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PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, Pa. 17105-3265

Public Meeting held March 27, 1997

Commissioners Present:

John M. Quain, Chairman  
Lisa Crutchfield, Vice Chairman  
John Hanger, Concurring in result  
David W. Rolka, Concurring in result  
Robert K. Bloom

**DOCKETED**  
APR 24 1997

Gerald Underwood **DOCUMENT**  
v. **FOLDER**  
Equitable Gas Company

Z-00129132

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for review pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. §332(h), is the Initial Decision of Administrative Law Judge John H. Corbett, Jr., issued January 30, 1997, in Gerald Underwood v. Equitable Gas Company, docketed at No. Z-00129132.

History of the Proceeding

On October 23, 1996, Gerald Underwood (Complainant or Mr. Underwood) filed a Formal Complaint against Equitable Gas Company (Respondent or Equitable) wherein he alleges that he cannot pay his bills for commercial gas service. The instant Complaint resulted from an appeal of a determination of the Bureau of Consumer Services (BCS) at No. S.T. 0129132, which issued on September 24, 1996. Equitable filed an Answer on November 18, 1996. A hearing was held before ALJ Corbett on January 22, 1997. Mr. Underwood participated pro se in the

hearing. Equitable was represented by Amy M.A. Klodowski, Esquire. On January 30, 1997, ALJ Corbett issued an Initial Decision wherein he recommended that the Complaint be granted in part and dismissed in part. Neither the Complainant nor the Respondent filed Exceptions to the Initial Decision. Pursuant to Section 332(h) of the Code, we exercised our right to review this matter.

### Discussion

ALJ Corbett made fifteen Findings of Fact and reached three Conclusions of Law. The said Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless specifically identified or discussed. The following Findings of Fact are critical to our analysis of this matter and reproduced below:

5. The Complainant owns the building. He operates the barber shop and lives in the second floor apartment.
6. Equitable supplies gas service to the building through a single meter.
7. The Complainant has separate furnaces for the barber shop and the apartment. A gas forced-air furnace supplies heat to the barber shop. A gas fired boiler supplies hot water for radiators to heat the apartment. The only other gas appliance in use is a water heater, which supplies hot water to both floors of the building. The Complainant has a gas kitchen range, which he does not use.
8. At the present time, the Complainant owes the Respondent the sum of \$2,177.26 on this account (Respondent's Exh. 1).
9. The monthly budget amount on this account is currently \$185.00.

11. The Complainant is 43 years of age and receives approximately \$800.00 a month in gross revenues from his barber shop business. In 1995, he received \$10,856.00 in gross receipts from his business and claimed a net profit of \$1,559.00 on his federal income tax return. For 1996, the Complainant cannot say whether the receipts from his business were better than, worse than or stayed about the same as the previous year.

12. The Complainant summarizes his monthly household expenses as follows:

Item	Amount	Comments
Electric	\$180.00	\$100.00 balance
Water	10.00	
Sewage	10.00	
Taxes	35.00	\$900 year (\$4,200 balance)
Telephone	25.00	\$25.00 balance
Food	100.00	
Clothing	-0-	
Bus fare	60.00	\$15 week x 4 weeks 12 months
Child support	150.00	
Movie rental	28.00	
<b>Total:</b>	<b>\$881.00</b>	

13. The Complainant offers to pay \$250.00 a month on this account.

14. Since the BCS issued its decision on September 24, 1996, the Complainant has made two payments: a payment of \$50.00 on November 5, 1996 and a payment of \$200.00 on December 1, 1996.

15. If the Complainant had abided by the decision of the BCS, the Complainant would have paid an additional \$974.00 from the date of issuance of the decision on September 24, 1996 until the date of the hearing.

The ALJ concluded that the Complaint should be granted only to the extent that it requests the establishment of a payment plan, and denied insofar as it requests the establishment of a special rate or any other relief. The ALJ reasoned as follows:

With very little disposable income, the Complainant will find it exceedingly difficult to comply with any meaningful payment plan established for this account. As the foregoing section of this decision illustrates, the Complainant receives approximately \$800.00 a month in gross receipts from his barber business. With monthly expenses of \$881.00, the Complainant has no excess income with which he can pay any realistic amount toward satisfaction of his gas bill. The Complainant's offer to pay only \$250.00 a month on this bill must be rejected. The monthly budget amount of this bill alone is currently \$381.00. The offer of \$250.00 would not even pay for the current charges and would pay nothing toward the arrearages of \$2,177.76 owed on this account. Unfortunately, the Complainant will have to pay at a minimum the monthly budget amount, together with a certain additional amount to satisfy the arrearages on this account. The reasons for this conclusion are based on well-settled law.

