of his lease with Ms. Churm.

I have not been asked to decide, and thus do not decide, whether Mr. Angle's arrangement with the current residential tenant is unlawful. Mr. Angle now has the utility bills in his name, although the tenants are, in fact, paying them. This may not be sufficient to comply with Section 1529.1 which requires not only that the utility place the bill in the owner's name, but also that "the owner shall thereafter be responsible for the payment for the utility services rendered. . . ." This section seems to require that the owner actually pay the bills.

Mr. Angle also argues that he should not be required to pay for the gas consumed between November 14, 1994 (when service was placed in his name) and February 8, 1995 (when Ms. Churm moved out of the house) because PFG initially agreed with him that he could avoid Act 54 by shutting off the radiators. (Tr. 59-61, 109-110).

It is clear, for several reasons, that simply turning off the radiators and removing the handles is insufficient to satisfy the requirements of §1529.1. First, heated water circulates

through the radiators even when they are turned off; second, the radiators can be turned on with a simple tool such as a pair of pliers; and, third, natural gas still flows to the boiler. (Tr. 53, 67, 69, 74-75). Finally, the hot water heater, which serves the entire house, still uses gas through the common meter. (Tr. 36, 52).

Although Mr. Angle's attempt to avoid the gas bill by altering the radiators must fail because merely turning off the radiators and removing the handles is insufficient to separate the post office from the gas service, further scrutiny of this issue is required to determine if Mr. Angle justifiably relied upon misinformation supplied by PFG. While a utility owes to its customers a duty to provide accurate information, AT&T. Communications, Inc. v. Pa. Public Utility Commission, 130 Pa. Commonwealth Ct. 595, 568 A.2d 1362 (1990), I conclude that Mr. Angle should not succeed on this claim for two reasons.

First, the evidence, including Mr. Angle's own testimony, establishes that he did not rely on PFG's advice in shutting off the post office radiators and replacing them with electric heaters. The gas service was placed in Mr. Angle's name on November 14, 1994. The gas bill for November 14, 1994 through December 14, 1994 was sent to Mr. Angle. He returned it to PFG unpaid, with a note written on it. The note said that he then had electric heat in the post office, and would not pay for gas service, since he had not requested it. (Tr. 62). When I asked Mr. Angle to state when he first received information from PFG that suggested he could avoi

having the gas bill in his name by shutting off the radiators, he replied that it was in January 1995. (Tr. 111-112). Accordingly, he did not rely on PFG's advice in converting the heat to electric, but converted the heat and then attempted to obtain PFG's consent.

There is a second reason why this claim should be rejected. Mr. Angle, by switching the post office heat from the radiators to electric heat was simply attempting to continue to require the residential tenant to pay for the heat in the post office. It is obvious that he took this step because he did not anticipate that Met-Ed would learn that the house was in violation of §1529.1 with respect to the electric service, as well as the gas service. Mr. Angle would benefit from converting the post office heat to electric heat only if Met-Ed did not learn of the violation, and thus continued to bill the residential tenant for electric service. Under §1529.1, Mr. Angle had a duty to notify Met-Ed of his ownership of the property, and the fact that it was used for rental purposes.[1] 66 Pa.C.S. §1529.1(a). Mr. Angle could successfully use his conversion of the post office heating system to avoid responsibility for the gas bill only by ignoring his duty under the law to notify the electric utility of the situation. I conclude that Mr. Angle should not be rewarded for having ignored his duty to inform Met-Ed by being absolved of the gas bill between

---

[1] Clearly, Mr. Angle became aware of his responsibility under the law no later than August 25, 1994 when PFG sent him a letter explaining that 66 Pa.C.S. §1529.1 required that the gas bill be put in his name. (Tr. 51). It appears likely that he was aware of it even earlier because PAWC put the water service in Mr. Angle's name on March 24, 1994. (Tr. 87-88).

November 14, 1995, and February 8, 1995.

For these reasons, I conclude that this complaint must be dismissed. Although I am dismissing this complaint, two other points remain to be discussed.

In other cases involving violations of §1529.1 by landlord/owners, the Commission has ordered that the utility bills must be transferred into the owner's name as of August 31, 1993, the effective date of Act 54, and service from that date rebilled to the owner. This results in the owner receiving a substantial bill for utility service already provided to, and billed to, the tenant. Boyce v. Duquesne Light Co., Docket No. Z-00223698 (Order entered March 1, 1995); Reddy v. The Peoples Natural Gas Co., Docket No. C-00946080 (Order entered May 26, 1995). I will make no such order here. In the Boyce and Reddy cases, complaints were brought by tenants seeking enforcement of §1529.1. Here, because the complaint was filed by an owner/landlord seeking to avoid the operation of the statute, and because none of the utilities has sought to rebill Mr. Angle for usage prior to placing the bill in his name, Mr. Angle had no notice that his liability for these utility bills might be significantly increased as a result of this proceeding. I conclude that his lack of notice of this possibility precludes the issuance of any order requiring these utilities to rebill him for service from August 31, 1993. Pocono Water Co. v. Pa. Pub. Util. Com'n., 158 Pa. Commonwealth Ct. 41, 630 A.2d 971 (1993).

Although I am dismissing this complaint, I am sympathetic

to Mr. Angle's plight. In my opinion, §1529.1 is overly restrictive and should be amended. While §1529.1 was a well-intentioned effort to alleviate the problem of landlords who allow their tenants to unknowingly pay for concealed foreign load, it creates undue hardship for landlords in certain situations. This case presents an ideal example. The house in this case is an older home that was not built as a multiple unit building. Conversion of the heating system (and, probably, the water and electric systems) to permit separate utility meters for the residential tenant and the post office would be economically unreasonable. The utility usage by the one room, part time, post office is obviously minimal compared to the consumption by the five bedroom house. It would do no harm to the public interest to permit the residential tenant in this house to waive §1529.1 as long as the tenant were given full written disclosure of the utility situation before signing a lease which specifically required the residential tenant to pay the entire utility bill. Unfortunately, the law as presently written, permits no waivers of §1529.1. I recommend that the Commission seek an amendment of §1529.1 to allow a tenant to waive the section, in writing, after receiving full written disclosure of the foreign load.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter of, and the parties to, this case under 66 Pa.C.S. Chapter 15.

2. Mr. Angle is the owner of the house at 121-123

Garibaldi Avenue, Rosetta, PA.

3. The house at 121-123 Garibaldi Avenue, Rosetta, PA contains one or more dwelling units not individually metered for gas, electric, and water service.

4. PAWC, PFG, and Met-Ed were required by 66 Pa.C.S. §1529.1 to place their utility services in Mr. Angle's name when they learned that he was the owner of he house at 121-123 Garibaldi Avenue, Rosetta, PA, and that the house contains one or more dwelling units not individually metered for gas, electric, and water service. The record does not establish any violation of the Public Utility Code or the Commission's regulations by any of these utilities in connection with their billing Mr. Angle for these utility services.

5. The record does not establish that Mr. Angle relied on advice from PFG in deciding to turn off, and remove the handles from, the radiators in the house and replace them with electric heaters.

6. As a matter of law, Mr. Angle was not entitled to attempt to shift responsibility for heating the post office back to the residential tenant by converting the post office to electric heat while ignoring his (Mr. Angle's) duty under 66 Pa.C.S. §1529.1(a) to notify Met-Ed of his ownership of the house and the fact that it is used for rental purposes. Accordingly, he is not entitled to avoid the gas bill placed in his name by PFG when PFG learned of his ownership of the building and the existence of the post office load on the residential meter.

Order

THEREFORE, IT IS ORDERED:

That the complaints of Ronald L. Angle against Metropolitan Edison Company at Docket No. C-00956597, against Pennsylvania-American Water Company at Docket No. C-00956598, and against PFG Gas, Inc. at Docket No. C-00956599 are dismissed.

Date: Dec. 19, 1995

Michael C. Schnierle
Michael C. Schnierle
Administrative Law Judge

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

6 -

IN REPLY PLEASE
REFER TO OUR FILE

January 16, 1996

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

Re: Ronald L. Angle v. Metropolitan Edison Company, Docket No. C-00956597; Ronald L. Angle v. Pennsylvania-American Water Company, Docket No. C-00956598; and Ronald L. Angle v. PFG Gas, Inc., Docket No. C-00956599.

Dear Mr. Alford:

Please find enclosed for filing an original and nine copies of the document Exception of the Law Bureau Prosecutory Staff to the December 27, 1996 Initial Decision of Administrative Law Judge Michael C. Schnierle in the above-captioned matter.

Very truly yours,

Patricia Krise Burket

Patricia Krise Burket
Assistant Counsel

Law Bureau Prosecutory Staff

Enclosures

cc: ALJ Michael C. Schnierle
All parties

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RONALD L. ANGLE	:	
v.	:	Docket No. C-00956597
METROPOLITAN EDISON COMPANY	:	
RONALD L. ANGLE	:	
v.	:	Docket No. C-00956598
PENNSYLVANIA-AMERICAN WATER	:	
RONALD L. ANGLE	:	
v.	:	Docket No. C-00956599
PFG GAS, INC.	:	

EXCEPTION OF THE LAW BUREAU PROSECUTORY STAFF
TO THE INITIAL DECISION OF
ADMINISTRATIVE LAW JUDGE
MICHAEL C. SCHNIERLE

Pursuant to 66 Pa. C.S. § 335, the Law Bureau Prosecutory Staff (Prosecutory Staff) hereby files the following exception to the Initial Decision of Administrative Law Judge (ALJ) Michael C. Schnierle, issued December 27, 1995 (Initial Decision):

THE COMMISSION SHOULD RECOMMEND TO THE LEGISLATURE THAT SECTION 1529.1 OF THE PUBLIC UTILITY CODE BE AMENDED TO WAIVE ITS APPLICATION TO SITUATIONS WHERE THE TENANT HAS KNOWINGLY AGREED TO PAY UTILITY BILLS, WHICH WOULD INCLUDE CHARGES FOR FOREIGN LOAD.

In ALJ Michael Schnierle's Initial Decision, the ALJ recommends the amendment of Section 1529.1 (relating to duties of owners of rental property) to allow a tenant to knowingly waive Section 1529.1 so as to permit the tenant to pay the utility bill which would include charges for foreign load. The ALJ wrote:

> In my opinion, §1529.1 is overly restrictive and should be amended. While §1529.1 was a well-intentioned effort to alleviate the problem of landlords who allow their tenants to unknowingly pay for concealed foreign load, it creates undue hardship for landlords in certain situations. This case presents an ideal example. The house in this case is an older home that was not built as a multiple unit building. Conversion of the heating system (and, probably, the water and electric systems) to permit separate utility meters for the residential tenant and the post office would be economically unreasonable. The utility usage by the one room, part time, post office is obviously minimal compared to the consumption by the five bedroom house. It would do no harm to the public interest to permit the residential tenant in this house to pay the entire utility bill. Unfortunately, the law as written, permit no waivers of 1529.1 I recommend that the Commission seek an amendment of §1529.1 to allow a tenant to waive the section, in writing, after receiving full written disclosure of the foreign load.

Initial Decision, p. 13.

The Prosecutory Staff agrees with and wishes to reiterate the ALJ's recommendation. The statute has produced unintended hardships for many landlords, such as the instant Complainant.

The Commission, through the Bureau of Public Liaison, should work with the Legislature to amend Section 1529.1 not only to except from its application situations where the tenant has knowingly agreed to pay for the foreign load recorded by his meter, as in the instant proceeding, but also situations where the foreign load is minimal. Additionally, such amendment should also 1) limit the retroactive effect of the statute and 2) clarify that recoupment of funds paid on the landlord/owner's behalf by the tenant should be pursued in accordance with Section 1529 of the Public Utility Code. This four-part amendment, which is consistent with the purpose of the statute, would not be inimical to, but would further promote the public interest.

SUGGESTED REVISIONS TO 66 PA. C.S. §1529.1
(RELATING TO DUTY OF OWNERS OF RENTAL PROPERTY)

Section 1529.1 of the Public Utility Code revised (additions underlined and annotated):

§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. A dwelling unit which has a utility meter that registers usage that is not exclusive to the dwelling unit shall be considered to be individually metered where the non-exclusive usage is so minimal that it would be unreasonable to install a meter to record the non-exclusive usage in a month's period.[1] In addition, the owner of a residential building or mobile home park containing a dwelling unit which is not individually metered shall be relieved of the obligation of notice and of financial responsibility for the utility account for that unit where it can be established by lease, contract or other arrangement that a person other than the owner of a mobile home park or residential building is the

[1] Revision to eliminate situations where the foreign load registered by an individual dwelling unit's utility meter is de minimis. Inclusion of the subjective standard permits the Commission to adjudicate on an ad hoc basis cases presenting various fact scenarios.

party responsible for paying for utility service for the dwelling unit and that such person has notice that the dwelling unit is not individually metered.[2]

(b) History of the 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 thereunder. Owner financial responsibility will attach from the date that the utility receives actual notice that one or more dwelling units within the residential building or mobile home park are not individually metered[3]. 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 of the utility services to the premises.

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[2] Revision to address situations where the tenant is aware that there is foreign load registered by the utility meter for his individual dwelling unit and has agreed to pay for the foreign load.

[3] Revision eliminates the problem of making the landlord financially liable for the utility account retroactive to the effective date of the Act.

(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.

(d) Recoupment of monies.-A person, other than the owner of a residential building or mobile home park containing one or more dwelling units not individually metered as defined in subsection (a), shall recoup monies paid on a utility account for such a dwelling unit in accordance with Section 1529 of this subchapter.[4]

---

[4] Revision makes it clear that the tenant's remedy for recoupment of monies paid on the owner's behalf is defined at §1529 which permits for rent set-off and direct reimbursement from the landlord. The inclusion of new subsection (d) is expressly to preclude any claim for tenant reimbursement directly from the involved utility.

CERTIFICATE OF SERVICE

I certify that I am on this date serving a copy of the foregoing document on this date on the following persons in the manner described below:

By First Class Mail:

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417 Walnut Street
Harrisburg, PA 17101-1904

Patricia Krise Burket

Patricia Krise Burket
Assistant Counsel

Law Bureau Prosecutory Staff

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: January 16, 1996

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

7—

ISSUED: June 10, 1996

REFER TO OUR FILE
IN REPLY PLEASE
C-00967875

JESSE A DILLON ESQ
PENNSYLVANIA POWER AND LIGHT COMPANY
TWO NORTH NINTH STREET
ALLENTOWN PA 18101-1179

Ray R. Warfel v. Pennsylvania Power & Light Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Wayne L. Weismandel. 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.

Very truly yours,

John G. Alford
Secretary

law
Encls.
Certified Mail
Receipt Requested

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ray R. Warfel	:	
	:	Docket Number
.v.	:	
	:	C-00967875
Pennsylvania Power & Light Company	:	

INITIAL DECISION
GRANTING JUDGMENT ON THE PLEADINGS

Before
Wayne L. Weismandel
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 9, 1996, Ray R. Warfel (complainant) filed a Formal Complaint (Complaint) against Pennsylvania Power & Light Company (respondent) with the Pennsylvania Public Utility Commission (Commission), Docket Number C-00967875.

On April 29, 1996, respondent filed its Answer (Answer) and Motion for Judgment on the Pleadings (Motion).

On May 20, 1996, complainant filed a Reply to Answer and Motion for Judgment on the Pleadings (Reply).

By Hearing Notice dated May 22, 1996, a Prehearing Conference (Telephonic) was scheduled for July 9, 1996, and the case was assigned to me.

This case is procedurally ready for a ruling on respondent's Motion and for the reasons discussed within, I will grant the Motion and dismiss the Complaint.

FINDINGS OF FACT

1. Complainant filed his Complaint against respondent on April 9, 1996, and his Reply on May 20, 1996.

2. Taken together, the Complaint and Reply establish, for purposes of ruling on respondent's Motion, that:

a.) complainant leases premises to Ellen V. Shoff under a lease dated May 1, 1993, which provides, among other things, that, "Tenant will pay all utilities; electricity for one street light will be supplied by tenant. Tenant will supply electricity to the well pump. Tenant will supply electricity to the barn."

b.) Up until January of 1995, the electric service provided by respondent to the leased premises was in an account in the name of the tenant, Ellen Shoff.

c.) In January of 1995, respondent placed the electric service account for the leased premises in complainant's name, with a connect date of December 28, 1994.

d.) Respondent transferred the account name from Ellen Shoff into that of complainant because of respondent's interpretation of the requirements of Act 54 of 1993, specifically, the provisions contained in 66 Pa.C.S. §1529.1.

e.) Respondent has billed complainant $1,163.08 on the transferred account, which amount complainant disputes as being Ellen Shoff's responsibility under the lease dated May 1, 1993.

f.) Both complainant and Ellen Shoff object to respondent's transfer of the electric service account for the premises from the name of Ellen Shoff to complainant.

g.) Complainant contends that the provisions of Act 54 of 1993, upon which respondent relies for transferring the electric service account from Ellen Shoff to complainant, are unconstitutional.

DISCUSSION

Upon the filing and service of complainant's Reply, the pleadings in this case were closed. 52 Pa.Code §§5.1, 5.102(a).[1]

With a scheduled hearing date of July 9, 1996, it is appropriate that respondent's Motion be ruled upon at this time. 52 Pa.Code §5.102(a) (after the pleadings are closed, but within a time so that the hearing is not delayed).

