

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gery Jakub	:	
	:	
v.	:	C-2023-3037638
	:	
Peoples Natural Gas Company LLC, and	:	
Interstate Gas Supply, d/b/a IGS Energy	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This decision dismisses a formal complaint for Complainant’s failure to sustain the burden of proof, which alleged Complainant’s natural gas supplier was switched without Complainant’s permission and without providing notice to Complainant – and he was charged a higher variable rate in place of the fixed rate he enjoyed with the previous former natural gas supplier.

HISTORY OF THE PROCEEDING

On January 12, 2023, Gery Jakub (Complainant or Mr. Jakub) filed the Formal Complaint (Complaint) against Peoples Natural Gas Company LLC (Respondent or Peoples) with the Pennsylvania Public Utility Commission (Commission). Complainant alleged his account was transferred from “Dominion”¹ as a supplier to “IGS” as a natural gas supplier without prior notice and without his permission. Complainant requested Respondent be ordered

¹ Dominion is a reference to Dominion Energy Solutions LLC. *See* IGS Exhibit 1.

to pay any charges on his billing statements, which exceeded Peoples' default service rate, starting in July 2022. Complainant noted he cancelled IGS as his supplier on January 9, 2023, but Peoples told him IGS would remain listed as the supplier for up to two billing cycles.

On February 3, 2023, Respondent filed and served its Answer. Peoples generally denied Complainant's allegations and contended Complainant's issues related to his former natural gas supplier Interstate Gas Supply, Inc. (IGS), d/b/a IGS Energy, when Dominion Energy Solutions was sold to IGS. Respondent noted Complainant did not allege Peoples violated any Commission regulation or order, or any provision of the Public Utility Code. Respondent requested the case be dismissed or IGS be joined as an indispensable party. Peoples did not copy IGS on its request to join it as an indispensable party.

On February 7, 2023, the Office of Administrative Law Judge (OALJ) mailed an Initial Call-In Telephone Hearing Notice to Complainant and Respondent, scheduling an initial telephonic hearing for April 5, 2023. On February 8, 2023, the presiding officer issued a Prehearing Order which notified the parties about various procedural matters.

On February 28, 2023, the presiding officer issued the Interim Order Joining an Indispensable Party. The presiding officer noted Peoples' Answer included a request to join Interstate Gas Supply (IGS) as an indispensable party. The presiding officer granted the request to make IGS an indispensable party, noting the Formal Complaint questioned whether Complainant was billed correctly when his supplier, Dominion Energy, was sold to another supplier, IGS. The presiding officer joined IGS because IGS was the supplier whose commodity charge appeared on Complainant's billing statements which Complainant contested.

On March 30, 2023, counsel for IGS filed a Motion for Continuance and Extension of Time to Answer the Formal Complaint (Motion for Continuance), asserting it was unaware of the proceeding until counsel for Peoples contacted IGS on March 30, 2023. IGS requested twenty (20) days in which to file a responsive pleading and requested the initial hearing be rescheduled after May 1, 2023, to provide the parties with sufficient time in which to respond to IGS' pleading.

On April 3, 2023, the presiding officer issued the Second Interim Order which granted the Motion for Continuance. Thereafter, on the same date, the OALJ issued the Cancelled/Rescheduled Initial Telephone Hearing Notice which cancelled the initial hearing on April 5, 2023, and scheduled the initial hearing to be conducted telephonically on May 17, 2023.

On April 11, 2023, IGS filed its Answer and New Matter. IGS denied the allegations in the Formal Complaint, except to note IGS became the natural gas supplier for Complainant in August 2022, after sending Complainant a letter on April 11, 2022, advising him there would be a change in supplier from Dominion Energy Solutions to IGS.

On April 22, 2023, Complainant emailed a response to the Answer and New Matter of IGS, copying Peoples, IGS and the presiding officer, contesting the allegations in the Answer and New Matter of IGS.

On April 27, 2023, counsel for IGS requested a continuance due to witness unavailability. On April 28, 2023, the presiding officer issued an interim order granting a continuance. Thereafter, on April 28, 2023, the OALJ issued the Cancelled/Rescheduled Initial Telephone Hearing Notice which cancelled the initial hearing on May 17, 2023, and scheduled the initial hearing to be conducted on May 16, 2023.