A public utility is entitled to receive payment for the service it provides. No public utility may receive a greater or lesser rate than the one set forth in its tariff on file with the Commission. 66 Pa. C.S. §1303. No public utility may unreasonably discriminate for or against a particular customer by establishing a special rate for them. 66 Pa. C.S. §1304. The budget amount stated on a customer's monthly utility bill is based upon that customer's expected historic usage over a period of one year at the utility's tarified rate and so cannot be modified absent extraordinary circumstances.

In certain limited circumstances, the Commission has in the past established special rates for certain ratepayers where

extraordinary circumstances exist. These circumstances have usually occurred where the income possibilities of the ratepayer will materially improve within the reasonably foreseeable future or where the ratepayer is currently burdened by extraordinary medical bills that will not reasonably reoccur in the future. Mill v. Pa. P.U.C., 67 Pa. Commonwealth Ct. 597, 447 A.2d 1100 (1982); Baum v. Duquesne Light Company, 56 Pa. P.U.C. 742 (1983). Neither of these circumstances apply to the present case.

Under these circumstances, I can only conclude that the Complainant must pay the monthly budget amount, which is currently \$385.00, and \$20.00 a month toward satisfaction of undisputed arrearages, which now total \$2,177.76. With the amount of income and expenses stated on this record, the Complainant does not appear reasonably capable of paying more. Due to these difficult financial circumstances, I am modifying the BCS decision, which directed the Complainant to pay the current monthly budget amount, plus \$40.00 a month toward satisfaction of the arrearages owed on this account. I believe it is better to establish a reasonable payment plan now rather than have the parties return to the Commission later after an unrealistic plan fails or have the Respondent terminate service for nonpayment and lose any hope of receiving payment for its services. (Footnote omitted).

(I.D., pp. 5-8).

The ALJ found that while a commercial account would not normally qualify for the procedures and protections established in Chapter 56 of the Commission's Regulations, 52 Pa. Code §§56.1, et seq., this case appears to present a hybrid situation, since the Complainant owns a building in which he conducts his barber business and in which he also resides. The ALJ noted that no other tenants reside in Mr. Underwood's building. The ALJ noted further that the Respondent provides gas service to the building through a single meter. Therefore, the ALJ concluded

that the better practice would appear to be to accord the protections of Chapter 56 of the Commission's Regulations to the Complainant. (I.D., p. 4; Footnote 1).

Since Mr. Underwood did not fully comply with the BCS decision during the pendency of this proceeding, ALJ Corbett considered whether the Complainant should be directed to make a lump sum payment to make up for the missed payments, consistent with our action in Betty Claypool v. T.W. Phillips Gas & Oil Company, Docket No. Z-00248730 (Order entered December 22, 1995), (Claypool). The ALJ concluded as follows:

Finally, the Complainant has made two payments totaling \$256.00 on his account with the Respondent since the BCS issued its decision on his informal complaint on September 24, 1996. Further, I advised the Complainant in a Prehearing Order issued December 9, 1996 that he was under a continuing duty to pay all undisputed utility bills while this proceeding was pending. Despite this warning, the Complainant has ignored the BCS decision and my Prehearing Order. Accordingly, I have no choice but to require the Complainant to pay a lump sum of \$974.00 within 30 days to make up the missed payments on the undisputed amounts of the bills as the BCS directed.

(I.D., p. 6).

In addition to his recommended payment schedule, the ALJ recommended that late payment charges be waived if Mr. Underwood complies with the ALJ-recommended payment plan.

#### **Analysis**

We agree with the ALJ that no special payment arrangement is appropriate in the matter before us. We find that the ALJ properly applied the precedents of Mill and Baum in his analysis. Accordingly, we adopt the ALJ-recommended payment plan

insofar as the amount paid per month on the current bill and the amount toward the arrearage. Also, the ALJ correctly noted that the Complainant's use of his building for his barber shop and his residence makes it appropriate to afford the protections of Chapter 56 of the Commission's Regulations to this commercial account. Because of the unique hybrid situation presented in this case, it is appropriate to afford Chapter 56 protections to this commercial account. Absent these circumstances, Commission directed payment arrangements are not appropriate for commercial accounts.