The criteria in ruling on a Motion for Judgment on the Pleadings are familiar. "Judgment on the pleadings is only appropriate where no material facts remain in dispute. (citations omitted) Only where the moving party's right to prevail is so

---

[1] Technically, the pleadings in this case were closed upon the filing of respondent's Answer. Commission regulations make no provision for a responsive pleading to an answer, unless the answer contains a section headed "New Matter" or seeks affirmative relief. 52 Pa.Code §§5.1, 5.62, 5.63. When however, as in this case, respondent files an Answer and Motion in one document, the complainant is permitted to answer the Motion. 52 Pa.Code §5.102(a). Complainant's Reply is not a pleading as defined in 52 Pa.Code §5.1, but is clearly permissible.

clear that a trial would be a fruitless exercise should a judgment on the pleadings be entered. (citations omitted)." Williams v. Lewis, 319 Pa.Super. 552; _____, 466 A.2d 682; 683 (1983). "When ruling on a motion for judgment on the pleadings, the trial court must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts which he specifically admits. (citation omitted) Judgment on the pleadings should be entered only when the case for determination is clear and free from doubt. (citation omitted)." Reuben v. O'Brien, 91 Pa.Commw. 80; _____, 496 A.2d 913; 915 (1985).

The parties to this case agree as to the material facts. Respondent changed the electric service account at the leased premises from the tenant, Ellen Shoff, to the complainant. Neither the tenant nor the complainant want this change. An outstanding balance in excess of One Thousand Dollars now exists in complainant's name. Respondent took this action based upon its interpretation of the requirements of Act 54 of 1993, specifically what is now contained in 66 Pa.C.S. §1529.1. Act 54 of 1993 became effective on September 1, 1993, and is preceded in time by the written lease dated May 1, 1993 between Ellen Shoff and complainant. Complainant believes, and avers, that the statutory provision respondent relies upon is unconstitutional. None of these facts are in dispute.

Complainant may well have a legitimate claim. Both the United States and the Pennsylvania Constitutions contain provisions prohibiting the enactment of laws that impair the obligation of contracts. U.S. Const. Act 1, § 10; Pa. Const. Act 1, § 17. This provision of the Pennsylvania Constitution applies to leases. Cf., DePaul v. Kauffman, 441 Pa. 386, 272 A.2d 500 (1971). In Pennsylvania, leases are recognized as being "in the nature of contracts and are thus controlled by principles of contract law. (citations omitted)." 2401 Pennsylvania Avenue Corp. v. Fed. of Jewish Agencies, 319 Pa.Super. 228; _____, 466 A.2d 132; 136 (1983), aff'd., 507 Pa. 166, 489 A.2d 733 (Case 2) (1985).

Complainant, however, has brought his claim in the wrong forum. It is well-settled law that an administrative agency is without power to determine the constitutionality of its own enabling legislation. Borough of Green Tree v. Bd. of Property Assess., 495 Pa. 268, 328 A.2d 819 (1974), City of Philadelphia v. Kenny, 28 Pa.Commw. 531, 369 A.2d 1343, US cert. den. in 434 US 923, US reh. den. in 434 US 1025, Allegheny Ludlum Steel v. PA Public Utility Comm'n, 67 Pa.Commw. 400, 447 A.2d 675 (1982), aff'd., 501 Pa. 71, 459 A.2d 1218 (1983), Schneider v. PA Public Utility Comm'n, 83 Pa.Commw. 306, 479 A.2d 10 (1984).

The provisions upon which respondent relies for authority (in fact, compulsion) for its actions, and which complainant assails as unconstitutional, are contained in 66 Pa.C.S. §1529.1, a section of the Public Utility Code, 66 Pa.C.S. §101 et seq. The

Public Utility Code is the enabling legislation of the Commission. Consequently, the Commission is without the power to determine the constitutionality of what both parties agree is the Section that controls this case. Lacking this power, a hearing based solely on complainant's claim of 66 Pa.C.S. §1529.1's unconstitutionality would truly be a "fruitless exercise."

The Commission can neither uphold nor deny complainant's sole claim -- that a Section of the Commission's own enabling legislation is unconstitutional. For that reason, respondent's Motion must be granted and complainant referred to an appropriate forum in which to pursue the merits of his case.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties in this case.

2. The Commission does not have jurisdiction over the subject matter in this case.

3. Judgment on the pleadings should only be granted where no material facts are in dispute, when the case is clear and free from doubt, and when a trial [hearing] would be a fruitless exercise.

4. As an administrative agency, the Commission is without power to determine the constitutionality of its own enabling legislation.

5. The sole issue raised by the Complaint in this case is the constitutionality of Section 1529.1 of the Public Utility Code, the Commission's enabling legislation.

6. In Pennsylvania, a lease is recognized as being in the nature of a contract.

7. Both Article 1, Section 10 of the United States Constitution and Article 1, Section 17 of the Pennsylvania Constitution prohibit the enactment of a law impairing the obligation of contracts.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed April 9, 1996, by Ray R. Warfel against Pennsylvania Power & Light Company with the Pennsylvania Public Utility Commission, Docket Number C-00967875, is dismissed for lack of subject matter jurisdiction.

2. That the Prehearing Conference (Telephonic) scheduled for July 9, 1996, is cancelled.

3. That the record at Docket Number C-00967875 be marked closed.

JUNE 3, 1996
Date

Wayne T. Weismandel
WAYNE L. WEISMANDEL
Administrative Law Judge

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C

PP&L 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

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June 28, 1996

OVERNIGHT MAIL

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

Ray R. Warfel v.
Pennsylvania Power & Light Company
Docket No. C-00967875

Dear Secretary Alford:

Enclosed for filing are an original and nine copies of "Exceptions of Pennsylvania Power & Light Company To Initial Decision" in the above matter.

This filing should be date stamped as filed on June 28, 1996, pursuant to the attached overnight mail deposit receipt.

Respectfully submitted,

Jesse A Dillon
acf

Jesse A. Dillon

Enclosures

cc: Certificate of Service

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RAY R. WARFEL	:	
	:	
v.	:	DOCKET NO. C-00967875
	:	
PENNSYLVANIA POWER & LIGHT COMPANY	:	

EXCEPTION OF PENNSYLVANIA POWER & LIGHT COMPANY

Jesse A. Dillon
Pennsylvania Power & Light Company
Two North Ninth Street
Allentown, Pennsylvania 18101
(610) 774-5013

Dated: June 28, 1996

I. EXCEPTION

1. While PP&L does not except to Administrative Law Judge Wayne L. Weismandel's dismissal of this case, Pennsylvania Power & Light Company (PP&L) excepts to the ALJ's statement that Complainant "may well have a legitimate claim" that Act 54 of 1993 violates the provisions of the United States and Pennsylvania Constitutions prohibiting the enactment of laws that impair the obligations of contracts. I.D. at pp. 4-5.

II. ARGUMENT

A. Despite the ALJ's Dismissal of the Complaint, PP&L Must File This Exception to Protect its Rights on Appeal

Obviously, PP&L does not disagree with the result in this case. PP&L itself sought a dismissal on other grounds through its motion for judgment on the pleadings. However, in dismissing the case, the ALJ found two things. First, the ALJ found that the Complainant may have a legitimate constitutional claim. I.D. at p. 5. Second, the ALJ found that the PUC is without the power to determine the constitutionality of its own enabling legislation. I.D. at pp. 5-6.

PP&L must except to the ALJ's finding on the possible unconstitutional nature of Act 54 of 1993 in the event that the Complainant files exceptions or the PUC takes the case on its own motion. In such event, the PUC could theoretically disagree with the ALJ's finding regarding its ability to decide the constitutional issue. Should the Commission decide that it has the power to decide the question and that as a legal matter there are no facts in dispute, the PUC could decide that Act 54 is

unconstitutional. In such event, PP&L's ability to appeal such ruling could be adversely affected by its failure to have excepted to the ALJ's finding in the first place. Moreover, given the PUC's previous consideration of the question of the constitutionality of Act 54 of 1993, concern that the PUC may decide to consider the constitutional question is genuine. See R&B Reddy Inc. v. Peoples Natural Gas Co., Docket No. C-00946080 (May 25, 1995).

B. The Complainant Does Not Have a Legitimate Claim That Act 54 of 1993 Violates the Constitutional Prohibitions Against Impairing Obligations of Contracts

On the ALJ's finding regarding the Commission's jurisdiction, power and authority to consider the constitutionality of its enabling legislation, PP&L expressly takes no position whatsoever and files no exception. Regarding the possible unconstitutionality of Act 54 of 1993, PP&L previously has researched and briefed the issue of the constitutionality of Act 54 of 1993 as it relates to the Contract Clauses of the Constitution of the United States and Pennsylvania. As a result, PP&L explained that Section 1529.1 of the Public Utility Code, which was enacted by Act 54 of 1993, is constitutional for several reasons, which can be summarized as follows:

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 of substantive rights.

3. At the times of renewal, 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 obligation.

PP&L's Brief in the Stoltzfus case is attached hereto as Appendix "A" and incorporated herein by reference.

Moreover, on grounds other than those explained above and in PP&L's Brief in the Stoltzfus case, the full PUC already has determined that Section 1529.1 is constitutional and does not impermissibly interfere with or impair constitutional prohibitions against impairment of the obligations of contracts. R&B Reddy Inc. v. Peoples Natural Gas Co., Docket No. C-00946080 (May 25, 1995), pp. 13-17.

III. CONCLUSION

For all foregoing reasons, PP&L respectfully excepts to the Initial Decision of Administrative Law Judge Wayne L. Weismandel, but concurs with the dismissal of the complaint.

Respectfully submitted,

PENNSYLVANIA POWER & LIGHT COMPANY

By:

Jesse A. Dillon
Its Attorney

Dated: June 25, 1996
at Allentown, Pennsylvania

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
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Harrisburg, PA 17105

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Loan Phan
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Allentown, PA 18103

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

Dated this 30th day of September, 1996.

Jesse A. Dillon

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JANET E. ARNOLD

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

JLS

September 30, 1996

VIA UPS OVERNIGHT

Mr. John G. Alford, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17105-3265

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 Brief 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/wfc

Enclosures

cc: As per Certificate of Service

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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 Brief 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:

Elizabeth Santos
212 South 9th Street
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(VIA FIRST CLASS MAIL)

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Attorneys for
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

BRIEF OF METROPOLITAN EDISON COMPANY

Janet E. Arnold
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Reading, Pennsylvania 19610-0219

Attorneys for
Metropolitan Edison Company

Dated: September 30, 1996

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I. 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. 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. 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.

On May 11, 1995, Ms. Santos filed an Informal Complaint with the Commission's Bureau of Consumer Services ("BCS") at Docket 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.

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 decision of the BCS. Filed contemporaneously with the formal Complaint was a Motion to Join Indispensable Parties, in which Met-Ed sought to join Loan Phan and Cesar S. Pomales in the action.

On March 18, 1996 the Administrative Law Judge 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.

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

Met-Ed presented the testimony of one witness at the hearing resulting in thirty-six pages of transcribed testimony and the admission of six Exhibits.

II. SUMMARY OF ARGUMENT

The BCS Order in this case required Met-Ed to transfer the entire outstanding balance on Ms. Santos' account into the name of her landlord, the owner of the building. The action required by the BCS is contrary to the express terms of §1529.1 of the Public Utility Code in several respects. First, the BCS decision is contrary to the plain language of §1529.1, which imposes clearly articulated duties upon public utilities, requiring that utility accounts with foreign load be placed in the name of the building owner once the building owner receives notice that a building is not individually metered. The statute is completely silent on issues related to payments or outstanding balances prior to the date on which a utility receives notice that a building is not individually metered. Consequently, the BCS Order imposes duties upon Met-Ed that appear nowhere in the statute.

The BCS interpretation also renders the duties established in Code §1529.1 completely ineffective. The rules of statutory construction mandate that statutes must be construed to give effect to all provisions, where possible. The interpretation advanced by the BCS in its Order renders the duties established by §1529.1 completely ineffective, and is hence completely contrary to the mandates of the rules of statutory construction.

Finally, the BCS interpretation in this case impermissibly adds requirements to §1529.1 of the Code. The BCS has ordered Met-Ed to transfer Elizabeth Santos' outstanding balance into the name of her landlord, yet the statute contains no such requirement. The duties imposed by the BCS in its Order have the potential to work a substantial financial hardship if applied to the numerous landlord/tenant cases currently pending before the Commission. The BCS interpretation would mandate that utilities must refund monies already paid retroactively or transfer outstanding balances into the name of the building owner. Such an approach requires utilities to engage in costly revenue

collection procedures against individuals with whom the utility may have no contractual privity. Ultimately, this approach will impose substantial financial burdens on utilities accross the state. Although on a case-by-case basis, the financial burden imposed upon a utility does not appear significant, in the aggregate such a burden could be substantial. Imposing such a financial burden on public utilities, particularly where no such burden is mandated anywhere in the Public Utility Code, is unlawful and contrary to the public interest. Therefore, the BCS Order should be reversed.

III. ARGUMENT

A. THE REQUIREMENTS AND REMEDY OF ACT 54

Section 1529.1 of the Public Utility Code, 66 Pa.C.S. §1529.1, also known as "Act 54", reads 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.

This statutory section, which became effective on September 1, 1993, has three distinct parts. Sections (a) and (c) impose duties upon owners of residential buildings containing

one or more dwelling units that are not "indvidually metered" to notify public utilities that the building is used for rental purposes. The term "individually metered" has been interpreted by this Commission and the Courts of Common Pleas to mean situations where a tenant is paying for electric service that the tenant does not use. For example, master-metered buildings with one meter recording electric usage for more than one apartment, as well as apartments with foreign load, have both been held to be not "individually metered". 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) imposes a duty upon public utilities, as well as imposing additional duties upon building owners, mandating 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 clear language, the section imposes a duty upon public utilities to list a tenant's account in the name of the building owner upon receipt of notice that a dwelling unit is not individually metered. This action must be taken by a public 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 building owner will 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. The owner becomes responsible for the payment for utility services when the utility places the account in the owner's name.

Nothing in §1529.1 indicates that the landlord must be responsible for utility charges prior to the day the utility discovers a foreign load condition. Indeed, §1529.1 is completely silent on that issue. Section 1529.1 only imposes the duty to pay for utility service on the landlord after a utility discovers that a building is not individually metered.

Section 1529 of the Public Utility Code provides a remedy for tenants to recover payments from landlords. That section provides that "any tenant who has made a payment to a utility on account on non-payment of charges by the landlord ratepayer pursuant to the 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 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. Hence, where a tenant has paid for utility service that was properly the responsibility of the owner, the Public Utility Code expressly provides aggrieved tenants with a remedy.

1. *The BCS Interpretations of Act 54*

Both the BCS and this Commission have struggled with the interpretation and application of Act 54. In January 1994, the BCS issued a policy letter in response to questions from

the Pennsylvania Electric Association ("PEA") providing answers to several questions that PEA member companies had submitted regarding the requirements of Act 54. Met-Ed Exhibit 3, N.T.14. In this letter, the BCS directed utilities to "correct the billing" back to September 1, 1993, the effective date of Act 54. In effect, this BCS letter directed utilities to backbill the landlord for utility service to September 1, 1993.

In 1995, the BCS interpretation of §1529.1 changed. 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. 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, the effective date of the listing should be the date on which the utility received notice on the non-individually metered situation. 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.

2. ***The Commission Decisions Interpreting Act 54***

The Commission has also struggled with the interpretation and implementation of Act 54. The Commission first addressed the requirements of Act 54 in David P. Boyce v. Duquesne

Light Co, (Docket Z-00223698, Order Entered September 1, 1994), providing the basic interpretation of §1529.1:

> 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. . . . It is clear that under §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. Boyce at p.p. 4-5.

Subsequently, in R&B Reddy, Inc. v. Peoples Natural Gas Co, (Docket Number C-00946080, Order Entered May 26, 1995) and Sarah Divilly v. Duquesne Light Co, (Docket Number C-00946235, Order Entered May 26, 1995), the Commission addressed the details of implementing §1529.1. Both cases involved tenants with foreign load on their meters, i.e. their buildings were not "individually metered". In R&B Reddy, Peoples Natural Gas placed the accounts of two tenants in the name of the owner of the building upon discovering foreign load. Peoples also refunded monies to the tenants that they had paid for gas service, subsequently billing the building owner retroactively for those amounts. The building owner challenged the action taken by Peoples Natural Gas.

The issue before the Commission was whether Peoples Natural Gas acted improperly in refunding money to the tenants back to September 1, 1993. In the Initial Decision, the Administrative Law Judge ruled, without explanation, that Peoples "had to refund the monies it collected" from the tenants. R&B Reddy, Initial Decision at p. 12.

The Commission's Law Bureau, filed Exceptions to the Initial Decision at p. 12 of the Administrative Law Judge's Initial Decision, arguing that People's refund of the monies it had collected from the tenants was improper.

The Commission evaluated the language of Act 54 and ruled that Peoples' actions were not improper. R&B Reddy Opinion and Order at p. 18. Notably, the Commission did not side with the Administrative Law Judge in ruling that Peoples was required to refund the tenants' money. Instead, the Commission merely ruled that Peoples' actions were not improper and hence did not violate the terms of the Public Utility Code. Id. Moreover, the Commission observed that Peoples had other alternatives available rather than refunding the money to the tenants. Id. at p.18. Indeed, the Commission recognized that § 1529 provides tenants with a remedy. Id. at p.16.

