

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Margie Burkhart	:	
	:	
v.	:	C-2009-2125844
	:	
Dominion Retail, Inc. d/b/a Peoples Plus	:	
	:	
and	:	
	:	
Dominion Peoples Gas Company	:	

PREHEARING ORDER No. 1 DENYING PRELIMINARY OBJECTION

AND

JOINING AN INDISPENSABLE PARTY

On August 13, 2009, Ms. Burkhart (Complainant) filed the above captioned Complaint against Dominion Retail d/b/a Peoples Plus (Peoples Plus or Company). The Complaint alleged: 1) that Ms. Burkhart had a billing dispute with Peoples Plus; 2) that she was unaware that she was paying two gas companies until she received a bill in November 2009; 3) that she paid Dominion at a Virginia address; 4) that her husband, Charles, died in 2003; 5) that she was confused and did not understand the bill; 6) that she was on a fixed income; 7) that she recently had eye surgery and did not see well; 7) that she contacted Dominion People in Virginia; and 8) that for health reasons she could not come to a hearing.

By letters dated, September 4, 2009, Peoples Plus filed an Answer and New Matter and a Preliminary Objection. The Answer alleged: 1) that Charles Burkhart was the named customer on the bill prior to termination of the Peoples Plus contract; 2) that Peoples Plus was a licensed natural gas supplier (NGS) and not a public utility; 3) that Mr. Burkhart had voluntarily enrolled with Peoples Plus using a signed reply card on September 24, 2008 and continued service through April 2009; 4) that Peoples Plus believed that Ms. Burkhart wanted to be excused from paying the balance owing; 5) that the Commission did not have the authority to

grant the relief requested; and 5) that no court had entered a protection from abuse order against Peoples Plus.

The New Matter alleged: 1) that the name on Complainant's account with Dominion Peoples Gas Company (Dominion Peoples) is Charles Burkhart; 2) that Mr. Burkhart voluntarily enrolled with Peoples Plus in September 2008; 3) that Complainant cancelled the contract in April 2009; 4) that charges for Peoples Plus gas service appeared conspicuously in a separate section of the Dominion Peoples bill; 5) that during the time Peoples Plus rendered service no payments were made on the account; 6) that the total balance due on the account was \$942.18; 7) that the account had been turned over to a collection agency; and 8) that Peoples Plus has the right to be paid for gas sold to and consumed at the Burkhart home.

A notice to plead was included with the Answer and New Matter. Ms. Burkhart did not respond.

The Preliminary Objection (Objection) alleged: 1) that the Answer and New Matter was incorporated into the Objection; 2) that the Complaint should be dismissed because the Commission lacked jurisdiction over the subject matter; 3) that the Complaint should be dismissed because the Complaint was insufficient as to substance; 4) that the Complaint raised a non-jurisdictional issue against a Company which was not subject to the Commission's jurisdiction; 5) that the \$942.18 balance due was the subject of a private natural gas commodity contract; 6) that the Commission did not have jurisdiction to excuse a private debt or the prices charged by Peoples Plus; and 7) that there should be no hearing because there were no factual issues and because the case could be resolved on a question of law.

A notice to plead was included with the Preliminary Objection. Ms. Burkhart did not respond to the Objection.

By Notice dated October 6, 2009, the parties were notified that I was the assigned as the Presiding Officer for the preliminary phase of this proceeding.

A party may file Preliminary Objections under Commission regulations. 52 Pa. Code § 5.101. When considering those Objections, the Commission must view the Complaint in a light most favorable to the Complainant. The Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. This requirement is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435 (July 18, 1994). For decisional purposes, the Commission must assume that the facts alleged in the Complaint are true. *Marinoff v. Bell Telephone of Pennsylvania*, 75 Pa. PUC 489, 491 (1991).

Applying the criteria set forth above, I find that the Objection must be denied. Taking the Complaint as a whole, the Objection is premised on a possible misinterpretation of the relief requested. The Peoples Plus Answer states: “As relief, she appears to be asking that the Commission excuse her from having to pay Peoples Plus.” Answer at. 2, ¶ 5. While the relief requested does lack some clarity, some words do stand out:

If you would of a have sent me a bill before this all happened I
would of a paid

...

