

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

William H. Sinning

v.

Verizon Pennsylvania Inc.

C-20043954

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SECRETARY'S BUREAU

ORDER JOINING INDISPENSABLE PARTY

On November 8, 2004, William H. Sinning (Complainant) filed a Formal Complaint with the Commission. The Complaint lists "Dominion Peoples" as the Respondent. The Complaint alleges that Complainant has received a couple of bills with a budget amount that is way too low, and that Respondent has been unresponsive to telephone calls and emails. Complainant requests that the Commission direct Respondent to return his phone calls and get him "a correct budget and accurate bill" before he receives a high bill, and to have Respondent fix its billing computer problem.

Dominion Peoples filed an Answer and Motion to Dismiss on December 21, 2004, stating that Complainant had filed this matter against his gas supplier, Dominion Peoples Plus, a separate and distinct company from Dominion Peoples. Dominion Peoples stated that Complainant is not a Dominion Peoples delivery customer and Dominion Peoples was incorrectly served with the instant Complaint. Dominion Peoples requested to be dismissed from the Complaint.

Complainant did not file a response to the Motion to Dismiss. The matter was assigned to me by Motion Judge Assignment Notice dated January 4, 2005. On January 5, 2005, I issued an Order dismissing Dominion Peoples from this proceeding, instructing the Commission's Secretary's Bureau to remove Dominion Peoples as Respondent in this case, and

¹ Complainant lists Dominion Peoples after striking through his listing of Equitable Gas as the "Name of utility company your complaint concerns" at Paragraph No. 2 of the Formal Complaint Form.

directing the Commission's Secretary's Bureau to list Dominion Peoples Plus as the Respondent and re-serve the Complaint on Dominion Peoples Plus.

Dominion Peoples Plus filed an Answer and Motion to Dismiss on January 26, 2005. In its Answer, Dominion Peoples Plus states that Complainant has been a natural gas commodity customer of Dominion Peoples Plus since March 1999, and its charges appear on Complainant's monthly gas bill from his gas utility, Equitable Gas Company (Equitable). Dominion Peoples Plus avers that Complainant's dispute is with Equitable, not Dominion Peoples Plus. In its Motion to Dismiss, Dominion Peoples Plus requests that the Complaint be dismissed because it fails to allege any wrongdoing on the part of Dominion Peoples Plus and fails to state a basis for action against Dominion Peoples Plus. Dominion Peoples Plus avers that Equitable is the proper respondent in this matter since Equitable renders the budget billing service that Complainant refers to in his Complaint. In the alternative, Dominion Peoples Plus moves that Equitable be added as an indispensable party to this proceeding.

Complainant did not file a response to the Motion to Dismiss filed by Dominion Peoples Plus. This matter was assigned to me by Motion Judge Assignment Notice dated January 31, 2005. The Motion to Dismiss is now ready for a decision.

Commission regulations provide for the filing of preliminary motions, including a motion to dismiss a pleading that fails to join an indispensable party. 52 Pa. Code §5.101(a)(3). When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435, Final Order entered July 18, 1994; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, supra.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 507 Pa. 360, 490 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

The Supreme Court of the United States has defined an indispensable party as one "whose interests in the subject-matter of the suit, and the relief sought, are so bound up with that of the other parties, that their legal presence as [a party] to the proceeding is an absolute necessity, without which the court cannot proceed." Kendig v. Dean, 97 U.S. 423, 24 L.Ed 1061 (1878). In Pennsylvania, a party is indispensable "only where its rights are so connected with the claims of the litigants that no order or decree can be effected without impairing such rights." Nason v. Commw. of Pa., 90 Pa. Commw. 130, 494 A.2d 499 (1985); Powell v. Shepard, 381 Pa. 405, 113 A.2d 261 (1955); See also, Columbia Gas Transmission Corp. v. Diamond Fuel Co., 464 Pa. 377, 346 A.2d 788 (1975); Tigue v. Basalyga, 451 Pa. 436, 304 A.2d 119 (1973); Nudi v. Township of Pine, 92 Pa. Commw. 32, 498 A.2d 55 (1985). The Commission has also adopted this standard. See, Woods v. United Telephone Co., 1991 Pa. PUC LEXIS 4, Docket No. C-903207, Final Order entered March 1, 1991; Nelson v. Duquesne Light Co., 1990 Pa. PUC LEXIS 24, Docket No. C-902938, Final Order entered August 6, 1990.

Equitable was not joined by Complainant in this proceeding, and Equitable appears to be an indispensable party to this case. Complainant receives natural gas commodity service from Dominion Peoples Plus; however, the charges for this service appear on Complainant's monthly gas bill from Equitable. Equitable appears to handle all billing related to Complainant's natural gas account, including his required monthly budget billing payment. While Complainant receives natural gas commodity service from Dominion Peoples Plus, it

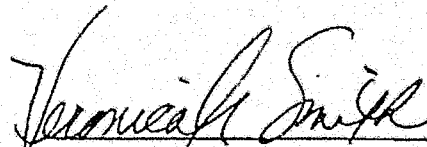
appears that his billing questions and disputes may arise from the service he receives from Equitable.

Consequently, it is necessary to join Equitable as an indispensable party in this proceeding. A copy of the Complaint and the Answer will be attached and Equitable will be ordered to file and serve its answer to the Complaint and participate in the Initial Hearing to be scheduled in this matter.

THEREFORE, IT IS ORDERED:

1. That Equitable Gas Company be added as a party in the above-captioned case.
2. That the Pennsylvania Public Utility Commission's Secretary's Bureau serve a copy of the Complaint filed by William H. Sinning and the Answer filed by Dominion Peoples Plus, at PUC Docket No. C-20043954, upon Equitable Gas Company with instructions as to filing a responsive pleading.
3. That Equitable Gas Company be added to the service list in the above-captioned case.
4. That an Initial Hearing be scheduled in the above-captioned case, with all parties being given notice thereof.

Dated: February 17, 2005



Veronica A. Smith
Chief Administrative Law Judge



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

IN REPLY PLEASE
REFER TO OUR FILE

March 11, 2005

In Re: C-20043954

(SEE ATTACHED LIST)

William H. Sinning v. Dominion Retail, Inc. t/a Peoples Plus

Billing Dispute

**DOCUMENT
FOLDER**

Telephone Hearing Notice

This is to inform you that a hearing by telephone on the above-captioned case will be held as follows:

Type: Initial Telephonic Hearing
Date: Tuesday, April 14, 2005
Time: 10:00 a.m.
Presiding: Administrative Law Judge Larry Gesoff
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

DOCKETED
APR 14 2005

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

At the above date and time, the Presiding Officer will contact the parties as follows:

William H. Sinning	412-881-5359
Gary A. Jeffries, Esquire	412-473-4129
Daniel Frutchey, Esquire	412-395-3202

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 3 days before the hearing.

Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Gesoff
Cherie Pyle, Scheduling Officer
Beth Plantz
Docket Section
Calendar File