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Highlights: PA PUC Public Session of November 10, 2011

Note: Audio from each public meeting is available on the Pennsylvania Public Utility Commission's website for approximately six months. To access the audio stream for this public meeting, please visit <http://www.puc.state.pa.us/general/PMAudio.aspx>. The public meeting calendar and agendas may be viewed at http://www.puc.state.pa.us/general/public_meeting.aspx.

At the November 10, 2011, Public Meeting of the Pennsylvania Public Utility Commission ("Commission"), the Commissioners adopted Staff's recommendations for action by a vote of 5-0 on all items listed on the Main Agenda and Carry-In Agenda, except as reflected herein below under the respective Commission agenda headings. Review of particular items addressed by the Commissioners at this Public Meeting which may be of interest are addressed under the respective Commission agenda headings below. Any relevant motions and statements are attached hereto and to the original of this Session Memo filed in the Public Meeting Agenda and Session Memo binder. The next regular Public Meeting is tentatively scheduled for **December 1 at 10:00 a.m.** The minutes of the Public Meeting of October 14, 2011, were, by a vote of 5-0, approved without modification.

MAIN AGENDA

BUREAU OF TECHNICAL SERVICES & BUREAU OF INVESTIGATION & ENFORCEMENT (Transportation)

- Shelva J. Charles, 2204112-TAS, A-2010-2204112. Application for the right to begin to transport as a common carrier by motor vehicle, persons in paratransit service. RECOMMENDATION: That the Commission adopt the proposed Order approving the application. Vote 5-0.

BUREAU OF AUDITS

- All matters approved as submitted.

DIRECTOR OF REGULATORY OPERATIONS

- Interim Guidelines - Standards for Changing An EGS, 2270442-DIR, M-2011-2270442. Based on customer complaints and EGS concerns, and at the request of the Commissioners' Offices, the Office of Competitive Market Oversight explored options to shorten the timeframe for a customer to switch EGSs. A change in EGS can take from 16 to 45 days. Based on discussions with CHARGE (Committee Handling Activities for Retail Growth in Electricity) and the Retail Market Investigation (Docket No. I-2011-2237952) participants,

OCCO drafted proposed interim guidelines that are intended to facilitate customer switching between an EDC or DSP and an EGS, or between EGSs while preserving safeguards to prevent "slamming," the switching of a customer's account without authorization. RECOMMENDATION: That the Commission adopt the Tentative Order that issues the proposed interim guidelines for public comment. Commissioner Cawley's Statement is attached. Vote 5-0.

OFFICE OF SPECIAL ASSISTANTS

- Laser Northeast Gathering Company, LLC, 2153371-OSA, A-2010-2153371. The matter was postponed from the 10/28/2011 Public Meeting. Application filed on 1/19/10. The Commission issued ALJ Colwell's Recommended Decision on 12/1/10, disapproving a Settlement and denying Laser's Application. By Order entered 6/14/11, the Commission determined that Laser's service was "public utility" service and remanded the proceeding to determine whether a Certificate of Public Convenience should be issued. By Order entered 8/25/11, the Commission denied Petitions for Reconsideration filed by the Pennsylvania Independent Oil and Gas Association and MarkWest Liberty Midstream & Resources, LLC and granted MarkWest's request for clarification. Laser filed a Petition to Withdraw Application on 9/8/11. PIOGA filed Objections on 9/29/11. MarkWest and Laurel Mountain Midstream filed a Joint Answer on 10/3/11. On 10/7/11, Laser filed a response to the Objections and the Joint Answer. On 10/13/11, MarkWest and LMM filed an Answer to Laser's Response. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order. Vice Chairman Coleman's Motion, which denied a request to rescind the Commission's prior Orders, is attached. Commissioner Cawley's Dissenting Statement is attached. Vote 3-2, with Commissioners Cawley and Witmer dissenting.

BUREAU OF TECHNICAL UTILITY SERVICES

- Pilot Project-Implement International Wtr., Assoc/American Wtr. Wks Water Audit Methodology, 2062697-FUS, M-2008-2062697. The matter was postponed from the 10/14/2011 Public Meeting. Bureau of Fixed Utilities lead a group of volunteer jurisdictional water companies to participate in a 24-month pilot program to consider the merits of implementing a new water audit methodology. RECOMMENDATION: That the Commission adopt the proposed Tentative Opinion & Order which implements the requirement to file annual water audit summaries by the participating companies. Chairman Powelson made a verbal statement with which Vice Chairman Coleman associated. Vote 5-0.
- Intellifiber, Cavalier, Talk America, US LEC, PAETEC, LDMI TEL, MCLEOD & Windstream, 2258734-FUS, A-2011-2258734, A-2011-2258734-FUS, A-2011-2258734, A-2011-2258715, A-2011-2258716, A-2011-2258717, A-2011-2258718, A-2011-2258719. Joint Application filed on 8/12/11, for approval of the indirect transfer of control was filed. On 9/19/11, Law Bureau filed a timely protest. On 10/14/11, Law Bureau filed a notice of withdrawal of its protest on the grounds that the parties had reached a mutually satisfactory agreement and requested that its Petition to Intervene and Protest be withdrawn. RECOMMENDATION: That the Commission adopt the proposed Order approving the indirect transfer of control. Vote 5-0.