Commissioner Hanger, in his statement issued at the Commission's public meeting of May 25, 1995, elaborated on the Commission's ruling in R&B Reddy. Commissioner Hanger stated that "refunds by the utility of payments previously made by the tenant followed by collection action against the landlord to collect the same amounts may be burdensome for the utility and is not the stated remedy under the Act". Furthermore, Commissioner Hanger went on to conclude that "utilities are obligated to begin correct landlord billing upon notice that the Act is applicable. . . .Once an account is properly placed in a landlord's name, it is appropriately the tenant's responsibility to collect any back amounts which may be due from the landlord. Utilities may take on the burden of helping to straighten out these affairs, but nothing in the act requires such action." Consistent with the Commission's ruling in R&B Reddy, Commissioner Hanger recognized that refunds are not precluded by Act 54, nor are they mandated.

In Divilly, supra, decided by the Commission on the same day as R&B Reddy, the Complainant was the owner of a building with two residential apartments. One meter recorded electric usage for both apartments. When Duquesne Light Company was notified by one of the tenants that both apartments were on one meter, it immediately placed the account in the building

owner's name, and refunded to the tenant who had paid the bill all of the monies he had paid to Duquesne from the effective date of the Act.

The Administrative Law Judge ruled that the landlord's responsibility for electric service commenced on September 1, 1993, the effective date of the Act. Divilly, Initial Decision at p. 9. The Administrative Law Judge did not address the propriety of Duquesne's returning to the tenant the monies he had paid to Duquesne.

The Law Bureau filed Exceptions to the Administrative Law Judge's Initial Decision, arguing that Duquesne was not authorized to refund the tenant's money. Instead, the Law Bureau argued that the exclusive statutory remedy available to tenant is the remedy provided for in §1529.

Consistent with its ruling in R&B Reddy, the Commission in Divilly held that §1529 was not an exclusive remedy for tenants, and thus Duquesne did not act improperly in refunding the tenant's money. However, the Commission made it clear that §1529 is available as a remedy for tenants. Divilly, Opinion and Order at p. 12.

The Commission's rulings in R&B Reddy and Divilly establish that refunding monies collected from tenants is not required by Act 54. Indeed, as Commissioner Hanger noted in his statement in R&B Reddy, "It is appropriately the tenant's responsibility to collect any back amounts which may be due from the landlord. Utilities may take on the burden of helping to straighten out these affairs, but nothing in the Act requires such action." R&B Reddy, Statement of Commissioner Hanger at p. 3.

B. THE BCS ORDER, REQUIRING MET-ED TO TRANSFER THE TENANT'S OUTSTANDING BALANCE INTO THE BUILDING OWNER'S NAME, IS CONTRARY TO THE REQUIREMENTS OF ACT 54

1. *The BCS Decision is Contrary to the Plain Language of §1529.1 (b)*

Section 1529.1(b) states as follows:

> 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 of the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment of the utility services rendered thereunder. 56 Pa. C.S. §1529.1(b).

The duties imposed upon public utilities by this section are clearly articulated. First, the section provides that a public utility list the account for a building not individually metered, in the name of the owner "upon receipt" of notice that the residential building is not individually metered. The use of the prepositional phrase "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 a "the state of being received". Random House College Dictionary (1973). Therefore, the plain language of this section requires 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 an affected public utility has obtained the required notice and is aware that a building is not individually metered, §1529.1(b) requires that the utility shall "forthwith" list the account for the premises in question in the name of the owner. 66 Pa. C.S. §1529.1(b). This language clearly indicates that the affected public utility must put the account in the name of the owner of the

building immediately. The statute then requires that "the owner shall thereafter be responsible for the payment for the utility services" rendered to the building. Id.

The plain language of this section thus requires that an affected public utility immediately list the account for the premises in question in the name of the owner once it actually becomes aware that the building is not individually metered. From that point forward, the owner of the building is responsible for the payment for utility services.

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 plain language of the statute imposes a duty upon public utilities to list the account in the name of the building owner when the utility actually becomes aware that the building is not individually metered. The landlord is responsible for the payment of utility services from that point on. The statute does not impose any duty upon utilities to refund monies paid by tenants or transfer outstanding balances. Indeed, §1529.1(b) is completely silent on that issue. Rather, the statute only addresses the account from the date the utility receives notice forward.

The BCS Order in this case, requiring Met-Ed to "transfer the entire balance that accumulated from the time Ms. Santos became the customer of record to the time the foreign load was detected to the landlord's account" is contrary to the plain language of the statute. The statute does not impose a duty upon utilities to refund monies already paid it prior to the time the utility discovered a foreign load condition, nor does it require the transfer of a tenant's outstanding balance to the owner's name. Indeed, the statute imposes a duty upon utilities beginning at the point where

the utility actually discovers the foreign load condition. The statute does not require that utilities refund monies paid prior to the discovery of a foreign load condition. Consequently, the BCS Order requiring Met-Ed to transfer Ms. Santos' entire accumulated balance from the time she became a customer of record to the time the foreign load was detected to the landlord's account imposes a duty upon Metropolitan Edison Company that is not imposed by Act 54. The BCS Order is contrary to the plain language of Act 54 and must be reversed.

2. ***The BCS Order Renders the Duties Established by §1529.1 (b) Superfluous and Ineffective***

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 discussed above, §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.

Act 54 does not create any duty upon a public utility to refund to tenants monies already paid, or transfer an existing balance to a building owner, upon receipt of notice that a building is not individually metered. No language to that effect is present in the statute. Indeed, interpreting Act 54 as imposing such a requirement actually vitiates the clear language of §1529.1(b). The imposition of 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 refund monies already paid or 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 actually notice that the building is not individually metered is redundant. If the owner is responsible for utility changes, there is simply no need to impose a duty upon a utility beginning when the utility receives notice that a building is not individually metered. Indeed, the BCS' 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 clear 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 BCS Decision Impermissibly Adds Provisions to Act 54*

By ordering Met-Ed to transfer the entire balance that had accumulated from the time Ms. Santos became the customer of record to the time the foreign load was detected to the landlord's account, the BCS ordered Met-Ed to take action that was not compelled by the statute. Neither Act 54 nor any other provisions of the Public Utility Code 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.

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. (the "Code"), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. Brockway Glass at 514. Act 54 imposes upon both building owners and utilities certain mandatory duties and requirements. Nowhere in Act 54, nor anywhere in the Code, is there a provision allowing the Commission to order a utility to essentially refund funds already paid for services rendered to a tenant, or to pursue collection for those amounts from the landlord. 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 landlord and bill the landlord thereafter. No provision for retroactive billing or collection exists.

By ordering Met-Ed to transfer Ms. Santos' entire outstanding balance into the name of the owner of her building, the BCS 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 refund tenants' money, that duty would have been clearly imposed 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 refund monies to a tenant and retroactively bill the landlord. By ordering such action, the BCS has gone beyond the language of the statute, essentially filling in a requirement which the Legislature did not see fit to include. The BCS has therefore exceeded its powers given it by the Legislature.

4. ***The BCS Interpretation of Act 54 Can Have Unreasonable Consequences***

Section 1529.1(a) places a duty on every residential building owner, where the dwelling units are not individually metered, to notify public utilities of the fact that the building is used for rental purposes. No definitive time-frame for the provision of such notice is included in the statute. Indeed, Act 54 is silent on that issue.

In its Order in this case, the BCS apparently interprets § 1529.1(a) to impose the duty to provide the mandated notice and take responsibility for utility accounts prior to the date on which a utility receives notice that the building is not individually metered.

The rules of statutory construction provide that the statute may be interpreted by considering, among other things, the consequences of a particular interpretation. 1 Pa. C.S .§1921(c). Sculley

v. City of Philadelphia, 112 A.2d 321, 381 Pa. 1 (1955); Williams v. State Farm Mutual Insurance Co., 763 F. Supp. 121 (E.D. Pa. 1991); Lehigh Valley Coop Farmers v. Commonwealth, 447 A.2d 498, 498 Pa. 521 (1992). It is to be presumed that the Legislature does not intend a result that is absurd or unreasonable. 1 Pa. C.S. §1922. Moreover, it must be presumed that the statute was intended to have the most reasonable and beneficial operation that its language permits. Ottazi v. Timothy Burke Stripping Co., 14 A.2d 188, 140 Pa. Super. 389 (1940).

The BCS interpretation of Act 54 as reflected in its Order in this case can have far-reaching unreasonable consequences. The BCS interpretation has the potential to place an undue burden upon both utilities and building owners by absolving tenants from any responsibility for paying for utility service. In this case, the BCS Order transfers Ms. Santos' outstanding balance to the building owner's account. Hence, Ms. Santos is absolved from any responsibility for paying for utility service. The burden is now placed on the owner of her building, retroactive to the date Ms. Santos became a tenant.

In this case, the balance transfer was only $348.55. However, the broader implications of the BCS Order are profoundly negative. Individual building owners may be held to be responsible for much larger utility account balances which they may be unable to pay. In addition, utilities facing a large number of these cases will be forced to either refund monies already paid by tenants or transfer outstanding balances to building owners who may not have either the ability or the willingness to pay, leaving the utility with substantial amounts in uncollectible debt. Placing such burdens on utilities and building owners is unreasonable and unlawful, since Act 54 contains no such requirement.

In this case, the BCS ordered only that Ms. Santos' balance be transferred into the owner's name. However, the BCS could easily order refunds or balance transfers retroactive to the

effective date of the Act, i.e. September 1, 1993. Indeed, the BCS has done so in numerous Act 54 cases. Such an interpretation certainly has the ability to unreasonably burden both building owners and utilities. In 1994, when the Act was relatively new, a retroactive interpretation might not have worked a hardship on utilities or building owners because the amount of money paid by tenants to the utility to be refunded was relatively minimal. However, as time advances from the effective date of the Act, the interpretation which requires that the building owner be responsible for the account from September 1, 1993 means that utilities must bear the burden of refunding years of monies to tenants, with no guarantee that they can recover those funds from landlords. Indeed, no collection mechanism to recover funds to landlords is provided by Act 54, or anywhere else in the Public Utility Code. Collection actions must therefore be pursued in the Courts of Common Pleas, with all inherent associated costs. On a case-by- case basis, such an approach would undoubtedly prove to be extremely costly, with counsel fees exceeding the amounts recovered. Ultimately, the result would be thousands of dollars in lost utility revenues.

Act 54 does not mandate, or even suggest, that a utility must bear the burden of refunding money to tenants, pursuing collection from building owners and potentially writing-off accounts as uncollectible. Indeed, the duties established in Act 54 operate such that a utility is not required to bear that burden. Section 1529.1(b) states that upon receipt of the notice required by §1529.1(a), 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. 66 Pa. C.S. §1529.1(b). This section is prospective in nature, providing for no interruption in payment for utility services. The responsibility for payment merely changes hands upon receipt of the requisite notice.

Finally, BCS interpretation may require that a utility retroactively bill a landlord that is not that utility's customer. As a consequence, the utility must seek to retroactively bill an individual with whom it has no contractual privity. Pursuing collection activities under such circumstances will be difficult, if not impossible, and places an additional burden on the utility - a burden not provided for under the terms of Act 54. Act 54 does not provide that such a burden be imposed upon utilities, and the imposition of such a burden reaches beyond the terms of the statute to impose an unreasonable burden.

Under the requirements of the rules of statutory construction, Act 54 must be interpreted consistent with its plain language, thus avoiding absurd and unreasonable results.

C. THE BCS ORDER IN THIS CASE IS CONTRARY TO PRIOR BCS POLICIES AND COMMISSION DECISIONS

In this case, the BCS ordered Met-Ed to transfer the entire outstanding balance of Elizabeth Santos' account into the name of the owner of the building. This Order is contrary both to the BCS' prior policy statements, as well as to established Commission decisions.

Since 1995, the BCS has interpreted §1529.1(b) to mandate that utilities must place an account in a building owner's name upon receipt of notice that the building is not individually metered. Under this interpretation, tenants are not entitled to refunds or credits from the company, but must pursue the remedy provided for in Code §1529 if they feel they have been wronged. Met-Ed Exhibit 1, 4. In order to make public utilities aware of this interpretation, the BCS issued two recent statements setting forth its position: one on March 7, 1995, and a second on March 4, 1996. Both policy statements are consistent with the plain language of Act 54.

In addition, the Commission has held that utilities are not required to refund monies collected from tenants under the terms of Act 54. In considering cases where utilities have chosen to refund monies paid by tenants, the Commission has specifically held that such actions are not improper, and did not constitute unreasonable service under the Public Utility Code. However, none of the Commission's decisions to date have held that refunds to tenants are mandatory.

In ordering Met-Ed to transfer Ms. Santos' outstanding balance to the name of her landlord, the BCS is acting contrary to both Commission decisions and its own policy statements. The Commission has ruled that, if a utility chooses to refund money to a tenant, such is not impermissible. However, the Commission has never stated that refunds can be ordered. Indeed, such an order would be directly contrary to the stated requirements of Act 54. Therefore, the BCS Order in this case must be rejected.

D. THE BCS ORDER IS ARBITRARY AND CAPRICIOUS

The BCS Order in this case requires Met-Ed to "transfer the entire balance that accumulated from the time Ms. Santos became the customer of record to the time the foreign load was detected to the landlord's account". (Emphasis Added). Met-Ed Exhibit 2. In its Order, the BCS reaches back to January 10, 1995, the day Ms. Santos became the customer of record. Met-Ed Exhibit 5.

In ordering Met-Ed to retroactively a balance that began to accrue in January 1995, the BCS has acted arbitrarily. Absolutely nothing in the language of Act 54 provides that a utility must refund monies paid or transfer outstanding balances retroactive to the time that a particular tenant became the customer of record. Act 54 provides no definitive time frame for the provision of the building owner's notice provided for in §1529.1(a), and §1529.1(b) is completely silent as to a

building owner's responsibility prior to the time that a utility receives notice that a building is not individually metered. Hence, Act 54 contains no parameters for retroactive billing.

With no direction or provision for retroactive billing provided for in Act 54, the BCS nevertheless chooses to reach backwards in time to the date when Ms. Santos became the customer of record, and orders that the owner of the building be responsible for utility service from that day forward. Selection of that date, with no provision for such action in the statute, was arbitrary and capricious, and completely contrary to the language in Act 54. As a result, the BCS Order must be rejected.

E. THE PUBLIC UTILITY CODE EXPRESSLY PROVIDES A REMEDY FOR TENANTS TO RECOVER MONIES PAID TO UTILITIES

Contrary to the Order of the BCS in this case, no direction is provided in Act 54 as to the recoupment of monies previously paid by the tenant for utility services. There is simply no authority for the Commission to order a utility to issue a refund, or transfer an outstanding balance.

Indeed, no refunds are necessary, since the Public Utility Code provides an express remedy for aggrieved tenants. Section 1529 of the Code, 66 Pa. C.S. §1529, provides that a tenant who has made payments to utilities on account of nonpayment of charges by a landlord may subsequently recover the amounts paid by deducting them from rent. Thus, the Public Utility Code provides an express remedy for tenants who may have been aggrieved by paying for utility service they themselves did not utilize.

This Commission, in Divilly and R&B Reddy, acknowledged that §1529 is a remedy that is available to tenants in situations where Act 54 applies. Of course, §1529 is not the exclusive remedy for tenants, as there are many others available under statutory and common law.

Where a clear and adequate remedy is provided for in a statute, it is beyond the jurisdiction of a court or an administrative agency to create another remedy under the guise of statutory interpretation. As with statutory provisions, neither courts nor administrative agencies may add remedies to a statute by interpretation which the Legislature did not see fit to include. Altieri v. Allentown Officers and Employment Retirement Board, 81 A.2d 884, 368 Pa. 176 (1951); Commonwealth v. Reich Corp., 213 A.2d 277, 419 Pa. 52 (1965); Latella v. Unemployment Compensation Board, 459 A.2d 464, 74 Pa. Commw. 14 (1983).

By requiring Met-Ed to transfer the balance of Ms. Santos' account to the building owner, the BCS has effectively created a remedy which appears nowhere in the statute. Having done so, the BCS has acted beyond the scope of its powers and contrary to established law.

IV. CONCLUSION

The BCS Order in this case requires Met-Ed to take action that is contrary to the express terms of Act 54 in several respects. First, the BCS Order imposes a duty upon Met-Ed that appears nowhere in the text of Act 54. The BCS ruling, if followed in subsequent cases, could lead to absurd and damaging results, forcing utilities to refund monies already paid and pursue collection activities against parties with whom they have no contractual privity and no statutory collection authority against. Indeed, such an interpretation would work a substantial hardship upon public utilities.

Second, the BCS Order in this case is directly contrary to the plain language of §1529.1(b), which clearly and unambiguously sets forth a public utility's duties where a building is used for residential purposes and not individually metered. The BCS Order is not only contrary to the plain language of Act 54, but would essentially vitiate the duties established under Act 54. Pursuant to the long-established rules of statutory construction, such an interpretation is patently impermissible.

