

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Ruth Bowers

v.

The Peoples Natural Gas Company
d/b/a Dominion Peoples;
Dominion Retail, Inc. d/b/a
Peoples Plus

C-20066960

DOCUMENT
FOLDER

**ORDER DENYING THE PRELIMINARY OBJECTIONS OF DOMINION
RETAIL, INC. d/b/a PEOPLES PLUS AND THE PEOPLES NATURAL GAS
COMPANY d/b/a DOMINION PEOPLES**

Before
Veronica A. Smith
Chief Administrative Law Judge

HISTORY OF THE PROCEEDING

On October 2, 2006, Ruth Bowers (Ms. Bowers or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against "Dominion Peoples." Complainant alleges that Dominion Retail, Inc. d/b/a Peoples Plus (Peoples Plus) wrongfully terminated the natural gas supply contract it had with Complainant after mailing the contract renewal information to the wrong address. Complainant further alleges that after the termination of contract with Dominion Peoples Plus, she was involuntarily switched to The Peoples Natural Gas Company d/b/a Dominion Peoples (Dominion Peoples) as her natural supplier. When she tried to go back to Peoples Plus she was charged \$11.59/mcf and not \$7.99/mcf as per the terms of the original contract. As relief, Complainant requests that she be charged only \$7.99/mcf in accordance with the original contract.

On October 2, 2006, the Complaint was served on Dominion Peoples. On October 23, 2006, Ms. Bowers' Complaint was also served on Peoples Plus, at the same docket number.

On November 8, 2006, Dominion Peoples filed an Answer and a Motion to Dismiss the Complaint on the basis that the allegations stated in the Complaint are against Ms. Bowers' gas supplier, Peoples Plus, a separate and distinct company from Dominion Peoples, and that the Complaint was incorrectly served on Dominion Peoples.

According to Commission's records, as of December 22, 2006, Complainant did not file a response to Dominion Peoples' Answer or its Motion to Dismiss.

On November 14, 2006,¹ Peoples Plus filed an Answer and New Matter, along with a Preliminary Objection seeking dismissal of the Complaint on the basis that it fails to invoke the Commission's jurisdiction.

According to Commission's records, as of December 22, 2006, Complainant did not file a response to the New Matter² portion of Peoples Plus' Answer or its Preliminary Objection.³ Therefore, the factual allegations raised as New Matter are deemed admitted.⁴

This matter was assigned to me by two separate Motion Judge Assignment Notices dated November 16, 2006. The Preliminary Objections are now ready for ruling.

¹ The Peoples Plus was served with the Complaint on October 23, 2006.

² Pursuant to 52 Pa. Code §5.63(a) Complainant's response to Peoples Plus' New Matter was due on or before December 4, 2006.

³ Pursuant to 52 Pa. Code §5.101(f) a reply to the Peoples Plus' Preliminary Objection was due on or before November 24, 2006.

⁴ According to Commission's regulations, a reply to new matter must be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted. 52 Pa. Code §5.63.

FINDINGS OF FACT

1. Complainant is Ruth Bowers, who uses Peoples Plus as her natural gas supplier, at account number 2461301194147.⁵

2. Peoples Plus is a licensed natural gas supplier (NGS) in the Commonwealth of Pennsylvania. Peoples Plus is not a public utility.

3. Dominion Peoples is a natural gas distributor and a public utility company.

4. On October 2, 2006, Complainant filed a Formal Complaint with the Commission against Peoples Plus. Complainant alleges that "Dominion Peoples Plus disconnected service and put us on Dominion, saying they sent a letter for us to sign if we wanted to stay with them, they sent it to 313 Marion St, not P.O. Box 295. We never got the letter. When I called they put us back on Dominion Peoples Plus but at commodity charge of MCF @11.59 not 7.99 when they took us off." Complaint, paragraph 4(B).

5. Complainant requests that the Commission "put us back to the MCF @ 7.99." Complaint, paragraph 5.

6. On October 2, 2006, the Complaint was served on Dominion Peoples.

7. On October 23, 2006, Ms. Bowers' Complaint was also served on Peoples Plus at the same docket number.⁶

⁵ It should be noted that the referenced Dominion Peoples Gas utility account applies to one Darrell Bowers, 313 Marion Street, Bakerstown, PA 15007-1011. Presumably, Darrell Bowers is the spouse or a family relative of Ruth Bowers. In its Answer, New Matter, and preliminary Objection, the Peoples Plus uses the term "Complainant" to refer to both Ruth and Darrell Bowers.