[T]his bill is making me crazy I don't understand it It hard on a
fix income

Complaint at ¶ 5 (unedited). There are other statements in the Complaint which emphasize her obvious confusion and her visual impairment, *i.e.* at 6, ¶4 and at 2nd p. 3, ¶6. However, contrary to the allegation by Peoples Plus, there is no request to be excused from payment. Even though the Objection will be denied, I stress that the objection to subject matter jurisdiction cannot be resolved based on the Complaint as written and that the Complaint is not insufficient as to substance. Ultimately, Peoples Plus may prevail at a hearing when Ms. Burkhart clarifies her request for relief and when Peoples Plus demonstrates its alleged defenses.

My review of the Complaint led me to the conclusion that the billing issue involved in this case cannot be resolved without impacting the rights of Dominion Peoples. Again, Ms. Burkhart's allegations show some confusion about her billing and payments made, as follows:

I never knew I was paying 2 gas company

...

I paid Dominion P.O Box 26666 Richmond Virginia 23261 A bill every month since Sept Oct 203

Complaint at ¶¶ 4 and 5 (unedited). Similar allegations were repeated in other sections of the Complaint. I note that the New Matter also contained allegations which indicated that Complainant was served by Dominion Peoples. New Matter at 2, ¶ 1. Under these circumstances I find that there is reason to believe that Ms. Burkhart's payment history will be relevant to the outcome of this case and has the potential to reallocate funds previously paid to Dominion Peoples. Accordingly, I believe that the rights of Dominion Peoples Gas Company may be impacted. As a result, it is an indispensable party to this case, and I will order below that it be served with this Complaint. It must be given the opportunity to respond.

ORDER

NOW THEREFORE,

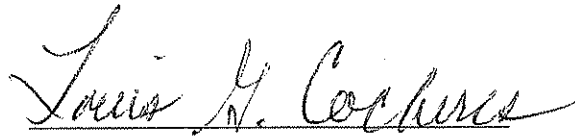
IT IS ORDERED:

1. That the Preliminary Objection of Dominion Retail d/b/a Peoples Plus is denied regarding subject matter jurisdiction and lack of substance.
2. That the Dominion Peoples Gas Company is hereby joined to this case as an indispensable party.

3. That the Office of Administrative Law Judge will serve copies of this Order, the Complaint, Answer and New Matter on the Dominion Peoples Gas Company within twenty (20) days.

4. That, after the twenty (20) day period for responding to the Complaint expires, the Office of Administrative Law Judge scheduling staff shall set this case for hearing as soon as practicable.

Dated: December 16, 2009


Louis G. Cocheres
Administrative Law Judge

C-2009-2125844 - MARGIE BURKHART v. DOMINION RETAIL INC

MARGIE BURKHART
312 WOODVALE AVENUE
JOHNSTOWN PA 15901
814.536.5929

GARY A JEFFRIES ESQUIRE
DOMINION RETAIL INC
501 MARTINDALE STREET
SUITE 400
PITTSBURGH PA 15212-5817
412.237.4729

SUSAN G GEORGE ESQUIRE
DOMINION PEOPLES GAS COMPANY
501 MARTINDALE STREET
D.L. CLARK BUILDING SUITE 500
PITTSBURGH PA 15212-5835
412.497.6891

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Charles W Burkhardt

Street/P.O. Box 312 Woodlands Avenue Apt # _____

City Johnstown State Penn Zip 15190

County Cambria

Daytime Telephone Number Where We Can Contact You: (814) 536 5929

E-mail Address (optional): None No Computer

Utility Account Number 3462103271815
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name Same No Change

Street/P.O. Box _____

City _____ State _____ Zip _____

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Dominion Retail

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- TELEPHONE
(local, long distance)
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER
(e.g., taxi, moving company, limousine)

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2009 AUG 13 AM 9:30
PA.P.U.C.
SECRETARY'S BUREAU

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

Other (explain) I never knew I was paying 2 gas company

B. State the facts of your complaint. Dominion Retail never sent me a bill until Nov. 2009.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

If you would of a have sent me a Bill before this all happened I would of a paid I paid DOMINION P.O. Box 26666 Richmond Virginia 23261

A Bill every month since Sept 2003 that when Charles Duplessis died June 27 2003

I was so Confused. I Couldn't believe He died. 47 Years is a Long Time to get him off my mind and this Bill is making me crazy I don't understand it it had an a fix income

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES Against Domestic Retail.
NO never sent me a Bill
File for?