Finally, the BCS interpretation of Act 54 in this case has the potential to work substantial financial hardship on public utilities. Essentially, the BCS is mandating that utilities must refund monies to tenants retroactive to the effective date of the Act. Where a tenant has an outstanding balance, the balance must be transferred into the owner's name. The danger of this interpretation is clear: it would undoubtedly result in public utilities bearing a substantial financial burden, where Act 54 accounts simply become written off as uncollectible. Of course, the countervailing issue of fairness to tenants might suggest that the BCS approach is more equitable, as

it lifts financial burdens from tenants who may not be in the best position to bargain with their building owners over utility service. Unfortunately, Act 54 simply does not address this issue. Act 54 clearly articulates the duties to be imposed upon building owners and utilities, yet is silent on other, critical issues. The Commission cannot, under the guise of interpreting the statute, impose duties upon utilities that do not appear within the four corners of the statute. To the extent that the plain language of the statute results in inequitable treatment of tenants, that issue can only be addressed 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 service to its customers. Placing unnecessary financial burdens upon public utilities can only hamper their ability to continue to provide quality service to their customers. Such a result is contrary to the public interest and should not be sanctioned.

Wherefore, Metropolitan Edison Company respectfully requests that the Order of the Bureau of Consumer Services, BCS Number 0274904 (dated December 22, 1995) be rejected and the Complaint of Metropolitan Edison Company be sustained.

Respectfully submitted,

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Attorneys for Metropolitan Edison Company

September 30, 1996

APPENDIX

UNPUBLISHED CASES

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, Pa. 17105-3265

Public Meeting held June 30, 1994

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
John M. Quain
Lisa Crutchfield
John Hanger

David P. Boyce

Z-00223698

v.

Duquesne Light Company

OPINION AND ORDER

History of the Proceeding

On November 29, 1993, David P. Boyce ("Complainant") filed a Formal Complaint against Duquesne Light Company ("Respondent") stating that for three (3) years, the apartment above his has been responsible for high summer electric bills due to the air conditioner in the apartment building that he resides in being connected to his (the Complainant's) electric meter.

The Respondent filed a timely Answer and a Motion to Dismiss for failure to join an indispensable party, the Complainant's landlord. The Administrative Law Judge ("ALJ") deferred ruling on the Motion to the Initial Decision.

On February 7, 1994, an initial hearing was held in Pittsburgh and, on March 22, 1994, ALJ Michael A. Nemec issued an Initial Decision sustaining the Complaint in part and setting a payment schedule with any Exceptions thereto due on or before April 11, 1994.

On April 13, 1994, the Complainant filed Exceptions to the Initial Decision and on April 22, 1994, a Secretarial Letter was sent to the Complainant informing him that the Exceptions were late filed and would not be considered.

On May 16, 1994, the Complainant filed a document entitled "Response To: Administrative Law Judge 'Exception' Decision", the gist of which is to request that his late filed Exceptions be considered by the Commission.

No Reply Exceptions have been filed.

Discussion

Based on the record in this proceeding, the ALJ made the following Findings of Fact:[1]

1. Complainant David P. Boyce resides at 5608 Ellsworth Avenue, Apartment 7, Pittsburgh, PA 15232, where he receives electric utility service from Duquesne Light Company.

2. Mr. Boyce has resided in the same apartment since December 31, 1990.

3. Three apartments, including that rented to Mr. Boyce, are served by the same air conditioning unit.

4. The electrical service for the compressor for the air conditioning unit is connected to the meter that registers electric service to Mr. Boyce's apartment.

5. The thermostat for controlling the air conditioner is located in an apartment other than the one rented by Mr. Boyce.

6. Mr. Boyce has been unsuccessful in obtaining the cooperation of other tenants in paying in full their respective shares of the electric bill.

---

[1]Record references are omitted for clarity.

7. Mr. Boyce has also been unsuccessful in obtaining the cooperation of his landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, in either helping with the electric bill or in rewiring the electrical system to take the compressor off his meter.

8. Mr. Boyce's sole source of income is Supplemental Security Income in the amount of $612 per month. He also receives food stamps in a value of about $63.

9. Mr. Boyce's monthly expenses include rent of $350 (which includes heat); telephone of about $20; cable TV of about $30; a monthly bus pass of $40; food expense is covered by food stamps.

10. Mr. Boyce is a full-time student at the University of Pittsburgh where he has a double major in media communications and political science; he is required by his classes to have access to both a telephone and cable tv.

11. As of the hearing, the balance on Mr. Boyce's account for electric service was $556.98. His budget amount was $74 per month and Duquesne was willing to accept a payment plan of the budget plus $5 per month on the arrearage.

12. Duquesne's account records confirm Mr. Boyce's testimony regarding high cooling season bills.

Based on the foregoing, the ALJ sustained the Complaint in part in recommending a payment schedule. The ALJ also notes the potential financial responsibility of the owner of the building in which the Complainant resides.

In the Initial Decision, the ALJ questions the Complainant's efforts which are directed at the Respondent to resolve the problems the Complainant is experiencing. The ALJ observed that the Respondent does not own the building, did not create the problems inherent with serving three apartments by one air conditioning unit, and has no authority under our regulations or the Public Utility Code to rewire a privately owned building. The

ALJ also briefly discusses the issue of the potential financial responsibility of the owner of the Complainant's building as it arises as a result of amendments to the Public Utility Code by Act 54 of 1993, which became effective August 31, 1993, and whether the owner should be joined as an indispensable party to the proceeding. However, the ALJ concluded that the issues raised by the Complainant against the Respondent could be resolved without the presence of the property owner.

Section 1529.1 of the Public Utility Code as amended by Act 54, 66 Pa. C.S.A. §1529.1 states 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.

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.

In our opinion, it is clear that the record before us is adequate to determine that foreign load exists as a matter of fact and that the utility service should be placed in the landlord's name as a matter of law. However, it is also clear that the record does not adequately indicate what portion of the arrearage, if any, is the responsibility of the Complainant. Accordingly, we will remand this proceeding to the Office of Administrative Law Judge solely for a determination of the responsibility for the arrearages, if any; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of the Administrative Law Judge in the above captioned proceeding be, and is hereby, remanded to

the Office of Administrative Law Judge for consideration of the issues as discussed in the body of this Opinion and Order and the issuance of an Initial Decision Upon Remand.

2. That the Respondent be, and is hereby, directed to place the service to each of the apartments in the Complainant's building in the name of the Complainant's landlord and owner of the apartment building, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, until such time as each tenant is individually metered and is responsible only for electric service to their individual apartment.

3. That the Complainant's landlord, Mr. Harold E. Haffner, 2723 Beechwood Blvd., Pittsburgh, PA 15217, be served a copy of this Opinion and Order.

BY THE COMMISSION,

John G. Alford

John G. Alford
Secretary

(Seal)

ORDER ADOPTED: June 30, 1994

ORDER ENTERED: SEP 1 1994

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

R & B Reddy, Inc.	:	
	:	Docket No.
v.	:	C-00946080
	:	
Peoples Natural Gas Company	:	

INITIAL DECISION

Before
Larry Gesoff
Administrative Law Judge

History of the Proceeding

R & B Reddy, Inc. ("R & B" or "Complainant") owns a building which has a restaurant/pizza shop on the first floor and two apartments on the second floor. Peoples Natural Gas Company ("Peoples" or "Respondent") refunded to two previous restaurant/pizza shop tenants of R & B monies the commercial tenants had paid for gas service, switched gas service into R & B's name retroactively and back-billed R & B for gas used. R & B asks the Commission to direct Peoples to credit it for the amounts the tenants paid. Peoples filed an Answer alleging that it is proper to charge Complainant because under Section 1529.1 of the Public Utility Code, 66 Pa. C.S. §1529.1, the owner of a multi-family, single-metered dwelling is responsible for the payment of utility services commencing on or after September 1, 1993.

Complainant asserts that Peoples's actions were improper, that Section 1529.1 does not apply because gas at 400 Market Street is used predominantly for commercial purposes, and that Peoples

interpreted Section 1529.1 to get a second chance to collect delinquent bills. I hold (1) that Peoples' actions were proper, (2) that Section 1529.1 applies where residential dwelling units are in a building regardless of the existence of a commercial tenant in the same building and regardless of how much gas the commercial tenant consumes and (3) that Peoples did not use Section 1529.1 as a collection device.

R & B filed its Complaint against Peoples on August 3, 1994. The Commission held a hearing on October 25, 1994. Joseph J. Chester, Esquire, represented Complainant and Horace P. Payne, Jr., Esquire, represented Respondent. Raghunatha Reddy testified on behalf of Complainant and sponsored two exhibits. Sylvia Werner, Peoples' customer accounting supervisor, testified on behalf of Respondent and sponsored one exhibit. The record in this proceeding consists of three exhibits and a 60 page transcription of the notes of testimony.

The parties present two issues to consider. Section 1529.1 is part of Subchapter B of Chapter 15 of the Public Utility Code, 66 Pa. C.S. §1521, et seq. Subchapter B concerns the discontinuance of service to leased premises. The two issues follow:

> (a) Does Subsection B of Chapter 15 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the building at 400 Market Street because it contains residential dwelling units, or is it inapplicable because the building also contains commercial units and because the vast majority of gas consumed in the building is for commercial purposes?

(b) If Subsection B applies, was it proper for Peoples. under Section 1529.1. to refund gas payment monies to the commercial tenants and bill Complainant for those monies?

Findings of Fact

1. Raghunatha Reddy has worked for Mellon Bank for eighteen years and is President of R & B. His cousin is a 49 percent partner in R & B. Tr. 4.

2. In 1990, R & B purchased the building located at 400 Market Street, Elizabeth, Pennsylvania 15037. The building has a restaurant/pizza shop on the first floor and two apartment units on the second floor, a one bedroom apartment and an efficiency apartment. Peoples' gas service enters the building via one line. Gas is used to operate the water heater, which heats water for the three leased areas, and the furnace, which heats the three leased areas. The restaurant/pizza shop, which uses gas for its pizza oven and a range, controls the furnace thermostat. Tr. 5-6, 15.

3. In 1990, R & B opened an account with Respondent for gas service because it operated the restaurant/pizza shop for a couple of months. R & B closed the account, paid in full, because it leased the building and made tenants responsible for gas service. Tr. 7-9; Complainant's Ex. 1.

4. R & B reduced the rent the commercial tenant pays for the building at 400 Market Street from $1000 monthly to $650 because the commercial tenant is responsible for paying for hot water and heat for the entire building. Tr. 9-10.

5. June Volpe began service at 400 Market Street in her name on July 14, 1993 and, as of September 1, 1993, the commercial account at 400 Market Street was in her name. Tr. 14, 23.

6. When Peoples finaled Ms. Volpe's account, it applied her security deposit against the balance, leaving an outstanding balance of $166.17 which she paid. Tr. 57.

7. On November 19, 1993, Elizabeth Michaels, also known as Elizabeth Bucy, took service in her name at 400 Market Street. Tr. 24-25.

8. On or about July 12, 1994, Elizabeth Michaels, the owner of the restaurant/pizza shop at 400 Market Street and the ratepayer of record, telephoned Peoples and requested a turn off of the gas service. She indicated that two upstairs tenants would be affected, and Peoples told her that the service would continue in her name because of the shared meter. Ms. Michaels said that the building was in Mr. Reddy's name, and Peoples told her that it would contact Mr. Reddy and correct her bill. Tr. 19-20.

9. On July 12, 1994, Respondent sent Raghunatha Reddy a letter indicating that his tenant advised Respondent that the gas meter at 400 Market Street, Elizabeth, Pennsylvania, services two apartments and one business, and that a recently passed act requires any gas meter servicing more than one dwelling to be billed to the landlord. The letter also advises that because Elizabeth Michaels has been billed for gas usage at this property since November 19, 1993, Respondent will place the service in

Mr. Reddy's name as of that date. Tr. 9-10, 14, 20-21; Complainant's Ex. 2.

10. On July 15, 1994, after receiving the July 12 letter, Mr. Reddy called Respondent, told it that R & B owns the building, verified that one gas meter served the restaurant/pizza shop and two tenants, and indicated that Respondent's lease made the tenant responsible for the gas bill and that Respondent should not return monies to the tenant. Tr. 10, 21.

11. On July 15, 1994, Peoples spoke with counsel for Complainant who indicated that he believed R & B owned the building, not Mr. Reddy. Peoples verified with the local tax authority that R & B owns the property. Tr. 22.

12. When Peoples realized it should have billed R & B, it corrected Ms. Michael's billing back to November 19, 1993. As a result, Peoples credited her account in the amount of $1,690.60, $759.28 of which was her security deposit plus interest. The remainder represents payments she made. Tr. 25, 30-31.

13. Peoples prorated Ms. Volpe's bill from September 1, 1993 to November 9, 1993, the date she moved from 400 Market Street. As a result, Peoples credited Ms. Volpe's account in the amount of $712.08, $688.50 of which was her security deposit plus interest. The remainder represents payments she made. Tr. 24, 30-31, 33.

14. Peoples published notice of the enactment of Act 54 in the newspaper and in a bill insert. Neither Mr. Reddy nor R & B

received the bill insert because neither were Peoples customers of record at the time. Tr. 31-32.

15. As a result of Act 54, Peoples billed R & B $5,659.77 for two accounts. One account is Ms. Volpe's; it is a final bill for $712.08 for service from September 1 to November 9, 1993. The second account is Ms. Michaels'; it is an active account which starts on November 19, 1993, and had a balance of $4,947.69 as of October 14, 1994. Tr. 18; Peoples Ex. A.

16. Complainant is a commercial customer because Peoples's tariff provides that multi-tenant accounts with one gas meter are charged commercial rates. Tr. 36-37.

17. Elizabeth Michaels returned to R & B $282 of the money Peoples refunded to her. R & B sought to collect $5,000 to $6,000 from her via small claims court. This amount represents rent, which she had not paid for the last three months of her lease, and natural gas use. Small claims court rendered a judgment of about $940 in favor of R & B. R & B appealed the judgement. The appeal will be heard in January 1995. Tr. 52-54.

18. R & B pursued a claim against Ms. Volpe in small claims court for rent and natural gas use. It received a judgment because she did not appear, but Ms. Volpe moved to New York and Mr. Reddy is not sure if R & B will collect on the judgement. Tr. 54.

Discussion

The issues set forth above are repeated here and discussed in order.

> (a) Does Subsection B of Chapter 15 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the building at 400 Market Street because it contains residential dwelling units, or is it inapplicable because the building also contains commercial units and because the vast majority of gas consumed in the building is for commercial purposes?

Subchapter B applies here because the building at 400 Market Street contains one or more dwelling units occupied by one or more tenants. This conclusion stems from the obvious purpose of Subchapter B: to protect tenants from termination of their utility service if a landlord does not pay for the service. This purpose is clear from the following summary of the sections of Subchapter B.

Subchapter B (Discontinuance of Service to Leased Premises) is contained within Chapter 15 of the Public Utility Code, 66 Pa. C.S. §1501, et seq. When first enacted, Subchapter B consisted of Sections 1521 to 1532, enacted by Act 1978, Nov. 26, P.L. 1245, No. 297, §1. Section 1533 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, §2. A brief summary of Subchapter B is necessary to understand how it applies here.

Section 1521 defines "landlord ratepayer," "residential building" and "tenant" as follows:

> "Landlord ratepayer." 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 one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.

"Residential building." A building containing one or more dwelling units occupied by one or more tenants. The term does not include nursing homes, hotels and motels or any dwelling of which the landlord ratepayer is the only resident.

"Tenant." Any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement, including, but not limited to, an oral or written lease with the landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service.

Section 1522 (Applicability of subchapter) makes the Subchapter applicable to public utilities. Section 1523 (Notices before service to landlord terminated) requires notices before service to a landlord ratepayer can be terminated. Section 1524 (Request to landlord to identify tenants) requires a landlord ratepayer to provide the utility with the names and addresses of affected tenants if the utility proposes to terminate service. Sections 1525 (Delivery and contents of termination notice to landlord) and 1526 (Delivery and contents of first termination notice to tenants) provide the details of a Section 1523 notice. Section 1527 (Right

of tenants to continued service) provides how affected tenants can apply to have service continued or resumed before or after a utility terminated service for nonpayment of charges by a landlord tenant. Section 1528 (Delivery and contents of subsequent termination notice to tenants) tells a utility how to send Section 1527 notices. Section 1529 (Right of tenant to recover payments) gives a tenant making a payment to a utility on account of nonpayment by a landlord ratepayer the right to recover the amount. Section 1529.1 (Duty of owners of rental property) requires the owner of a residential building with one or more dwelling units not individually metered to notify each public utility from whom service is received of the ownership and that the premises served are used for rental purposes, requires the public utility to list the account in the name of the owner when the notice is received and makes the owner responsible for payment of the utility service, even if the owner did not give the public utility the required notice. Section 1530 (Waiver of subchapter prohibited) makes void and unenforceable any waiver of a tenant's rights under Subchapter B. Section 1531 (Retaliation by landlord prohibited) makes it unlawful for a landlord ratepayer to threaten or take reprisals against a tenant for exercising rights under Sections 1527 or 1529. Section 1532 (Penalties) provides for penalties if a landlord ratepayer violates Section 1524 (relating to request to landlord to identify tenants) or removes, interferes or tampers with a Section 1526 notice. Finally, Section 1533 (Petition to appoint receiver) allows a public utility, under certain circumstances, to petition

the applicable court of common pleas to appoint a receiver to collect rent payments from the tenants and apply the payments to overdue and subsequent utility bills. The applicability of Subchapter B to the facts of this case is further demonstrated because R & B, the building at 400 Market Street and the residential tenants fall within the definitions in Section 1521.

