



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: December 21, 2005

C-20054941

JOSEPH WARHOL
44 CLOVER STREET
JOHNSTOWN PA 15902

**DOCUMENT
FOLDER**

Joseph Warhol

v.

The People Natural Gas Company d/b/a Dominion Peoples

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Mark A. Hoyer. 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 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, 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. A certificate of service shall be attached to the filed 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.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
SS

HORACE P PAYNE JR ESQUIRE
THE PEOPLES NATURAL GAS COMPANY
D/B/A DOMINION PEOPLES
625 LIBERTY AVENUE
PITTSBURGH PA 15222-3197

SERVICE LIST: C-20054941

Joseph Warhol
44 Clover Street
Johnstown, PA 15902

Horace P. Payne, Jr., Esquire
The Peoples Natural Gas Company
d/b/a Dominion Peoples
625 Liberty Avenue
Pittsburgh, PA 15222-3197

TD 20/10

NOV 22 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Warhol

v.

The Peoples Natural Gas Company
d/b/a Dominion Peoples

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:

C-20054941

INITIAL DECISION

DOCKETED
DEC 23 2005

Before
Mark A. Hoyer
Administrative Law Judge

**DOCUMENT
FOLDER**

HISTORY OF THE PROCEEDING

On July 13, 2005, Joseph Warhol ("Complainant") filed a formal complaint with the Pennsylvania Public Utility Commission ("Commission") against The Peoples Natural Gas Company d/b/a Dominion Peoples ("Respondent") seeking to have a \$303.00 security deposit charge removed from his gas utility bill. On September 8, 2005, Respondent filed an answer denying the material allegations contained in the complaint.

By Telephone Hearing Notice dated October 5, 2005, the parties were notified that an initial telephonic hearing in this case was scheduled for Wednesday, November 16, 2005 at 9:00 a.m. A standard Prehearing Order was issued on October 11, 2005, stating the date and time of the scheduled hearing. The Prehearing Order further advised the parties, *inter alia*, that they must be available when contacted by the presiding officer; that the case would be dismissed if the customer (Complainant) failed to participate in the hearing and present evidence on the issues raised; and that Complainant bears the burden of proof and must demonstrate by a preponderance of the evidence that he is entitled to the relief requested in the complaint.

The hearing convened as scheduled. Attempts to contact Complainant at the home telephone number listed on the Formal Complaint Form and the Telephone Hearing Notice were unsuccessful. I attempted to call Complainant's home telephone number three times between 9:00 a.m. and 9:05 a.m. and each time the answering machine responded. The answering machine message indicated that no one was available to take the call. I recorded a message identifying myself, the purpose of my call and the time scheduled for the hearing (9:00 a.m.). I attempted to call Complainant at the work telephone number listed on the Formal Complaint Form and a business answering machine responded. I left no message.

Horace P. Payne, Jr., Esquire, representing Respondent at the hearing, moved to dismiss the complaint for lack of prosecution. No witnesses were presented and no exhibits were admitted into evidence. No briefs were filed. The record closed upon conclusion of the hearing. This decision memorializes my ruling at the hearing granting the motion to dismiss the complaint.

FINDINGS OF FACT

1. On July 13, 2005, Complainant filed a formal complaint with the Commission seeking to have a \$303.00 security deposit charge removed from his gas utility bill.
2. By Telephone Hearing Notice and Prehearing Order, Complainant was notified that an initial hearing on his complaint was scheduled for Wednesday, November 16, 2005 at 9:00 a.m. Both of these documents were mailed to Complainant at the address provided on his complaint and were not returned to the Commission by the United States Postal Service.
3. Complainant failed to appear for the hearing.
4. Complainant did not settle or withdraw his complaint prior to the scheduled hearing or obtain a continuance.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. P.U.C., 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied, however, when the parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the telephonic hearing in this case was sent to Complainant on October 5, 2005 by regular first-class mail to the address stated in the complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a Prehearing Order on October 11, 2005, which, *inter alia*, reminded the parties of the hearing date and time. This Order also directed the parties to notify me if the telephone numbers changed where they could be reached at the time of the hearing. This Order, which was also mailed to Complainant at the address stated on the complaint, was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course of business, was received by the addressee. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Superior Ct. 1997); and Judge v. Celina Mutual Insurance Co., 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

Complainant did not appear and was not available when I placed calls at the time of the hearing to the telephone numbers listed in the complaint. Complainant never notified me of another telephone number where he could be contacted. Neither Respondent nor I possessed any additional information about how to contact Complainant. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa. Code §5.245(a).

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. §332(a). By failing to appear and proffer any evidence to

support his complaint, Complainant has failed to meet this burden. Complainant's failure to appear is unexcused. He has waived the opportunity to participate in the hearing and this case must be dismissed with prejudice. 52 Pa. Code §5.245(a); Jefferson v. UGI Utilities, Inc., Opinion and Order entered December 26, 1995 at Docket No. Z-00269892.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §701.

2. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (1994).

3. The due process rights of Complainant have been fully protected in this proceeding.

4. By failing to appear and proffer any evidence to support this complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa. C.S. 332(a).

ORDER

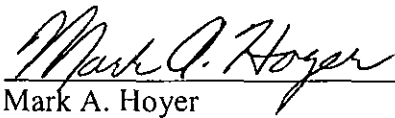
THEREFORE,

IT IS ORDERED:

1. That the motion of The Peoples Natural Gas Company d/b/a Dominion Peoples to dismiss the complaint of Joseph Warhol at Docket No. C-20054941 is granted.

2. That the complaint filed by Joseph Warhol against The Peoples Natural Gas Company d/b/a Dominion Peoples at Docket No. C-20054941 is dismissed with prejudice for failure to prosecute.

Dated: November 18, 2005


Mark A. Hoyer
Administrative Law Judge

2. Article Number



7160 3901 9843 0829 3115

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

John Lieber Jr. Esq.

PS Form 3811, March 2005

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

Requid Du S...

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

John Lieber Jr. Esq.

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 0829 3122

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

Grace Payne Jr. Esq.

PS Form 3811, March 2005

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

J. Reiner

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

Grace Payne Jr. Esq.

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 0829 3153

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

Joseph Warhol

PS Form 3811, March 2005

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

Joseph Warhol

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

Joseph Warhol

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 0829 3184

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

Linda Cassidy

PS Form 3811, March 2005

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

Linda S Cassidy

D. Is delivery address different from item 1? Yes No

If YES, enter delivery address below:

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

C-20054941 ID

Linda Cassidy

PS Form 3811, March 2005

Domestic Return Receipt