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Recycling Services (RSI))
)
-vs-) 04-0614
)
The Peoples Gas Light and Coke)
Company)
)
Complaint as to People's refusing to)
supply natural gas service as requested)
by RSI in Chicago, Illinois)

RESPONDENT'S REPLY BRIEF

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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 -vs-) 04-0614
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RESPONDENT'S REPLY BRIEF

Now comes the Respondent, THE PEOPLES GAS LIGHT AND COKE COMPANY ("Peoples"), by its counsel, MARK L. GOLDSTEIN, and files its Reply Brief.

I. INTRODUCTION

In its Post-Hearing Brief, Complainant, Recycling Services, Inc. ("RSI") contends that Peoples refused to provide gas service to RSI's California Avenue facility, which should have been routinely provided, and this was a violation of the Illinois Public Utilities Act, 220 ILCS 5/1-101, et seq. (the "Act"). More specifically, Complainant continues to contend that Peoples violated Sections 8-101, 8-404 and 9-241 of the Act, but now substitutes Section 8-401 for Section 8-404 as an additional basis for Peoples' violations. Peoples will again demonstrate that not only did it comply with those sections but rather those sections, particularly the Section 8-101 and Section 9-241 non-discrimination provisions, support Peoples' actions. RSI then ignores certain facts in its Post-Hearing Brief Background and then goes back and re-argues its position concerning Section 5-201 damages from its Response to Peoples' Motion for Summary Judgment, again without statutory or judicial support, that the Commission may award damages.

When the Administrative Law Judge (“ALJ”) and Commission cut through Complainant’s hyperbola, innuendos and assumptions, they will find that it is a rather straightforward complaint. RSI is a tenant and its landlord, the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”), required an easement before gas service could be installed on MWRD property. Pursuant to the Commission’s Rules, RSI was an applicant for service. As such, the provisions of service were subject to the Act, the Commission’s Rules and Peoples’ tariffs. Peoples’ tariffs, which are law in Illinois, require an applicant or customer to provide Peoples “free access” in installing a gas service. RSI, while admittedly being ignorant of at least this portion of Peoples’ tariffs, even after being told by Peoples of its duty to provide “free access,” unbelievably maintained an entrenched position that Peoples had an unfettered duty to provide gas service. RSI maintained that it could shift its duty of providing “free access” to Peoples without regard to the duties, costs, and risks that RSI’s landlord, the MWRD attempted to impose on Peoples with the MWRD’s onerous “Standard Easement.” Once the MWRD agreed to terms in its “Standard Easement” that were appropriate for a gas service, Peoples executed the easement. Shortly after the MWRD executed the easement, Peoples installed the gas service and began providing gas to RSI. Peoples stands on its Initial Brief where it thoroughly detailed the procedural history and facts and analyzed the law concerning this Complaint, but will show again in this Reply Brief that RSI’s contentions are baseless and contrary to law.

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Peoples detailed the procedural history at pages 3 and 4 of its Initial Brief. Peoples repeats below the portion of the procedural history from its Initial Brief for the ALJ’s ease when

Peoples addresses Complainant's contention that Peoples only provided service because RSI filed a complaint with the Commission.

On October 22, 2004, RSI filed a Verified Amended Complaint and a written Motion for an Immediate Order to Provide Gas Service and for Expedited Decision ("Expedited Motion"). On November 15, 2004, Peoples filed a Reply to the Expedited Motion. This Expedited Motion came on for a status hearing before a duly authorized ALJ on November 18, 2004. At the hearing, RSI again requested that the ALJ issue an immediate order requiring Peoples to initiate service. The ALJ ruled that since Peoples had executed the MWRD easement, there was no basis to issue an emergency order. The ALJ further ruled that if the company was not doing its utmost to accomplish what RSI represented, RSI should bring it to his attention and the ALJ would bring it to the Commission's attention. (Tr. 3-6) A subsequent status hearing was held on January 20, 2005, where the ALJ summarized the status of the service installation and RSI did not object. (Tr. 12)