R & B is a "landlord ratepayer" because it is listed on Peoples' records as responsible for the payment of gas service provided to two residential units in a residential building. R & B's building is a "residential building" because it contains two dwelling units occupied by two tenants. The tenants in R & B's residential building are "tenants" because they are obligated to make rental payments to R & B for a dwelling unit in a residential building which is provided gas as an included service under the rental agreement and because they are not Peoples' ratepayers. These definitions make it clear that Subchapter B applies here even though it neither addresses nor applies to commercial tenants, and even though it does not address a building with commercial and residential tenants. Subchapter B applies even with the existence of a commercial tenant because one gas meter serves the building at 400 Market Street and because residential tenants occupy the building. Because of this, it does not matter that the restaurant/pizza shop uses much more gas than the residential tenants. Accordingly, I will not discuss R & B's argument on this point. However, I shall examine the consequences of R & B's position.

If Subchapter B does not apply here, residential tenants in buildings which also contain commercial tenants will not be protected from the loss of utility service when a landlord ratepayer does not pay for utility service. This interpretation of Subchapter B would negate the very protection it creates, an absurd result which the legislature did not intend when it enacted Subchapter B. See Section 1922 of the Statutory Construction Act, 1 Pa. C.S. §1922 (Presumptions in ascertaining legislative intent).

Because Subchapter B applies here, it is necessary to address the second issue in this proceeding.

> **(b) If Subsection B applies, was it proper for Peoples, under Section 1529.1, to refund gas payment monies to the commercial tenants and bill Complainant for those monies?**

Section 1529.1 reads as follows:

> § 1529.1 **Duties 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.

Section 1529.1 requires the owners of residential buildings with dwelling units not individually metered to notify utilities of the situation and requires the utilities to make them landlord ratepayers under Subchapter B.

Peoples had to refund the monies it collected from the commercial tenants and had to bill R & B for those amounts. Section 1529.1(c) makes the owner of a residential building responsible for the payment of utility services even if the owner fails to notify the utility, pursuant to Section 1529.1(a), of the existence of a building with one or more dwelling units served by one meter. When Ms. Michaels informed Peoples that R & B owned the building at 400 Market Street, R & B became the billing responsible party back to September 1, 1993, the effective date of Section 1529.1. Subchapter B required Peoples to bill R & B for the gas used since that time. Peoples had to refund the monies it received from Ms. Volpe and Ms. Michaels because it had no right to them.

I address next Complainant's assertions that Peoples should have notified Complainant about the enactment of Section 1529.1, and that Peoples used Section 1529.1 to obtain a second

chance to collect on delinquent accounts. I address the issue of notice first.

R & B's objection to not being notified has no merit because Section 1529.1 requires landlord ratepayers to give utilities notice, not the other way around. Even so, Peoples used newspaper and bill inserts to notify Ms. Michaels, and other billing responsible customers, of the provisions of Section 1529.1. Peoples reasonably believed that Ms. Michaels owned the building at 400 Market Street because she operated the restaurant/pizza shop there. Peoples could not be expected to assume that R & B owned the building just because it was the billing responsible customer for a short period four years ago. R & B noted that Peoples sent its July 12 letter (Exhibit 2) before the effective date of its tariff implementing Section 1529.1. This was not improper, however. Although unartfully written, the letter was an attempt to update Peoples' files in advance of the effectiveness of its tariff. I address next whether Peoples misused Section 1529.1 to collect delinquent accounts.

I find that Peoples did not use Section 1529.1 or Subchapter B to collect money from delinquent accounts. As noted above, Peoples had to bill R & B and had to refund the monies to Ms. Volpe and Ms. Michaels, the commercial tenants. This does not create a windfall for them as Complainant asserts. Ms. Volpe and Ms. Michaels still owe Complainant money for the gas for which R & B is now obligated to pay Peoples. R & B might not be able to satisfy its judgment against Ms. Volpe and Ms. Michaels, but this

is not because Peoples' actions were improper. It is because Ms. Volpe moved to New York and because Ms. Michaels might not have sufficient funds to satisfy the judgement. Peoples applied Section 1529.1 correctly. It did not use it to collect a delinquency. Nothing in the record suggests such an intent on Peoples' behalf.

This Complaint should be dismissed.

Conclusions of Law

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Sections 1521-1533 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the owner of a building containing one or more dwelling units occupied by one or more tenants, even if the building also contains a commercial tenant and even if the commercial tenant consumes the vast majority of the gas consumed at the premises.

3. It was proper for Peoples to refund monies collected by it from Ms. Volpe and Ms. Michaels, the commercial tenants, for gas used at 400 Market Street back to September 1, 1993, and to bill the owner of the building at 400 Market Street retroactively to September 1, 1993, the effective date of Section 1529.1 of the Public Utility Code, 66 Pa. C.S. §1529.1.

ORDER

THEREFORE;

IT IS ORDERED:

1. That the Complaint of R & B Reddy, Incorporated against Peoples Natural Gas Company at Docket No. C-00946080 is dismissed.

2. That the docket in this proceeding be marked closed.

Date: December 9, 1994

Larry Gesoff

LARRY GESOFF
Administrative Law Judge

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

TAE

IN REPLY PLEASE
REFER TO OUR FILE

May 26, 1995 C-00946080

DOCKETED
JUN 02 1995

R & B REDDY INC
(RAGHUNATHA REDDY)
518 CLAIR DRIVE
UPPER ST CLAIR PA 15241

DOCUMENT
FOLDER

R & B Reddy, Inc.
v.
The Peoples Natural Gas Company

To Whom It May Concern:

This is to advise you that an Opinion and Order has been adopted by the Commission in Public Meeting on May 25, 1995 in the above entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,

John G. Alford
Secretary

Enclosure
Certified Mail
JEP

MARGARET H PETERS ESQUIRE
THE PEOPLES NATURAL GAS COMPANY
625 LIBERTY AVENUE
PITTSBURGH PA 15222-3197

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 25, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice-Chairman
John Hanger, Statement attached
David W. Rolka, Dissenting - Statement attached
Robert K. Bloom

R & B Reddy, Inc. C-00946080
v.
Peoples Natural Gas Company

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions filed to the Initial Decision of Administrative Law Judge ("ALJ") Larry Gesoff issued on December 22, 1994.

History of the Proceedings

On August 3, 1994, R & B Reddy, Inc. ("Complainant" or " R & B ") filed a complaint against Peoples Natural Gas Company ("Peoples") alleging that Peoples had (1) improperly refunded monies to the commercial tenants that had paid for gas service, (2) switched gas service into Complainant's name retroactively and (3) back-billed Complainant for gas used.

On August 23, 1994, Peoples filed an Answer and Motion to Dismiss.

A hearing was held before ALJ Gesoff on October 25, 1994. The record consists of 60 pages of transcript and three exhibits.

No briefs were filed in this proceeding. The Initial Decision of ALJ Gesoff was issued on December 22, 1994. Exceptions were filed on January 10, 1995 by the Law Bureau. Peoples filed its Reply Exceptions on January 23, 1995.

Findings of Fact

The ALJ made the following Findings of Fact which we adopt in the disposition of this complaint proceeding:

1. Raghunatha Reddy has worked for Mellon Bank for eighteen years and is President of R & B. His cousin is a 49 percent partner in R & B. Tr. 4.

2. In 1990, R & B purchased the building located at 400 Market Street, Elizabeth, Pennsylvania 15037. The building has a restaurant/pizza shop on the first floor and two apartment units on the second floor, a one bedroom apartment and an efficiency apartment. Peoples' gas service enters the building via one line. Gas is used to operate the water heater, which heats water for the three leased areas, and the furnace, which heats the three leased areas. The restaurant/pizza shop, which uses gas for its pizza oven and a range, controls the furnace thermostat. Tr. 5-6, 15.

3. In 1990, R & B opened an account with Respondent for gas service because it operated the restaurant/pizza shop for a couple of months. R & B closed the account, paid in full, because it leased the building and made tenants responsible for gas service. Tr. 7-9; Complainant's Ex. 1.

4. R & B reduced the rent the commercial tenant pays for the building at 400 Market Street from $1000 monthly to $650 because the commercial tenant is responsible for paying for hot water and heat for the entire building. Tr. 9-10.

5. June Volpe began service at 400 Market street in her name on July 14, 1993 and, as of September 1, 1993, the commercial at 400 Market Street was in her name. Tr. 14, 23.

6. When Peoples finaled [sic] Ms. Volpe's account, it applied her security deposit against the balance, leaving an outstanding balance of $166.17 which she paid. Tr. 57.

7. On November 19, 1993, Elizabeth Michaels, also known as Elizabeth Bucy, took service in her name at 400 Market Street. Tr. 24-25.

8. On or about July 12, 1994, Elizabeth Michaels, the owner of the restaurant/ pizza shop at 400 Market Street and the ratepayer of record, telephoned Peoples and requested a turn off of the gas service. She indicated that two up-stairs tenants would be affected, and Peoples told her that the service would continue in her name because of the shared meter. Ms. Michaels said that the building was in Mr. Reddy's name, and Peoples told her that it would contact Mr. Reddy and correct her bill. Tr. 19-20.

9. By letter dated July 12, 1994, Respon-dent indicated Raghunatha Reddy that Ms. Michaels advised Respondent that the gas meter at 400 Market Street, Eliza-beth, Pennsylvania, services two apart-ments and one business, and that a recently passed act requires any gas meter servicing more than one dwelling to be billed to the landlord. The letter also advises that because Elizabeth Michaels has been billed for gas usage at this property since November 19, 1993, Respondent will place the service in Mr. Reddy's name as of that date. Tr. 9-10, 14, 20-21; Complainant's Ex. 2.

10. On July 15, 1994, after receiving the July 12 letter, Mr. Reddy called

Peoples, told it that R & B owns the building, verified that one gas meter served the restaurant/pizza shop and two tenants, and indicated that the lease made the tenant responsible for the gas bill and that Peoples should not return monies to the tenant. Tr. 10, 21.

11. On July 15, 1994, Peoples spoke with counsel for Complainant who indicated that he believed R & B owned the building, not Mr. Reddy. Peoples verified with the local tax authority that R & B owns the property. Tr. 22.

12. When Peoples realized it should have billed R & B, it corrected Ms. Michael's billing back to November 19, 1993. As a result, Peoples credited her account in the amount of $1,690.60, $759.28 of which was her security deposit plus interest. The remainder represents payments she made. Tr. 25, 30-31.

13. Peoples prorated Ms. Volpe's bill from September 1, 1993 to November 9, 1993, the date she moved from 400 Market Street. As a result, Peoples credited Ms. Volpe's account in the amount of $712.08, $688.50 of which was her security deposit plus interest. The remainder represents payments she made. Tr. 24, 3031, 33.

14. Peoples published notice of the enactment of Act 54 in the newspaper and in a bill insert. Neither Mr. Reddy nor R & B received the bill insert because neither were Peoples customers of record at the time.

15. As a result of Act 54, Peoples billed R & B $5,659.77 for two accounts. One account is Ms. Volpe's; it is a final bill for $712.08 for service from September 1 to November 9, 1993. The second account is Ms. Michaels'; it is an active account which starts on November 19, 1993, and had a balance of $4,947.69 as of October 14, 1994. Tr. 18; Peoples Ex. A.

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17. Elizabeth Michaels returned to R & B $282 of the money Peoples refunded to her. R & B sought to collect $5,000 to $6,000 from her via small claims court. This amount represents rent, which she had not paid for the last three months of her lease, and natural gas use. Small claims court rendered a judgment of about $940 in favor of R & B. R & B appealed the judgement. The appeal will be heard in January 1995. Tr. 52-54.

18. R & B pursued a claim against Ms. Volpe in small claims court for rent and natural gas use. It received a judgment because she did not appear, but Ms. Volpe moved to New York and Mr. Reddy is not sure if R & B will collect on the judgement. Tr. 54.

19. The accounts of both Volpe and Michaels were both delinquent when closed. Tr. 57.

(Initial Decision, pp. 3-6)

Discussion

R & B owns the building at 400 Market Street which has a restaurant/pizza shop on the first floor and two apartments on the second floor. Peoples refunded to two previous restaurant/pizza shop tenants of R & B monies the commercial tenants had paid for gas service switched gas service into R & B's name retroactively and back-billed R & B for gas used. R & B asks the Commission to direct Peoples to credit it for the amounts the tenants paid. Peoples filed an Answer alleging that it is proper to charge Complainant because under Section 1529.1 of the Public Utility Code, 66 Pa. C.S. §1529.1, the owner of a multi-family,

single-metered dwelling is responsible for the payment of utility services commencing on or after September 1, 1993.

Complainant asserts that Peoples's actions were improper, that Section 1529.1 does not apply because gas at 400 Market Street is used predominantly for commercial purposes, and that Peoples interpreted Section 1529.1 to Ret a second chance to collect delinquent bills.

The ALJ ruled that (1) Peoples' actions were proper, (2) Section 1529.1 applies where residential dwelling units are in a building regardless of the existence of a commercial tenant in the same building and regardless of how much gas the commercial tenant consumes and (3) Peoples did not use Section 1529.1 as a collection device. The issues in the present proceeding concern 66 Pa. C.S. §1521 et seq. which is Subchapter B of Chapter 15 of the Public Utility Code.

Specifically, Subchapter B concerns the discontinuance of service to leased premises. The parties present two issues to consider which will be addressed separately.

> (1) Does Subsection B of Chapter 15 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the building at 400 Market Street because it contains residential dwelling units, or is it inapplicable because the building also contains commercial units and because the vast majority of gas consumed in the building is for commercial purposes?

Subchapter B applies here because the building at 400 Market Street contains one or more dwelling units occupied by one or more tenants. This conclusion stems from the obvious purpose of Subchapter B: to protect tenants from termination of their utility service if a landlord does not pay for the service.

This purpose is clear from the following summary of the sections of Subchapter B.

Subchapter B (Discontinuance of Service to Leased Premises) is contained within Chapter 15 of the Public Utility Code, 66 Pa. C.S. §1501, et seq. When first enacted, Subchapter B consisted of Sections 1521 to 1532, enacted by Act 1978, Nov. 26, P.L. 1245, No. 297, §1. Section 1533 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, §2. A brief summary of Subchapter B is necessary to understand how it is applicable in the present proceeding.

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> "Landlord ratepayer." 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 one or more residential units of a residential building or mobile home park of which building or mobile home park the party is not the sole occupant. In the event the landlord ratepayer is not the party to a lease between the landlord ratepayer and the tenant, the term also includes the individual or organization to whom the tenant makes rental payments pursuant to a rental arrangement.
>
> "Residential building." A building containing one or more dwelling units occupied by one or more tenants. The term does not include nursing homes, hotels and motels or any dwelling of which the landlord ratepayer is the only resident.
>
> "Tenant." Any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement, including, but not limited to, an oral or written lease with the

> landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service.

Section 1522 (Applicability of subchapter) makes the Subchapter applicable to public utilities. Section 1523 (Notices before service to landlord terminated) requires notices before service to a landlord ratepayer can be terminated. Section 1524 (Request to landlord to identify tenants) requires a landlord ratepayer to provide the utility with the names and addresses of affected tenants if the utility proposes to terminate service. Sections 1525 (Delivery and contents of termination notice to landlord) and 1526 (Delivery and contents of first termination notice to tenants) provide the details of a Section 1523 notice. Section 1527 (Right of tenants to continued service) provides how affected tenants can apply to have service continued or resumed before or after a utility terminated service for nonpayment of charges by a landlord tenant. Section 1528 (Delivery and contents of subsequent termination notice to tenants) tells a utility how to send Section 1527 notices. Section 1529 (Right of tenant to recover payments) gives a tenant making a payment to a utility on account of nonpayment by a landlord ratepayer the right to recover the amount. Section 1529.1 (Duty of owners of rental property) requires the owner of a residential building with one or more dwelling units not individually metered to notify each public utility from whom service is received of the ownership and that the premises served are used for rental purposes, requires the public utility to list the account in the name of the owner when the notice is received and makes the owner responsible for payment of the utility service, even if the owner did not give the public utility the required notice. Section 1530 (Waiver of subchapter prohibited) makes void and unenforceable any waiver of a tenant's rights under Subchapter B.

Section 1531 (Retaliation by landlord prohibited) makes it unlawful for a landlord ratepayer to threaten or take reprisals against a tenant for exercising rights under Sections 1527 or 1529. Section 1532 (Penalties) provides for penalties if a landlord ratepayer violates Section 1524 (relating to request to landlord to identify tenants) or removes, interferes or tampers with a Section 1526 notice. Finally, Section 1533 (Petition to appoint receiver) allows a public utility, under certain circumstances, to petition the applicable court of common pleas to appoint a receiver to collect rent payments from the tenants and apply the payments to overdue and subsequent utility bills. The applicability of Subchapter B to the facts of this case is further demonstrated because R & B, the building at 400 Market Street and the residential tenants fall within the definitions in Section 1521.

Based on the above analysis, the ALJ reached the following conclusions:

> R & B is a "landlord ratepayer" because it is listed on Peoples' records as responsible for the payment of gas service provided to two residential units in a residential building. R & B's building is a "residential building" because it contains two dwelling units occupied by two tenants. The tenants in R & B's residential building are "tenants" because they are obligated to make rental payments to R & B for a dwelling unit in a residential building which is provided gas as an included service under the rental agreement and because they are not Peoples' ratepayers. These definitions make it clear that Subchapter B applies here even though it neither addresses nor applies to commercial tenants, and even though it does not address a building with commercial and residential tenants. Subchapter B applies even with the existence of a commercial tenant because one gas meter serves the building at 400 Market Street and because residential tenants occupy the building. Because of this, it

> does not matter that the restaurant/pizza shop uses much more gas than the residential tenants.
>
> * * *
>
> If Subchapter B does not apply here, residential tenants in buildings which also contain commercial tenants will not be protected from the loss of utility service when a landlord ratepayer does not pay for utility service. This interpretation of Subchapter B would negate the very protection it creates, an absurd result which the legislature did not intend when it enacted Subchapter B. See Section 1922 of the Statutory Construction Act, 1 Pa. C.S. §1922 (Presumptions in ascertaining legislative intent). (Initial Decision, pp. 10-11)

No party has excepted to the ALJ's determination that Subchapter B is applicable in the present proceeding. Therefore, we affirm the ALJ's ruling that Subchapter B is applicable to the present proceeding.

