

PLEASE DOCKET

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

William H. Sinning

v.

The Peoples Natural Gas Co. t/a Dominion Peoples :

C-20043954

DOCKETED

ORDER

JAN 7 2005

SECRETARY'S BUREAU

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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.

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

Complainant has not filed a response to the Motion to Dismiss. The matter has been assigned to me by Motion Judge Assignment Notice dated January 4, 2005.

Apparently, Complainant erroneously listed the wrong respondent, Dominion Peoples, on the Formal Complaint form and the Commission served the instant Complaint on the named respondent. Complainant is not a Dominion Peoples delivery customer. Complainant's dispute appears to be with his gas supplier. According to Respondent, Complainant's actual gas

supplier is Dominion Peoples Plus, and not Dominion Peoples. These are two separate and distinct companies.

Therefore, Respondent, Dominion Peoples, shall be dismissed from this matter. The Commission's Secretary's Bureau shall remove The Peoples Natural Gas Company t/a Dominion Peoples as Respondent in this case. Furthermore, the Secretary's Bureau shall correctly list Dominion Peoples Plus as the proper respondent and re-serve this Complaint on Dominion Peoples Plus.

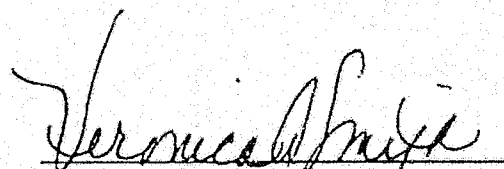
ORDER

THEREFORE,

IT IS ORDERED THAT:

1. Respondent, Dominion Peoples, be dismissed from the matter regarding the Complaint filed by William H. Sinning, at PUC Docket No. C-20043954.
2. The Commission's Secretary's Bureau shall remove The Peoples Natural Gas Company t/a Dominion Peoples as Respondent in the instant case.
3. The Commission's Secretary's Bureau shall correctly list Dominion Peoples Plus as the proper respondent in the matter regarding the Complaint filed by William H. Sinning, at PUC Docket No. C-20043954.
4. The Commission's Secretary's Bureau shall re-serve this Complaint on the proper respondent, Dominion Peoples Plus.

Dated: January 5, 2005


Veronica A. Smith
Chief Administrative Law Judge

C-20073954 WILLIAM H. SINNING v. THE PEOPLES NATURAL GAS COMPANY
D/B/A DOMINION PEOPLES

WILLIAM H SINNING
4620 CURRY ROAD
PITTSBURGH PA 15236
412-881-5359

HORACE P PAYNE JR ESQUIRE
THE PEOPLES NATURAL GAS COMPANY D/B/A DOMINION PEOPLES
625 LIBERTY AVENUE
PITTSBURGH PA 15222
412-497-6889

Gary A. Jeffries
Senior Counsel

Dominion Retail, Inc.
1201 Pitt Street, Pittsburgh, PA 15221
Phone: 412-473-4129 Fax: 412-473-4170
Email: gjeffries@dom.com



Dominion

ORIGINAL

January 26, 2005

By Overnight Mail

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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JAN 26 2005

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: William H. Sinning v. Dominion Retail, Inc. T/A Peoples Plus; Docket No. C-20043954

Dear Secretary McNulty:

On behalf of Dominion Retail, Inc. d/b/a Peoples Plus, the Respondent in the above-referenced matter, enclosed please find an original and three (3) copies of Respondent's ANSWER AND MOTION TO DISMISS OR IN THE ALTERNATIVE TO ADD EQUITABLE GAS COMPANY AS AN INDISPENSABLE PARTY.

A copy of this filing is also being served upon Complainant this date by first-class U.S. Mail.

If you have any questions, please do not hesitate to contact me.

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FOLDER**

Very truly yours,

Gary A. Jeffries
Senior Counsel

Enclosures

cc: William H. Sinning, 4620 Curry Road, Pittsburgh, PA 15236

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JAN 2 2005

BEFORE THE

P.A. PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

WILLIAM H. SINNING)	
)	
Complainant,)	
)	
v.)	Complaint Docket
)	No. C-20043954
DOMINION RETAIL, INC)	
T/A PEOPLES PLUS)	
)	
Respondent.)	

