

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 19, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly M. Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Vanee Flowers

F-2023-3037961

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Vanee Flowers (Complainant or Ms. Flowers) filed on August 3, 2023,¹ to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Arlene Ashton, which was issued on July 14, 2023, in the above-captioned proceeding. Replies to Exceptions were filed by PECO Energy Company

¹ The Complainant's Exceptions are dated August 1, 2023. However, the Exceptions were electronically filed with the Commission on August 3, 2023.

(PECO or Company) on August 18, 2023. For the reasons discussed below, we shall hold in abeyance our consideration of the Exceptions and Replies thereto and remand this matter to the Office of Administrative Law Judge (OALJ) for further proceedings, consistent with this Opinion and Order.

I. History of Proceeding

On January 25, 2023, Vanee Flowers filed a Formal Complaint against PECO with the Commission in which she alleged that there were incorrect charges on her bill.² Complaint at 2. Additionally, Ms. Flowers alleged an “illegal electricity hookup” at her apartment and that she had experienced an “overload of electricity, constant power outages, flickering lights, and overheating of appliances.”³ *Id.* The Complaint also states that Ms. Flowers did not have access to the breaker box for her apartment as such an apparatus is located in another apartment unit. *Id.* Attached to the Complaint are what appears to be failed housing quality standards inspections regarding the Complainant’s rental property and an email from the Complainant to the Delaware County Housing Authority, *inter alia*, wherein the Complainant again alleges an illegal electrical hookup and “an overload of electricity causing a high Peco [*sic*] bill.” *Id.* at 21. For relief, Ms. Flowers requests that PECO reimburse her for all electric service provided to the apartment that she rented at the 927 Coates Street, 2nd Floor Unit, Sharon Hill,

² This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3866604 issued on December 21, 2022. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

³ Ms. Flowers checked boxes on her Complaint indicating the type of utility service that is the subject of the Complaint to be: electric, gas, steam heat, and storm water. Hand-written notes were also on the complaint form. Complaint at 2.

Pennsylvania, 19079 (Service Address)⁴ and that all balances for utility service to her at the Service Address be charged to the owner of the rental property.⁵ *Id.* at 3.

On February 17, 2023, PECO filed an Answer to Ms. Flowers' Complaint denying the material allegations of the Complaint.⁶

On February 21, 2023, a Hearing Notice was issued scheduling an Initial Hearing to be held telephonically on April 12, 2023, and assigning the matter to ALJ Ashton.

ALJ Ashton issued a Prehearing Order on March 9, 2023. The Prehearing Order, *inter alia*, directed the parties to comply with various procedural requirements and explained the burden of proof. The Prehearing Order stated the Complainant bears the burden of proof to establish that PECO violated its tariff, Public Utility Code (Code), or a Commission Order or regulation and that she is entitled to the relief requested in the Complaint. Prehearing Order at 4; I.D. at 2.

The hearing was held as scheduled on April 12, 2023. Ms. Flowers participated *pro se* and testified. Four (4) exhibits were offered by Ms. Flowers that were entered into the record. I.D. at 2; Tr. at 28-38. PECO appeared, represented by Khadijah Scott, Esquire, and presented the testimony of Anna Mae Migliaccio, a PECO regulatory

⁴ Ms. Flowers no longer resides at the Service Address and currently resides at 1101 Hook Rd. Apt. 350, Sharon Hill, Pennsylvania, 19079 (Current Address). Tr. at 14.

⁵ The owner of the Service Address is identified as Del Val Realty & Property Management, LLC, 49 E. Lancaster Ave, Suite 300, Malvern, PA 19355. Complaint at 3.

⁶ In its Answer, PECO indicated that Ms. Flowers had electric and gas heating service at the Service Address. Answer at 1.

assessor. PECO offered four (4) exhibits and they were entered into the record. I.D. at 2.; Tr. at 80-90.

The record closed on April 26, 2023.