8. On November 8, 2006, Dominion Peoples filed an Answer and a Motion to Dismiss the Complaint on the basis that the allegations stated in the Complaint are against Ms. Bowers' gas supplier, Peoples Plus, a separate and distinct company from Dominion Peoples, and that the Complaint was incorrectly served on Dominion Peoples.

9. Complainant did not file a response to Dominion Peoples' Answer or its Motion to Dismiss.

10. On November 14, 2006, Peoples Plus filed an Answer and New Matter, along with a Preliminary Objection seeking dismissal of the Complaint on the basis that it fails to invoke the Commission's jurisdiction.

11. In its New Matter, Peoples Plus alleges that Complainant voluntarily enrolled for natural gas commodity services from Peoples Plus in May of 1998 under a two-year, cancel-anytime contract at a price of \$6.71/mcf. New Matter ¶ 1.

12. Dominion Peoples, the utility company, performed billing of Peoples Plus' charges to Complainant on a separate portion of the monthly gas bill. New Matter ¶ 1.

13. Complainant's contract was renewed in December 2002 for a one-year term at the price of \$5.46/mcf. New Matter ¶ 2.

14. In October 7, 2003, Peoples Plus sent an automated renewal letter to Complainant offering a renewal price of \$6.99/mcf through November 2004. New Matter ¶ 2.

⁶ The complaint against Dominion Peoples and that against Peoples Plus raise the same legal and factual issues. They have already been docketed under the same Docket No. C-20066960 and will be handled as a single case.

15. The automated renewal letter was sent to the utility service's address of record for the account, 313 Marion Street, Bakerstown, PA 15007. The letter was returned to Peoples Plus as undeliverable. New Matter ¶ 2.

16. On October 30, 2003, Peoples Plus' automated renewal system cancelled Complainant's service and returned Complainant to gas sales service from Dominion Peoples. Dominion Peoples would have sent Complainant a letter advising of the change in suppliers. New Matter ¶ 2.

17. Effective with Complainant's December 2003 gas bill from Dominion Peoples, all references to Peoples Plus would have no longer appeared on the bill. New Matter ¶ 2.

18. For over two years, from late 2003 until early 2006, Complainant did not contact or question Peoples Plus about the contract cancellation. New Matter ¶¶ 2, 3.

19. On January 4, 2006, Complainant called Peoples Plus' call center to complain about a high bill and learned that service to her account had been cancelled in 2003. Complainant explained to Peoples Plus that she did not know her service from Peoples Plus had ended over two years prior and asked that Peoples Plus immediately reinstate her at the original contract price. Peoples Plus explained to her that a return to the previous contract price was not possible since Peoples Plus' standard offer price in January of 2006 was significantly higher. New Matter ¶ 3.

20. On February 21, 2006, Complainant voluntarily enrolled via Internet with Peoples Plus at the price of \$11.59/mcf, for services from March of 2006 through November 30, 2006. On October 2, 2006, Peoples Plus sent a renewal letter to Complainant advising of new pricing to become effective December 1, 2006 through October 30, 2007. New Matter ¶ 4.

21. Complainant is free to cancel without penalty. Complainant currently remains a customer of Peoples Plus'. New Matter ¶ 4.

22. Complainant did not file a response to the New Matter portion of Peoples Plus' Answer or its Preliminary Objection.

DISCUSSION

Dominion Peoples' Motion to Dismiss

On April 29, 2006, the Pennsylvania Public Utility Commission's revised Rules of Practice and Procedure became effective. Filings made pursuant to 52 Pa. Code § 5.101 are now referred to as Preliminary Objections and not Motions to Dismiss, and should be referred to as such in the future.

In addition, according to 52 Pa. Code § 5.101(b), a preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection. Dominion Peoples has failed to attach the required notice to plead to Dominion Peoples' motion.

Because Dominion Peoples has failed to comply with the Commission's Rules of Practice and Procedure I shall strike Dominion Peoples' motion *sua sponte*.

Furthermore, Dominion Peoples, at all times relevant hereto, has been responsible for the billing of Peoples Plus' charges to Complainant (New Matter, paragraph 1), and became Complainant's natural gas supplier by default once her contract with Peoples Plus was terminated. New Matter, paragraph 2. For these reasons, Dominion Peoples is an indispensable party in Ms. Bowers' case against Peoples Plus alleging incorrect billing and unauthorized change of her natural gas supplier.

Peoples Plus' Preliminary Objection

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code § 5.101. See, Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, 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., 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Complaint are true. Id. The preliminary objection 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)).

As in every case coming before this forum, the Commission must decide initially whether it has jurisdiction over the parties and the subject matter of this dispute.

As a creature of legislation, the Commission possesses only the authority the state legislature has specifically granted to it in the Public Utility 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., 383 A.2d 791 (Pa. 1977).

The Commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. PA Public Utility Comm'n, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist. Commonwealth v. VanBuskirk, 449 A.2d 621 (Pa. Super. 1982), nor can jurisdiction be obtained by waiver or estoppel, In Re Borough Of Valley-Hi, 420 A.2d 15 (Pa. Commw. 1980).

Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Cf., Hughes v. PA State Police, 152 Pa. Commw. 409, 619 A.2d 390 (1992), alloc. den., 637 A.2d 293 (1993).

Peoples Plus is not a public utility as defined in 66 Pa. C. S. § 102. Instead, it is a natural gas supplier specifically excluded from the definition of public utilities in 66 Pa. C. S. § 102 (2)(iii).⁷ The Commission's jurisdiction over natural gas suppliers, such as Peoples Plus, is restricted to the activities set forth in 66 Pa. C.S. §2208(e) which reads:

Form of Regulation of Natural Gas Suppliers—Except where a natural gas supplier serves as a supplier of last resort, the commission may forbear from extending its regulation of natural gas suppliers beyond licensing, bonding, reliability and consumer services and protections, including all

⁷ "Public Utility."

(2) The term does not include:

(iii) Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

66 Pa. C. S. § 102 ("Public utility").

applicable portions of 52 Pa. Code Ch. 56 (relating to standards and billing practices for residential utility service).

66 Pa.C.S. § 2208. I agree with Peoples Plus that Commission's jurisdiction does not extend to regulating the prices that Peoples Plus charges its customers or other commercial activities of natural gas suppliers. Also, the contract between Complainant and Peoples Plus for the supply of natural gas is a private contractual matter over which the Commission has no jurisdiction.⁸

However, in her Complaint, Ms. Bowers alleges that Peoples Plus sent the letter with information regarding the renewal of contract for natural gas supply service to the wrong address. She also makes allegations regarding unauthorized changing of her natural gas supplier when she states that Peoples Plus "disconnected services and put us on Dominion."⁹ Complaint, paragraph 4(B). Pursuant to 66 Pa. C.S. §2208(e) and 52 Pa. Code Ch. 56, the Commission retains regulatory jurisdiction over an NGS' billing practices and services for residential customers. Whether Peoples Plus violated Commission regulation when it sent the contract renewal information to Complainant's service address instead of her mailing address, and whether Complainant suffered an unauthorized change of her natural gas supplier are questions of fact which can not be resolved through a preliminary objection.

For these reasons, Peoples Plus' Preliminary Objection will be denied and the case will be set for hearing.

⁸ Adams, et al. v. Pa. Public Utility Commission, No. 1697 C.D. March 21, 2003, citing Allport Water Authority v. Winburne Water Company, 258 Pa. Superior Ct. 673, 393 A.2d 673 (1978); Litman v. The Peoples Natural Gas Company, 303 Pa. Superior Ct. 345, 449 A.2d 720 (1982); Piper v. Columbia Gas of Pennsylvania, Inc., Docket No. C-891720 (Opinion and Order entered September 2, 1988).

⁹ With "Dominion" Complainant is referring to The Peoples Natural Gas Company d/b/a Dominion Peoples, the utility company. See also Peoples Plus' New Matter, paragraph 2.

CONCLUSIONS OF LAW

1. On April 29, 2006, the Pennsylvania Public Utility Commission's revised Rules of Practice and Procedure became effective. Filings made pursuant to 52 Pa. Code § 5.101 are Preliminary Objections and not Motions to Dismiss.

2. A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection. 52 Pa. Code § 5.101(b).

3. Failing to comply with the Commission's Rules of Practice and Procedure is ground for striking Dominion Peoples' pleading *sua sponte*.

4. Commission regulations provide for the filing of preliminary objections. 52 Pa. Code §§5.101.

5. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveler Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979).

6. The preliminary objection may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985).

7. As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code, 66 Pa. C.S. §§101, *et seq.*

8. Dominion Retail, Inc. d/b/a Peoples Plus is not a public utility as defined in 66 Pa. C.S. § 102.

9. The Commission's jurisdiction over natural gas suppliers is restricted to the activities set forth in 66 Pa. C.S. §2208(e) and does not extend to regulate the prices that a natural gas supplier charges its customers.

10. Pursuant to 66 Pa. C.S. §2208(e) and 52 Pa. Code Ch. 56, the Commission retains regulatory jurisdiction over an NGS' billing practices and services for residential customers.

