

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, PA 17105-3265**

**Vertis Dillon**  
v.  
**UGI Penn Natural Gas, Inc.**

**Public Meeting – April 19, 2018**  
**2583960-ALJ**  
**Docket No. C-2017-2583960**

**STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.**

In this matter, Vertis Dillon filed a Formal Complaint disputing his responsibility for a bill issued by UGI Penn Natural Gas, Inc. (UGI). The Complainant alleged that his identity was used to accrue a \$1,500 gas bill while he was incarcerated. After filing this Complaint, but prior to his Initial Hearing, Mr. Dillon was incarcerated again. The Commission learned of this incarceration when a prison counselor contacted our Administrative Law Judge (ALJ) three days before the Initial Hearing to inform her that Mr. Dillon was unavailable for the hearing. During this call, however, it was confirmed that Mr. Dillon was able to send and receive written correspondence while incarcerated.

At the time of that hearing, UGI made a Motion to Dismiss this matter. The ALJ required that this motion be made in writing and sent to the Complainant so that he could respond. Mr. Dillon provided an unsigned and brief written response in opposition to the Motion on May 1, 2017, which demonstrates that our service was effective and proper.<sup>1</sup>

Following this motion and response, the ALJ afforded Mr. Dillon four months to indicate how he could be accommodated in the prosecution of his Complaint. Specifically, the ALJ issued an Interim Order, which was mailed to the Complainant at his known address and was not returned as undeliverable.<sup>2</sup> The Interim Order advised that the ALJ was willing to give Complainant time in which to either make arrangements for a telephonic hearing while still incarcerated in Lackawanna County Prison, or to wait until he is sentenced and then schedule a telephonic hearing after he is released from prison. The Interim Order further advised that if, before August 31, 2017, Complainant did not provide contact information or explain how he could participate in a telephonic hearing, a new notice would be issued which would schedule a telephonic hearing using the same contact information provided by Complainant in his formal complaint.

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<sup>1</sup> On May 1, 2017, the Commission's Secretary Bureau mailed the Response to Complainant at the Lackawanna County Prison and informed him the Response was returned to him without being filed in the official Commission file because Complainant did not sign the Response. The Secretary's Bureau notified Complainant in writing that he had ten (10) days in which to return the Response with an original signature and that failure to return the Response with an original signature would result in the Commission assuming he did not file the Response.

<sup>2</sup> As such, the document is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 44 A.2d 658 (Pa. Super. 1982). See also *Commonwealth of PA Department of Corrections Policy Number DC-ADM 803 §(1)(a)(4)(c)*

After several months of no communication from the Complainant through mail, email or telephone, the ALJ listed this matter for a second hearing to be held on January 18, 2018. Again, notice was mailed to the defendant at his known address. The record indicates that the Complainant did not respond to the notice and made no contact with the opposing party, the ALJ or the Commission in nearly a year. For clarity, the procedural timeline has been outlined below, which includes the steps taken by the Presiding Officer to accommodate the Complainant:

January 9, 2017	Mr. Dillon files his Formal Complaint.
March 21, 2017	The ALJ issues a written notice of telephonic hearing scheduled for April 21, 2017.
April 18, 2017	Mr. Dillon's Prison Counselor contacts the ALJ, informs Mr. Dillon is not available for the hearing, and explicitly confirms that Mr. Dillon can send and receive mail.
April 21, 2017	An Initial Hearing is held (ALJ, court reporter, UGI attorney and witness present). A written Motion to Dismiss is mailed to Mr. Dillon.
May 1, 2017	Mr. Dillon's unsigned Response to the Motion is received and an opportunity to perfect the response is sent to Mr. Dillon via mail.
May 25, 2017	The ALJ via Interim Order grants a continuance of the hearing until 8/31/17 to allow Mr. Dillon to indicate how he can be accommodated.
May 26, 2017 through October 31 <sup>st</sup> , 2017	No communication in any manner from Mr. Dillon.
October 31 <sup>st</sup> , 2017	The ALJ schedules a second hearing for 1/18/18 and sent written notice to Mr. Dillon.
January 18, 2018	The second hearing is held (ALJ, court reporter, UGI attorney and witness present), with no communication from Mr. Dillon.

Upon review, I am troubled by several aspects of the proposed Motion. I note that the Motion glosses over the attempts made by the Presiding Officer to accommodate the Complainant upon learning that he was incarcerated. As the facts in this case show, the ALJ specifically provided the Complainant with ample time to explain how he could participate in a hearing, given his incarceration. However, the Complainant chose not to avail himself of this opportunity. The Motion also presumes that Mr. Dillon could not place phone calls while he was incarcerated. This fact is nowhere in the record and appears contrary to the policy of the Pennsylvania Department of Corrections.<sup>3</sup>

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<sup>3</sup> Commonwealth of PA Department of Corrections Policy Number DC-ADM 818 §1(B)(1)

Beyond this concern, this motion also requires that ALJ's hold dockets open for an indeterminate amount of time that could be decades in the future, if ever, depending on the length of incarceration and provides no clear path forward for our Administrative Law Judges.

Our process and the ALJ's attempts to accommodate Mr. Dillon have given him eleven months to correspond or indicate how he could be accommodated during his incarceration, and he has not responded. It also is notable that none of our correspondence has been returned undeliverable, which results in a presumption that service was effective.<sup>4</sup> For procedural due process purposes, what matters is that a Complainant be given a meaningful *opportunity* to be heard on a complaint, and it is my belief that the ALJ has already afforded the Complainant a more than adequate opportunity to be heard in light of the circumstances.

Consistent with Section 5.245(b) of the regulations, I cannot conclude that the Complainant's failure to appear was "unavoidable." I further conclude that, given the time and resources already expended by UGI and the PUC, both other parties and the public would be "prejudiced by permitting the reopening or further examination" of this matter. Accordingly, I cannot support the Motion modifying the Initial Decision in this matter.

**DATE: April 19, 2018**

  
**JOHN F. COLEMAN, JR.**  
**COMMISSIONER**

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<sup>4</sup> *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A. 2d 584 (1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 44 A.2d 658 (Pa. Super. 1982). See also *Commonwealth of PA Department of Corrections Policy Number DC-ADM 803* §(1)(a)(4)(c)