ALJ Ashton's Initial Decision was issued on July 14, 2023. On August 3, 2023, Complainant filed Exceptions to the ALJ's Initial Decision. PECO filed Replies to Exceptions on August 18, 2023.⁷

II. Discussion

A. Legal Standards

1. Foreign Load

The term "foreign load" refers to the situation where a customer's meter registers utility usage not exclusive to the customer's dwelling unit or its occupants. In 1993, the General Assembly amended the Code to include 66 Pa. C.S. § 1529.1 to address foreign load issues.⁸ Section 1529.1 provides as follows:

⁷ PECO filed its Reply Exceptions on August 18, 2023, after the August 13, 2023 deadline set by the July 14, 2023 Secretarial Letter, indicating that it was served the Complainant's Exceptions via electronic mail on August 9, 2023 by the Complainant. R. Exc. at 1, Note 1. We note that, pursuant to 52 Pa. Code § 1.2, where the Commission deems it appropriate in the interest of justice, and where no prejudice results, a procedural defect may be disregarded where the substantive rights of the parties are not prejudiced. Finding no prejudice will result from consideration of the PECO's Reply Exceptions, in the circumstances, we shall hold in abeyance our consideration of PECO's Reply Exceptions, as noted *supra*.

⁸ Section 1529.1 was added to the Code by the enactment of Public Law 379, No. 54, on July 2, 1993, with an effective date of September 1, 1993.

§ 1529.1. Duty of owners of rental property

(a) **Notice to public utility.**—It is the duty of every owner of a residential building . . ., 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 . . . 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 . . .

(c) **Failure to give notice.**—Any owner of a residential building . . . 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.

66 Pa. C.S. § 1529.1 (emphasis added).

The phrase “not individually metered,” as used in Section 1529.1, is not defined in the Code or our Regulations. *See, I-A Realty v. Pa. PUC*, 63 A.3d 480, 483 (Pa. Cmwlth. 2013) (*I-A Realty*). However, since the enactment of Section 1529.1 of the Code in 1993, we consistently have defined “not individually metered” in our decisions

as the “utility meter for the unit is registering a foreign load, or usage not exclusive to the dwelling unit or its occupants.” *Id.* at 483 (citations omitted).⁹

In *Ace Check Cashing*, we explained the operation of Section 1529.1. Specifically, Subsection (a) of Section 1529.1 establishes an affirmative duty on the

⁹ See also, *David P. Boyce v. Duquesne Light Company*, Docket No. Z-00223698 (Opinion and Order entered September 1, 1994) (*Boyce*) (foreign load existed where tenant’s meter registered electric service for the compressor for the air conditioning unit servicing three apartment units); *Elizabeth Santos v. Metropolitan Edison Company*, Docket No. C-00967757 (Opinion and Order entered August 7, 1997) (*Santos*) (foreign load existed where tenant’s meter registered electric service to a barber shop and church located in tenant’s building); *Theodore P. Del Vecchio v. PPL Electric Utilities Corp.*, Docket No. Z-01464793, 2005 WL 2277638 (Opinion and Order entered September 13, 2005) (foreign load existed where tenant’s account registered electric service to well water pump and various outbuildings); *Linda Franckowiak v. PPL Electric Utilities Corp.*, Docket No. C-20054687, 2006 WL 4794383 (Order entered July 3, 2006) (*Franckowiak*) (“the existence of foreign wiring precludes a premises from being considered ‘individually metered’ for purposes of [Section 1529.1 of the Code.]”); *Ronald Shank v. PPL Electric Utilities Corporation*, Docket No. C-2009-2087300 (Opinion and Order entered August 31, 2009) (*Shank*) (foreign load existed where tenant’s meter registers electric service from foreign wiring); *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Opinion and Order entered May 21, 2010) (*Ace Check Cashing*), (foreign load existed where tenants’ gas meter registered gas service for hot water heater supply to separate floor of building); *Cosme v. PECO Energy Co.*, Docket No. C-2010-2171497, 2012 WL 1794917 (Final Order entered March 8, 2012) (foreign load existed where tenant’s meter registered electric service for hallway electric heater and light); *George W. Kopf, Jr. v. PECO Energy Co.*, Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013) (*Kopf*) (foreign load existed where tenant’s meter registered electric service to common areas in second floor hallway, basement and outside light); *I-A Realty v. PPL Electric Utilities Corp.*, Docket No. F-2010-2166554, et al. (Opinion and Order entered April 12, 2012), *aff’d I-A Realty v. Pa. PUC*, 63 A.3d 480 (Pa. Cmwlth. 2013) (foreign load existed where communal street lights in a mobile home park were connected to the electric boxes of the homes of the nearest tenants); *Gnana Chinniah v. PPL Electric Utilities Corp.*, Docket No. F-2012-2325248 (Opinion and Order entered May 9, 2013) (foreign load existed where tenant’s meter registered electric service to a detached storage shed located in the middle of a backyard of a duplex on the boundary between the two properties).