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations) Same people
NO Richard figure

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

Call & No I did call & told them
Thanks for this help

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known. NONE

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____



9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I MARGIE BURKHART, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Margie Burkhardt
(Signature)

Aug 10 2009
(Date)

Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service: mail it

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

law, the PUC cannot decide whether companies should pay customers' damage claims. Damage claims may be sought in an appropriate civil court.

6. Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

I never knew I was paying I Gas Co.?

Answer this question by checking "yes" or "no." You are required to answer this question only if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility and your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement. The Commission needs this information to determine how to process your complaint.

The Domino Retail W/T Money

Have you spoken to a representative from the utility company about your complaint?

Answer by checking "yes" or "no." *I called Domino people and Domino Retail*

Check "yes" if you are appealing from a Bureau of Consumer Services (BCS) determination on an informal complaint. You do not need to contact the company again if you are filing an appeal from a BCS determination.

I never get a bill from Domino Retail in Pittsburg

You should speak to a company representative about your problem before you file a complaint. You must contact the company if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility, AND your complaint is about a billing problem, an application for service problem, a termination of service problem or a request for a payment agreement.

I did contact Domino people

However, you do not need to contact the company if your complaint is against a proposed utility rate increase or if you are not a residential service account customer. If you tried to, but could not speak to a utility company representative, please explain why.

I did contact people Domino Richard

8. If you are represented by a lawyer in this matter, you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Hope I don't get that far my health wouldn't do it. I had

If you are filing a complaint as an individual, you are not required to have a lawyer. You may represent yourself at the hearing.

Could make hearing see Tony Seckman

Corporations, associations, partnerships and political subdivisions are required to have a lawyer at a hearing and to file any motions, answers, briefs or other legal pleadings.

If naming a lawyer, please make sure the lawyer is aware of your complaint and is representing you in this matter. If you have a lawyer representing you in this matter, you and your lawyer must be present at your hearing.

9. You must sign your complaint.

2 color photos of job may 11 July 4 month in hospital

I just had eye surgery & can't see good. Hope you understand me. Thank you

In Section Eight (8) of the formal complaint, you **must** print or type your name in the space provided in the verification paragraph, and you **must** sign and date your formal complaint form on the lines in this Section. If a complainant is a corporation or association, the verification must be signed by an authorized officer or other authorized employee. If you do not sign the formal complaint form, the Commission will not accept it.

10. Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Keep a copy of your complaint for your records.

Facsimiles and/or electronic filings of the complaint form will not be accepted.

Charles W. Guffart
512 Woodland Ave
Johnstown PA
15901



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

Gary A. Jeffries
Senior Counsel

Dominion Resources Services, Inc.
501 Martindale Street, Suite 400, Pittsburgh, PA 15212-5817
Phone: 412-237-4729, Fax: 412-237-4782
E-mail: Gary.A.Jeffries@dom.com
Web Address: www.dom.com



Dominion[®]

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SECRETARY'S BUREAU

September 4, 2009

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Margie Burkhart v. Dominion Retail, Inc.: Docket No. C-2009-2125844

ANSWER AND NEW MATTER OF DOMINION RETAIL, INC. D/B/A PEOPLES PLUS

Dear Secretary McNulty:

On behalf of Dominion Retail, Inc., a party in the above-referenced matter, please find an original and three (3) copies of the ANSWER AND NEW MATTER OF DOMINION RETAIL, INC. D/B/A PEOPLES PLUS.

Pursuant to 52 Pa. Code §5.63, unless otherwise ordered by the Commission, a reply to new matter shall be filed with the Commission and served within 20 days after date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing. Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

Please note that Dominion Retail, Inc. is also filing this date in the instant docket a PRELIMINARY OBJECTION seeking the dismissal of the subject complaint.

A copy of this filing is also being served upon Complainant by first-class U.S. Mail.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Gary A. Jeffries
Senior Counsel

Enclosures

cc: Margie Burkhart, 312 Woodvale Avenue, Johnstown, PA 15901

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARGIE BURKHART)	
)	
Complainant,)	
)	
v.)	Docket No. C-2009-2125844
)	
DOMINION RETAIL, INC.)	
)	
Respondent)	

ANSWER AND NEW MATTER OF
DOMINION RETAIL, INC. d/b/a PEOPLES PLUS

NOW comes Dominion Retail, Inc. d/b/a Peoples Plus ("Peoples Plus"), Respondent in the above-referenced docket and files its Answer and New Matter to the Complaint filed by Margie Burkhart ("Complainant"):

ANSWER

1. The averments in Paragraph 1 of the Complaint are admitted. The Dominion Peoples Gas utility account at the listed premises is registered in the name of "Charles Burkhart". Charles Burkhart was also the customer of Peoples Plus prior to contract termination.
2. Peoples Plus is a licensed natural gas supplier ("NGS") in the Commonwealth of Pennsylvania. It is not a public utility. Peoples Plus's address is:

Dominion Retail, Inc. d/b/a Peoples Plus
501 Martindale Street, Suite 400
Pittsburgh, PA 15212
Gary A. Jeffries, Counsel for Dominion Retail, Inc.

