



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: January 9, 2006

C-20054944

SHERI AND PAUL DELANEY
512 ST PHILLIPS COURT
CRANBERRY PA 16066

Sheri and Paul DeLaney
v.
The Peoples Natural Gas Company
d/b/a Dominion Peoples

**DOCUMENT
FOLDER**

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Larry Gesoff. 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

SERVICE LIST: C-20054944

Sheri & Paul DeLaney
512 St. Phillips Court
Cranberry, PA 16066

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

SP 20/10

JAN 05 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sheri and Paul DeLaney

v.

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

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C-20054944

DOCUMENT
FOLDER

INITIAL DECISION

DOCKETED
JAN 09 2006

Before
Larry Gesoff
Administrative Law Judge

HISTORY OF THE PROCEEDING

This decision dismisses with prejudice the complaint which Sheri and Paul DeLaney filed with this Commission on July 12, 2005 asserting that they cannot afford to pay a security deposit and asking for it to be waived. The Peoples Natural Gas Company, d/b/a Dominion Peoples (Peoples) filed a timely answer.

The Commission held a telephonic hearing on November 15, 2005. Ms. DeLaney appeared on behalf of herself and Mr. DeLaney. Horace P. Payne, Jr., Esquire, appeared on behalf of Peoples. At the hearing Ms. DeLaney asserted for the first time that a Peoples representative promised she would receive a bill before she left for Florida for three months and that if she paid the bill in full she would not have to pay a security deposit. First Interim Order issued November 15, 2005 continued the proceeding until December 15, 2005 to give the parties time to discuss Peoples' security deposit requirements in an attempt to settle the matter. Settlement negotiations failed and Mr. Payne requested a further hearing which was held on

December 29, 2005. Ms. DeLaney failed to appear at the telephonic hearing. Peoples' witness, Deborah Gardner, a customer relations representative was prepared to testify on Peoples' behalf. I granted Mr. Payne's motion to dismiss the complaint with prejudice for failure to appear and prosecute.

The record closed upon completion of the hearing by notation on the Office of Administrative Law Judge Hearing Report. This decision is written before receipt of the transcript of the December 29, 2005 hearing.

FINDINGS OF FACT

1. The Commission's notice of hearing dated November 29, 2005 set the time and place for the further hearing by telephone as 10:00 a.m. on December 29, 2005 and indicated that Complainants might lose their case if they did not take part in it. The notice was mailed to Complainants by first class mail and not returned as undeliverable.

2. The telephone call placed to Complainants at the number listed on the notice was met with a machine message. The presiding Administrative Law Judge left a message to return the call by 10:15 a.m. or the hearing would proceed without Complainants.

3. The presiding Administrative Law Judge called Complainants at 10:15 a.m. and left another message that the hearing proceeded without them.

DISCUSSION

As the party seeking relief from the Commission, Complainants have the burden of proof.¹

¹ Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

The Commission satisfied the requirement of affording Complainants with administrative due process by providing timely notice of the hearing on their complaint and the opportunity to be heard.² Finding of Fact No. 1.

The Commission mailed the hearing notice by first class mail and the U.S. Postal Service did not return it as undeliverable. Accordingly, it must be presumed that the Complainants received the notice, which was sent in the ordinary course of business.³ It is presumed, therefore, that Complainants knew the time and place of the scheduled hearing and chose not to participate.

By failing to appear and present any evidence in support of their complaint, Complainants failed to meet their burden of proof and their complaint must be dismissed with prejudice.⁴ This means that Complainants cannot reopen hereafter any matter accomplished at the hearing.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. The due process rights of the Complainants have been fully protected in this proceeding.
3. By failing to appear and be heard on this complaint, Complainants failed to meet their burden of proving that they are entitled to the relief they seek from the Commission.

² *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

³ *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); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Superior Ct. 221, 444 A.2d 658 (1982).

⁴ *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

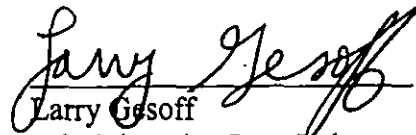
ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Sheri and Paul DeLaney v. The Peoples Natural Gas Company, d/b/a Dominion Peoples at Docket No. C-20054944 is dismissed with prejudice.
2. That the docket in this proceeding be marked closed.

Dated: December 29, 2005


Larry Gesoff
Administrative Law Judge

2. Article Number



7160 3901 9843 1136 9388

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

C-20054944 ID
Horace Payne Jr Esq.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) <i>Josh Resiver</i>	B. Date of Delivery <i>1/12/06</i>
C. Signature <i>[Signature]</i>	
<input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 1136 9395

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

C-20054944 ID
Sheri & Paul DeLaney

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) <i>Sheri DeLaney</i>	B. Date of Delivery <i>1-11-06</i>
C. Signature <i>[Signature]</i>	
<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

PS Form 3811, March 2005

Domestic Return Receipt