

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Uniform Cover and Calendar Sheet

53

1. REPORT DATE: May 8, 1995	2. BUREAU AGENDA NO.: MAY-95-OSA-139*
3. BUREAU: Office of Special Assistants	
4. SECTION(S):	5. PUBLIC MEETING DATE: May 25, 1995
6. APPROVED BY:  Director: C.W. Davis 7-1827 Supervisor: A. Arnold 7-8032	
7. PERSONS IN CHARGE: P.C. Foster 7-8754	
8. DOCKET NO.: C-00946235	

DOCKETED  
JUL 20 1995

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

DOCUMENT  
FOLDER

(a) Sarah Divilly v. Duquesne Light Company  
  
(b) On September 20, 1994, Sarah Divilly (Complainant) filed a Complaint against Duquesne Light Company (Duquesne). On October 21, 1994 Duquesne filed its Answer denying the allegations and stated in New Matter that it was acting in a manner required by law.

On March 1, 1995, the Initial Decision of Administrative Law Judge Fred R. Nene was issued. The Law Bureau filed Exceptions on March 17, 1995.

(c) The Office of Special Assistants recommends that the Commission adopt the draft Opinion and Order denies the Exceptions of the Law Bureau and adopts the Initial Decision.

10. MOTION BY: Commissioner Chm. Quain  
SECONDED: Commissioner Crutchfield  
Commissioner Hanger - Yes  
Commissioner Rolka - No  
Commissioner Bloom - Yes

CONTENT OF MOTION: Staff recommendation adopted.  
Statement of Commissioner David W. Rolka attached.



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

May 26, 1995

IN REPLY PLEASE  
REFER TO OUR FILE  
C-00946235

■  
SARA DIVILLY  
506 STRATMORE AVENUE  
PITTSBURGH PA 15205  
■

**DOCKETED**  
MAY 31 1995

Sarah Divilly  
v.  
Duquesne Light Company

**DOCUMENT  
FOLDER**

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

DANIEL J SPSORRER ESQUIRE  
DUQUESNE LIGHT COMPANY  
ONE OXFORD CENTRE  
301 GRANT STREET  
PITTSBURGH PA 15279

**DOCKETED**  
MAY 31 1995

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

**DOCUMENT  
FOLDER**

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.<sup>1</sup>

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

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<sup>1</sup> 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 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 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<sup>2/</sup> with the ALJ's conclusion that Duquesne's action was in compliance with the statute. The

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<sup>2/</sup> 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.<sup>3/</sup>

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<sup>3/</sup> 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:**

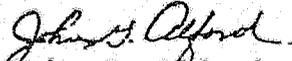
**IT IS ORDERED:**

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. Afford  
Secretary

(SEAL)

ORDER ADOPTED: May 25, 1995

ORDER ENTERED: MAY 26 1995

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

May 31, 1995

IN REPLY PLEASE  
REFER TO OUR FILE  
C-00946235

▪  
SARA DIVILLY  
506 STRATMORE AVENUE  
PITTSBURGH PA 15205  
▪

INDEXED  
JUN 19 1995

Sarah Divilly  
v.  
Duquesne Light Company  
\_\_\_\_\_

DOCUMENT  
FOLDER

Dear Mr. Sporrer:

Attached is copy of a Statement of Commissioner David W. Rolka which inadvertently was not attached to the Opinion and Order adopted at Public Meeting May 25, 1995 and issued May 26, 1995 in the above entitled proceeding.

We hope we have not caused you any inconvenience in this matter.

Very truly yours,

John G. Alford  
Secretary

Enclosure

JEP

DANIEL J SPORRER ESQUIRE  
DUQUESNE LIGHT COMPANY  
CNE OXFORD CENTRE  
301 GRANT STREET  
PITTSBURGH PA 15279

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 ✓

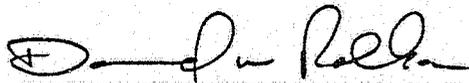
STATEMENT OF COMMISSIONER DAVID W. ROLKA

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