



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

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: December 22, 2005

C-20054942

DEB SPICER  
209 CRAWFORD AVENUE  
ALTOONA PA 16602

**DOCUMENT  
FOLDER**

Deb Spicer

v.

The Peoples 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 John H. Corbett, Jr. 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 2<sup>ND</sup> 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 CO D/B/A DOMINION PEOPLES  
625 LIBERTY AVENUE  
PITTSBURGH PA 15222

SERVICE LIST: C-20054942

Deb Spicer  
209 Crawford Avenue  
Altoona, PA 16602

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

*TPO 20/10*

DEC 02 2005

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deb Spicer

v.

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

C-20054942

**INITIAL DECISION**

**DOCKETED**  
DEC 22 2005

Before  
John H. Corbett, Jr.  
Administrative Law Judge

**DOCUMENT  
FOLDER**

**HISTORY OF THE PROCEEDING**

This decision dismisses a complaint that Deb Spicer (“Complainant”) filed on July 13, 2005. Spicer alleges she cannot afford to make the payments that the Commission’s Bureau of Consumer Services (“BCS”) directed under a plan issued on April 14, 2005 at BCS Case No. 1759741 to pay for residential natural gas service from The Peoples Natural Gas Company, d/b/a Dominion Peoples (“Respondent”). She seeks a more affordable payment plan. The Respondent answered the complaint on September 6, 2005.

A standard Prehearing Order, together with an Interim Payment Order, were issued on September 12, 2005. A telephonic hearing scheduled for 1:00 p.m. on October 18, 2005 was postponed after Respondent’s counsel received a telephone call from a woman, who identified herself as a neighbor of the Complainant, stating that the Complainant had been taken to a local hospital for treatment of a medical emergency. To verify the story, I attempted to call the Complainant at the only telephone number listed on the complaint. Upon calling that number, I was connected to an auto dealership and informed that the Complainant no longer

worked there. Later that day, Respondent's counsel provided me with a work number for the Complainant at a Dean Patterson auto dealership.

A telephonic hearing was rescheduled for 10:00 a.m. on November 23, 2005 pursuant to Section 56.174 of Title 52 of the Pennsylvania Code. 52 Pa. Code §56.174. The Complainant also failed to appear for this hearing. When I attempted to call the Complainant at the telephone number listed on the complaint, I again was informed that the Complainant no longer worked there. Upon calling the work number provided by counsel, I was informed that the Complainant was with a customer. I then left a message on the Complainant's voice mail for her to return the call by 10:15 a.m. or the hearing would proceed without her.

Upon commencement of the hearing, Respondent's counsel informed me that at 9:30 a.m. on the day before the hearing, he received a call from an individual, who refused to identify herself or disclose her telephone number. The caller stated that the Complainant had lost her job, that she was traveling to Ohio for medical treatment and the utility would receive further information from her physician. When pressed further for her name and telephone number, the caller abruptly hung up. At 4:20 p.m. that same day, the Respondent's representative, who testified at the hearing, successfully called the Complainant at the Dean Patterson auto dealership. The Complainant informed her that she would be traveling to Ohio on the day of the hearing, she would be unavailable for the hearing, the utility could do whatever it wanted to do at the hearing, and the utility would receive further information from her physician. The hearing then recessed until 10:15 a.m. to allow the Complainant an opportunity to return the call.

After waiting until 10:16 a.m., the hearing reconvened. Following brief testimony from the utility's representative, Respondent's counsel moved to dismiss the complaint for lack of prosecution. The Respondent submitted two exhibits for admission into the record. 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. The Complainant, Deb Spicer, resides at 209 Crawford Avenue, Altoona, Pennsylvania 16602.
2. The Respondent, The Peoples Natural Gas Company, d/b/a Dominion Peoples, provides residential natural gas service to the Complainant at the foregoing address.
3. By notice dated October 19, 2005, the Commission notified the Complainant that a telephonic hearing was scheduled for 10:00 a.m. on November 23, 2005. The Commission mailed this notice to the Complainant at the address provided in her complaint.
4. The United States Postal Service did not return this notice to the sender.
5. The Complainant failed to appear for the hearing.
6. Since the Respondent began providing service on February 25, 2004, the Complainant has made only two payments, to wit: \$340.00 on August 2, 2004 and \$40.00 on November 3, 2004 (Respondent's Exh. A).
7. At the present time, the Complainant owes the Respondent the sum of \$2,619.44 on this account (Respondent's Exh. A).
8. On April 14, 2005, the BCS determined at BCS Case No. 1759741 that the Complainant should pay the Respondent the monthly budget amount of her bills, plus \$25.00 each month to satisfy the arrearage owed on this account (Respondent's Exh. B).