B. FACTUAL SUMMARY

Peoples provided a detailed analysis of the facts surrounding this Complaint in its Initial Brief, pages 4-12. While Peoples will not re-state all the facts set forth in its Initial Brief, some facts need to be summarized and highlighted for reference purposes when Peoples addresses Complainant's contentions in the Argument section. While RSI initiated contact with Peoples in March 2001 and a preliminary exchange of plans and contacts continued to December 2001, there was no contact by RSI again until September 9, 2003. It was only then that Peoples was advised that the RSI project was going forward. Between September 9, 2003 and January 8, 2004, there were several contacts between RSI and Peoples (Joint Stipulation Exhibits 14-16 & 18-19); however, there was no contact between the MWRD and Peoples, and there was no

request from RSI to provide a date certain when service was required. As RSI's landlord, the MWRD did not contact Peoples and request that Peoples sign its "Standard Easement" agreement until after Peoples submitted its standard service agreement on January 8, 2004. Peoples submitted its routine, standard one and one-half page agreement to the MWRD. As Ms. Morakalis admitted, if the MWRD had executed that agreement, the instant complaint would never have been filed. The MWRD, instead, insisted on its own "Standard Easement" agreement. (Joint Stipulation Exhibit 21) From January 2004 to November 15, 2004, when Peoples executed an easement agreement, substantive negotiations occurred. As outlined in the Joint Stipulation, as each month passed, both Peoples and the MWRD made concessions. Those concessions are outlined in Respondent's Initial Brief, pages 7-10 & 22-24.

The business, operational and easement concerns expressed by Peoples regarding the MWRD's "Standard Easement" agreement are outlined in the Joint Stipulation Exhibits 24 and 29, and the testimony of Peoples' witnesses. Suffice it to say, both Peoples and the MWRD had legitimate bases for the positions they took during the negotiations. Only when each side was comfortable with the concessions that were made did the easement get signed.

III. REPLY

Peoples had significant difficulty replying to Complainant's Post-Hearing Brief. Just as RSI has ignored the law when it is convenient throughout the period prior to execution of the MWRD easement, in its 11 page Background Facts Section, it completely ignored Supreme Court Rule 341(6) that requires a party to accurately and fairly provide the facts in a brief without argument or comment. Post-Hearing Brief, pages 1-11. RSI's Procedural Background Section at pages 11-13 is also principally an argument of its position. The balance of this Reply

Brief shall discuss the ARGUMENT sections of RSI's Post-Hearing Brief at pages 15-29 in two parts, REPLY TO VIOLATIONS and REPLY TO RSI'S REMEDY REQUEST.

A. REPLY TO VIOLATIONS

1. Peoples Never Refused to Provide Service.

One theme of RSI's Post-Hearing Brief is that Peoples refused to provide this service and this service should have been routinely provided to RSI. This is patently false. Peoples never refused to provide service to RSI. In March 2001 and again in March 2004, Peoples advised RSI that it was ready, willing and able to provide service. (Joint Stipulation Exhibits 4 and 24) RSI provided absolutely no evidence that Peoples refused to provide service. Moreover, RSI is partially correct that the easement should have been routinely provided. Peoples has pointed out that if the MWRD would have executed Peoples standard service line easement in January 2004, the provision of service to RSI would have been routine.

2. RSI's Argument that Peoples Only Provided Service Because RSI Filed a Formal Complaint is Both Contrary to the Facts and False as a Matter of Law.

RSI contends at pages 13 and again at page 18 of its Post-Hearing Brief that Peoples refused to execute the MWRD easement until RSI filed a formal Complaint. As a matter of law that is a false statement. Earlier in the procedural section of this Reply Brief, Peoples detailed the history of RSI's "Motion for an Immediate Order to Provide Gas Service" ("Gas Service Motion"). The ALJ ruled at the hearing on the Gas Service Motion that since Peoples executed the easement, there was no basis for an emergency order. (Tr. 3-6) RSI also correctly states that its filing of the informal complaint did not move Peoples to execute the agreement. Intercession by the Commission was unnecessary and had no bearing on Peoples providing service to RSI.