LAW BUREAU

- Eligible Customer List, 2183412-LAW, M-2010-2183412, M-2009-2104271, P-2009-2135500. Interim Guidelines for Eligible Customer Lists issued P-2009-2135500 on 11/12/10. The Commission, among other things, limited the ability of consumers to restrict release of their customer information to EGSs. OCA and the PA Coalition Against Domestic Violence filed appeals of the order and the PCADV requested a stay of the Order.

Commonwealth Court granted the stay and, on 4/28/11, returned jurisdiction to the PUC on the Commission's motion so that it could reconsider its 11/12/10 Order. The Commission gave interested parties an opportunity to comment and has now considered those comments. RECOMMENDATION: That the Commission approve the proposed Order. Commissioner Witmer's Conflicts Statement is attached. Vote 5-0.

OFFICE OF ADMINISTRATIVE LAW JUDGE

- Gretchen Buchanan vs. Pike County Light & Power Company, 2137873-ALJ, F-2009-2137873. The matter was postponed from the 10/28/2011 Public Meeting. Formal Complaint filed on 10/15/09, alleging an inability to pay for electric and gas service. On 11/17/09, Pike County filed an Answer and New Matter addressing the material allegations of the complaint. A hearing was held on 7/17/10. COMMISSION REVIEW: That the Commission adopt ALJ Vero's Initial Decision sustaining the complaint. Commissioner Powelson's and Commissioner Witmer's Joint Motion, which finds that Ms. Buchanan has not made a good-faith effort to pay her outstanding balance, and therefore is denied another payment agreement, is attached. Vote 5-0.
- Robert O. Cruz & Heather Campbell vs. UGI Utilities Inc - Gas Division, 2149273-ALJ, F-2009-2149273. The matter was postponed from 10/28/11 Public Meeting. Formal Complaint filed on 12/21/09, alleging an inability to pay their monthly bill and requested the Commission order a payment arrangement they can afford. UGI filed an answer on 1/13/10, requesting full payment of arrearage as well as a reconnection fee and one half of a security deposit before Complainants' gas service is reconnected. UGI avers Complainants have broken three payment arrangements, and do not deserve another one prior to reconnection of service. A hearing was held on 10/5/10. COMMISSION REVIEW: That the Commission adopt ALJ Barnes' Initial Decision dismissing the complaint. Commissioner Gardner's Motion, which moves to remand the matter to the Office of Administrative Law Judge to develop the record fully, is attached. Vote 5-0.
- Rainey Richmond vs. PECO Energy Co., 2187305-ALJ, F-2010-2187305. Formal Complaint filed on 7/12/10, alleging incorrect charges on his electric bill. On 7/21/10, PECO filed Preliminary Objections. The Complainant did not file an Answer to the Preliminary Objections. COMMISSION REVIEW: That the Commission adopt ALJ Barnes' Initial Decision dismissing the complaint. Commissioner Gardner's and Commissioner Witmer's Joint Motion is attached. Vote 5-0, with Chairman Powelson and Vice Chairman Coleman concurring in result only.
- Esther Cobb vs. UGI Penn Natural Gas, 2207096-ALJ, F-2010-2207096. Formal Complaint filed on 10/28/10, alleging an inability to pay for natural gas service. On 11/10/10, UGI filed its answer, and a hearing was held on 1/6/11. COMMISSION REVIEW: That the Commission adopt Special Agent Alexander's Initial Decision denying the complaint. Chairman Powelson's Motion is attached, denying a second BCS payment agreement requested by Ms. Cobb because she broke prior payment agreements. Vote 5-0.
- Lennia Kutz vs. UGI Utilities-Gas, 2214107-ALJ, C-2010-2214107. Formal complaint filed on 12/7/10, asserting that Complainant is unable to pay her monthly bill and requested a new payment arrangement she can afford. UGI filed its answer on 12/27/10. A hearing was held on 8/30/11. COMMISSION REVIEW: That the Commission adopt ALJ Salapa's Initial Decision denying the complaint. Commissioner Witmer's Statement is attached. Vote 5-0.
- Brian Rudnick vs. Verizon PA, 2238995-ALJ, C-2011-2238995. The matter was postponed from the 10/28/11 Public Meeting. Formal Complaint filed on 4/18/11, alleging that the Verizon's website does not provide accurate information with respect to the rates for calls to

Ecuador. On 5/3/11, Verizon filed an Answer and New Matter as well as Preliminary Objections. Complainant did not respond to the Preliminary Objections. COMMISSION REVIEW: That the Commission adopt ALJ Buckley's Initial Decision sustaining the Preliminary Objections and dismissing the Complaint. Vice Chairman Coleman's Motion is attached. Vote 5-0, with Commissioner Cawley concurring in result only.

CARRY-IN AGENDA

BUREAU OF AUDITS

- All matters approved as submitted.

OFFICE OF SPECIAL ASSISTANTS

- Columbia Gas of PA, Inc., 2215623-OSA, R-2010-2215623, C-2011-2224941, C-2011-2224985, C-2011-2227004, C-2011-2230067, C-2011-2232186, C-2011-2224944, C-2011-2225050, C-2011-2225828, C-2011-2225878, C-2011-2227222. On 10/14/11, the Commission entered an Opinion and Order that, inter alia, approved a Joint Petition in Partial Settlement of Columbia's base rate proceeding, rejected Columbia's proposed Levelized Distribution Charge, and deferred consideration of the litigated issue concerning Columbia's Customer Assistance Plan. On 10/31/11 the Pennsylvania Communities Organizing for Change filed a Petition for Reconsideration and/or Clarification of the Commission's 10/14/11 Opinion and Order. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order granting reconsideration pending further review of the merits of the Petition. Commissioner Witmer's Conflicts Statement is attached. Vote 5-0.

