



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

IN REPLY PLEASE
REFER TO OUR FILE

C-2011-2246921

August 4, 2011

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

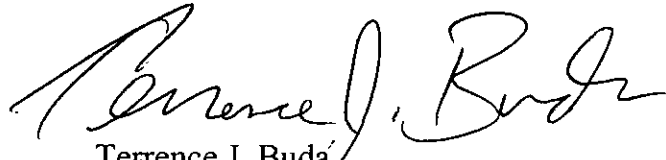
Re: Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff
v. Kelly Fink, Joe Fink, Jr., Claude J. Fink, and Lois A. Fink, individually
and jointly, t/d/b/a Fink Gas Company; Docket No. C-2011-2246921

Dear Ms. Chiavetta:

Enclosed please find an original and three copies of the Answer to Preliminary
Objections to be filed in the above-captioned proceeding.

If you have any further questions regarding this matter, please contact me at
717-783-3459.

Sincerely,


Terrence J. Buda
Assistant Counsel

Enclosures

cc: As per Certificate of Service
Robert Young, Deputy Chief Counsel
Paul Metro, Gas Safety Division Chief
David Kline, Gas Safety Inspector

PA PUC
SECRETARY'S BUREAU

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
Law Bureau Prosecutory Staff :

Complainant

v.

Kelly Fink, Joe Fink, Jr., Claude J. Fink,
and Lois A. Fink, individually and jointly,
t/d/b/a Fink Gas Company

Respondents

Docket No. C-2011-2246921

SECRETARY
PENNSYLVANIA
PUBLIC UTILITY
COMMISSION
LAW BUREAU

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ANSWER TO PRELIMINARY OBJECTIONS TO COMPLAINT

AND NOW, this August 4, 2011, comes the Complainant, Pennsylvania Public Utility Commission Law Bureau Prosecutory Staff, by its counsel, and answers Respondent Kelly Fink's Preliminary Objections as provided for by 52 Pa. Code § 5.101(f):

COUNT 1: LACK OF COMMISSION JURISDICTION

1. Admitted.
2. Admitted.
3. Denied. By way of further response, Respondent Kelly Fink is a public utility as defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102, as Respondent provides natural gas service to or for the public for compensation.

4. Denied. By way of further response, a more accurate legal statement is that public utilities are clearly defined under Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.

5. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

6. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

7. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

8. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

9. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations. By way of further response, it is specifically denied that Respondent's ownership and operation of facilities that provide natural gas service to the customers identified in Paragraph No. 16 of the Complaint is anything other than natural gas service to the public for compensation subject to the jurisdiction of the Pennsylvania Public Utility Commission under the Public Utility Code.

10. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

11. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

12. Denied. By way of further response, it is specifically denied that the Fink Gas Company gas distribution system was designed and constructed only to serve certain homes on Camp and Ridge Roads. Complainant believes that Fink Gas Company also serves customers on Fosters Mills Road and as recently as 2000 and 2002 extended natural gas service to two new customers and sold natural gas for compensation, and continues to sell natural gas for compensation to customers identified in Paragraph No. 16 of the Complaint.

13. Admitted in part and denied in part. It is admitted that Fink Gas Company's natural gas distribution system may need significant improvement to satisfy Commission regulations. It is denied that the gas distribution system cannot serve others in the community.

14. Denied. By way of further response, Respondent has accepted new customers as recently as 2002.

15. Denied. By way of further response, Respondent added customers as recently as 2002 and, as a public utility, has an obligation to provide natural gas service to the public.

16. Admitted in part and denied in part. It is admitted that the *Waltman* case may be cited for the general legal precedent set forth in this paragraph. It is denied that Respondent's natural gas service was not offered "for the public" for compensation satisfying the *Waltman* test.

17. Admitted in part and denied in part. It is admitted that the case may be cited for the general legal precedent set forth in this paragraph. Although Respondent does not explain the relevancy of the “Drexelbrook” holding to the specific facts of this case, it is denied that Respondent’s natural gas service to its residential customers for compensation is merely incidental to another business or specifically designed for these customers. Complainant believes that since the acquisition of the customers occurred over a number of years between 1969 and 2002, the system could not have been designed and constructed to serve only specific individuals. The public utility service was offered and accepted as a general holding itself out to serve the public in that area.