What is clear from the record and an objective view of the facts is that Peoples provided service as soon as it obtained “free access” via an easement that was appropriate for a gas service.

3. The Modifications to the MWRD “Standard Easement” Were Significant to Peoples.

As is typical of RSI’s contentions, RSI ignores the innumerable contacts and revisions made by Peoples and the MWRD over the ten months preceding the November 18, 2004 hearing on the Gas Service Motion. RSI both contends that the modifications were minor (Post-Hearing Brief at 11), and that early in the negotiations “MWRD made every concession conceivable” (*Id.* at 19), both statements are incorrect. Peoples considered the modifications, which are discussed at length in Respondent’s Initial Brief to be significant. Without the modifications, no easement agreement would have been reached.

On pages 11 and 12 of its Post-Hearing Brief, RSI contends that the easement executed was the MWRD’s Standard Easement Agreement with “minor modifications.” As set forth in Peoples Initial Brief, pages 22-24, the modifications made by the MWRD were significant to Peoples, to the extent that Peoples proposed that the Commission urge the MWRD to memorialize those concessions in future easements with Peoples. (Respondent’s Initial Brief, pages 29-30) RSI also contends that it took Peoples “three years, ten months and ten days” to January 26, 2005 to provide service to RSI’s facility. While this may be the length of time from first contact between RSI and Peoples, it bears no relationship to the provision of service. RSI provided evidence that it was not prepared to receive gas service in March 2001, or even in March 2004. No in-service date was ever requested by RSI. No timeline for providing service was ever proposed by RSI. In the Initial Brief, Peoples outlined the other services that RSI required at its California Avenue facility, some provided around Christmas 2004. RSI had not completed the buildings at its facility as of the April 12, 2005 hearing. (See Respondent’s Initial

Brief, page 16) Finally, to even suggest that Peoples is bound by a time restriction in negotiating an easement is ridiculous. This is exactly what RSI is attempting by its outlandish statement regarding the almost four year period it took to provide service. Peoples has clearly demonstrated by the record evidence that it provided gas service to RSI as quickly as possible under the facts and circumstances presented. (See Respondent's Initial Brief, page 20)

4. Peoples Not Only Treated RSI Fairly But Would Have Discriminated Against Similarly Situated Customers Had It Executed the Earlier Versions of the MWRD "Standard Easement."

In its initial and amended complaints and its Post-Hearing Brief, RSI contends that it has been discriminated against through Peoples by Peoples failure and refusal to provide it gas service. In addition to Section 8-101, RSI cites Section 9-241 of the Act to support this contention. Again, when RSI only cites a portion of the law, it not only is intended to make its point, but also to mislead the Commission. The issue of discrimination as set forth in Section 9-241 applies solely to rate "prejudice" or "disadvantage" or "discrimination." This discrimination is "either as between localities or as between classes of customers." Localities as used in Section 9-241 relates solely to different areas served by a public utility. Classes of customers relate solely to preference or disadvantage between, for example, residential and commercial customers. Thus, Section 9-241 is wholly inapplicable and irrelevant to the instant case. Moreover, as noted in Respondent's Initial Brief, RSI did not present any evidence of discrimination. This is truly a "red herring" that should not be countenanced by the Commission.