## 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 the Complainant on October 19, 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. 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).

The Complainant did not appear and was not available when I placed telephone calls as discussed above at the time of the hearing. The Complainant never notified me of another telephone number where she could be contacted. As the foregoing discussion illustrates, the Complainant was acutely aware of this hearing, but her efforts to forestall it proved unavailing. The facts simply did not support her assertion of another impending medical emergency. Thus, the Complainant had ample opportunity to appear and be heard here, but voluntarily chose not to do so. Therefore, the due process rights of the 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).

Turning to the merits of this case, the Complainant seeks a payment arrangement on her account for residential natural gas service with the Respondent. As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the "Code"), 66 Pa. C.S. §§101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell of Pa., 477 Pa. 1, 383 A.2d 1191 (1977); Allegheny County Port Authority v. Pa. P.U.C., 427 Pa. 562, 237 A.2d 602 (1967); Behrend v. Bell of Pa., 257 Pa. Superior Ct. 35, 390 A.2d 233 (1978); Pa. Department of Highways v. Pa. P.U.C., 198 Pa. Superior Ct. 87, 182 A.2d 267 (1962); City of Erie v. Pa. Electric Co., 383 A.2d 575 (Pa. Cmwlth. 1978). When deciding upon an appropriate payment plan for utility service,

the Commission must abide by the provisions of the Responsible Utility Customer Protection Act, 66 Pa. C.S. §§1401, *et seq.* (“Chapter 14”). Rudacille v. Columbia Gas of Pennsylvania, Inc., Docket No. C-20043504 (Order entered August 9, 2005).

As pertinent to this case, the General Assembly has declared that absent a change in income, the Commission lacks authority to establish a second or subsequent payment arrangement for a customer, who has defaulted on a previous payment arrangement. 66 Pa. C.S. §1405(d). Section 1405(d) of Chapter 14, however, does not restrict a customer’s right to appeal a BCS informal decision nor does it restrict the Commission’s duty to review the terms of a payment arrangement that is the subject of such a timely appeal. Kalamets v. Columbia Gas of Pennsylvania, Inc., Docket No. Z-01701441 (Order entered October 14, 2005). Accordingly, a customer cannot be deemed in default of a timely appealed payment arrangement directed by a BCS informal decision until the formal complaint on appeal is ultimately adjudicated and the Commission issues a final Order. *Id.* Having reviewed the Commission’s Bridge for this case, it appears the present complaint is a timely appeal.

Moreover, having judged that it is timely, this proceeding is a *de novo* review of the BCS’s determination of an appropriate payment plan for this account. Stammel v. P.G. Energy, Docket No. C-20027994 (Order entered May 21, 2003); and Claypool v. T.W. Phillips Gas & Oil Company, Docket No. Z-00248730 (Order entered December 22, 1995). The BCS issued its determination of a payment plan on April 14, 2005 at BCS No. 1759741 directing the Complainant to pay the budget amount of her natural gas bills each month, plus \$25.00 a month to satisfy the arrearage on this account (Respondent’s Exh. B). The Complainant bears the burden of proving by substantial evidence that she is entitled to relief. Stammel, *supra*, and 66 Pa. C.S. §332(a). By failing to appear and present any evidence in support of her complaint, the Complainant has failed to meet this burden. Thus, the complaint must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

Accordingly, the following Order will confirm the BCS payment plan for this account.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. §701.
2. The due process rights of the Complainant have been fully protected in this proceeding.
3. The present complaint is a timely appeal of a BCS determination issued on April 14, 2005 at BCS No. 1759741 of a payment plan for this utility service account. 52 Pa. Code §1.2.
4. By failing to appear and be heard on this complaint, the Complainant has failed to meet her burden of proving that she is entitled to relief. 66 Pa. C.S. §332(a).
5. Since the present case is a timely appeal of a BCS determination and the Complainant has failed to meet her burden of proving that she is entitled to relief, the BCS payment plan for this account must be confirmed.