BUREAU OF TECHNICAL UTILITY SERVICES

- All matters approved as submitted.

LAW BUREAU

- All matters approved as submitted.

OFFICE OF ADMINISTRATIVE JUDGE

- PA American Water Company, 2232243-ALJ, R-2011-2232243. Supplement No. 253 to Tariff Water- Pa. P.U.C. No. 4 filed on 4/29/11, to become effective 6/28/11 containing proposed changes in rates, rules and regulations calculated to produce \$70,676,379 (or 13.8%) in additional annual revenues. By Order entered 6/9/11, the Commission instituted an investigation. The proposed rate was suspended by operation of law on 6/28/11, until 1/28/12. OSBA, OCA, AK Steel, I&E and PAWLUG filed formal complaints in this Proceeding. Eighteen formal complaints were filed. Eight Public Input hearings were held. On 10/6/11, a Joint Petition for Settlement of Rate Investigation was filed with the Commission. COMMISSION REVIEW: That the Commission adopt ALJs Jones and Vero's Recommended Decision approving the Joint Petition for Settlement. Commissioner Witmer's Conflicts Statement is attached. Vote 5-0.

COMMISSIONERS OFFICE

- Prevention and Mitigation of Extended Service Outages, 2271989-CMR. Chairman Powleson's and Vice Chairman Coleman's Joint Motion is attached. Vote 5-0.

SUPPLEMENTAL CARRY-IN AGENDA

LAW BUREAU

- Natural Gas Pipeline Replacement & Performance Plans, 2271982-LAW, M-2011-2271982. Order requires all pipeline distribution utilities to provide copies of Federal Distribution Integrity Management Plans to Bureau of Inspection and Enforcement; that all gas distribution utilities conduct frost patrol leak surveys; and seeks comment on Tentative Order requiring large gas distribution utilities to submit pipeline replacement and performance plans and transmission integrity management plans. RECOMMENDATION: That the Commission issue the proposed tentative order. Chairman Powelson's and Vice Chairman Coleman's Joint Statement is attached. Vote 5-0.

ANNOUNCEMENTS

- A special Veterans Day program was held prior to meeting.
- The RMI En Banc Hearing will convene at 12:30 p.m. in Hearing Room 1.

NEXT PUBLIC MEETING IS TENTATIVELY SCHEDULED FOR THURSDAY, DECEMBER 1, 2011 AT 10:00 A.M.

* Denotes Order

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Re: Interim Guidelines
Regarding Standards For
Changing a Customer's
Electricity Generation Supplier

Public Meeting: November 10, 2011
2270442-DIR
Docket M-2011-2270442


STATEMENT OF COMMISSIONER CAWLEY

Before us for consideration are proposed interim guidelines that are intended to facilitate the timely transfer of a customer's account from an electric distribution company (EDC) to a competitive electric generation supplier (EGS or supplier) or from one EGS to another. These proposed guidelines propose to accelerate the process of enrolling a customer with his or her EGS of choice. As part of these changes, the tentative order proposes to require EGSs to advise a customer about the date that the customer's account can be transferred to the EGS. In Pennsylvania, this switching date is currently tied to the customer's individual monthly meter read date. Specifically, it is proposed that the EGS must provide an estimate of the starting date of EGS supply service to the customer in the Disclosure Statement.

It would be helpful if the parties commented on the following issues, in light of these proposed changes:

1. How important is it to consumers that they have a good faith estimate of the projected starting date for EGS service in the Disclosure Statement?
2. Are there other means or timelines that would more beneficially provide information to customers regarding the service starting date?
3. If a customer opts out of the Eligible Customer List (ECL) and the EGS and/or customer does not readily have information on customer specific meter read dates, will this complicate the customer contracting process, and what new processes or EDC information systems can be provided *in real time* to enable effective contracting between EGSs and customers?*
4. What is the experience of EGSs with regard to customers having ready access to their billing statements so that EGSs can provide the necessary meter read information to customers during the contracting process? Does the vast majority of customers keep a copy of their bills and/or have a copy available when contracting with an EGS?

November 10, 2011



James H. Cawley
Commissioner

* EDI processes usually provide for batch processing that may not be sufficiently responsive to obtaining meter cycle information on a real time base, but instead require twenty-four or more hours in response times.

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Application of Laser Northeast
Gathering Company, LLC**

**Public Meeting November 10, 2011
2153371-OSA
Docket No. A-2010-2153371**

**MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of Laser Northeast Gathering, LLC (Laser), to withdraw its Application for a certificate of public convenience filed on September 8, 2011. The Pennsylvania Independent Oil and Gas Association ("PIOGA") filed Objections to this Petition on September 29, 2011, and MarkWest Liberty Midstream, LLC ("MarkWest") and Laurel Mountain Midstream, LLC ("Laurel") filed a Joint Answer in Support of the Petition.

The Commission's disposition of Petitions to Withdraw in contested proceedings is governed by Section 5.94 of our regulations, 52 Pa. Code §5.94, and directs the Commission to apply a public interest standard. Laser now represents that its service plans have changed, and that it no longer intends to offer service to the public. Based on this representation, I find it to be in the public interest that its Petition be granted.

Markwest and Laurel also request that the Commission's prior Orders at this docket be rescinded, given Laser's change in business plans. They aver that Laser's business plans have changed, that the facts used to support the prior Orders are no longer present. This request is opposed by Laser.