owner of a property to notify the utility if a residential building contains “one or more dwelling units, not individually metered.” If the landlord provides the required notice, Subsection (b) requires the utility to list the account with the foreign load in the landlord’s name and hold the landlord responsible for the payment for utility services rendered to the account.¹⁰ If the landlord fails to provide the required notice, Subsection (c) places an affirmative duty on the utility to proceed as if the notice had been provided. Thus, a utility has an affirmative duty to investigate a foreign load or high bill complaint, and if the utility discovers the presence of a foreign load, the utility is required to list the account in the landlord’s name and hold the landlord responsible for the payment for utility services rendered to the account. *See, Ace Check Cashing.*

Our foreign load policy in implementing Section 1529.1 is well-settled. That long-standing policy, as articulated in *Ace Check Cashing* (citing *Santos*), is as follows:

Upon the finding of foreign load, the utility would list the account, including any arrearages, in the name of the landlord. The landlord had the responsibility to pay the utility bills until the foreign load was corrected. Once the foreign load was corrected by the landlord and verified by the utility, the utility would place the account back in the name of the tenant. However, the arrearage, if any, was to remain with the landlord. There was no *de minimus* exception, and any dispute regarding the financial responsibilities of the parties [as between landlord and tenant] was a matter to be resolved

¹⁰ Prior to 1993, we resolved foreign load high bill complaints by directing the utility to remove the charges attributable to the foreign load from the customer’s bill and to issue a bill for the foreign load in the property owner’s name. *See, Albright v. UGI Penn Natural Gas Co., Inc.*, Docket No. F-2009-2139408 (Initial Decision Issued September 29, 2010) (*Albright*). Section 1529.1 changed this by mandating that the account registering foreign load be listed in the name of the property owner and that the owner be thereafter responsible for the payment of utility services rendered to such account until the foreign load is fixed.

in the Court of Common Pleas and outside this Commission's jurisdiction.

Accordingly, once a foreign load is verified on a tenant's service, the utility is to list the account in the property owner's name and hold the property owner financially responsible for the current balance and any arrearages¹¹ on the account. It is only after the landlord corrects the foreign load, as verified by the utility, that the utility must re-list the account back in the name of the tenant; however, the landlord remains responsible for any arrearage on the tenant's account that existed prior to when the utility verified that the foreign load was corrected. *Ace Check Cashing; Kopf*. The utility must pursue collection of any unpaid amounts on the foreign load-affected account from the landlord, and not from the tenant. *Santos*.

Section 1529.1 is intended to protect residential tenants from the loss of utility service because another customer has service terminated by the utility. *See, Santos*. Additionally, Section 1529.1 recognizes that the property owner is in a better position to know about and correct the existence of the foreign load than a tenant. *See, Albright; Ace Check Cashing*. The operation of Section 1529.1 provides an incentive for the landlord to correct the foreign load situation resulting from the wiring, plumbing, or piping for which the landlord is responsible. *See, Ace Check Cashing*.

¹¹ As clarified in *Glen DeHaven v. PECO Energy Company*, Docket No. C-2017-2585680 (Opinion and Order entered March 23, 2018) (*DeHaven*) and *Richard Dina v. PECO Energy Company*, Docket No. F-2017-2592410 (Opinion and Order entered March 23, 2018) (*Dina*), the utility shall transfer to the landlord only the account arrearages that accumulated at the premises/service address where the foreign load is found to exist and shall exclude any prior debts of the tenant that had been accumulated at another service address and that the utility transferred, pursuant to 52 Pa. Code § 56.35, to follow the financially-responsible tenant to the foreign load-affected premises.