On May 16, 2023, the presiding officer convened the initial telephonic hearing. Complainant appeared *pro se* and testified on his own behalf. Complainant did not offer any exhibits. Respondent was represented by Jennifer L. Petrisek, Esquire, who presented the testimony of two witnesses and offered two (2) exhibits. IGS was represented by Todd S. Stewart, Esquire, who presented the testimony of one witness and offered one (1) exhibit. The hearing concluded after Complainant, Peoples and IGS issued final statements on the hearing record in lieu of filing briefs.

On June 12, 2023, the presiding officer issued the Interim Order Closing the Record, having received the transcript of the hearing, containing 75 pages. The hearing record consists of the transcript and three exhibits.

FINDINGS OF FACT

1. Gery Jakub resides at 954 Sugar Run Road, Eighty-Four, Pennsylvania (service address) with his wife. (Tr. 9, 10).
2. Peoples Natural Gas Company LLC is a natural gas distribution company (NGDC) which provided natural gas distribution service to Mr. Jakub at the service address for 41 years. (Tr.10).
3. Interstate Gas Supply, d/b/a IGS Energy is a natural gas supplier which supplied natural gas to the service address from July 1, 2022, until February 2, 2023. (Tr. 30, 31; Peoples Exhibit 3).
4. From 1998 to 2022, Mr. Jakub received natural gas supply service from Dominion Energy Solutions LLC (Dominion Energy) through a fixed rate contract price at the service address. (Tr.11, 14, 29-31; IGS Exhibit 1).
5. Mr. Jakub receives “informed delivery service” from the United States Postal Service (USPS) which electronically sends photographs to Complainant of the envelopes the USPS leaves in his mailbox. (Tr. 11, 19, 20, 24-26, 67).
6. Complainant denies receiving any correspondence from IGS prior to July 2022 or receiving an email from the USPS with a photograph of an envelope from IGS prior to July 2022. (Tr. 11, 19, 20, 24-26, 67).

7. Sometime in 2022, IGS completed its acquisition process of Dominion Energy and, as a consequence, Complainant's contract with Dominion Energy for natural gas supply was assigned to IGS. (Tr. 15, 18, 19, 30, 61, 65; IGS Exhibit 1).

8. On April 11, 2022, Dominion Energy sent a letter to Complainant, notifying Complainant that Dominion Energy was acquired by IGS, the natural gas supply contract would be transferred to IGS as the supplier as of the August 2022 meter read and Complainant did not have to take any action in response to the letter. (Tr. 61-64; IGS Exhibit 1).

9. Complainant's fixed rate contract with Dominion Energy became a variable rate when IGS became the new natural gas supplier. (Tr. 63).

10. The letter from IGS, dated April 11, 2022, was not returned to IGS by the USPS as "undeliverable." (Tr. 61).

11. On June 30, 2022, Peoples issued a bill to Complainant for natural gas service from June 1 through June 30, 2022, which reflected Complainant's supplier was "Dominion Energy Solutions LLC" and indicated the supply rate was \$5.69 per mcf. (Tr. 30-33, 47; Peoples Exhibit 3).

12. Complainant became a customer of IGS in July 2022. (Tr. 30-33, 47; Peoples Exhibit 3).

13. On July 30, 2022, IGS, as the natural gas supplier for the service address, notified Peoples that the supply rate would change from \$5.69 per mcf to \$10.99 per mcf. (Tr. 11, 32).

14. On August 1, 2022, Peoples issued a bill to Complainant for service from July 1 through July 31, 2022, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$5.6900 per mcf. (Tr. 48, 49; Peoples Exhibit 3).

15. On August 30, 2022, Peoples issued a bill to Complainant for service from August 1 through August 30, 2022, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$5.6900 per mcf. (Tr. 15-17; Peoples Exhibit 3).

16. On September 29, 2022, Peoples issued a bill to Complainant for service from August 30 through September 29, 2022, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$6.3826 per mcf. (Tr. 49; Peoples Exhibit 3).

17. On October 28, 2022, Peoples issued a bill to Complainant for service from September 29 to October 28, 2022, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$10.9900 per mcf. (Tr. 13, 14, 50; Peoples Exhibit 3).

18. On December 1, 2022, Peoples issued a bill to Complainant for service from October 28 to December 1, 2022, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$10.9900 per mcf. (Tr. 11, 12; Peoples Exhibit 3).

19. On January 3, 2023, Peoples issued a bill to Complainant for service from December 1, 2022 to January 3, 2023, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$10.9900 per mcf. (Tr. 11; Peoples Exhibit 3).