In 2010, we addressed the issue of rescission of an interlocutory order in a case with a similar procedural and appellate history. In 2008, the Commission referred a dispute over purchased gas cost rates to the Office of Administrative Law Judge for additional hearings. As is the case here, a party filed both a Petition for Reconsideration and a Petition for Review with Commonwealth Court of that interlocutory Order. After the Commission granted the Petition for Reconsideration, pending later disposition on the merits, the Petition to Review was withdrawn. When the Commission subsequently denied the Petition for Reconsideration, the same party filed a second Petition for Review of the Commission's interlocutory orders with Commonwealth Court. Shortly thereafter, the parties to that case negotiated a settlement, withdrew the pending appeal, and requested that the remand proceeding be discontinued and that the prior Commission orders be rescinded.

While the Commission granted the request to discontinue the remand proceeding, it declined the request to rescind its prior orders. It had been asserted that the non-rescinded orders would serve as advisory opinions, which was disfavored under the law. The Commission

rejected this argument, noting its full authority to issue declaratory orders under Section 331(f) of the Public Utility Code, 66 Pa. C.S. §331(f).¹

Separately, I note that while the determinations in the prior Orders issued at this docket were specific to the interlocutory issues presented to us, other statements were of generally applicable legal principles. These Orders did not adjudicate the merits of Laser's application. The Commission also granted Exceptions for the purpose of acknowledging prior Commission and Commonwealth Court decisions that were relevant. For example, the Commission concluded that:

- It had the authority, under Section 502 of Public Utility Code, to enforce its orders approving settlement provisions agreed to by the parties as a condition for resolving a case, including those involving certificates of public convenience.²
- Service to a limited class of customers may constitute service "to or for the public."³
- That the provision of natural gas gathering and transportation services was not exempt from Commission jurisdiction under the definition of "public utility" at Section 102 of the Public Utility Code, as had been asserted, but that the determination of utility status was a fact specific inquiry.⁴

The Commission has the full authority and the obligation to affirm its prior orders, correct the misapplication of Commonwealth Court precedent, and provide guidance to the public regarding issues within its jurisdiction for future adjudications. Rescinding these Orders would in fact foster regulatory uncertainty about the validity of prior, long-standing Commission decisions.

Additionally, I conclude that rescission is no longer an appropriate option for one other reason. There are two other cases involving applications for certificates of public convenience for natural gas gathering and transportation service that are pending before the Commission. In one, the presiding Administrative Law Judge has required the parties, via a Prehearing Order, to address all the directed questions issued by the Commission at this docket, including both those attached to our June 14, 2011 Order, and those attached to the Secretarial Letter issued on August 25, 2011.⁵ The Applicant in that case has already submitted its Direct Testimony, and public input hearings have already occurred. It would be impractical and illogical for us to require the parties to this case to address these directed questions, but at the same time rescind these Orders and thereby instruct them to ignore the guidance provided therein.

¹ *Pennsylvania Public Utility Commission v. T.W. Phillips Oil and Gas Company*, R-2008-2013026 (Order entered April 16, 2010).

² The Commission has on numerous occasions approved settlements of cases involving certificates of public convenience that included provisions that required the public utility to make charitable donations to a non-profit entity, maintain a corporate presence in a specific city or maintain a certain minimum level of employees for period of time, etc. All of these actions are normally fully within the discretion of utility management, and not something the Commission could compel. The Commission has been monitoring and enforcing compliance with orders approving settlement provisions such as these for many years. See *Statewide Sustainable Energy Board*, Docket No. M-00031715 (Order entered August 12, 2003)

³ *Waltman v. Pa. PUC*, 596 A.2d 1221(Pa. Cmwlth. 1991); *Rural Telephone Co. Coalition v. Pa. PUC*, 941 A.2d 751, 760 (Pa. Cmwlth. 2008)

⁴ "We note that, while natural gas gathering and transportation service can meet the definition of "public utility" service, and in the case of Laser's proposed operations, does meet the definition of "public utility" service, not all gathering and transportation service providers will be considered public utilities and subject to the Commission's jurisdiction." (emphasis added) *Application of Laser Northeast Gathering Company, LLC*, Docket No. A-2010 (Order entered June 14, 2011).

⁵ *Application of Peregrine Keystone Gas Pipeline, LLC*, Docket A-2010-2200201 (Fourth Prehearing Order Issued September 12, 2011).

Finally, I would note that a bill has recently been introduced in the General Assembly that would address the jurisdictional status of natural gas pipeline corporations that provide gathering services.⁶ As I acknowledged in my previous statement at this docket, the regulatory scheme established in the law for intrastate pipeline utilities may be obsolete due to subsequent changes in markets, law and technology. The Commission stands ready to assist the General Assembly in its review of this matter, and will promptly implement any legislation signed into law.

THEREFORE, I MOVE THAT:

1. The Petition of Laser Northeast Gathering Company, LLC to Withdraw its Application be granted.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: November 10, 2011



JOHN F. COLEMAN, JR.
VICE CHAIRMAN

⁶ House Bill 1926 of 2011.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Eligible Customer List

**Public Meeting - November 10, 2011
2183412 - LAW
Docket No. M-2010-2183412 et al**

**STATEMENT OF
COMMISSIONER PAMELA A. WITMER**

Prior to joining my staff, Shelby Linton-Keddie was employed by a law firm that served as counsel to a party in the above-captioned proceeding. Therefore, to avoid any impropriety arising from her previous employment, I wish to note that I have not been advised by Shelby Linton-Keddie regarding this matter.