DOMINION RETAIL, INC. d/b/a PEOPLES PLUS' ANSWER AND MOTION TO DISMISS OR IN THE ALTERNATIVE TO ADD EQUITABLE GAS COMPANY AS AN INDISPENSABLE PARTY

NOW comes Respondent, Dominion Retail, Inc. d/b/a Peoples Plus ("Peoples Plus" or the "Company") and states and avers as follows:

1. Peoples Plus admits the averment in Paragraph 1 of the Complaint.
2. Peoples Plus questions Complainant's averment in Paragraph 2. The Company's records reflect that Complainant is a gas utility customer of Equitable Gas Company, not Dominion Peoples Gas Company.
3. No response required.
4. Complainant has been a natural gas commodity customer of Peoples Plus since March 1999, at which time he enrolled in a 3-year offer for service from March 1999 through April 2003. Since that time, his contract with Peoples Plus has renewed three times. Peoples Plus' charges appear on Complainant's monthly gas bill from his gas utility, Equitable Gas Company ("Equitable"). Complainant called Peoples Plus' Call Center on November 1, 2004 to question

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why he had not received a gas bill. The Company's Call Center representative explained to Complainant that Equitable handles all billing related to his natural gas account

5. In his Complaint, the Complainant indicates that he is having problems with his bill, in particular with regard to his budget payment being set too low. However, as Peoples Plus explained to the Complainant on 11/1/04, his complaint is with Equitable, not Peoples Plus

WHEREFORE, Peoples Plus respectfully requests to be dismissed from this Complaint through approval of the attached Preliminary Motion to Dismiss.

**MOTION TO DISMISS OR IN THE ALTERNATIVE TO
ADD EQUITABLE GAS COMPANY AS AN INDISPENSABLE PARTY**

Respondent, Peoples Plus, hereby moves the Commission, pursuant to §§ 5.101(a)(1) and 5.101(a)(3) of the Commission's Rules on Formal Proceedings, 52 Pa. Code §§ 5.101(a)(1), 5.101(a)(3), for an Order dismissing the Formal Complaint of William H. Sinning for the reason that the Complaint fails to allege any wrongdoing on the part of Peoples Plus and thus fails to state a basis for action against Peoples Plus. Insofar as Equitable Gas Company, not Peoples Plus, renders the budget billing service about which Complainant has filed this Complaint, Peoples Plus submits that the Complaint names the wrong respondent. Equitable is properly the respondent in this matter. Peoples Plus, which is not a public utility, plays no role and is not responsible for any problem or deficiency that may exist with regard to the billing relationship between Equitable and the Complainant. According to Section 701 of the Pennsylvania Consolidated Statutes, 66 Pa. § 701,

any person . . . having an interest in the subject matter . . . may complain in writing, setting forth any act or thing done or omitted to be done *by any public utility* in violation, or

claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. (Emphasis added)(See also 52 Pa. Code §5.21)

The instant motion to dismiss is comparable to a preliminary objection in civil practice under Rule 1028 of the Pennsylvania Rules of Civil Procedure. As is the standard in civil practice, the Commission has held that dismissal of a pleading will be granted only where such relief is clearly warranted and free from doubt. In this matter, as noted above, the Complaint is fatally flawed because it names the wrong respondent. Thus, the justification for dismissal is clearly warranted and free from doubt.

Finally, the Complaint should be dismissed without a hearing. The Commission's rules recognize that a hearing is not necessary in every formal complaint brought before it. Those rules provide that "The filing of a formal complaint entitles the complainant to a formal hearing before the Commission, *except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.*" 52 Pa. Code §5.21(d)(emphasis added). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy, or discretion¹. In this matter, no hearing is needed to determine that Complainant has brought his complaint against the wrong respondent.

In the alternative, should this Motion to Dismiss be denied, Peoples Plus moves that Equitable Gas Company be added as an indispensable party to this proceeding for the reason that it, not Peoples Plus, provides the billing service to Complainant that is the subject of the Complaint.

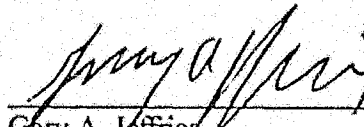
¹ *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A 2d 557 (Pa. Cmwlth 1989).

Respectfully submitted,

DOMINION RETAIL, INC.

DATED: January 26, 2005

By:



Gary A. Jeffries
Senior Counsel

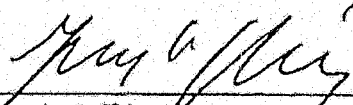
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of § 1.54 (relating to service by a participant).

William H. Sinning
4620 Curry Road
Pittsburgh, PA 15236

Dated this 26th day of January, 2005.



Gary A. Jeffries
1201 Pitt Street
Pittsburgh, PA 15221

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JAN 26 2005

PA PUBLIC UTILITIES
COMMISSION



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

IN REPLY PLEASE
REFER TO OUR FILE

January 31, 2005

In Re: C-20043954

(SEE ATTACHED LIST)

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

Billing Dispute

Motion Judge Assignment Notice

**DOCUMENT
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This is to inform you that a preliminary motion was filed on the above-captioned case. This motion is being assigned to Chief Administrative Law Judge Veronica A. Smith for ruling. The Commission rule of practice at 52 Pa. Code §5.101 specifies that the person who filed the complaint has ten (10) days from the date the motion was served on you to file an answer.

If you file any pleading or document relating to this motion with the Secretary of the Commission, please provide a duplicate copy to the judge.

Procedural questions or comments should be directed to the judge at:

717-783-5452

pc: SA Bingaman
Cherie Pyle
Beth Plantz
Docket Section
Calendar File

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FEB 10 2005