20. On January 9, 2023, Complainant contacted Peoples to request a return to Peoples as his natural gas supplier. (Tr. 11, 12, 15-17, 42; Peoples Exhibit 1).

21. On January 10, 2023, Peoples mailed a letter to Complainant which noted Peoples would become the new commodity supplier effective February 3, 2023, and the first bill to reflect the change in suppliers would not be mailed until after February 2, 2023. (Tr. 41, 51; Peoples Exhibit 1).

22. Respondent obtains monthly readings from its meter at the service address through a digital meter and does not read the digital meter in the middle of a billing cycle when there is a change in commodity supplier. (Tr. 17; 43, 57, 58).

23. On February 2, 2023, Peoples issued a bill to Complainant for service from January 3, 2023 to February 2, 2023, which reflected Complainant's supplier was "Interstate Gas Supply, Inc." and indicated the supply rate was \$10.9900 per mcf. (Tr. 51; Peoples Exhibit 3).

24. Peoples returned Complainant to Peoples' supply rate, effective on February 3, 2023. (Tr. 41, 52, 53; Peoples Exhibit 3).

25. On March 3, 2023, Peoples issued a bill to Complainant for service from February 2, 2023 to March 3, 2023, which reflected that Complainant's supplier was Peoples and indicated the supply rate was \$4.7271 per mcf. (Tr. 52, 53; Peoples Exhibit 3).

26. Complainant is a customer in good standing with Peoples and pays his bills on time and in full. (Tr. 10, 45).

DISCUSSION

Complainant's Position

Complainant asserts IGS became his natural gas supplier without his permission and without his prior knowledge. Complainant insists IGS was forced upon him for his supply service and then it took Peoples two months to switch his supply service from IGS to Peoples. Complainant requests the Commission order Peoples and/or IGS pay him the difference between the rate he paid for supply service from IGS minus the amount he would have paid had he received Peoples' rate instead, from October 2022 until February 2023.

Respondent Peoples's Position

Respondent Peoples contends the Complaint should be dismissed because Peoples did not violate any Commission regulation or Order, or provision of the Public Utility Code, when Peoples charged Complainant the natural gas supply rates supplied to Complainant by his supplier – first, Dominion Energy and then, IGS Energy. In addition, Peoples contends it timely removed IGS Energy from Complainant's account as his supplier at the start of the first billing cycle after Complainant contacted Peoples to request removing IGS Energy as his competitive supplier.

Respondent/Indispensable Party IGS

IGS contends the Complaint should be dismissed because Complainant failed to meet the burden of proving IGS did anything in conflict with any Commission order or regulation, or the Public Utility Code. IGS argues it provided Complainant with written notice of the change in suppliers, which notice was not returned to IGS as undeliverable. IGS argues the Complaint should be dismissed because IGS provided prior notice to Complainant about the pending change in supplier, but Complainant did not complain or object until months after the switch was made. IGS points out that once Complainant made the request to switch to Peoples as his supplier, the switch was made in a timely fashion.

Burden of Proof

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof.² To establish a sufficient case and satisfy the burden of proof, Mr. Jakub must show Peoples and/or IGS is responsible or accountable for the problem described in the complaint.³ Complainant must show this fact to be true by a preponderance of the evidence, that is, by

² See 66 Pa.C.S. § 332(a).

³ *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

presenting evidence more convincing, by even the smallest amount, than that evidence presented by the other party.⁴ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁵ Notably, more evidence is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁶

Jurisdiction

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.⁷ The Commission must act within, and cannot exceed, its jurisdiction.⁸ Jurisdiction may not be conferred by the parties where none exists.⁹ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹⁰ The Commission does not have jurisdiction to regulate the rates charged by an EGS or order a refund of unreasonable rates. Rather, these rates are governed by private contract between the EGS and the customer. The Commission lacks the jurisdiction to rule on the parties' responsibilities under a private agreement or the authority to award damages under that agreement.¹¹

⁴ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiere v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁵ *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

⁶ *Norfolk & Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

⁷ *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁸ *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

⁹ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹⁰ *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992).

¹¹ *Feingold*, 383 A.2d 791.

Issue Involving the Switch in Suppliers

Complainant argues IGS had no right to tell Peoples that he agreed IGS would become his new supplier and Peoples had no right to switch his supplier from Dominion to IGS. He testified he never received notice that Dominion Energy would no longer be his natural gas supplier, after IGS acquired Dominion Energy and his supply contract was assigned to IGS. Complainant is incorrect in his contentions and his Complaint will be denied in the paragraphs below.