B. ALJ's Initial Decision

In her Initial Decision, ALJ Ashton made sixteen (16) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 3-4; 9-10.

The ALJ considered the claims raised by Ms. Flowers regarding whether the Company acted lawfully by providing the Complainant with adequate and reasonable service under 66 Pa. C.S. § 1501. I.D. at 6-8. The ALJ also considered whether the Company acted lawfully by transferring past-due account balances from an account in the Complainant's name at the Service Address to the Current Address under 52 Pa. Code § 56.35. *Id.* at 8-9.

The ALJ concluded that, under the circumstances, the Company had acted lawfully and that the Complainant failed to meet her burden to prove that PECO provided less than reasonable service. I.D. at 8. During the hearing, the Complainant and PECO agreed that no inspection had been conducted due to the fact that the breaker box was inaccessible to Ms. Flowers without her landlord's involvement. Ms. Flowers did not present any evidence indicating that she took steps to obtain access to the breaker box so PECO could conduct an inspection at the Service Address. *Id.*

The ALJ also concluded that PECO acted lawfully in transferring the past due account balances to the Complainant's present service account. I.D. at 9. ALJ Ashton stated that Ms. Flowers failed to meet her burden of proof under the law to establish that she was improperly billed for service by PECO. *Id.* at 8. The ALJ cited to 52 Pa. Code § 56.35, which governs the transfer of charges to and among utility customer accounts and determined that PECO appropriately transferred the balance from Ms. Flowers' Service Address to her Current Address. *Id.* at 9. The ALJ found that when Ms. Flowers' PECO service was terminated at the Service Address on November 30, 2022, the outstanding balance was \$542.91. *Id.* at 4. Therefore,

Ms. Flowers is responsible to pay the transferred outstanding balance from the Service Address. *Id.* at 9.

C. Exceptions and Reply Exceptions

Ms. Flowers' Exceptions are summarized as follows:

1. ALJ Ashton erred in determining that Complainant did not meet her burden of proof that PECO did not provide her with adequate and reasonable service which violated the Public Utility Code;
2. ALJ Ashton erred in determining that Complainant did not meet her burden of proof that PECO's transfer of the balance from the Service Address to Complainant's Current Address violated the Public Utility Code; and
3. ALJ Ashton denied Ms. Flowers a fair and impartial hearing, violating Ms. Flowers' due process and civil rights.

Exc. at 2-7.

Ms. Flowers asserts that the ALJ had been unfair, unjust and denied the Complainant due process and violated her Civil Rights. Ms. Flowers explains that ALJ Ashton did not allow her to cross examine witnesses and was interrupted and muted several times by ALJ Ashton during the hearing. It is Ms. Flowers' position that ALJ Ashton erred by excluding Ms. Flowers' Answer to PECO's Answer from evidence. Exc. at 2.

The Complainant asserts that the ALJ erred in determining that she did not meet her burden of proof with respect to PECO violating the Public Utility Code by not providing her with adequate and reasonable service. Ms. Flowers argues that PECO

failed to respond to her requests for an investigation to be conducted regarding illegal electric hookups and wiring to be conducted at the Service Address. Exc. at 3.

In its Replies to Exceptions, PECO asserts that the Complainant failed to make specific allegations that the ALJ abused her discretion or made an error of law. PECO acknowledges that the ALJ provided the Complainant the opportunity to present evidence, cross examine PECO's witness and present any objections to evidence during the hearing. R. Exc. at 4.

PECO states that the Complainant contacted the Company on September 22, 2022, regarding flickering lights. PECO instructed the Complainant to contact her landlord and obtain access to the breaker box so that an inspection could be performed. In October 2022, PECO was unable to contact the Complainant and on November 30, 2022, PECO finalized the Complainant's account. PECO explains that an inspection could not have been performed due to the lack of access to the breaker box and that the Complainant had since moved from the residence. Since an inspection was not performed, PECO could not transfer the outstanding balance of \$542.19 to the property owner without confirmation of the foreign wiring consistent with 66 Pa. C.S. § 1529.1. R. Exc. at 4.