We will adopt the ALJ's recommendation to direct that the Complainant make a lump sum payment to make up for the missed payments pursuant to the BCS decision consistent with our action in Claypool. Accordingly, Equitable shall render a bill within ten days of entry of this Opinion and Order to Mr. Underwood which represents the missed payments, minus payments made, pursuant to the BCS decision to the date of the entry of this Opinion and Order. The said payment shall be due thirty days from the date of the bill.

Finally, we note that ALJ Corbett recommended that the Respondent be directed to waive late payment charges so long as the Complainant complies with the terms of the payment plan contained within this Opinion and Order. We reject the ALJ's recommendation regarding late payment charges. We find that, although the commercial/residential nature of this account allows us to afford Chapter 56 protection to the Complainant regarding a payment schedule, it is inappropriate to waive late payment charges for a commercial account regardless of its hybrid nature. Accordingly, we reject the ALJ's recommendation to waive late payment charges.

### Conclusion

We will adopt the Initial Decision of A.I.J. Corbett in all respects except for his recommendation to direct the Respondent to waive late payment charges if the Complainant complies with the recommended payment schedule; THEREFORE,

#### IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge John H. Corbett, Jr. in Gerald Underwood v. Equitable Gas Company, docketed at Z-00329132, is adopted as modified by this Opinion and Order.
2. That within ten (10) days after the entry date of this Opinion and Order, Equitable Gas Company, shall render a bill to Gerald Underwood, which represents the missed payments pursuant to the BCS decision at S.T.0329132, rendered September 24, 1996 to the entry date of this Opinion and Order minus any payments made. Payment of the said bill is due within thirty (30) days.
3. That thereafter, beginning with the first bill rendered by the Respondent after the entry date of this Opinion and Order, the Complainant shall pay the Respondent, the current monthly budget bills as they come due, plus \$20.00 a month towards the reduction of the arrearage until the arrearage is liquidated.
4. That, so long as the Complainant adheres to the terms of this Order, the Respondent shall not terminate service to the Complainant, except for valid safety and/or emergency reasons.



5. That if the Complainant fails to adhere to the terms of this Order, the Respondent is hereby authorized to terminate service to the Complainant pursuant to the provisions of 52 Pa. Code §§56.1, et seq.

BY THE COMMISSION

*John G. Alford*

John G. Alford  
Secretary

(Seal)

ORDER ADOPTED: March 27, 1997

ORDER ENTERED: APR 22 1997

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
Uniform Cover and Calendar Sheet

1. REPORT DATE: February 28, 1997	2. BUREAU AGENDA NO. MAR-97-ALJ-24*
3. BUREAU: ALJ	
4. SECTION(S):	5. PUBLIC MEETING DATE: March 27, 1997
6. APPROVED BY: Acting Chief ALJ: Robert A. Christianson SUPERVISOR:	
7. PERSON IN CHARGE: ALJ John H. Corbett, Jr.	
8. DOCKET NO.: Z-00129112	<b>DOCKETED</b> APR 9 1997

MEM

9. (a) CAPTION (abbreviate if more than 4 lines)  
(b) Short summary of history & facts, documents & briefs  
(c) Recommendation

a) Gerald Underwood v. Equitable Gas Company

b) On October 23, 1996, the Complainant filed a formal complaint with the Commission alleging the inability to pay for the gas service he received from the Respondent on a commercial account. On November 18, 1996, the Respondent answered the complaint. A telephonic hearing was held on January 22, 1997. No briefs were filed.

c) In a Bench Decision, Judge Corbett granted the complaint in part and denied the complaint in part. He granted the complaint to the extent it requested the establishment of a payment plan, but denied it to the extent it requested the establishment of a special rate.

Initial Decision served: January 30, 1997  
Commission Review requested by: Chairman Quain and  
Commissioner Bloom by OSA memo dated February 20, 1997

10. MOTION BY: Commissioner Bloom  
Commissioner Chm. Quain - Yes  
Commissioner Hanger - Concurring  
Commissioner Rolka - Concurring

SECONDED: Commissioner Crutchfield

**CONTENT OF MOTION:** 1) The Initial Decision of ALJ Corbett is modified to the extent that late payment charges are not to be waived; 2) Equitable shall render a bill to the Complainant which represents the missed payments under the BCS Decision to the date of the entered Order minus payments made - said bill is due within 10 days of entry of the Order with the monies due 30 days thereafter; and 3) the Office of Special Assistants shall prepare the appropriate Order consistent with this Motion.