Because it has been determined that Subchapter B is applicable, it is necessary to address the second issue in this proceeding.

> (2) If Subsection B applies, was it proper for Peoples, under Section 1529.1, to refund gas payment monies to the commercial tenants and bill Complainant for those monies?

Section 1529.1 reads as follows:

> §1529.1 **Duties 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.

The ALJ determined that Section 1529.1 requires the owner of residential buildings with dwelling units not individually metered to notify utilities of the situation and requires the utilities to make them landlord ratepayers under Subchapter B. (Initial Decision, p. 12)

The ALJ then determined that:

Peoples had to refund the monies it collected from the commercial tenants and had to bill R & B for those amounts. Section 1529.1(c) makes the owner of a residential building responsible for the payment of utility services even if the owner fails to notify the utility, pursuant to Section 1529.1(a), of the existence of a building with one or more dwelling units served by one meter.

> When Ms. Michaels informed Peoples that R & B owner the building at 400 Market Street, R & B became the billing responsible party back to September 1, 1993, the effective date of Section 1529.1. Subchapter B required Peoples to bill R & B for the gas used since that time. Peoples had to refund the monies it received from Ms. Volpe and Ms. Michaels because it had no right to them. (Initial Decision, p. 11)

The Law Bureau excepts to the above finding stating:

> ...[N]o direction is provided in section 1529.1 as to the recoupment of monies previously paid by the tenant for that account. Under the plain language of [Subchapter B], there is no authority for the utility to sua sponte issue refunds. (Law Bureau Exceptions, p. 4)

Furthermore, the Law Bureau asserts that the Legislature, by inserting Section 1529.1 into Subchapter B, has provided the tenant with an exclusive remedy for recoupment of money paid in 66 Pa. C.S. §1529.[1/] The Legislature thus made it clear that any claim by the tenant must be collected from the landlord, not from the utility.

Finally, the Law Bureau argues that the ALJ's construction of Section 1529.1, allowing utilities to refund monies paid by tenant's on landlord's accounts, impermissibly impairs the obligation of contracts in violation of Article I, Section 10

1/ The Law Bureau notes that a tenant, in resorting to Section 1529 self-help, is protected form reprisals by the landlord by 66 Pa. C.S. §1531 which prohibits landlord retaliation, and establishes civil remedies for the tenant. In the instant case, the Law Bureau asserts that the commercial tenants should have used the civil courts to recoup the monies that were paid on the landlord's utility account. (Law Bureau Exceptions, p. 5, fn. 1)

of the U.S. Constitution and Article I, Section 17 of the Pennsylvania Constitution. (Law Bureau Exceptions, p. 6-7)

In its Reply Exceptions, Peoples asserts that the applicability of 66 Pa. C.S. §1529 is not dispositive of the issue of recoupment presented in the instant case and the Law Bureau's reliance on it is misleading and misplaced. Further, Peoples contend that the refunding of monies paid by the tenants on the landlord's account was not illegal or prejudicial. Finally, Peoples assert that the proper judicial forum to hear R&B's grievance relative to the lease should be in a civil court and not with the Commission.

1. Impairment of Contracts

Article I, Section 10 of the U.S. Constitution provides that:

> No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts.

Article I, Section 17 of the Pennsylvania Constitution provides that:

> No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

The Pennsylvania Supreme Court has held that, whenever possible, interpretations of statutes which would create conflict with constitutional provisions must be avoided. Commonwealth v. Hude, 492 Pa. 600, 4215 A. 313 (1980). See also Commonwealth v. Staley, 476 Pa. 171, 381 A.2d 1280 (1978); Laurence County Foht, 33 Pa. Commonwealth Ct. 379, 381 A.2d 1348 (1978). Moreover,

under the Pennsylvania Statutory Construction Act, the Legislature is presumed not to intend to violate the Constitution of the United States nor the Commonwealth of Pennsylvania. 1 Pa. C.S. §1922(3).

The Law Bureau asserts that the ALJ's interpretation of Section 1529.1 as granting authority to a utility to refund to a tenant monies paid on a landlord's account conflicts with both the U.S. and Pennsylvania Constitutions. The Law Bureau argues that Complainant Exhibit No. 1 (lease agreement) established that the tenants of the pizza shop were given a reduction in rent in consideration of the fact that the tenant would be responsible for utility service. See also Tr. 7-10. Therefore, according to the Law Bureau, Peoples sua sponte refund to the tenants of the pizza shop impermissibly impairs the obligations of the tenants as parties to the lease agreement.

The Law Bureau contends that its interpretation that the Section 1529 remedy is applicable to situations arising under Section 1529.1 is preferable for two reasons, to wit: (1) it avoids the present situation where a utility inserted itself into a private contractual agreement, and (2) it does not conflict with the provisions of either the U.S. or Pennsylvania Constitutions.

As the Law Bureau stated:

> [It's] interpretation safeguards the integrity of a possible existing private contract between a landlord and tenant which may identify the party responsible for making utility service payments. The contract thus would be preserved so that any adjudication of the rights and responsibilities of each of the parties to the contract could then be undertaken in court. (Law Bureau Exceptions, p. 7)

On consideration of the Law Bureau's Exceptions, we shall deny them. The Law Bureau's reliance on Section 1529 as an exclusive statutory remedy is misplaced. Initially we observe that the statutory scheme of Section 1529.1 is in furtherance of the protection of the rights of tenants of multi-occupied properties to continued utility service in the event of owner default. Consequently, the Law Bureau's position which champions the rights of the landlord, or other person/entity to whom lease payments are due, does not advocate for the class of persons the statute seeks to protect.

Also, Section 1529, which preceded the enactment of Section 1529.1, is placed after a sequence of events which outline a logical series of conditions precedent to guaranteed continuity of service in the event of landlord/owner default. See Section 1523 - Notices before service to landlord terminated; Section 1524 - Request to landlord to identify tenants; Section 1525 - Delivery and contents of termination notice to landlord; Section 1526 - Delivery and contents of first termination notice to tenants; Section 1527 - Right of tenants to continued service; Section 1528 - Delivery and contents of subsequent termination notice to tenants.

We find particularly instructive the steps to be taken pursuant to Section 1527. Here, the tenants may apply for continuation or resumption of service for the nonpayment of

charges by the landlord/owner. See 66 Pa. C.S. § 1527(a). Also, when the tenants pay such charges service is to be resumed and termination averted. See Section 1527(b). And, under subsection (c), when the utility receives payment from the tenants on behalf of the landlord/owner who is liable, the landlord/owner is notified and otherwise apprised of the amount credited on its behalf by the particular tenant.[2/]

On the basis of the foregoing, we conclude that the right of set off established in Section 1529 and alleged by the Law Bureau to be an exclusive remedy in this matter, is a reasonable interpretation, though misplaced as an exclusive remedy for implementation of Section 1529.1.

On consideration of the overall statutory scheme, we conclude that the Law Bureau's interpretation would be inconsistent with the clear intent of Section 1529.1(b). This provision states that "[u]pon receipt of notice... 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 payment for the utility services rendered thereunto." (Emphasis added) This language, though perhaps harsh to the landlord/owner, leaves

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[2/] Also, in subsection c there is an express directive to the utility to refund amounts to the tenants where there is a failure to satisfy the requirements of subsection b, or where the tenants elect to voluntarily terminate service.

little doubt that it is the intention of the General Assembly to place the burden of payment for utility service in master metered circumstances on the property owner. Under the Law Bureau's interpretation, the burden of payment and subsequent reimbursement through collection would shift from the landlord/owner to the tenant. The right of recovery through set off is more speculative than the direct reimbursement from the utility.

The issue of impairment of contract as suggested by the Law Bureau lacks merit. The Court in Suburban Water Company v. Oakmont Borough, 268 Pa. 243, 254, 110 A.778 782 (1920) held that changes in rates are not an impairment of the obligation of contract. Law Bureau has presented no authority where the impairment of contract related to other changes in conditions under which a utility may be providing service.

Also, we note that the Commonwealth Court in Crown American Corp. v. Pa. P.U.C., 76 Pa. Commonwealth Ct., 305, 463 A.2d 1257 (1983) affirmed this Commission finding that a rule prohibiting the master metering of electricity at new multi-tenant commercial locations was held a legitimate exercise of the state's police power. No impairment of contract was found to exist.

Finally, we hasten to add that Peoples' actions were consistent with the procedure to be followed when a utility improperly bills a customer - i.e., refund the money to the customer. However, in the present proceeding the "customer" consumed the gas but Act 54 required someone else be responsible for the bill.

While we find that Peoples' actions were not improper we would offer the following observations. Peoples could have avoided the instant Complaint and corresponding time and monies associated with defending its actions.

Peoples found itself in a situation where there was a delinquent account. It was aware that the billed tenants (Volpe and Michaels) had received a reduction in rent since the tenant "assumed responsibility for utility service" per phone conversations with Complainant. Peoples, as a "stakeholder" in the dispute had other alternatives available rather than directly refunding the money. Peoples could have filed a petition for declaratory relief requesting that the Commission advise Peoples how to proceed. Perhaps a more equitable solution could have been reached.

Conclusions of Law

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Sections 1521-1533 of the Public Utility Code, 66 Pa. C.S. §§1521-1533, apply to the owner of a building containing one or more dwelling units occupied by one or more tenants, even if the building also contains a commercial tenant and even if the commercial tenant consumes the vast majority of the gas consumed at the premises.

3. It was not improper for Peoples to refund monies collected by it from Ms. Volpe and Ms. Michaels, the commercial tenants, for gas used at 400 Market Street back to September 1, 1993; **THEREFORE;**

IT IS ORDERED:

1. That the Complaint of R & B Reddy, Inc. against Peoples Natural Gas Company is dismissed consistent with this Opinion and Order.

2. That the Exceptions of the Law Bureau are denied, consistent with this Opinion and Order.

3. That the Initial Decision issued on December 22, 1994 is adopted, consistent with this Opinion and Order.

BY THE COMMISSION,

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: May 25, 1995

ORDER ENTERED: MAY 26 1995

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105

R & B REDDY, INC.
V.
PEOPLES NATURAL GAS COMPANY

PUBLIC MEETING-
MAY 25, 1995
MAR-95-OSA-101*
DOCKET NO. C-00946080

STATEMENT OF COMMISSIONER HANGER

Complainant is a landlord whose property includes two residential apartments and a first floor pizza restaurant which all operate under a single utility meter for service from Peoples Gas. In this case, the pizza shop was the direct utility customer for all gas service to the building.

Pennsylvania law requires that utility service to residential dwelling units must be billed to the landlord unless the dwelling unit is individually metered, in which case the tenant may be the utility customer of record. See, 66 Pa.C.S. Sec. 1521 et seq. This portion of the Public Utility Code was amended by the legislature by Act 54 in 1993. Act 54 was enacted to address problems associated with "foreign load" on tenants' utility bills. Foreign load occurs when utility service serving other tenants or the landlord is being billed to one tenant.

While the OSA Report properly resolves the issues raised in this case, there has been considerable confusion concerning appropriate responses to the rights and responsibilities established under the Act. Hopefully, this statement will help to produce greater clarity.

To date, the Commission has decided only one relevant case. The Commission's decision in Boyce v. Duquesne Light Company, No. Z-00223698, Order entered September 1, 1994 established the basic interpretation of the Act, but did not address many detailed points. In addition, the case of Divilly v. Duquesne Light Co., No. C-00946235, which is OSA-139 on today's agenda, raises similar issues as Reddy.

The ALJ, Law Bureau and OSA agree that the statute covers this case even though a commercial tenant is involved, and no parties filed exceptions on this matter. The statute not only protects residential tenants from paying for service to others, but also protects residential tenants from losing utility service due to nonpayment by other tenants. Since the residential tenants in the building could have lost service upon nonpayment by the pizza shop, the definitions in the statute properly address the purposes of the Act.

When Peoples learned that the master metered account in question had been in the tenant's name even though it served other tenants in a residential dwelling, it properly recognized a violation of the Act. Peoples transferred the account into the landlord's name, refunded sums already paid by the tenant in whose name the account had been billed, and proceeded to attempt to collect the balance from the landlord back to the September 1, 1993 effective date of the amendments to the Act.

Section 1529.1 (a) of the Act requires owners of rental residential buildings which contain dwelling units that are not individually metered to notify the utility of that fact. Section 1529 (b) provides that, once such notice is received, the utility must put the service into the landlord's name. Thus, Peoples acted properly in this regard. The Act does not require landlords to meter individually each apartment. It remains the landlord's choice either to be responsible for the bill directly by putting the bill in his name or to ensure that each unit is individually metered.

The gravamen of the instant dispute is whether Peoples should have refunded the monies collected from the tenants and then billed the landlord for the amount accrued. The ALJ held that Peoples was required to refund the amounts paid by the tenants, because it had no right to such payments. Law Bureau contends that Peoples was not permitted to interfere with the private contractual arrangement between landlord and tenant by refunding the amounts already paid by tenant and subsequently billing landlord. Peoples contends that Act 54 provides the authority to refund payments made by the tenant and to rebill the landlord for those services.

Section 1529.1 (c) makes clear that the landlord is responsible "for payment of the utility services as if the required notice had been given," even if the landlord failed to provide the required notice. This must be considered to be effective as of the effective date of the Act, September 1, 1993. The landlord is without question responsible for the bill, retroactive to the effective date of the Act.

What are the appropriate remedies? If the law says the landlord is responsible for the account, of course the utility may refund the amounts paid by a tenant when the tenant is not responsible for the account as a matter of law. Similarly, of course the utility may pursue collection against the landlord who is responsible for the bill.

Refund by the utility of payments previously made by the tenant followed by collection action against the landlord to collect the same amounts may be burdensome for the utility and is not the stated remedy under the Act. Section 1529 provides another remedy. Section 1529 provides that a tenant may obtain reimbursement directly from the landlord or deduct the amount paid from any rent or other amounts otherwise due to landlord. There is, however, nothing in the Act to indicate that Section 1529 is

imposed as an exclusive remedy. Refunds are, therefore, not precluded.

While not directly related to the instant case, many questions have been raised concerning application of the Act when foreign load is minimal. For example, an apartment may have been individually metered, but a small amount of foreign usage was mistakenly left on a tenant's line. Similarly, a small amount of usage may have intentionally been left on a meter because it would have been unreasonable and/or uneconomical to install a separate meter.

Although not specifically authorized by the Act, the landlord has a third option if he does not wish separately to meter his property or put the account in his own name. The landlord can attempt to arrive at an agreement with his tenant or tenants, although it is not the role of either regulated utilities or this Commission to enforce the terms of private leases. This option may be particularly useful when the amount of "foreign" load is small. Of course, the terms of a private lease agreement cannot permit other affected tenants in the building to experience any harm. For example, all tenant protections in the Act would still be effective if service termination is threatened when a tenant fails to pay the utility bill for the building as agreed.

In summary, utilities are obligated to begin correct landlord billing upon notice that the Act is applicable. The landlord has the choice either to put the account in his own name, to meter separately the account, or to arrive at an agreement with the affected tenants that is mutually agreeable. Once an account is properly placed in a landlord's name, it is appropriately the tenant's responsibility to collect any back amounts which may be due from the landlord. Utilities may take on the burden of helping to straighten out these affairs, but nothing in the Act requires such action. The Commission need not be involved in ordering refunds, however, as the basic statutory guideline of Section 1529 should be observed.

May 24, 1995
DATED

John Hanger
JOHN HANGER, COMMISSIONER

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

R & B REDDY, INC.
v.
PEOPLES NATURAL GAS COMPANY

PUBLIC MEETING - MAY 25, 1995
MAR-95-OSA-101* (REV)
DOCKET NO. C-00946080

SARAH DIVILLY
v,
DUQUESNE LIGHT COMPANY

MAY-95-OSA-139*
DOCKET NO. C-00946235

STATEMENT OF COMMISSIONER DAVID W. ROLKA

I disagree with the conclusion that rate refunds to the residential tenants were an appropriate remedy in this matter. By issuing refunds, and billing the landlord-building owners for the amounts previously paid by the residential tenants, Peoples and Duquesne implemented Section 1529.1 retroactively. The Companies rely on the following language as the basis for their actions:

> (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.

In my opinion, this language if applied retroactively to leases already in existence as of the effective date of the law, September 1, 1993, would constitute an unconstitutional impairment of existing contracts. I agree with the Law Bureau's Exceptions on this point. The utilities should not take any action such as issuing refunds to tenants and rebilling landlord-building owners which would retroactively modify the terms of the lease between a landlord and tenant. If Section 1529.1(c) can be enforced, such efforts should be left up to the actual parties to the lease. For these reasons, I do not support the staff recommendation in these cases.

