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

March 1, 1995
ISSUED:

IN REPLY PLEASE
REFER TO OUR FILE

C-00946235

DANIEL J SPORRER ESQ
DUQUESNE LIGHT COMPANY
ONE OXFORD CENTRE
301 GRANT STREET
PITTSBURGH PA 15279

SARAH DIVILLY
VS
DUQUESNE LIGHT COMPANY

DOCUMENT FOLDER

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Fred R. Nene. 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.

SARA DIVILLY
506 STRATMORE AVENUE
PITTSBURGH PA 15205

Very truly yours,

Allison K. Turner

Enclas
Certified Mail
Receipt Requested

Allison K. Turner
Chief Administrative Law Judge

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

Act 294

Case Identification: C-00946235; Sarah Divilly vs Duquesne Light Company

Initial Decision By: ALJ Fred R. Nene

Deadline for Return to OSA: March 13, 1995

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

David W. Rolka/jr
Commissioner

3-13-95
Date

Act 294

Case Identification: C-00946235; Sarah Divilly vs Duquesne Light Company

Initial Decision By: ALJ Fred R. Nene

Deadline for Return to OSA: March 13, 1995

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

Joseph Rhodes, Jr. Commissioner

3/15/95 Date

Act 294

TB

Case Identification: C-00946235; Sarah Divilly vs Duquesne Light Company

Initial Decision By: ALJ Fred R. Nene

Deadline for Return to OSA: March 13, 1995

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

X _____ Commissioner

3-13-95 Date

Act 294

Case Identification: C-00946235; Sarah Divilly vs Duquesne Light Company

Initial Decision By: ALJ Fred R. Nene

Deadline for Return to OSA: March 13, 1995

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

Lisa Crutchfield
_____ Commissioner

3/3/95
_____ Date

RW.

Act 294

Case Identification: C-00946235; Sarah Divilly vs Duquesne Light Company

Initial Decision By: ALJ Fred R. Nene

Deadline for Return to OSA: March 13, 1995

This decision has not been reviewed by OSA.

* * * * * *

I want full Commission review of this decision.

_____ Commissioner

_____ Date

I do not want full Commission review of this decision.

John Hangen Commissioner

3-9-95 Date

ORIGINAL

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

IN REPLY PLEASE
REFER TO OUR FILE

March 17, 1995

TAE

RECEIVED
95 MAR 17 PM 1:01
PA. P.U.C.
INFO. CONTROL DIV.

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

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

Dear Secretary Alford:

Enclosed for filing, please find an original and nine copies of the document "Exception of the Law Bureau Prosecutory Staff" for filing in the above-captioned matter. A certficate of service is also enclosed.

Sincerely yours,

Patricia Krise Burket

Patricia Krise Burket
Assistant Counsel

DOCUMENT
FOLDER

Enclosures

cc: Parties
ALJ Fred R. Nene

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sarah Divilly,
Complainant

v.

Duquesne Light Company,
Respondent

DOCKETED
MAR 20 1995

Docket No. C-00946245

RECEIVED
95 MAR 17 PM 1:01
PA. P.U.C.
SEC'Y'S. CONTROL DIV.

DOCUMENT FOLDER

EXCEPTION OF THE LAW BUREAU
PROSECUTORY STAFF

Pursuant to 66 Pa. C.S. § 335, the Law Bureau Prosecutory Staff (Prosecutory Staff) respectfully submits the following exception to the March 1, 1995 Initial Decision filed by Administrative Law Judge Fred R. Nene in the above-captioned matter:

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 RESPONSIBILITY OF THE LANDLORD AS OF SEPTEMBER 1, 1993; THE EXCLUSIVE STATUTORY REMEDY AVAILABLE TO TENANTS IS TO RECOUP DIRECTLY FROM THE LANDLORD, PURSUANT TO SECTION §1529, ANY PAYMENT MADE ON SUCH ACCOUNTS.

A. Background

On September 20, 1994, the Complainant Sarah Divilly filed a formal complaint with the Commission claiming that she should not be held responsible retroactive to September 1, 1993 for her tenant's utility account with Duquesne Light Company (Duquesne). She claimed that she was unaware of the existence of Act 54 requiring that each apartment in a residential rental property be individually metered. Duquesne filed an answer denying the complaint's allegations and stating in New Matter that it was

acting in a manner required by law.

A hearing was held on December 12, 1994. The Complainant represented herself, and Regina Sestak, Esquire, appeared on behalf of the Respondent and presented the testimony of Duquesne's witness, a regulatory analyst. Two Complainant exhibits and three Respondent exhibits were submitted. No briefs were filed.

The Complainant is the landlord owner of 1327 Jeffers Street, Pittsburgh, PA 15204. The house is divided into two rental apartments. One tenant, Scott Deere, entered into a lease agreement on September 1, 1991 whereby he agreed to pay half of all utilities charged to the house at 1327 Jeffers Street.

Duquesne supplies electric service to the Jeffers Street house. The Complainant never notified Duquesne that the two apartments were connected to a single meter.

Prior to May 1994, the Complainant did not know of the existence of Act 54, which, inter alia, added Section 1529.1 to the Public Utility Code, 66 Pa. C.S. § 1529.1. This enactment required multiple apartments in the same building to be individually metered. Further, the statute provided in effect that where rental units were not individually metered, the landlord would be financially responsible for the utility account effective September 1, 1993.