DATE: November 10, 2011



**PAMELA A. WITMER
COMMISSIONER**

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Gretchen Buchanan v. Pike County Light &
Power Company

Public Meeting
November 10, 2011
2137873-ALJ
Docket No. F-2009-2137873

JOINT MOTION OF
CHAIRMAN ROBERT F. POWELSON
AND COMMISSIONER PAMELA A. WITMER

Before the Commission today for disposition is the Initial Decision of Special Agent Eranda Vero¹ sustaining the Complaint of Gretchen Buchanan (Ms. Buchanan) against Pike County Light & Power Company (Pike). Special Agent Vero found that, despite having already received one Commission-issued payment arrangement, Ms. Buchanan's circumstances warranted the issuance of another payment arrangement due to a 20% reduction in income. We respectfully disagree.

By way of background, between 2002 and 2008, Ms. Buchanan was given eight payment arrangements by Pike, all of which were broken. Further, Ms. Buchanan's account history shows that she made 14 payments between 2006 and 2009, only five of which were made in 2008 and 2009. While the Commission has interpreted Chapter 14 of the Public Utility Code as giving it the authority to issue at least one payment arrangement, nowhere is the Commission required to issue subsequent payment arrangements, particularly where the Complainant, whose service was terminated for nonpayment, has not made a good-faith effort to pay her utility bills.² In this case, we find that Ms. Buchanan has not made a good-faith effort to pay her outstanding balance with Pike and, therefore, is not deserving of yet another payment agreement.

THEREFORE, WE MOVE THAT:

The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.


ROBERT F. POWELSON
CHAIRMAN


PAMELA A. WITMER
COMMISSIONER

DATE: November 10, 2011

¹ Ms. Vero is currently employed by the Commission as an Administrative Law Judge but was employed as a Special Agent at the time the decision at issue was rendered.

² *George Crawford v. National Fuel Gas*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Roberto Cruz and Heather Campbell
v.
UGI Utilities, Inc.

Public Meeting held November 10, 2011
2149273-ALJ

Docket No. F-2009-2149273

MOTION OF COMMISSIONER WAYNE E. GARDNER

Before the Commission today is the Initial Decision dismissing the Complaint in the above-captioned case. The Complainant, Roberto Cruz,¹ filed a Formal Complaint against UGI Utilities (UGI) alleging incorrect charges, and that Low Income Home Energy Assistance Program (LIHEAP) payments may have been incorrectly applied to his account. He also requested a payment arrangement. Based on information gathered at a hearing, the Administrative Law Judge (ALJ) determined that the household consisted of the Complainant and four children, that the household income was \$700 a month, that the Complainant had made only two payments to UGI in 2009 and one payment in 2010, and that his service was currently terminated. Further, the Complainant had entered into three payment arrangements with UGI which he did not keep. Based upon his payment history, the ALJ declined to set a payment arrangement stating that the Complainant had not made a good faith effort to pay his utility bills.

The Commission is not required to set a payment arrangement for a complainant whose service has been terminated for non-payment when there has not been a good faith effort by the complainant to pay his utility bills.² However, whether or not a good faith effort is made is determined by each Complainant's individual circumstances. The Initial Decision provides that the Complainant's service was terminated at some point and then restored. There is no record evidence indicating the dates of service or terminations, how long service was off, or the dates the payments were made. While the payment history alluded to in the Initial Decision seems to indicate a lack of good faith on the Complainant's part, without record evidence to support the ALJ's Findings of Facts and conclusions, I cannot definitively ascertain if a good faith effort was made by the Complainant. The case is to be remanded to develop the record fully, including dates of service, dates of terminations, and the dates payments were made to the account including LIHEAP payments.

Also, the available record does not address the Complainant's allegations of incorrect bills and the possible misapplication of LIHEAP funds to the Complainant's account. Those allegations are to be investigated and discussed upon remand.

¹ Although the Complaint was filed by Roberto Cruz and Heather Campbell, Ms. Campbell did not appear at the hearing and Mr. Cruz testified that she no longer resided at the service address.

² *George Crawford v. National Fuel Gas*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

THEREFORE, I MOVE:

1. That this matter be remanded to the Office of Administrative Law Judge for further proceedings.
2. That the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

November 10, 2011

Date

A handwritten signature in black ink, appearing to read "Wayne E. Gardner", written over a horizontal line.

Wayne E. Gardner, Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Rainey Richmond v. PECO Energy Company

Public Meeting held November 10, 2011
2187305-ALJ

Docket No. F-2010-2187305

JOINT MOTION OF COMMISSIONER WAYNE E. GARDNER and
COMMISSIONER PAMELA A. WITMER

The Complainant in this case, Rainey Richmond, filed a Formal Complaint against PECO Energy company alleging incorrect charges. On the Formal Complaint form provided by this Commission, Mr. Richmond marked the check box next to “there are incorrect charges on my bill” and wrote a note stating that he had the paperwork. In response, PECO filed Preliminary Objections requesting that the Complainant be ordered to amend the Complaint to state his allegations with more specificity. The Administrative Law Judge (ALJ) granted the Preliminary Objections and when the Complaint was not amended, dismissed the case.