May 24, 1995
DATED

DAVID W. ROLKA, COMMISSIONER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sarah Divilly	:	
	:	Docket No.
v.	:	C-00946235
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Fred R. Nene
Administrative Law Judge

History of the Proceeding

On September 20, 1994, the Complainant, Sarah Divilly, filed a formal Complaint with the Commission claiming that she should not be responsible for her tenant's Duquesne Light service account from September 1, 1993 because she was unaware of the existence of Act 54 requiring each apartment to be individually metered. Duquesne Light filed an Answer on October 21, 1994 denying the allegations and stating in New Matter that it was acting in a manner required by law.

A hearing was held on December 12, 1994. Sarah Divilly represented herself and Regina Sestak, Esquire, appeared on behalf of the Respondent. The record consists of a 45 page transcript, 2 Complainant exhibits, and 3 Respondent exhibits. There were no briefs filed.

Findings of Fact

1. The Complainant, Sarah Divilly, is the landlord/ owner of 1327 Jeffers Street, Pittsburgh, Pennsylvania 15204. Ms. Divilly rents two apartments in the house. (Tr. 5)

2. Ms. Divilly is in the business of renting property as a portion of her income. (Tr. 18)

3. Scott Deere entered into a lease agreement with Ms. Divilly on September 1, 1991, at which time he agreed to pay half of all utilities charged to the house at 1327 Jeffers Street. (Tr. 12-14, Attachment to Complaint)

4. Duquesne Light Company provides electric service to the Jeffers Street location.

5. Ms. Divilly never notified Respondent, Duquesne Light, that the two apartments were connected to a single meter. (Tr. 17)

6. Prior to May 1994, Ms. Divilly did not know of the existence of Act 54, also known as Section 1529.1 (66 Pa. C.S.A §1529.1) and House Bill 678. This enactment requires multiple apartments in the same building to be individually metered. (Tr. 7, 37, 42)

7. On April 26, 1994, Duquesne Light was first notified, by a complaint from Mr. Deere, that 1327 Jeffers Street had two apartments with one meter. (Tr. 25 - 26, 36)

8. At the time Mr. Deere notified Duquesne Light that the apartments were not individually metered, he was delinquent on his electric bill in the amount of $339.40. (Tr. 38)

9. Duquesne Light refunded to Mr. Deere $278.71 on or about June 1, 1994 as a result of his complaint and Duquesne Light's knowledge of the situation. (Tr. 17, 38)

10. Ms. Divilly received a bill from Duquesne Light, due on June 9, 1994, with a balance of $738.35. This bill was for service to the Jeffers Street address dating back to September 16, 1993. (Tr. 9, 14, Complainant's Exhibit A)

11. Mr. Deere gave $260.00 from the $278.71 refund received from the Respondent to Ms. Divilly who, in turn, gave the $260.00 back to Duquesne Light toward satisfaction of the outstanding balance on the account. (Tr. 13) This payment was made on July 18, 1994. (Respondent Exhibit 3)

12. Duquesne Light's witness, a regulatory analyst, testified that Act 54 was and is being implemented by Duquesne Light by placing accounts that had been in the tenant's name into the landlord's name effective from September 1, 1993 until the wiring problem is corrected. (Tr. 25, Respondent's Exhibit 1)

13. Duquesne Light sent a letter dated May 16, 1994 to Ms. Divilly advising her that the service account would be placed into her name effective from September 16, 1993 until the two apartments at 1327 Jeffers Street were individually metered. (Tr. 25, 27, Respondent's Exhibit 2)

14. The account was terminated in the name of Sarah Divilly and placed into Scott Deere's name on August 5, 1994 when Duquesne Light confirmed that the apartments had been individually metered. (Tr. 28 - 29)

15. To date, Ms. Divilly has made three payments toward the balance due: $260 received from Mr. Deere; $100; and $50, leaving a current balance of $548.90. (Tr. 13, 15, 28, Respondent's Exhibit 3)

Discussion

On May 16, 1994, the Complainant, Sarah Divilly, received a telephone call from someone at Duquesne Light Company informing her that a bill for electric service provided to one of the apartments she owned was being placed in her name. In fact, she was told, the bill was being made retroactive and she now owed the company for electric service provided to one of her tenants since September 1, 1993, some eight months earlier. She was further advised that the law required her to have a separate electric meter installed for each apartment.

Evidence introduced at the hearing established that on April 26, 1994, a telephone call from a tenant in her two apartment house on Jeffers Street first alerted Duquesne Light that two apartments shared one electric meter at that location. The tenant that made the call, one Scott Deere, was in arrearage in the amount of $339.40 on his electric bill. In response to that call, and in attempting to comply with its interpretation of the provisions of a recently enacted Pennsylvania law, Duquesne Light issued a refund of $278.71 to the tenant, Mr. Deere, and assessed the landlord/owner, Ms. Divilly, a charge for electricity to the apartment in the amount of $738.35. The record further shows that Mr. Deere

gave $260.00 of his refund to Ms. Divilly who, in turn, returned the $260.00 to Duquesne Light for credit on the account in question. The record further shows that the other apartment at the Jeffers Street location was unoccupied during the time these electric bills were incurred.

Finally, the record shows that Ms. Divilly arranged to have a second meter installed at the location and that, as of August 5, 1994, Ms. Divilly's name was removed from the account and a separate account was established in the name of the tenant, Scott Deere.

Therefore the amount in question here is the balance due on the now-terminated account. At the time of the hearing that amount owing was $548.90.

Ms. Divilly, the Complainant, claims that she should not be held responsible for any bills incurred by Mr. Deere prior to her becoming aware of a duty under a newly enacted law to install separate meters. She contends that her responsibility should be limited to the period between May 16, 1994 and August 5, 1994. Besides, she argues, Mr. Deere, in a lease agreement, had agreed to pay one half of the electric bill for power supplied to the structure.

This dispute arose because of the enactment of 66 Pa. C.S.A. §1529.1 (also referred to as Act 54 of 1993). The law became effective on September 1, 1993. That statute reads as follows:

1529.1 Duties 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 the 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 effected 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 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 of the 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.

The first issue that must be addressed is whether or not the statute provides adequate notice to the landlord/owner concerning her responsibilities under the act. There is no dispute that Ms. Divilly received no actual notice of her responsibility for utility service until contacted by Duquesne Light in May 1994, some eight months after that liability had been imposed. Unfortunately for Ms. Divilly, the act does not require that actual

notice be provided. The statute requires her as landlord/owner to notify Duquesne Light that her residential building contains multiple dwelling units and only one meter. This duty is imposed on her, regardless of whether she knows of it or not. Her financial responsibility for electric service provided to the Jeffers Street residence commenced on September 1, 1993, the effective date of the act. That responsibility was effected by operation of law.

Since the landlord/owner was responsible for paying the utility bills incurred after September 1, 1993, Duquesne Light had no right to collect and hold monies paid to it by the tenant for service provided after that date. Duquesne Light, therefore, was acting in compliance with the statute when it returned to Mr. Deere the money it had received from him for service provided after September 1, 1993.

This conclusion does not, however, absolve Mr. Deere from any obligation he might have under a lease agreement with Ms. Divilly to pay for his share of the electric bill. That obligation is one which cannot be enforced by this Commission. And nothing in this decision would preclude Ms. Divilly from seeking enforcement of her rights under the proffered lease agreement in the Court of Common Pleas or other appropriate forum.

The lease agreement provides that Mr. Deere will pay his specified share of the utility bills. It does not state to whom that share should be paid. The fact that 66 Pa. C.S.A §1529.1 requires that the utility account be in the name of the landlord

does not relieve the tenant of any personal obligation he has assumed in relation to that landlord.

Ms. Divilly's financial responsibility for electric service to Mr. Deere does cease, naturally, as of August 5, 1994, when separate metered service is established in the name of Mr. Deere.

I find that the Respondent, Duquesne Light, was acting in accord with the provisions of the statute when it listed the Jeffers Street residence electric account in the name of Ms. Divilly and held her responsible for service provided there after the effective date of the act and before the creation of separately metered accounts.

I further find that no issue is raised in this case concerning the propriety of Duquesne Light's action of returning to Mr. Deere the monies he had paid to it on account of Ms. Divilly's obligations. Virtually the entire amount refunded by Duquesne Light to the tenant was given to the landlord and repaid to the utility.

Conclusions of Law

1. The Commission has jurisdiction over the parties as well as the subject matter of this dispute.

2. Section 332(a) of the Public Utility Code (66 Pa. C.S.A §332(a)) places the burden of proof upon the Complainant, as the party seeking affirmative relief from the Commission.

3. Pursuant to 66 Pa. C.S.A §1529.1(c) the Complainant is responsible for the payment of electric service at the Jeffers Street residence effective September 1, 1993 through August 4, 1994.

4. The Complainant has failed to meet her burden of proof in this matter.

ORDER

THEREFORE,

IT IS ORDERED:

That the Complaint of Sarah Divilly v. Duquesne Light Company docketed with the Pennsylvania Public Utility Commission at No.C-00946235 is hereby dismissed.

Date: February 21, 1995

Fred R. Nene

FRED R. NENE
Administrative Law Judge

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 25, 1995

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
David W. Rolka, Dissenting - Statement attached
Robert K. Bloom

Sarah Divilly
v.
Duquesne Light Company

C-00946235

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions filed to the Initial Decision of Administrative Law Judge ("ALJ") Fred R. Nene issued on March 1, 1995.

HISTORY OF THE PROCEEDINGS

On September 20, 1994, Sarah Divilly ("Complainant") filed a complaint against Duquesne Light Company ("Duquesne" or "Respondent") alleging that Duquesne had (1) improperly refunded monies to the tenant that had paid for electric service, (2) switched electric service into Complainant's name retroactively and (3) back-billed Complainant for its electric used.

On October 21, 1994, Duquesne filed an Answer denying the allegations and stated in New Matter that it was acting in a manner required by law.

A hearing was held before ALJ Nene on December 12, 1994. The record consists of 45 pages of transcript plus two Complainant exhibits, and three Respondent exhibits.

No briefs were filed in this proceeding. The Initial Decision of ALJ Nene was issued on March 1, 1995. Exceptions were filed on March 17, 1995 by the Law Bureau.

FINDINGS OF FACT

The ALJ made the following Findings of Fact which we adopt in the disposition of this complaint proceeding:

1. The Complainant, Sarah Divilly, is the landlord/owner of 1327 Jeffers Street, Pittsburgh, Pennsylvania 15204. Ms. Divilly rents two apartments in the house. (Tr. 5)

2. Ms. Divilly is in the business of renting property as a portion of her income. (Tr. 18)

3. Scott Deere entered into a lease agreement with Ms. Divilly on September 1, 1991, at which time he agreed to pay half of all utilities charged to the house at 1327 Jeffers Street, (Tr. 12-14, Attachment to Complaint)

4. Duquesne Light Company provides electric service to the Jeffers Street location.

5. Ms. Divilly never notified Respondent, Duquesne Light, that the two apartments were connected to a single meter. (Tr. 17)

6. Prior to May 1994, Ms. Divilly did not know of the existence of Act 54, also known as Section 1529.1 (66 Pa. C.S.A. §1529.1) and House Bill 678. This enactment requires multiple apartments in the same building to be individually metered. (Tr. 7, 37, 42)

7. On April 26, 1994, Duquesne Light was first notified, by a complaint from Mr. Deere, that 1327 Jeffers Street had two

apartments with one meter. (Tr. 25 - 26 36)

8. At the time Mr. Deere notified Duquesne Light that the apartments were not individually metered, he was delinquent on his electric bill in the amount of $339.40. (Tr. 38)

9. Duquesne Light refunded to Mr. Deere $278.71 on or about June 1, 1994 as a result of his complaint and Duquesne Light's knowledge of the situation. (Tr. 17, 38)

10. Ms. Divilly received a bill from Duquesne Light, due on June 9, 1994, with a balance of $738.35. This bill was for service to the Jeffers Street address dating back to September 16, 1993. (Tr. 9, 14, Complainant's Exhibit A)

11. Mr. Deere gave $260.00 from the $278.71 refund received from the Respondent to Ms. Divilly who, in turn, gave the $260.00 back to Duquesne Light toward satisfaction of the outstanding balance on the account. (Tr. 13) This payment was made on July 18, 1994. (Respondent Exhibit 3)

12. Duquesne Light's witness, a regulatory analyst, testified that Act 54 was and is being implemented by Duquesne Light by placing accounts that had been in the tenant's name into the landlord's name effective from September 1, 1993 until the wiring problem is corrected. (Tr. 25, Respondent's Exhibit 1)

13. Duquesne Light sent a letter dated May 16, 1994 to Ms. Divilly advising her that the service account would be placed into her name effective from September 16, 1993 until the two apartments at 1327 Jeffers Street were individually metered. (Tr. 25, 27, Respondent's Exhibit 2)

14. The account was terminated in the name of Sarah Divilly and placed into Scott

Deere's name on August 5, 1994 when Duquesne Light confirmed that the apartments had been individually metered. (Tr. 28-29)

15. To date, Ms. Divilly has made three payments toward the balance due: $260 received from Mr. Deere; $100; and $50, leaving a current balance of $548.90. (Tr. 13, 15, 28, Respondent's Exhibit 3)

(Initial Decision, pp. 2-4)

DISCUSSION

Ms. Divilly owns the building at 1327 Jeffers Street which has two apartments. Scott Deere, at all times material, was a tenant of Ms. Divilly, occupying one of the dwelling units. Duquesne refunded monies to Scott Deere that he paid for electric service after learning that Mr. Deere was a tenant. Duquesne acted based on Act 54, also known as Section 1529.1 (66 Pa. C.S.A. §1529.1). Duquesne initiated service on the landlord's name on June 9, 1994, and billed the landlord retroactively back to September 1, 1993.[1]

The Complainant, Ms. Divilly claims she should not be held responsible for bills incurred by Mr. Deere prior to her becoming aware of her responsibility under Act 54. She contends her responsibility should be limited to the period, May 16, 1994, the date she received actual notice, through August 5, 1994, the date Duquesne confirmed that the apartments had been individually metered.

In Duquesne's Answer and New Matter filed on October 21, 1994, the Respondent denied it was under any duty to

[1] Because of Respondent's billing cycle, the actual date was September 16, 1993

Duquesne opines that it was under a duty to list the electric service account for Complainant's rental property in the Complainant's name. Duquesne maintains that the Complainant was responsible for payment for electric service at the Complainant's rental property from September 1, 1993, the effective date of Act 54, until such time that each dwelling unit at Complainant's rental property was separately metered.

The ALJ noted the dispute arose due to the enactment of 66 Pa.C.S.A. §1529.1 which became law on September 1, 1993. The statute reads as follows:

> **1529.1 Duties 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 the 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 effected 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 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 of the 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.

The ALJ concluded the statute did not require actual notice be provided to the landlord. The statute requires the landlord/owner notify the utility that the residential building contains multiple dwelling units and only one meter. The ALJ noted that the duty to notify the utility is imposed on the landlord, regardless of whether the landlord knows of it or not. The ALJ opined that the landlord's responsibility for electric service provided to the Jeffers Street residence commenced on September 1, 1993, the effective day of the act and that the responsibility was effected by operation of law. The ALJ concluded that the Duquesne acted in compliance with the provision of the statute when it returned the tenant's money it received from him, for service provided after September 1, 1993. Initial Decision, p. 7. The ALJ further concluded Duquesne correctly listed the Jeffers Street residence electric account in the name of Ms. Divilly and held her responsible for service provided after the effective date of the act.

The ALJ addressed the propriety of Duquesne's action of returning to Mr. Deere the monies he had paid to it on account of Ms. Divilly's obligation concluding that this was not an issue in this case.

We will now consider the Exceptions of the Law Bureau.

EXCEPTIONS

In review of the matter before us, we find that the critical factor the Law Bureau argues is that Section 1529.1 of the Public Utility Code does not authorize the utility to refund to a tenant monies paid on accounts which became the responsi-

bility of the landlord as of September 1, 1993. The Law Bureau contends that the exclusive statutory remedy available to tenants is to recoup directly from the landlord pursuant to Section §1529, any payments made on such accounts.

The Law Bureau maintains that the ALJ correctly determined that Section 1529.1 does not require that the owner of a rental property "not individually metered" to receive actual notice of the landlord's responsibilities under the act before those responsibilities attach. "The responsibility was effected by operation of law." Initial Decision, p. 7.

The Law Bureau continues in its Exceptions, stating that ALJ Nene determined that Duquesne had no right to collect and hold monies paid to it by the tenant (emphasis added):

> Since the landlord/owner was responsible for paying utility bills incurred after September 1, 1993, Duquesne Light had no right to collect and hold monies paid to it by the tenant for service provided after that date. Duquesne Light, therefore, was acting in compliance with the statute when it returned to Mr. Deere the money it had received from him for service provided after September 1, 1993.

Initial Decision, p. 7.

The Law Bureau disagrees[2/] with the ALJ's conclusion that Duquesne's action was in compliance with the statute. The

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2/ Although Law Bureau believes that Duquesne's action in refunding monies to the tenant was not in compliance with §1529.1, the Law Bureau does not believe that it was a violation of the statute. It is Law Bureau's understanding that Duquesne, in making the refund, was relying on advice given by the Commission's Bureau of Consumer Services. Because the statute is sufficiently confusing to engender differing yet reasonable interpretations of its intent and application, Duquesne should not be held to have violated the statute by its action.

