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CHIEF CLERK'S OFFICE

No. 03-0390

VERNA L. BETHEA AND WEBELENE BETHEA,)
)
 Complainant,)
)
 vs.)
)
 THE PEOPLES GAS LIGHT AND COKE)
 COMPANY,)
 Respondent.)

**RESPONDENT'S RESPONSE TO COMPLAINANTS' RESPONSE TO RESPONDENT'S
MOTION TO DISMISS**

NOW COMES RESPONDENT, The Peoples Gas Light and Coke Company ("Peoples Gas"), by and through its attorney, Brian J. McCarthy, and pursuant to 83 Ill. Admin. Code Section 200.190, hereby moves this honorable Illinois Commerce Commission ("ICC) to enter an order which dismisses the complaint in the above captioned cause ("Complaint"), and in support thereof states as follows.

Introduction

1. On June 12, 2003, Complainants Verna L. Bethea and Webelene Bethea filed a formal Complaint (the "Complaint") with the ICC against The Peoples Gas Light and Coke Company.
2. The Complaint is based on an alleged incorrect bill issued to Complainants on June 23, 1997. See Complaint Item 1 at Paras. 1 and 14.
3. The Complaint made it clear that Complainant immediately disputed the bill. See the Complaint at Paras. 1-5.
4. On August 7, 2003, Peoples Gas filed a Motion to Dismiss the Complaint for lack of jurisdiction.

5. Peoples Gas argued that the commission did not have the jurisdiction to hear the complaint because it was not filed within the time period set forth in set forth in the Public Utilities Act at 220 ILCS 5/9-252.1 (the "Statute of Limitations").

6. On or about September 24, 2003, Complainant filed a Timeline Response (the "Timeline") to Peoples Gas' Motion to Dismiss, as required by the Administrative Law Judge.

7. The timeline again made it clear that the heart of the dispute is an allegedly incorrect bill issued to the Complainants by Peoples Gas on June 23, 1997

8. The timeline also made it clear that complainant did not file a formal complaint until June 12, 2003, nearly six years after complainants first had knowledge of the incorrect billing.

ARGUMENT

I. The Complainant's Failure to File a Formal Complaint by Approximately June 23, 1999 Leaves the ICC Without Jurisdiction to Hear the Complaint.

9. The Statute of Limitations provides that "Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing."

10. Here, the Complainants immediately had knowledge of the alleged improper billing.

11. Accordingly, the Complaints had to file a formal complaint within two years of the date of the bill, or approximately, June 23, 1999.

12. Instead the complainants did not file a formal complaint for another four years.

13. The Complainant's failure to file a formal complaint within the period required by the statute of limitations leaves the ICC without jurisdiction to hear the Complaint.

14. Therefore, the Complaint should be dismissed.

II. The making of an informal complaint to the ICC does not Constitute the Filing of a Complaint for Purposes of the Statute of Limitations.

15. The fact that the Complainants allege that they made informal complaints to the ICC before the Statute of Limitations ran does not cure the ICC's lack of jurisdiction.

16. 5/9-252.1 clearly requires the filing of a formal complaint within the two year period, not the filing of an informal complaint.

17. This intent is evident from the fact that the Public utilities act never refers to an informal complaint.

18. The informal complaint process is solely a construct of the ICC, not the Public Utilities Act.

19. Moreover, the provisions of the PUA that set forth the procedure and requirements of complaint proceeding before the ICC match the requirements and procedure that the ICC has put in place for a formal complaint. (See 220 ILCS 5/10-108, 5/10-110 and 5/10-111 as to notice, hearings, proposed orders, etc.).

20. Clearly, the Public Utilities Act Requires the Complainant to file a formal complaint before the two year period in 5/9-252.1 has elapsed.

21. Complainants did not do so and, consequently, their Complaint should be dismissed.

III. The Making of an Informal Complaint to the ICC Should Not Toll The Statute Of Limitations.

22. The alleged filing of the informal complaints should not toll the statute of limitations.

23. "Once [a] limitations statute has begun to run, it is not arrested or tolled unless expressly so provided by statute. Stranger v. Felix, 97 Ill.App.3d 585, 422 N.E.2d 1142 (1981)

24. Nothing in the PUA or the ICC's rules provides that the Statute of Limitations is tolled during the pendency of an informal complaint.

25. Therefore, the Statute of Limitations has run regarding the Complaint and the Complaint should be dismissed for lack of jurisdiction.