On April 26, 1994, Duquesne was first notified, by complaint from Mr. Deere, that 1327 Jeffers Street had two apartments with one meter. At the time that the notification was made, he was delinquent on his electric bill in the amount of

$339.40. On or about June 1, 1994, Duquesne refunded to Mr. Deere $278.71 as a result of his complaint and Duquesne's knowledge that Mr. Deere's apartment was not individually metered.

On or about May 16, 1994, Duquesne wrote to the Complainant advising her that the service account for 1327 Jeffers Street would be placed into her name effective September 1, 1993 until the two apartments at that location were individually metered. The Complainant then received a bill from Duquesne, due on June 9, 1994, with a balance of $738.35. This bill was for service to Jeffers Street address back to September 16, 1993.

Mr. Deere gave $260.00 to the Complainant of the $278.71 refund he received from Duquesne. In turn the Complainant gave the $260.00 back to Duquesne Light toward satisfaction of the outstanding balance on the account. This payment was made on July 18, 1994.

The account was terminated in the Complainant's name and placed in Scott Deere's name on August 5, 1994 when Duquesne confirmed that the two apartments had been individually metered. 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.

B. <u>The Exclusive Remedy For Tenants Who Have Made Payments On a Utility Account For Which a Landlord Is Made Financially Responsible Is Recoupment From the Landlord and Not From the Utility Via Refund</u>.

In the instant proceeding the ALJ addressed two

questions, the first was whether 66 Pa. C.S. § 1529.1 provides adequate notice to the landlord/owner concerning her responsibilities. 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 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.

The ALJ correctly determined that Section 1529.1 does not require that the owner of a rental property "not individually metered" 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.

However, ALJ Nene then 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 ALJ states that Duquesne's action was in compliance with the statute. Prosecutory Staff disagrees.[1] 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.

Instead 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

---

[1] Although Prosecutory Staff believes that Duquesne's action in refunding monies to the tenant was not in compliance with §1529.1, we do not believe that it was a violation of that statute. It is our 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.

the landlord ratepayer.

This section allows the tenant to utilize self-help in recouping utility service payments made on the landlord's behalf. Applying this remedy to a general case under Section 1529.1, a tenant may withhold rent payments from his or her landlord to offset the amount paid to the utility on the landlord's behalf since September 1, 1993, the effective date of the statute, or otherwise obtain reimbursement from the landlord. The Legislature thus made it clear that any claim by the tenant must be collected from the landlord, not from the utility.

C. The ALJ's Construction of Section 1529.1, Which Allows Utilities to Refund Monies Paid by Tenants on Landlord's Accounts, Impermissibly Impairs the Obligation of Contracts in Violation of the United States and Pennsylvania Constitutions.

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.

Consistently, 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, 425 A. 313 (1980). See also Commonwealth v. Staley, 476 Pa. 171, 381 A.2d 1280 (1978); Lawrence County v. Foht,

33 Pa. Commonwealth Ct. 379, 381 A.2d 1348 (1978). Moreover, under the Pa. Statutory Construction Act, the General Assembly is presumed not to intend to violate the Constitution of the United States nor the Commonwealth of Pennsylvania. 1 Pa. C.S. §1922 (3).

In the instant proceeding, the ALJ's interpretation of the Section 1529.1 as granting authority to Duquesne to refund to a tenant monies paid on a landlord's account conflicts with Article 1, Section 10 of the United States Constitution and Article I, Section 17 of the Pennsylvania Constitution. Credible record evidence established that by entering into a lease agreement dated September 1, 1991, the tenant, Mr. Deere, agreed to pay half of all utility bills charged to the Jeffers Street house (ALJ Findings of Fact No. 3, Initial Decision, p. 2; Tr. 12-14; Attachment to the Complaint). However, Duquesne's sua sponte refund to Mr. Deere of the money paid for utility service, based upon the utility's faulty construction of Section 1529.1 adopted by the ALJ in his Initial Decision, impermissibly impaired the obligations of the tenant as a party to his lease contract.[2]

The Prosecutory Staff's interpretation that the Section 1529 remedy is applicable to situations arising under Section 1529.1 is preferable to the ALJ's approach for two reasons: 1) it avoids the situation that was created in the instant case where a

---

[2] Ironically, the ALJ indicated that the Commission had no power over enforcement of the tenant's obligations under the contract, Initial Decision, p. 7, but nonetheless adopted an interpretation of Section 1529.1 that interferes with the contract obligations of the tenant.

utility inserted itself into a private contractual agreement, and 2) consequently, it is not in conflict the provisions of the U.S. Constitution and the Pennsylvania Constitution that proscribes state laws that impair private contracts. In application, the Prosecutory Staff'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.

WHEREFORE, the Law Bureau Prosecutory Staff respectfully requests that the Commission grant its exception, sustain the complaint to the extent that it is consistent with the exception, and order Duquesne Light Company to credit the account of the landlord with the monies that were improperly refunded to the tenants.

Respectfully submitted,

Patricia Krise Burket

Patricia Krise Burket
Assistant Counsel

The Law Bureau Prosecutory Staff
The Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Date: March 17, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Exception of the Law Bureau Prosecutory Staff to the Initial Decision of Administrative Law Judge Fred R. Nene, Docket No. C-00946080, has been served on this date on the following persons in the manner indicated below:

By First Class Mail:

Daniel J. Sporrer, Esq.
Regina Sestak, Esq.
Duquesne Light Company
One Oxford Center
301 Grant Street
Pittsburgh, PA 15279

Sarah Divilly
506 Startmore Avenue
Pittsburgh, PA 15205

Patricia Krise Burket
Assistant Counsel
Law Bureau Prosecutory Staff

Date: March 17, 1995