Finally, PECO asserts that the Complainant has failed to meet her burden of proof and failed to prove that the Company violated any regulation, statute or order. PECO requests that the Complainant's Exceptions be dismissed and the ALJ's Initial Decision be affirmed. R. Exc. at 5.

III. Disposition

Based on our review of the record in this proceeding and the applicable law, we shall remand this matter to the OALJ, per the discussion *infra*, and shall hold in

abeyance our consideration of the Exceptions and Replies thereto. Further evaluation of the Complaint has shown that the Complainant has made a *prima facie* claim of foreign load with regard to her electric service. Complaint at 2-3.

A public utility has an affirmative duty under Section 1529.1 of the Code to investigate a rental premise upon receiving from a tenant-customer a foreign load or high bill complaint and to transfer the account to the property owner upon discovering a foreign load. In *Franckowiak*, we ruled that the mere suspicion of foreign load is sufficient to trigger the public utility's obligation, pursuant to Section 1529.1, to list the account in the name of the property owner.

Here, PECO was made aware of the Complainant's allegations of overload, unlawful hookup, and high billing, *inter alia*, evidencing the possibility of foreign load,¹² yet PECO failed to conduct an investigation claiming inaccessibility without the property owner's involvement. Furthermore, we have previously stated that a utility is not required to coordinate with a landlord in carrying out its obligations under Section 1529.1 to perform a foreign load investigation, noting that such a requirement could encourage dilatory behavior on behalf of the landlord to the frustration of the lessees. *Franckowiak*.

The crux of Ms. Flowers' Complaint and Exceptions is tied to the results of a foreign load investigation. PECO had an affirmative duty under Section 1529.1 of the Code to investigate Ms. Flowers' Complaint. However, the record does not reflect

¹² We note that in Complainant's Exhibit B, BCS' Informal Complaint Decision issued in this matter, BCS concludes that PECO "has found no evidence of foreign, shared, or mixed meters." Complainant Exh. B at 9. Additionally, in PECO's Exhibit 4, "BCS Decision Report" (on Exelon letterhead), the "Resolution Description" states, in pertinent part, "[d]ismissal issued Company has been unable to schedule an appointment with the customer to test for high voltage, meter sharing, blackouts, extreme heat, and illegal hookup issues as reported in the PUC Complaint." PECO Exh. 4 at 1. We find this information further evidences a foreign load claim made by the Complainant that, upon review of the record, has not been adequately addressed.

whether PECO has, in fact, conducted a foreign load investigation on Ms. Flowers' account. Due to the fact that the record has not been fully developed on this issue, we believe that a remand is necessary for the limited purpose of addressing Ms. Flowers' foreign load claim at the Service Address and for considering any appropriate redress allowed by statute for PECO's actions. Consequently, we will remand this matter to OALJ for a hearing, as deemed necessary, consistent with this Opinion and Order and for appropriate resolution.

Because we are remanding this matter, consistent with this Opinion and Order, we will hold in abeyance our consideration of Ms. Flowers' Exceptions and Replies to Exceptions thereto at this time pending the outcome on remand.

IV. Conclusion

Based on our review of the record, we shall hold in abeyance our consideration of the Exceptions and Replies thereto currently pending before us and remand this matter to the OALJ for the limited purpose of addressing the Complainant's foreign load claim in this proceeding, consistent with this Opinion and Order;

THEREFORE,

IT IS ORDERED:

1. That the Commission's consideration of the Exceptions filed by Vanece Flowers on August 3, 2023, to the Initial Decision of Administrative Law Judge Arlene Ashton issued at Docket No. F-2023-3037961 and the Reply Exceptions filed by PECO on August 18, 2023, will be held in abeyance, consistent with this Opinion and Order.

2. That this matter shall be remanded to the Office of Administrative Law Judge for such further proceedings, as deemed necessary, and an appropriate resolution.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 19, 2023

ORDER ENTERED: October 19, 2023