ORDER

THEREFORE,

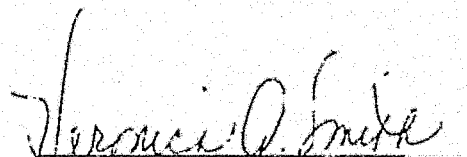
IT IS ORDERED:

1. That the Motion to Dismiss filed by The Natural Gas Company d/b/a Dominion Peoples to dismiss the Complaint filed by Ruth Bowers, at Docket No. C-20066960, is hereby stricken, *sua sponte*, for failure to comply with the Commission's Procedural Rules.

2. That the Preliminary Objection filed by Dominion Retail, Inc. d/b/a Peoples Plus to dismiss the Complaint filed by Ruth Bowers, at Docket No. C-20066960, is hereby denied.

3. That the Formal Complaint filed by Ruth Bowers against The Natural Gas Company d/b/a Dominion Peoples and Dominion Retail, Inc. d/b/a Peoples Plus, at Docket No. C-20066960, be set for hearing.

DATED: December 27, 2006



Veronica A. Smith
Chief Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
December 28, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-20066960

(SEE ATTACHED LIST)

Ruth M. Bowers v. The Peoples Natural Gas Company d/b/a Dominion
Peoples; Dominion Retail, Inc. d/b/a Peoples Plus

Service Dispute / Billing Dispute

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: Thursday, February 15, 2007
Time: 10:00 a.m.
Presiding: Administrative Law Judge John H. Corbett, Jr.
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: 412-565-3550
Fax: 412-565-5692

BTL

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.

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FOLDER

DOCKETED
JAN 10 2007

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

Ruth M. Bowers	724-443-3853
Gary A. Jeffries, Esquire	412-473-4129
Horace P. Payne, Jr., Esquire	412-497-6889

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 5 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 at least (2) two business days prior to your hearing:

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

pc: Judge Corbett
Stacy Nolan, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

COMMONWEALTH OF PENNSYLVANIA

Pennsylvania Public Utility Commission

INTEROFFICE MEMORANDUM

TO: STACY NOLAN
OALJ SCHEDULING STAFF

FROM: JOHN H. CORBETT, JR. *JHC*
ADMINISTRATIVE LAW JUDGE

SUBJECT: RUTH M. BOWERS V. THE PEOPLES NATURAL GAS
COMPANY, D/B/A DOMINION PEOPLES, AND
DOMINION RETAIL, INC., D/B/A PEOPLES PLUS
DOCKET NO. C-20066960

DATE: JANUARY 8, 2007

CC: CHRISTINE WILLIAMS

DOCUMENT
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I am scheduled to preside over a telephonic hearing in the above-captioned case at 10:00 a.m. on Thursday, February 15, 2007. Enclosed you will find correspondence from the Complainant requesting leave to withdraw her complaint.

Accordingly, I respectfully request that you cancel the scheduled hearing. Please process this matter pursuant to 52 Pa. Code §5.94(a). Kindly ask the Secretary for the Commission to send the appropriate notice to the parties and thereafter, mark the docket for this case as settled and closed.

As always, if you have any questions or if I can be of any service to you, please feel free to contact me. I thank you for your time and attention to this matter.

Enclosure

RECEIVED

JAN 10 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

01 Jan 2007 10:50
PA PUC

12-6-2007

Dear Law Judge John H Corbett Jr -

I would like to
withdraw my complaint against
"Common People", that I placed on
October 2, 2006

I still feel that I was right,
but I can't go through a
hearing at this time because
of a family illness.

Thank you

Ruth Bowers

hearing was to be on
Thursday February 15, 2007
at 10:00

Ruth Bowers

P.O. Box 295 313 Marion St
Bakerston, PA 15007

JAN 08 2007

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: January 9, 2007

SUBJECT: C-20066960
Ruth M. Bowers v. Peoples Natural Gas Co.

TO: Wanda Zeiders
Docket Management

FROM: Stacy Nolan, ALJ Support Staff
Office of Administrative Law Judge

On January 8, 2007, a Petition to Withdraw was filed in the above-captioned proceeding. If no objection is filed to this petition within 20 days of the filing, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

Attachment

pc: ALJ John H. Corbett, Jr.
Beth Plantz
Case File

DOCUMENT
FOLDER

DOCKETED
JAN 11 2007



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

IN REPLY PLEASE
REFER TO OUR FILE

February 16, 2007

C-20066960

RUTH M. BOWERS
PO BOX 295
BAKERSTOWN PA 15007

RUTH M. BOWERS
v.
DOMINION RETAIL INC T/A PEOPLES PLUS

DOCKETED
FEB 18 2007

TO WHOM IT MAY CONCERN:

Please be advised that the Commission has marked closed the above-entitled proceeding.

Very truly yours,

James J. McNulty
Secretary

cc: All parties of Record

nvl

**DOCUMENT
FOLDER**