

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Pennsylvania Public Utility
Commission, Law Bureau Prosecutory
Staff v. The Peoples Natural Gas
Company, LLC**

**Public Meeting – June 9, 2011
2157542-OSA
Docket No. M-2011-2157542**

STATEMENT OF COMMISSIONER TYRONE J. CHRISTY

Today, the Commission is issuing an Opinion and Order seeking comments from interested parties regarding a Settlement Agreement (Settlement) filed on March 14, 2011, by the Commission's Law Bureau Prosecutory Staff (LBPS) and The Peoples Natural Gas Company (Peoples). The Settlement concerns a series of gas service outages that occurred between February 2009 and January 2010 at four residences in Altoona. The Settlement, among other things, provides for the imposition of a civil penalty of \$20,000.

I request that parties submitting comments in this proceeding address the appropriateness of directing Peoples to contribute \$20,000 to its Hardship Fund rather than pay a \$20,000 civil penalty. The Peoples' Hardship Fund, which is a fund of last resort, is available to low-income residential customers who have a balance due on their account, who have paid at least \$150 toward their bill in the last 90 days, and who already have applied for LIHEAP and Crisis benefits. Currently Peoples' shareholders contribute up to \$300,000 annually to the Hardship Fund to match customer donations. Assuming an average grant of \$300, an additional \$20,000 would help approximately 67 low-income families maintain their utility service.

I direct the attention of interested parties to the resolution adopted by the Commission's Consumers Advisory Council (CAC) at its meeting of November 23, 2010, as well as the legal memorandum supporting the resolution that was prepared by the Chairman of the CAC. Because these documents have not been posted on the Commission's website, I am attaching them to this statement for the convenience of interested parties who may want to file comments on this issue.

6-9-11
DATE

Tyrone J. Christy
TYRONE J. CHRISTY, COMMISSIONER

PUC Settlement Dollar Resolution

For PUC Advisory Council Consideration

Overview

Recently, the Public Utility Commissioners have been split on their vote to direct utility company settlements to hardship funds versus imposing civil penalties. Directing these funds to statewide utility related low-income programs will assist Pennsylvania utility consumers truly in need. Concerns of utility companies "paying themselves" by directing these dollars to their own hardship funds have been included in settlement comments. Directing settlement dollars to a general utility assistance funding pool of organizations that administer utility hardship funds will benefit low-income utility consumers while addressing this concern.

Dollar Energy Fund has been serving low-income Pennsylvania utility customers since 1983. Dollar Energy Fund is the largest hardship fund in Pennsylvania and one of the largest in the country. The organization partners with 13 Pennsylvania utility companies to help more than 12,000 low-income households, over 40,000 individuals – adults, seniors and children, each year. The utility assistance grants provided through this program ensure that low-income households are able to maintain or restore safe gas, electric or water service. While Dollar Energy Fund does administer separate hardship funds for utility partners, the organization also operate a general funding pool. The general funding pool allows us to funnel dollars to low-income consumers in all 64 Pennsylvania counties in which Dollar Energy Fund operates based on need – not utility company.

Hardship funds are essential to assisting utility consumers through crisis situations. Budgets are stretched to the limit for many Pennsylvania families during these difficult times. Many families throughout the Commonwealth are going to face difficult choices this heating season. The demand for utility assistance is growing. Choices between providing a nutritious meal, taking necessary prescription medication or heating their homes are becoming all too common. Directing Public Utility Commission settlements to Dollar Energy Fund's Hardship Program would help make these choices easier for low-income Pennsylvania families and ensure they maintain or restore safe gas, electric or water service.

Resolution

I would like to ask the PUC Advisory Council for support in the form of adopting a resolution requesting the Pennsylvania Public Utility Commissioners direct future utility settlement dollars to hardship funds.

Pennsylvania utility consumers are struggling to maintain safe gas, electric and water utility service due to the current state of the economy, rising costs of everyday living expenses and other circumstances beyond their control. These factors have lead to an increased demand for utility assistance programs from low-income utility consumers throughout the Commonwealth.

Dollar Energy Fund is the largest hardship fund in Pennsylvania, serving households in 64 counties. The organization partners with 13 Pennsylvania utility companies to help more than 12,000 low-income households, over 40,000 individuals – adults, seniors and children, each year. The utility assistance grants provided through this program ensure that low-income households are able to maintain or restore safe gas, electric or water service.

The PUC Advisory Council recognizes the struggle many households throughout the Commonwealth face to afford the basic need of utility service; and, recognizes the critical role hardship funds play in helping thousands of low-income Pennsylvania customers maintain or restore safe utility service.