Commission regulations require, *inter alia*, that Formal Complaints contain a clear and concise statement of the violation being alleged. 52 Pa. Code § 5.22(a)(5). To aid *pro se* complainants in meeting this and other requirements for filing Formal Complaints, the Commission has developed a Formal Complaint form, which is mailed to all complainants at the conclusion of the informal complaint process. This Formal Complaint form contains a series of check boxes designed to help complainants clearly state what they are alleging. When, as in this case, the box is checked next to the statement that there are incorrect charges on the customer’s bill, the complaint is specific enough to allow the utility to prepare an Answer and to prepare for a hearing. The utility has access to all necessary account records and can review those records for inaccuracies. Additionally, this was an appeal of an informal complaint in which PECO participated. Therefore, PECO was likely already familiar with the allegations made by Mr. Richmond

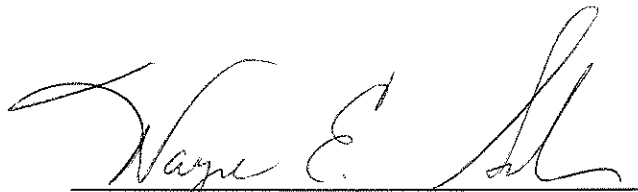
Furthermore, In *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993), this Commission held that, in the normal course, we would not dismiss a *pro se* complaint without first providing a hearing during which *pro se* complainants could further explain their position and the factual basis for their complaint. The concern was expressed that, in general, *pro se* complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issue and supporting facts. In light of Complainant’s status as a *pro se* litigant and consistent with *Carlock*, we do not agree with the decision to dismiss Mr. Richmond’s Complaint at the pleadings stage.

However, with an understanding that the inclusion of pertinent facts allows better preparation of a case, and to ensure that complainants more clearly state the facts of their complaints, the Commission has undertaken a review of its Formal Complaint Form.

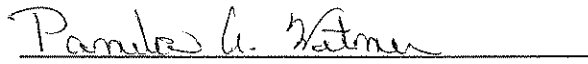
THEREFORE, WE MOVE:

1. That this matter be remanded to the Office of Administrative Law Judge for further proceedings.
2. That the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

November 10, 2011
Date



Wayne E. Gardner, Commissioner



Pamela A. Witmer, Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Esther Cobb v. UGI Penn Natural Gas

Public Meeting
November 10, 2011
2207096-ALJ
Docket No. F-2010-2207096

MOTION OF
CHAIRMAN ROBERT F. POWELSON

Before the Commission today for disposition is the Initial Decision in the above-captioned matter. In this case, Ms. Cobb requests that a previous payment agreement be reinstated to allow her gas service to be restored.

By way of background, on or about June 30, 2008, the Commission's Bureau of Consumer Services ("BCS") issued a payment agreement between the parties. Ms. Cobb failed to abide by the terms of that payment agreement but subsequently was issued another payment agreement by UGI Penn Natural Gas ("UGI PNG" or "Company") on or about March 5, 2009. Ms. Cobb also broke this payment agreement, which resulted in the Company terminating her service in April 2010.

Ms. Cobb contacted BCS on October 6, 2010, and requested a payment arrangement to allow for the restoration of her service. BCS issued a decision requiring Ms. Cobb to pay the entire outstanding balance as well as a reconnection fee and a deposit. Ms. Cobb filed a timely appeal from this BCS decision.

In rendering the Initial Decision in this matter, the Special Agent determined that, because Ms. Cobb was an applicant for service as opposed to a customer, she was ineligible for a Commission-issued payment arrangement under Chapter 14 of the Public Utility Code.¹ While I ultimately agree with the Special Agent regarding the outcome of this case, I disagree with the reasoning of the Initial Decision.

The Commission previously found, in *Crawford v. National Fuel Gas Distribution Corporation*,² that the Commission does have authority to establish payment agreements between applicants and public utilities. However, because the Complainant defaulted on a prior Commission-issued payment agreement, and because Complainant has not shown the requisite change in income, the Commission lacks the authority to issue a second payment agreement, as requested by Ms. Cobb in her October 6, 2010, informal complaint and subsequent appeal.

THEREFORE, I MOVE THAT:

The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

DATE: November 10, 2011


ROBERT F. POWELSON
CHAIRMAN

¹ See generally 66 Pa. C.S. §§ 1405, 1407.

² Docket No. C-20066346 (Opinion and Order entered December 6, 2007).

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Lennia Kutz v. UGI Utilities, Inc.

Public Meeting – November 10, 2011
2214107-ALJ
Docket No. C-2010-2214107

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission (“PUC” or “Commission”) for disposition is an Initial Decision (“I.D.”) denying the above-captioned Formal Complaint. Specifically, after determining that the Responsible Utility Customer Protection Act, 66 Pa. C.S. §§ 1401-1418, (“Chapter 14”) applies to this proceeding, the Complaint was denied due to a finding that the Complainant did not suffer a significant loss in income, damage to or loss of residence or increase in number of dependents.

While I agree that the I.D. correctly found that Chapter 14 applies to the facts in this proceeding and that the I.D. also correctly denies the Formal Complaint because the Complainant failed to establish a “significant change in circumstance” as required by 66 Pa. C.S. § 1403, I do not agree with the premise that applicability of Chapter 14 is automatic in situations where an individual in whose name a commercial account is listed also resides at the property. Instead, I believe that the decision of whether Chapter 14 applies when there is a master meter/mixed use situation depends on an analysis of all relevant facts evaluated on a case by case basis, including but not limited to: the character of the end use, the rate schedule applied, applicable tariff language and any other pertinent facts that come to light during the proceeding.