ORDER

THEREFORE,

IT IS ORDERED:

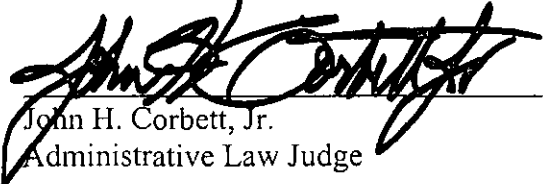
1. That the complaint of Deb Spicer against The Peoples Natural Gas Company, d/b/a Dominion Peoples, at Docket No. C-20054942 is hereby dismissed with prejudice.
2. That the Complainant shall pay the Respondent the monthly budget amount of the bills as they come due, plus \$25.00 a month to reduce the arrearage owed on this

account, on the date due for the payment of each monthly bill, effective with the first monthly bill received after entry of the Commission's Order in this case and continuing thereafter on the due date for the payment of each regular monthly bill, until the arrearage on this account has been paid in full.

3. That, so long as the Complainant adheres to the terms of this Order, the Respondent shall not assess any late payment charges nor shall Respondent terminate service to the Complainant, except for valid safety and/or emergency reasons.

4. That if the Complainant fails to adhere to the terms of this Order, the Respondent is hereby authorized to terminate service to the Complainant pursuant to the provisions of the Public Utility Code, 66 Pa. C.S. §§101, *et seq.*

Date: November 23, 2005

  
John H. Corbett, Jr.  
Administrative Law Judge

1560214943-03 0005

A  
 B  
 C  
 S

INSUFFICIENT ADDRESS  
 ATTEMPTED NOT KNOWN  
 NO SUCH NUMBER/STREET  
 NOT DELIVERABLE AS ADDRESSED  
 UNABLE TO FORWARD

OTHER  
**RTS**  
RETURN TO SENDER

65-687

UNCLAIMED  
resent 3/2/06  
C-20054942 ID

DOCUMENT FOLDER  
Deb Spicer  
MAR 05 11 17 AM  
HARRISBURG PA  
U.S. POSTAGE  
\$4.65

7760 3901 9843 0829 9148  
Return Receipt Requested



CERTIFIED MAIL™

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. -- FOLD AT DOTTED LINE

FORM UGCD-12 8M (Rev. 10-01-00)  
COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
PO BOX 3265  
HARRISBURG, PA 17105-0326  
DE

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) \_\_\_\_\_  
B. Date of Delivery 1-27-06  
C. Signature \_\_\_\_\_  
D. Is delivery address different from item 1? IF YES, enter delivery address below:  
 Agent Addressed  
 Yes  
 No

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) \_\_\_\_\_  
B. Date of Delivery 12/27  
C. Signature J. Reiser  
D. Is delivery address different from item 1? IF YES, enter delivery address below:  
 Agent Addressed  
 Yes  
 No

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) \_\_\_\_\_  
B. Date of Delivery \_\_\_\_\_  
C. Signature \_\_\_\_\_  
D. Is delivery address different from item 1? IF YES, enter delivery address below:  
 Agent Addressed  
 Yes  
 No

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) \_\_\_\_\_  
B. Date of Delivery \_\_\_\_\_  
C. Signature \_\_\_\_\_  
D. Is delivery address different from item 1? IF YES, enter delivery address below:  
 Agent Addressed  
 Yes  
 No

1. Article Number  
2. Article Number  
3. Service Type CERTIFIED MAIL  
4. Restricted Delivery? (Extra Fee)  Yes  
1. Article Addressed to:  
C-20054942 ID  
Deb Spicer

1. Article Number  
2. Article Number  
3. Service Type CERTIFIED MAIL  
4. Restricted Delivery? (Extra Fee)  Yes  
1. Article Addressed to:  
C-20054942 ID  
Horace Payne Jr. Esq.