Law Bureau contends there is no direction provided in Section 1529.1 as to the recoupment of monies previously paid by the tenant for a landlord's utility account. Under the plain language of this statute, there is no authority for the utility to sua sponte issue refunds to tenants.

The Law Bureau asserts that the General Assembly, by inserting Section 1529.1 into Subchapter B of Chapter 15 of the Public utility Code, has provided the tenant with an exclusive remedy for recoupment of moneys paid by the tenant on the landlord's behalf at Section 1529. Section 1529 reads as follows:

> 66 Pa. C.S. §1529. Right of tenant to recover payments.
>
> 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 any 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.

Furthermore, the Law Bureau asserts that the Legislature, by inserting Section 1529.1 into Subchapter B, has provided the tenant with an exclusive remedy for recoupment of money paid in 66 Pa. C.S. §1529. The Legislature thus made it clear that any claim by the tenant must be collected from the landlord, not from the utility.

Finally, the Law Bureau argues that the ALJ's construction of Section 1529.1, allowing utilities to refund monies paid by tenant's on landlord's accounts, impermissibly impairs the obligation of contracts in violation of Article I,

Section 10 of the U.S. Constitution and Article I, Section 17 of the Pennsylvania Constitution. (Law Bureau Exceptions, p. 6-7).

1. Impairment of Contracts

Article I, Section 10 of the U.S. Constitution provides that:

> No state shall pass any bill of attainder, ex post facto law or law impairing the obligation of contracts.

Article I, Section 17 of the Pennsylvania Constitution provides that:

> No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed.

The Pennsylvania Supreme Court has held that, whenever possible, interpretations of statutes which would create conflict with constitutional provisions must be avoided. Commonwealth v. Hude, 492 Pa. 600, 4215 A. 313 (1980). See also Commonwealth v. Staley, 476 Pa. 171, 381 A.2d 1280 (1978); Laurence County Foht, 33 Pa. Commonwealth Ct. 379, 381 A.2d 1348 (1978). Moreover, under the Pennsylvania Statutory Construction Act, the Legislature is presumed not to intend to violate the Constitution of the United States nor the Commonwealth of Pennsylvania. 1 Pa. C.S. §1922(3).

The Law Bureau asserts that the ALJ's interpretation of Section 1529.1 as granting authority to a utility to refund to a tenant monies paid on a landlord's account conflicts with both the U.S. and Pennsylvania Constitutions. The Law Bureau argues that credible record evidence established, that by entering into a lease agreement dated September 1, 1991, the tenant, agreed to pay half of all utility bills charged to the Jeffers Street house

(ALJ Finding of Fact No. 3, I.D.) Therefore, according to the Law Bureau, Duquesne is sua sponte refund to the tenant impairs the obligation of the tenant as party to the lease agreement.

The Law Bureau contends that its interpretation that the Section 1529 remedy is applicable to situations arising under Section 1529.1 is preferable for two reasons, to wit: (1) it avoids the present situation where a utility inserted itself into a private contractual agreement, and (2) it does not conflict with the provisions of either the U.S. or Pennsylvania Constitutions.

As the Law Bureau stated:

> [It's] interpretation safeguards the integrity of a possible existing private contract between a landlord and tenant which may identify the party responsible for making utility service payments. The contract thus would be preserved so that any adjudication of the rights and responsibilities of each of the parties to the contract could then be undertaken in court. (Law Bureau Exceptions, p. 8).

On consideration of the Law Bureau's Exceptions, we shall deny them. The Law Bureau's reliance on Section 1529 as an exclusive statutory remedy is misplaced. Initially we observe that the statutory scheme of Section 1529.1 is in furtherance of the protection of the rights of tenants of multi-occupied properties to continued utility service in the event of owner default. Consequently, the Law Bureau's position which champions the rights of the landlord, or other person/entity to whom lease payments are due, does not advocate for the class of persons the statute seeks to protect.

Also, Section 1529, which preceded the enactment of Section 1529.1, is placed after a sequence of events which outline a logical series of conditions precedent to guaranteed continuity of service in the event of landlord/owner default. See Section 1523 - Notices before service to landlord terminated; Section 1524 - Request to landlord to identify tenants; Section 1525 - Delivery and contents of termination notice to landlord; Section 1526 - Delivery and contents of first termination notice to tenants; Section 1527 - Right of tenants to continued service; Section 1528 - Delivery and contents of subsequent termination notice to tenants.

We find particularly instructive the steps to be taken pursuant to Section 1527. Here, the tenants may apply for continuation or resumption of service for the nonpayment of charges by the landlord/owner. See 66 Pa. C.S. § 1527(a). Also, when the tenants pay such charges service is to be resumed and termination averted. See Section 1527(b). And, under subsection (c), when the utility receives payment from the tenants on behalf of the landlord/owner who is liable, the landlord/owner is notified and otherwise apprised of the amount credited on its behalf by the particular tenant.[3/]

[3/] Also, in subsection c there is an express directive to the utility to refund amounts to the tenants where there is a failure to satisfy the requirements of subsection b, or where the tenants elect to voluntarily terminate service.

On the basis of the foregoing, we conclude that the right of set off established in Section 1529 and alleged by the Law Bureau to be an exclusive remedy in this matter, is a reasonable interpretation, though misplaced as an exclusive remedy for implementation of Section 1529.1.

On consideration of the overall statutory scheme, we conclude that the Law Bureau's interpretation would be inconsistent with the clear intent of Section 1529.1(b). This provision states that "[u]pon receipt of notice... 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 payment for the utility services rendered thereunto." (Emphasis added) This language, though perhaps harsh to the landlord/owner, leaves little doubt that it is the intention of the General Assembly to place the burden of payment for utility service in master metered circumstances on the property owner. Under the Law Bureau's interpretation, the burden of payment and subsequent reimbursement through collection would shift from the landlord/owner to the tenant. The right of recovery through set off is more speculative than the direct reimbursement from the utility.

The issue of impairment of contract as suggested by the Law Bureau also lacks merit. The Court in Suburban Water Company v. Oakmont Borough, 268 Pa. 243, 254, 110 A. 778 782 (1920) held

that changes in rates are not an impairment of the obligation of contract. Law Bureau has presented no authority where the Court has found impairment of contract related to other legislatively mandated changes in conditions under which a utility may be providing service.

Also we note that the Commonwealth Court in Crown American Corp. v. Pa. P.U.C., 76 Pa. Commonwealth Ct. 305, 463 A.2d 1257 (1983) affirmed this Commission's finding that a rule prohibiting the master metering of electricity at new multi-tenant commercial locations was improper. The Court held that our Order was a legitimate exercise of the state's police power. No impairment of contract was found to exist.

Finally, we hasten to add that Duquesne's actions were consistent with the procedure to be followed when a utility improperly bills a customer - i.e., refund the money to the customer. However, in the present proceeding the "customer" consumed the gas but Act 54 required someone else be responsible for the bill.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding.

2. Sections 1521-1533 of the Public Utility Code, 66 Pa. C.S. §1521-15533, apply to the owner of a building containing one or more dwelling unit occupied by one or more tenants.

3. It was not improper for Duquesne to refund monies collected by it from Mr. Deere the tenant, for electric used at 1327 Jeffers Street back to September 1, 1993; **THEREFORE:**

IT IS ORDERED:

1. That the Complaint of Sarah Divilly against Duquesne Light Company is dismissed consistent with this Opinion and Order.

2. That the Exceptions of the Law Bureau are denied, consistent with this Opinion and Order.

3. That the Initial Decision issued on March 1, 1995 is adopted, consistent with this Opinion and Order.

BY THE COMMISSION,

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: May 25, 1995

ORDER ENTERED: MAY 26 1995

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

R & B REDDY, INC.
v.
PEOPLES NATURAL GAS COMPANY

PUBLIC MEETING - MAY 25, 1995
MAR-95-OSA-101* (REV)
DOCKET NO. C-00946080

SARAH DIVILLY
v.
DUQUESNE LIGHT COMPANY

MAY-95-OSA-139*
DOCKET NO. C-00946235

STATEMENT OF COMMISSIONER DAVID W. ROLKA

I disagree with the conclusion that rate refunds to the residential tenants were an appropriate remedy in this matter. By issuing refunds, and billing the landlord-building owners for the amounts previously paid by the residential tenants, Peoples and Duquesne implemented Section 1529.1 retroactively. The Companies rely on the following language as the basis for their actions:

> (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.

In my opinion, this language if applied retroactively to leases already in existence as of the effective date of the law, September 1, 1993, would constitute an unconstitutional impairment of existing contracts. I agree with the Law Bureau's Exceptions on this point. The utilities should not take any action such as issuing refunds to tenants and rebilling landlord-building owners which would retroactively modify the terms of the lease between a landlord and tenant. If Section 1529.1(c) can be enforced, such efforts should be left up to the actual parties to the lease. For these reasons, I do not support the staff recommendation in these cases.

May 24, 1995
DATED

DAVID W. ROLKA, COMMISSIONER

UGI Utilities, Inc. vs. Ronald L. Heckman

Non-Jury Trial; Breach of contract; Public Utility Code of Pennsylvania; Rental property; Duty of owners of rental property to give notice of ownership; Failure to give notice; Obligation to pay for gas service; Burden of proof; Verdict for Plaintiff

1. Defendant has the burden of proving by a preponderance of the credible evidence that he provided notice to the Plaintiff that the premises were being used for rental purposes when the premises contains one or more dwelling units, not individually metered.
2. Any owner of a residential building or mobile home park failing to notify affected public utilities shall be responsible for payment of the utility services.
3. An application for natural gas delivery service can constitute notice.

UGI UTILITIES, INC., Plaintiff vs. RONALD L. HECKMAN, Defendant. In the Court of Common Pleas of Berks County, Pennsylvania Civil Action - Law No. 4125-95 A.D. Non-Jury Trial, Action for Breach of Contract.

Gary L. Swavely, Jr., Esquire, Attorney for Plaintiff
Ronald L. Heckman, Defendant, In Propria Persona

DECISION, ALBERT A. STALLONE, JUDGE, AUGUST 14, 1996

This is an action for damages arising out of an alleged breach of contract for the sale of natural gas. The Plaintiff, UGI Utilities, Inc., is in the business of selling natural gas to the general public. The Defendant, Ronald L. Heckman, is the owner of an apartment building located at 153 Walnut Street in the City of Reading which contains two (2) dwelling units, one on the first floor and one on the second floor.

According to the Plaintiff, it delivered natural gas to the premises between October 6, 1993, and May 31, 1994, but it discontinued making deliveries thereafter because the Defendant had failed to pay for the gas delivered. The Plaintiff also contends that it delivered natural gas to the premises between June 15, 1994, and June 10, 1996, but has again discontinued making such deliveries thereafter because the Defendant has likewise failed to pay for the gas delivered to the premises during that period of time. In this action, the Plaintiff is seeking to recover the value of the natural gas delivered during these two (2) periods. The Defendant does not deny these deliveries but denies all liability for them, claiming that it is the tenants who have the sole responsibility of paying for the aforesaid natural gas and not the landlord.

And now, after having held a non-jury trial, this Court now

sets forth the following findings of fact, discussion and conclusions of law in disposition of the claims and defenses asserted by the parties in this action.

FINDINGS OF FACT

1. The Plaintiff, UGI Utilities, Inc., is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 225 Morgantown Road, Reading, Berks County, Pennsylvania.

2. The Defendant, Ronald L. Heckman, is an adult individual currently residing at 4677-6 Indian Creek Road, Macungie, Lehigh County, Pennsylvania.

3. The Defendant is the record owner of an apartment building located at 153 Walnut Street in the City of Reading (hereafter the "premises"), which is comprised of two (2) dwelling units, one on the first floor and one on the second floor.

4. The Plaintiff sold and delivered natural gas through one gas meter to the premises between October 6, 1993, and May 31, 1994.

5. This meter measured total gas usage for purposes of heat, hot water and cooking for the entire premises.

6. On May 31, 1994, the Plaintiff stopped delivering natural gas to the premises and turned off the existing meter as a result of the Defendant's failure to pay for the previous deliveries of natural gas to the premises.

7. The Plaintiff did not reactivate this meter subsequent to May 31, 1994.

8. On April 24, 1995, the Plaintiff removed the gas meter which it had previously inactivated on May 31, 1994, from the premises.

9. The Plaintiff did not deliver natural gas to any part of the premises between May 31, 1994, and June 15, 1994.

10. On June 15, 1994, the Plaintiff installed a separate gas meter in the basement of the premises for the sole purpose of measuring natural gas usage by the tenant of the second floor apartment for hot water and cooking.

11. At some unknown date between June 15, 1994, and April 21, 1995, the Defendant connected piping from a furnace located in the basement which served the entire premises to the piping supplying natural gas to the second floor apartment.

12. As of June 15, 1994, this one gas meter was measuring

natural gas usage for heat, hot water and cooking for the entire premises.

13. The Plaintiff continued making deliveries of natural gas to the premises until June 10, 1996, when the gas line to the meter was turned off as a result of the Defendant's failure to pay for the deliveries between June 15, 1994, and June 10, 1996.

DISCUSSION

Section 1529.1 of the Public Utility Code of Pennsylvania, Title 66, 66 Pa.C.S.A. Sec. 1529.1 (Supp. 1996), provides as follows:

Sec. 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.

In order for the Defendant to successfully defend against this claim, this Court must find that the Defendant provided notice to the Plaintiff that:

(1) He was the record owner of the premises;
(2) The premises were being used for rental purposes; and

(3) The premises were individually metered.

And assuming that he did, that the tenants of the premises notified the Plaintiff that the natural gas delivery account(s) should be listed in their name(s) rather than in the name of the Defendant.

The evidence establishes that the only "notice" which the Defendant provided to the Plaintiff relative to his ownership of the premises was an application for natural gas delivery service which he allegedly filed with the Plaintiff in his own name in 1982 when he purchased the property, although the Defendant was unable to find this application in his records. Although this Court does not have the benefit of any appellate court decisions setting forth the type of "notice" that is required, our review of the evidence convinces us that this application, if in fact given, would not constitute the type of notice contemplated by the Pennsylvania Legislature when it enacted subparagraph (a) of section 1529.1.

Nor does the evidence establish that the Defendant ever provided notice to the Plaintiff that the premises were being used for rental purposes.

Moreover, it is undisputed that on May 31, 1994, the Plaintiff turned off the original meter serving the entire premises, that the Plaintiff never reactivated this meter at any time subsequent to May 31, 1994, and that the Plaintiff removed it from the premises on April 24, 1995. The evidence likewise establishes that the gas meter which the Plaintiff installed on June 15, 1994, was to supply natural gas only for cooking and hot water to the second floor apartment. Furthermore, as with the issue of notice, this Court does not have the benefit of any appellate court decision interpreting the exact meaning of the term "individually metered". Therefore, we conclude that the two (2) apartment units were not at any time individually metered inasmuch as, at all times relevant to these proceedings, there was only one (1) meter servicing the premises by UGI Utilities, Inc.

That leaves us with the sole remaining issue of whether there is sufficient credible evidence in the record to establish that any of the tenants of the premises notified the Plaintiff that the natural gas delivery accounts should be listed in their name(s) and that they, and not the Defendant, should be billed for natural gas deliveries to their individual apartments. For even if the evidence would have established that the Defendant provided the required notice to the Plaintiff and that the two (2) apartment units were individually metered because the Defendant was leasing them out as separate rental units, it is still incumbent upon the Defendant to establish that the tenants assumed

his otherwise obligation to pay for the gas service to the premises he owned.

The Defendant claims that five (5) of his tenants between November, 1986, and November, 1994, made such a request. However, the Defendant himself admitted at trial that he had no personal knowledge as to whether any of the tenants actually made such a request except for Gloria Sanders, who allegedly made her request on February 13, 1994, in his presence. However, the Defendant's only other witness, Harry Stouffer, his plumber, admitted on cross-examination that Gloria Sanders never received any natural gas from the Plaintiff subsequent to that date.

Accordingly, we conclude that there is insufficient evidence in the record to establish that any of the tenants notified the Plaintiff that the natural gas delivery accounts should be listed in their name(s) and that they should be billed for natural gas deliveries to the premises instead of the Defendant.

CONCLUSIONS OF LAW

1. The Defendant has failed to meet his burden of proving by a preponderance of the credible evidence that he provided notice to the Plaintiff of his ownership of the premises.

2. The Defendant has failed to meet his burden of proving by a preponderance of the credible evidence that he provided notice to the Plaintiff that the premises were being used for rental purposes.

3. The Defendant has failed to meet his burden of proving by a preponderance of the credible evidence that the two (2) apartment units were individually metered.

4. The Defendant has failed to meet his burden of proving by a preponderance of the credible evidence that one or more of the tenants provided notice to the Plaintiff that the natural gas delivery account for the premises should be listed in their name(s) and that they should be billed individually for natural gas deliveries to the premises.

5. Accordingly, the Defendant is legally responsible for payment for the natural gas deliveries made to the premises between October 6, 1993, and May 31, 1994, and between June 15, 1994, and June 10, 1996.

VERDICT OF COURT

And now, this 14th day of August, 1996, this Court hereby finds in favor of the Plaintiff, UGI Utilities, Inc., and against the Defendant, Ronald Heckman, in the amount of $5,833.79 plus interest from June 13, 1996.

VERDICT OF COURT

And now, this 14th day of August, 1996, this Court hereby finds in favor of the Plaintiff, UGI Utilities, Inc., and against the Defendant, Ronald Heckman, in the amount of $5,833.79 plus interest from June 13, 1996.