DATE: November 10, 2011


PAMELA A. WITMER, COMMISSIONER

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Brian M. Rudnick
v.
Verizon Pennsylvania Inc.

Public Meeting November 10, 2011
2238995-ALJ
Docket No. C-2011-2238995

**MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for disposition is an Initial Decision (“ID”) granting the Preliminary Objections of Verizon Pennsylvania Inc. (“Verizon PA” or “Verizon”) and dismissing the above-captioned Formal Complaint filed by Brian M. Rudnick (“Mr. Rudnick” or “Complainant”). The Complaint alleges inaccurate information on verizon.com about international calling rates for calls to Ecuador. Specifically, the allegations relate exclusively to verizon.com, information contained on the website, and communications with “Verizon telephone representatives” about the website and its contents.

I agree with the ID that the Commission does not have subject matter jurisdiction in this case. However, my reasoning for lack of jurisdiction differs from the ID. The Commission has previously held that it does not have jurisdiction to regulate rates for calls made from a point in Pennsylvania to another country. See, e.g., Reverend Fatoma Y. O. Kpakiwa v. Bell Atlantic-Pennsylvania, Inc., and AT&T Communications of Pennsylvania, Inc., Docket No. F-09344616, Final Order entered March 29, 1994 (no subject matter jurisdiction to decide complaint alleging improperly billed international calls to Sierra Leone). Rather, the Federal Communications Commission has exclusive jurisdiction over rates for international calls. Because international calling rates are outside our subject matter jurisdiction, it follows that the website content issue raised by Complainant regarding access to information about international calling rates is also outside our subject matter jurisdiction. It is fundamental that the Commission cannot create jurisdiction where none exists.¹ In my view, a finding of Commission jurisdiction here would be doing just that; creating jurisdiction where none exists.

The Commission previously dismissed a similar complaint filed by Mr. Rudnick against Verizon PA about international calling rates for calls to Ecuador. See Brian M. Rudnick v. Verizon Pennsylvania, Inc. Docket No. C-2009-2142052 (Opinion and Order entered April 1, 2011). In Mr. Rudnick’s prior complaint case,

¹ See Roberts v. Matarano, 427 Pa. 581, 235 A.2d 602 (1967).

the Commission did not have jurisdiction over the international calling rates at issue. But, the Commission did exercise jurisdiction over whether Verizon PA's billing disclosures implicated in that case were in compliance with applicable law.² Here, we have no such allegations regarding international calling rate disclosures provided by Verizon PA in its billing statements that would otherwise implicate Commission jurisdiction.

I note that the instant Complaint does not appear to implicate a reliability, safety, or strictly engineering quality of service issue with Complainant's quality of FiOS (retail fiber-to-the-home or FTTH) service that is provided by Verizon PA.³ Because Verizon PA admits that it is the provider of the FiOS service to Complainant, the on-line affiliate of Verizon PA – Verizon On-Line – does not appear to be involved or otherwise implicated in this proceeding.⁴

As indicated in our August 3, 2010 decision concerning Mr. Rudnick's prior complaint mentioned above, the Commission encouraged all telephone utilities in Pennsylvania to strive to use the most modern means of available technology to inform consumers of the various available calling plans, including the associated rates for local, intrastate, interstate or international calls. In doing so, the Commission further encourages all telecommunications providers to strive for accuracy and clarity in disclosing calling and rate plans to consumers communicated through the company websites.

THEREFORE, I move that:

1. The Initial Decision be modified consistent with this Motion.
2. The Commission's Office of Special Assistants draft an appropriate Order consistent with this Motion.

DATE: November 10, 2011



JOHN F. COLEMAN, JR.
VICE CHAIRMAN

² Specifically, 66 Pa. C.S. § 1501 and 52 Pa. Code § 64.14.

³ Verizon PA Answer, ¶ 4.B(a), Docket No. C-2011-2238995 (filed May 23, 2011) ("Verizon PA ADMITS Complainant currently receives FiOS service provided by the Company [Verizon PA]"). We note that the Verizon PA FiOS fiber optic based (FTTH) service and network configuration have certain engineering differences from the Verizon PA digital subscriber line or xDSL services that are provided over ordinary copper access lines. Thus, the terms FiOS and xDSL cannot be equated or used interchangeably. ID at 1.

⁴ ID, Findings of Fact 4 & 5, at 3. It should be administratively noted that Verizon On-Line is an affiliate of Verizon PA. *Affiliated Interest Agreement Verizon Services Corp., et al.*, Docket No. G-00041080 (filed September 2, 2004) (Proprietary).

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Columbia Gas of PA, Inc.

Public Meeting – November 10, 2011
2215623-OSA
Docket No. R-2010-2215623 et al

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Prior to joining my staff, Shelby Linton-Keddie was employed by a law firm, during which time she served as counsel of record for the Columbia Industrial Intervenors in the above-referenced proceeding. Therefore, to avoid any impropriety arising from her previous employment, I wish to note that I have not been advised by Shelby Linton-Keddie regarding this matter.

DATE: November 10, 2011



PAMELA A. WITMER
COMMISSIONER

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

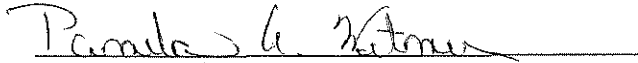
Pennsylvania Public Utility
Commissioner vs. Pennsylvania
American Water Company

Public Meeting – November 10, 2011
2232243 - ALJ
Docket No. R-2011-2232243

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Prior to joining my staff, Shelby Linton-Keddie was employed by a law firm that served as counsel to a party in the above-captioned proceeding. Therefore, to avoid any impropriety arising from her previous employment, I wish to note that I have not been advised by Shelby Linton-Keddie regarding this matter.