18. Admitted in part and denied in part. It is admitted that the case may be cited for the general legal precedent set forth in this paragraph. Although Respondent again does not explain the relevancy of this case based on the facts, it is denied that this case may be cited as authority for a conclusion of law that Respondent does not own and operate a public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission.

19. Admitted in part and denied in part. It is admitted that the case may be cited for the general legal precedent set forth in this paragraph, and that this case supports a finding of jurisdiction because service is limited to residents in that area. It is denied that since Respondent owns and operates a public utility, the public does not have a right to subscribe to Respondent’s natural gas service, under reasonable terms of service.

20. Denied. By way of further response, it is specifically denied that the Fink Gas Company offers natural gas service to only a particular group of people such that Respondent is not currently providing natural gas service to and for the public for compensation subject to Pennsylvania Public Utility Commission jurisdiction. As recently as 2002, Fink Gas Company offered, accepted, and provided natural gas service to Jason Booher at 2223 Ridge Road.

21. Complainant is without knowledge or information to form a belief as to the truth of the allegation and on that basis denies the allegations.

22. Denied. By way of further response, as recently as 2002, Fink Gas Company offered, accepted, and provided natural gas service to Jason Booher at 2223 Ridge Road.

23. Denied. By way of further response, it is specifically denied that Respondent does not serve the general public in that area. To the extent that Respondent intends to only serve current customers, that representation does not diminish Respondent's status as a public utility to the customers identified in Paragraph No. 16 of the Complaint.

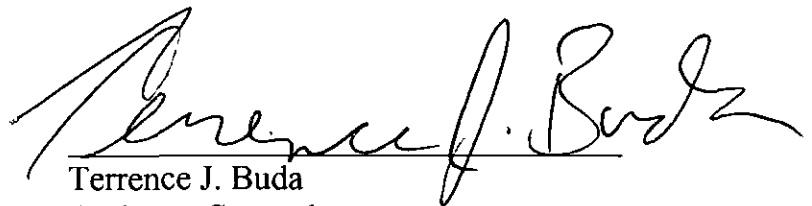
24. Denied. By way of further response, as a public utility Respondent has an obligation to serve the public.

25. Denied. By way of further response, it is specifically denied that Fink Gas Company is not a public utility as defined in Section 102 of the Public Utility Code, 66 Pa. C.S.A. § 102. As alleged by Respondents, the distribution system was put in place back in 1969. Based on Respondent's representation, Fink Gas Company would

have been providing individually metered natural gas service to paying customers receiving monthly bills. Fink Gas Company has been providing natural gas service to the public and collecting rates for years as well as adding customers as recently as 2002 to its natural gas distribution system. Therefore, “the fact that only a limited number of persons may have occasion to use a utility’s service does not make it a private undertaking if the general public has a right to subscribe to such service.” *Waltman v. Pa. PUC*, 596 A.2d 1221, 1224 (Pa. Cmwlth. 1991). It appears that Fink Gas Company provided a public utility service for years but now the Respondent maintains that it does not accept new customers or serve the general public. Apparently, after acquiring and serving a number of natural gas customers over the years, billing these customers, and accepting payment for gas usage, Respondent believes it can abdicate any responsibility as a public utility by simply professing they will not accept new customers. Unfortunately for Respondent, this position simply is not supported by any case law. Respondent has operated as a public utility and must continue until the Commission approves an application to abandon service under Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102.

WHEREFORE, for all the foregoing reasons, Law Bureau Prosecutory Staff respectfully requests that the Honorable Commission issue an order which dismisses the Preliminary Objections filed by the Respondent Kelly Fink, and direct the Respondent to answer the complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Terrence J. Buda", written over a horizontal line.

Terrence J. Buda
Assistant Counsel

Law Bureau Prosecutory Staff
Pennsylvania Public Utility Commission

P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-5000

Dated: August 4, 2011

CERTIFICATE OF SERVICE

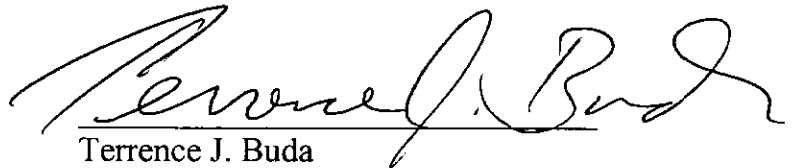
I hereby certify that I am this day serving the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

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Dated: August 4, 2011

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