



3. That the following language be added after the following sentence in the Proposed Order:

Proposed addition: Mr. Krol testified on rebuttal that the last listed customer was Elizabeth Abrams and that her service ended on February 18, 1992. (Tr. 63)

Presiding sentence: "In his opinion, the meter had previously been taken down by someone other than a Peoples Service Department Employee."

4. That the following language be added before the following sentence in the Proposed Order:

Proposed addition: Mr. Estrada testified that the method used for the rebilling process is only an estimate. (Tr. 49, 52, 53)

Following sentence: "Mr. Estrada stated that the bill issued to Mr. McNabb was based on degree-day analysis, which is, an average temperature for an average year, but based on a ten-year average."

5. That the entire Analysis and Conclusions section of the Proposed Order should be stricken and replaced with the following:

Proposed Analysis and Conclusions: Mr. McNabb does not dispute the ownership of the premises, 11411 South May Street, during the period from June 2, 1993, through July 8, 2002. Mr. McNabb, however, contends that no gas was used because the house was vacant. This contention is supported by the uncontested violation list which states that the house was indeed vacant. Therefore, it does follow that no gas was used during the time period stated because with a vacant house there is no need for gas especially if it has been vacant for sometime. Mr. McNabb's assertion that the house was vacant from the time he purchased the house in 1997 until 2004 is further supported by the fact People's Gas was not made aware of any need of gas or use thereof until after Mr. McNabb's potential tenant contacted People's Gas in 2004 for service.

The electric bills that Mr. McNabb presented establish that electricity was started on or about November 1999 and per his testimony it was used for power tools and only service. Mr. McNabb did present evidence that gas was not used at the premises during the stated time period. The undisputed evidence that the premises were vacant during the stated time presents, by a preponderance of the evidence, that gas was not being used.

Once the complaint has presented a prima facie case that an assertion in the complaint has been established it falls on the Respondent to refute such a case. The Respondent has failed to give any evidence that gas was actually used during the period stated. The only evidence presented by the

Respondent is that of estimated calculation of gas usage and none of actual usage of gas.

Mr. Krol merely speculated that someone had removed the gas meter. He did not testify that he actually witnessed someone remove the gas meter. Mr. Krol's determination that gas was stolen is incorrect. By his own testimony the rubber ring is quit difficult to place properly and he cannot be certain that a People's Gas employee did not place the ring incorrectly because by his own testimony that day he inspected the gas meter was the first time he had ever been to the premises. Therefore, Mr. Krol does not know who installed the gas meter and in what condition that installed gas meter was left in.

The estimated amount of gas used at the premises based on previous gas use and degree-day analysis, which is an average temperature for an average year, is not credible evidence to establish the actual amount of gas used during the stated period. Mr. Estrada's own testimony establishes that the rebilling process is merely an estimate and People's Gas has no clear way of establishing what gas was actually used during the stated period. Even though the estimated calculations are used widely they are not credible in the case in chief due to the fact People's Gas waited until they were notified by Mr. McNabb's potential tenant that gas was needed at the premises. Mr. McNabb had owned the premises for at least five years before People's Gas decided to send him a rebilling or give him notice of any use of gas at the premises. This lack of activity by People's Gas shows that they had no reason to believe that gas was being used, needed or being stolen by anyone at the premises or its owner.

The estimates stated by Mr. Estrada are used to determine the amount of gas that should have been used during the stated period had someone resided at the residence. This is supported by the way the estimate is calculated. Not only do they use various factors in determining the estimate but they also look at previous bills. Bills which were sent to the last listed customer, Elizabeth Abrams. As established above, the premises were vacant and outside of a brief period where the electricity was functional, no one ever worked and/or lived at the premises.

In conclusion, Mr. McNabb has presented evidence establishing that the \$6,354.27 gas bill for 11411 South May Street is in error, and, that he is not the person responsible for this bill. Mr. McNabb has established, by a preponderance of the evidence, that the stated bill is erroneous and he is not responsible for the bill.

6. That item (4) of the Findings and Ordering Paragraph should be stricken and replaced with the following:

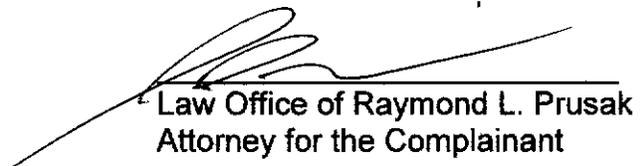
Proposed replacement: (4) the Complaint filed by Jessie McNabb on August 4, 2004 and relief therefore requested should be granted.

7. That the following sentence should replace the following sentence:

Proposed replacement: IT IS THEREFORE ORDERED that the Complaint filed by Jesse McNabb on August 4, 2004 and relief therefore requested is granted.

Proposed deletion: "IT IS THEREFORE ORDERED that the Complaint filed by Jesse McNabb on August 4, 2004, is dismissed, with prejudice.

WHEREFORE Complainant, Jesse McNabb, by and through his attorneys, Law Office of Raymond L. Prusak, respectfully requests that the above Exceptions to the Proposed Order be adopted and the Proposed Order be amended accordingly.



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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Jesse J. McNabb,</b>	:	
	:	
<b>Complainant</b>	:	
	:	
-vs-	:	<b>04-0544</b>
	:	
<b>The Peoples Gas Light and Coke Company</b>	:	
	:	
Complaint as to billing/charges in Chicago, Illinois.	:	
	:	
<b>Respondent</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of February, 2005, I serve Complainant's Exceptions and Brief of Exceptions by providing a copy thereof to each of the parties indicated below, by first class, U.S. Mail:

Ms. Elizabeth N. Rolando  
Chief Clerk  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, Illinois 62701

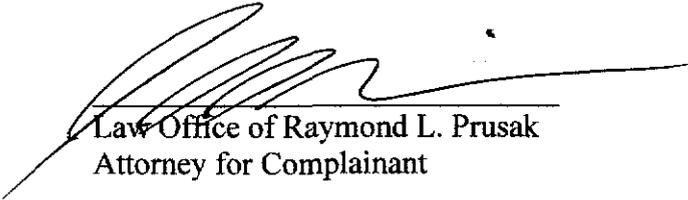
Ms. Claudia Sainsot  
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