DATE: November 10, 2011


PAMELA A. WITMER
COMMISSIONER

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120


Natural Gas Pipeline Replacement and
Performance Plans

Public Meeting November 10, 2011
2271982-LAW
Docket No. M-2011-2271982

JOINT STATEMENT OF
CHAIRMAN ROBERT F. POWELSON
AND VICE CHAIRMAN JOHN F. COLEMAN, JR.

With this Order, the Commission seeks comment on requiring Pennsylvania natural gas utilities to develop and file with the Commission Pipeline Replacement and Performance Plans. Specifically, these plans will tentatively be required to include infrastructure replacement time frames and a proposal for the means by which the cost of the infrastructure replacement program should be addressed in rates.

While the Commission is currently only seeking to have natural gas utilities file such plans, we wish to put Pennsylvania's electric distribution companies on notice that we anticipate developing a similar requirement for the electric industry in the near future. Electric utilities are already required to implement Commission-approved system inspection and maintenance plans on a biennial basis. We feel that the development of infrastructure replacement plans would complement and enhance existing efforts to ensure the continued provision of safe and reliable service.


ROBERT F. POWELSON
CHAIRMAN


JOHN F. COLEMAN, JR.
VICE CHAIRMAN

DATE: November 10, 2011

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Prevention and Mitigation of
Extended Service Outages

Public Meeting November 10, 2011
2271989-CMR

JOINT MOTION OF CHAIRMAN ROBERT F. POWELSON
AND VICE CHAIRMAN JOHN F. COLEMAN, JR.

Electric utilities operating in Pennsylvania have a duty to provide safe and reliable service to customers.¹ As part of its statutory powers, the Commission is authorized to adopt and enforce rules to ensure that electric utilities provide safe and reliable service.² This includes rules relating to the frequency, scope and duration of electric service outages that may be caused by extreme weather events. It is self-evident that these types of outages cannot be completely prevented for various reasons, including the strength and unpredictability of weather and the absence of legal authority to remove trees located outside of a utility's rights of way. Further, the Commission must also balance the reliability of service with affordability of service; an electric distribution system completely immune to weather events would not be affordable for many customers.

However, the Commission expects that customers experiencing service outages will be restored safely and within a reasonable period of time. The Commission further expects that electric utilities will appropriately invest in their distribution systems and give the necessary level of priority to the most troubled segments.

Unfortunately, much of Pennsylvania suffered a series of extreme weather events over the past six months that caused many electric customers to experience extended service outages. While the large majority of customers are typically restored within twenty four hours of interruption, many in the past six months experienced outages of longer duration, and a small percentage of customers have suffered outages of up to a week or even longer. The Commission wishes to verify these facts, and investigate whether there are additional remedies that can and should be adopted to improve the reliability of service, particularly during extreme weather events. To accomplish this, pursuant to our authority under Section 504 of the Public Utility Code,³ we direct all electric distribution companies to:

1. Provide a list circuits or segments of circuits that experienced service outages of a duration greater than 24 hours within the last six months. Separate lists should be provided for circuits that were fully or partially out 24 to 48 hours, 48 to 72 hours, and 72 hours and longer. Where there are instances of multiple outages of 24 hours or greater occurring on a circuit over the past 6 months, please list each instance separately and group the instances (where necessary) by whether the outages were 24-48 hours, 48-72 hours, or greater than 72 hours. Please list the circuits by location and provide the date and

¹ 66 Pa. C.S. § 1501.

² 66 Pa. C.S. § 501.

³ 66 Pa. C.S. § 504.

time of the first interruption and the date and time the final customer was restored for each circuit. Indicate whether any of the above circuits were also among the electric distribution company's worst performing 5% of circuits identified in the Quarterly Reliability Reports for the first three quarters of 2011.

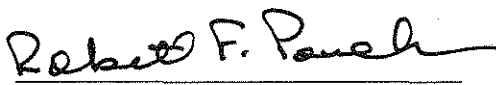
2. Provide detailed explanations of the restoration activities associated with these circuits for each outage listed, including a general description of the system damages encountered. Describe any other mitigating factors that hampered restoration efforts for each outage listed. Also provide a general description of the terrain, foliage, topography, and customer density associated with each circuit.
3. Offer any corrective actions planned or contemplated to reduce the frequency, scope and duration of outages on either the circuits impacted by the weather events and/or the worst performing circuits along with any suggestions that would reduce the frequency, scope and duration of outages on these circuits.

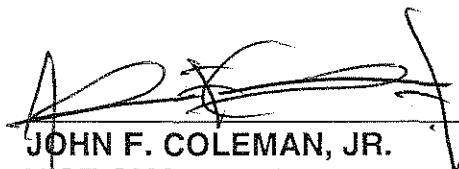
Responses to these questions should be filed with the Commission within thirty days of the entry of this Motion. The Office Technical Utility Services will prepare a report summarizing these responses and providing recommendations for future action by the Commission.

THEREFORE, WE MOVE THAT:

The Law Bureau prepare an Order consistent with this Motion.

DATE: November 10, 2011


ROBERT F. POWELSON
CHAIRMAN


JOHN F. COLEMAN, JR.
VICE CHAIRMAN