The PUC Advisory Council strongly supports the direction of Pennsylvania Public Utility Commission settlement dollars to hardship funds. By directing these dollars to hardship funds, they will support thousands of low-income utility consumers – adults, children and senior citizens – throughout the Commonwealth that are truly in need. The PUC Advisory Council strongly encourages all Pennsylvania Public Utility Commissioners to direct all future settlements to hardship funds.



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Date: November 23, 2010

To: Pennsylvania Public Utility Commission
Consumer Advisory Council

Subject: Disposition of Funds from Settlements
at the Pennsylvania Public Utility Commission

From: Renardo L. Hicks, Chairman

I do not disagree with the legal analysis of Shane Rooney in his memo dated November 19, 2010 concerning the direction of civil fines and penalties imposed upon public utilities to recipients other than the General Fund of the Commonwealth of Pennsylvania¹; however, in his evaluation of the actual practice of directing funds from settlements to low income assistance and universal service programs here at the Pennsylvania Public Utility Commission ("Commission"), he starts his analysis in the wrong place. I have participated in many settlements at the Commission and in the Pennsylvania Attorney General's Office which have in funds being directed to recipients other than the General Fund, and in the particular circumstances of these transactions this practice is completely legal and consistent with the requirement of directing fines and civil penalties to the General Fund.

Importantly, these settlements do not involve the imposition of a "fine" or "civil penalty." At the Commission, typically the staff raises charges or questions regarding the acts or practices of a utility company and requests information regarding such acts or practices from the utility to determine whether a violation of regulations or law has occurred. In response the utility provides the information and claims that its acts or practices do not violate the Commission's regulations or the Public Utility Code. In many of these cases, no evidentiary hearings are conducted.

¹ Chapter 33 of the Public Utility Code provides for the assessment of civil penalties against public utilities and their disposition. 66 Pa.C.S. §§3301-3316.

Consequently, neither the staff's allegations nor the utility company response is proven and no judge or fact finder decides who is actually correct. Nevertheless, in an effort to resolve the differences of opinion between staff and the utility – and nearly always without any admission or finding of wrongdoing – the utility and the staff often agree to disagree and resolve the matter through a settlement, with changes in practice and funds directed to low income or universal service programs. These settlements are properly subject to review by the Commission and if they are not appropriate, the parties may properly return to the battlefield and fight it out in evidentiary hearings to determine who is correct.

It is important to note that such settlements explicitly include “no finding or admission or wrongdoing” because such a finding is the basis upon which a “civil penalty” may be imposed. Put another way, in the absence of a finding of violation of the Commission's regulations or the law – or an admission of violation of the Commission's regulations or the law, there is no legal basis upon which to impose a civil penalty! It is also commendable and consistent with Commission policy, to see the staff and utility companies agree to resolve disputes without protracted litigation and expense and to have consumers benefit from these abbreviated and settled disputes.

This practice is not very different from the approach taken by the Pennsylvania Office of Attorney General's Bureau of Consumer Protection (“BCP”). BCP is responsible for enforcing the PA Unfair Trade Practices and Consumer Protection Law² (“UTPCPL”). While the UTPCPL provides for resolution of disputes by BCP through an Assurance of Voluntary Compliance with restitution to consumers, injunctive relief and the imposition of civil penalties, the Attorney General's office has long engaged in the practice resolving many disputes, before engaging in full evidentiary hearings, through settlement with no admission of wrongdoing by the company and provisions that direct funds to the Attorney General's office to be used for “future consumer protection purposes.” Such practice has been ongoing and undisputed for many years.

In my view, the Commission's practice of permitting the staff and utilities to direct settlement funds to low income and universal service programs in non-litigated proceedings – particularly in circumstances where no evidentiary hearings take place and there is no finding or admission of wrongdoing – is more equitable. Moreover, in response to concerns of “unjust enrichment” by utilities, or concerns that they are being permitted to benefit from their bad acts by funding service for customers who merely return the money to the utility for the payment of utility service, I agree with the recommendation of Cindy Datig, Chief Executive Officer of the Dollar Energy Fund. **Direct settlement dollars to a general utility assistance funding pool of organizations that administer utility low income programs and hardship funds.** This suggestion places emphasis upon the benefit to consumers, instead of the utility.

² 73 P.S. §§201-1 – 201-9.2.

The above practice is completely consistent with the legal requirement that fines and civil penalties imposed by the Commission be paid to the General Fund of the Commonwealth. Where the Commission finds facts to support a violation and concludes as a matter of law that such violation has been committed, civil penalties appropriately may be imposed. However, in the absence of such factual findings and legal conclusions, the imposition of civil penalties is simply not required by Pennsylvania law.

Accordingly, I support the Resolution of Cindy Datig to "Request and encourage the Commission to continue to support and permit settlement funds in non-litigated matters and matters which do not result in findings of fact and conclusions of law which constitute violations of law to be directed to low income programs and hardship funds."