3. As noted, Peoples Plus is not a public utility.
4. Complainant claims she “*never knew I was paying 2 gas company (sic.)*” As described in more detail in NEW MATTER, in fact Charles Burkhart voluntarily enrolled with Peoples Plus via signed reply card on September 24, 2008 and service continued through April 24, 2009.
5. Complainant again alleges that she did not know she was being billed by Peoples Plus. As relief, she appears to be asking that the Commission excuse her from having to pay Peoples Plus. Respectfully, the Commission has no such authority.
6. Peoples Plus denies that a court-ordered protection from abuse order has been issued against Peoples Plus. Peoples Plus has done nothing that would warrant such an action.
7. No response necessary.
8. No response necessary.
9. No response necessary.
10. No response necessary.

NEW MATTER

In furtherance of its Answer, the Respondent, Peoples Plus, hereby states and avers the following material facts as New Matter pursuant to 52 Pa. Code §5.62(b):

1. The Complainant receives natural gas utility service from Dominion Peoples Gas Company. The account is listed in the name of Charles Burkhart. On September 24, 2008, Charles Burkhart voluntarily enrolled by signed business reply card for natural

cancellation by Complainant on April 29, 2009. Billing of Peoples Plus's charges was administered by Dominion Peoples Gas on its monthly utility bill rendered to Complainant. Peoples Plus's charges appeared conspicuously on a separate section of the Dominion Peoples Gas utility bill.

2. During the approximately six month period that Complainant was a customer of Peoples Plus she made no payments whatsoever toward her Peoples Plus charges. At the time of cancellation she owed \$942.18 to Peoples Plus and to the present has made zero payments toward this indebtedness. Her account has been turned over to a collection agency.
3. At no time was Charles Burkhart or Complainant ever obligated to enroll for service from Peoples Plus. The Burkharths enrollment was voluntary. Moreover, Peoples Plus has the legal right to be paid for the gas sold to and consumed at the Burkhart home.
4. Accordingly, any assertion by Complainant that Peoples Plus has somehow wronged her is totally without merit. In sum, the Complaint is without merit and should be dismissed with prejudice. See also the PRELIMINARY OBJECTION filed this date by Peoples Plus.

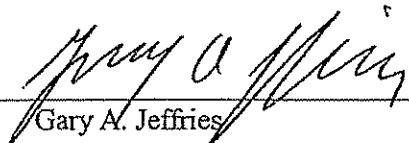
Pursuant to 52 Pa. Code §5.63, unless otherwise ordered by the Commission, a reply to new matter shall be filed with the Commission and served within 20 days after the date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing. Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

IN WITNESS WHEREOF, Peoples Plus respectfully submits its ANSWER AND NEW
MATTER.

DOMINION RETAIL, INC.

DATED: September 4, 2009

By:



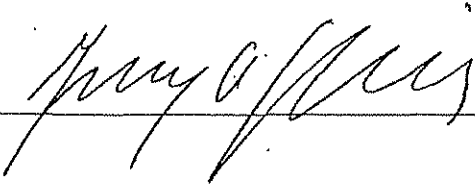
Gary A. Jeffries
Senior Counsel

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF ALLEGHENY)

I, Gary A. Jeffries, Senior Counsel and Assistant Secretary, Dominion Retail, Inc., hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: September 4, 2009



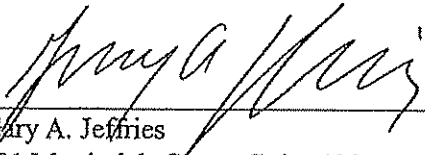
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SECRETARY'S BUREAU

CERTIFICATE 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).

Margie Burkhart
312 Woodvale Avenue
Johnstown, PA 15901

Dated this 4th day of September, 2009.



Gary A. Jeffries
501 Martindale Street, Suite 400
Pittsburgh, PA 15212

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