IV. Even If the Alleged Informal Complaints to the ICC Were Deemed to Toll the Statute Of Limitations, the Complaint Should Still be Dismissed for Lack of Jurisdiction.

26. Assuming, for purposes of argument only, that the Statute of Limitations is tolled by the filing of an informal complaint, which it should not be (see above), this Complaint should still be dismissed for lack of jurisdiction.

27. The Complainant's allegations regarding complaints they made to the ICC about the bill could not cause the Statute of Limitations to be tolled for an additional 4 years.

28. At most, they would toll that statute only for the pendency of the informal complaint.

29. The ICC has made it clear in its rules that the Complainant is only protected from disconnection and the accrual of late fees while an informal complaint is pending, not after it is completed. 83 Ill. Admin. Code 280.170(e) provides that no complainants' service will be discontinued during the pendency of the informal complaint. 83 Ill. Admin. Code 280.160, provides that late charges will only be held in abeyance for 14 days after the resolution of an informal complaint.

30. Both of the forgoing rules evidence an intention on the part of the ICC that complainants not wait long to file their formal complaint after receiving the results of the informal complaint (or failing to receive the result in a timely fashion – see below). If the complainant waits to file a formal complaint, late charges will begin to accrue and the

complainant will be subject to disconnection. The rules do not evidence an intention to allow the complainant to rest upon the unresolved results of an informal complaint for years.

31. The foregoing rules also imply that the any tolling of the Statute of Limitations would only be for the period that the informal complaint is pending.

32. Informal complaints are not pending for more than 28 days. 83 Ill. Admin. Code 280.170(c)(1) and (3), provide that a utility must respond to an informal complaint within 14 days and that the ICC must inform the parties of the result of its investigation of the complaint within 14 days of receiving the response from the utility.

33. Furthermore, 83 Ill. Admin Code 280.170 (d) provides that if the Consumer Assistance Section is unable to resolve a complaint to the satisfaction of the parties or if the utility does not respond within the 14 day period, the complainant may file a formal complaint.

34. This means that no informal complaint would be pending for much more than 28 days.

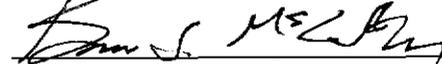
35. Accordingly, Complainants' allegations related to making informal complaints to the commission regarding the bill would, for purposes of argument only, toll the statute of limitations for approximately one month.

36. Complainants missed the Statute of Limitations by four years.

37. As a result their complaint should be dismissed for lack of jurisdiction.

WHEREFORE, Peoples Gas respectfully requests that the Administrative Law Judge issue a proposed order that would dismiss the Complaint and that the Illinois Commerce Commission enter an order dismissing the Complaint.

Respectfully Submitted,



Brian J. McCarthy, for
The Peoples Gas Light and Coke Company

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

VERNA L. BETHEA AND WEBELENE BETHEA,)
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Complainant,)
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vs.)
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THE PEOPLES GAS LIGHT AND COKE)
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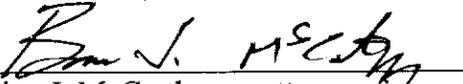
NOTICE OF FILING

TO: Verna & Webelene Bethea
1322 West 72nd Street
Chicago, Illinois 60036

Administrative Law Ian Brodsky
Illinois Commerce Commission
160 North LaSalle Street, Ste. C-800
Chicago, Illinois 60601-3104

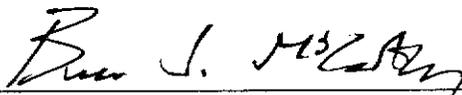
PLEASE TAKE NOTICE that on this date Respondent in the above-captioned case sent by U.S. mail for filing with the Illinois Commerce Commission, 527 East Capital Avenue, P.O. Box 19280, Springfield, Illinois 62701, an original of Respondent's Response to Complainants' Response to Respondent's Motion to Dismiss, a copy of which is attached.

DATED: October 15, 2003

By: 
Brian J. McCarthy, an attorney for
The Peoples Gas Light and Coke Company

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Notice of Filing and Respondent's Response to Complainants' Response to Respondent's Motion to Dismiss on Complainant and the Administrative Law Judge by causing a copy to be placed in the U.S. mail, properly addressed and postage prepaid on October 15, 2003.


Brian J. McCarthy, an attorney for
The Peoples Gas Light and Coke Company

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