Complainant failed to show how Peoples was in error when Peoples processed the switch in suppliers from Dominion Energy to IGS, after IGS acquired Dominion Energy, as well as the contracts with Dominion Energy's customers, in 2022. Peoples and IGS proved that a notice was sent to Complainant in writing on April 11, 2022, which explained the sale of Dominion Energy and the projected timeline when Complainant's supplier would switch to IGS.¹² If Complainant did not want natural gas supply from IGS, Complainant had an obligation to notify IGS and Peoples that he wanted a different supplier.

Complainant contended he never received any letter from IGS in April 2022 and he referred to a service offered by the USPS which would send him an email daily with pictures of the mail it leaves in his mailbox. Complainant insisted he did not receive any envelope or correspondence in his mailbox by the USPS, and insisted he did not receive notice of the supplier switch. Complainant's contention was not borne out by the evidence.

Complainant received notice, starting with the billing statement dated August 1, 2022, that IGS had become his natural gas supplier. Starting on September 29, 2022, Complainant received notice that his natural gas supply rate increased from \$5.6900 per Mcf to \$6.3826 per Mcf. Complainant continued to receive monthly notices, through the billing statements, that IGS was his natural gas supplier and that the natural gas supply was changing. Complainant received his monthly billing statements from Peoples and through these notices, he was notified about two increases in the supply charge (from \$5.6900 per Mcf to \$6.3826 per Mcf

¹² 52 Pa. Code §§ 62.75, 62.81.

in the September 2022 bill, and from \$6.3826 per Mcf to \$10.9900 per Mcf in the October 2022 bill). Yet, with all these forms of notification, Complainant did not notify either supplier or Respondent about his objection to IGS as his supplier until January 9, 2023.

Accordingly, it is the decision of the presiding officer that Complainant failed to meet his burden of proving Peoples or IGS were in error to switch his natural gas supplier from Dominion Energy to IGS. Mr. Jakub received at least one written notice advising him of the upcoming switch and received numerous additional written notices as part of his monthly bills reflecting the change in suppliers and the change in the supply rate. Despite all those notices, Mr. Jakub waited until January 9, 2023 before he complained about the switch.

Once that complaint was received, Peoples worked in a timely manner to switch the suppliers at the earliest possible time, given the fact Mr. Jakub had called towards the start of a billing cycle. Peoples is permitted to delay a switch to a new supplier until the start of the next billing cycle, which is what Peoples did when it began providing supply service to Complainant on February 3, 2023.¹³ Complainant did not prove any undue delay on the part of Peoples to make the switch and he failed to meet his burden of proving Peoples did not comply with the Commission's orders and regulations, or the Public Utility Code, when it waited from January 9, 2023 until February 3, 2023 to switch Mr. Jakub to Peoples as his natural gas supplier.

Pursuant to 66 Pa.C.S. § 1501, Peoples is required, as a public utility, to:

furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission. Subject to the provisions of this part and the regulations or orders of the Commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service[.]

¹³ 52 Pa. Code § 59.94.

Peoples took reasonable steps to process the supplier switches on Complainant's account, to timely notify Complainant about the switches and to provide Complainant with time in which to object or raise concerns, as needed. Accordingly, Peoples provided reasonable customer service when it switched the supplier on Complainant's account.

Based on the evidence presented, Complainant failed to demonstrate by a preponderance of the evidence that Peoples failed to provide reasonable and adequate customer service when it switched Complainant to a new supplier. Further, Complainant failed to demonstrate by a preponderance of the evidence that IGS failed to provide reasonable and adequate customer service when it notified Complainant in April 2022 that IGS would become Complainant's supplier in August 2022. Accordingly, the Complaint will be denied in the paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this Formal Complaint. 66 Pa.C.S. §§ 701.

2. The burden of proof in this proceeding is on Complainant to prove Respondent or the Indispensable Party did not provide reasonable and adequate service. 66 Pa.C.S. § 332(a).

3. The Commission does not have jurisdiction to regulate the rates charged by an Natural Gas Supplier or to order a refund of unreasonable rates. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

4. Complainant failed to meet the burden of proving Respondent did not provide reasonable and adequate service in how Respondent processed the switch in suppliers on Complainant's account in June 2022 and January 2023. 66 Pa.C.S. § 1501.