In its Post-Hearing Brief, RSI argues that it is improper for Peoples to have distinguished between a single service line user and service to multiple customers and that this distinction is discriminatory in violation of Sections 8-101 and 9-241 of the Act. RSI fails to understand that

there is a substantial difference in providing a service line to a single customer and serving numerous customers via large mains. It is this difference that necessitated the negotiations between Peoples and the MWRD, whether or not, the MWRD differentiated between a single service and large mains. In no way does this difference, which is clearly delineated by Peoples standard line easement agreement and the MWRD "Standard Easement" agreement, constitute discrimination. The distinction was argued at length in Respondent's Initial Brief discussing the Motion In *Limine*, and the evidence presented by Peoples' witnesses. In sum, the MWRD "Standard Easement" agreement was tailored for large main easements, not 2-inch service lines. The MWRD "Standard Easement" agreement imposed onerous and burdensome business, operational and environmental provisions on Peoples. Peoples had a right to negotiate with RSI regarding those provisions which it believed imposed unfair burdens and responsibilities on Peoples. As noted earlier, RSI provided no testimony on the so-called discrimination issue and has not provided any basis for discrimination under Sections 8-101 and 9-241 of the Act.

5. RSI had the Burden under Peoples' Tariffs of Providing "Free Access" and RSI's Position that Peoples was Obligated to Provide Service Prior to Agreeing to Terms of the Executed Easement is Contrary to Illinois Law.

On page 15 of its Post-Hearing Brief, RSI contends that the "free access" issue raised by Peoples is a "pretext" for not providing service to RSI." In the Initial Brief, pages 17-20, Peoples fully explained why RSI was legally obligated to provide "free access" in accordance with Peoples' tariff, Ill. C.C. No. 27, Second Revised Sheet No. 24, Respondent's Cross Exhibit 1. Peoples noted that this was explained and understood by Mr. Koty in March 2001. Ms. Morakalis understood that "free access" was not provided to the RSI property until the easement agreement was executed. (Tr. 144) Peoples had no duty to install the service line until it had "free access." RSI's pretext argument is not only unsustainable, but it also improperly shifts the

obligation of obtaining the easement from RSI to Peoples. RSI really is advocating that Peoples should have ignored its own tariff and violate the law. "Free access" was only first provided in December 2004, when the MWRD executed the easement.

On the bottom half of page 18 and on page 19 of the Post-Hearing Brief, RSI engages in a convoluted, unfathomable argument that somehow Peoples could have accessed the RSI property at any time. Later in its argument, RSI argues that there was nothing contained in the MWRD easement that does not give Peoples "reasonable access." While RSI wrongfully attempts to equate "reasonable access" with "free access," the point remains that Peoples could only lawfully access the RSI easement after the agreement was executed by the parties. The signed easement agreement gave Peoples permission to enter the property. Without permission, Peoples would have been a trespasser upon entering the property.

Somehow, RSI equates and attempts to fit the term "reasonable use" with the easement concession that it construes as "erecting a building over an easement...." (Post-Hearing Brief, page 19) Again, the concession was that there would be no building over the easement. (Tr. 189) Once again, RSI's attempted semantic ploy is revealed for what it is, an attempt to obfuscate the evidence and minimize a major concession made by the MWRD.

6. Peoples Provided Service to RSI Without Commission Intervention and Therefore RSI's Contention that Economics Weighed into the Provision Of Service is Patently False and Unsupported by the Evidence.

Another common theme running throughout RSI's Post-Hearing Brief, as illustrated on page 20 is, as follows: "The real distinction, from People's perspective, is that since there is only one service to be provided, it is hardly worth Peoples' trouble to deal with the MWRD." Again, the distinction between single line service and service via mains is not discrimination. This is just another false statement that is contrary to the evidence. As the evidence shows, Peoples

dealt, at length, with the MWRD. An accord was reached between Peoples and the MWRD based on good faith negotiations between the parties. Moreover, this bald unsustainable assertion has no record basis. It is another attempt by RSI to cloud the record with unsupported implications regarding Peoples' conduct during its negotiations with the MWRD. RSI contends that Peoples should not have distinguished between its service line easement agreement and the MWRD's "Standard Easement" agreement. RSI really contends that Peoples should have blindly accepted the MWRD agreement no matter how burdensome and onerous and no matter that the agreement, as originally proposed, imposed substantial operational, business and environmental obligations that were deemed unfair to Peoples and its other customers. Such assertions rob Peoples of its right to negotiate a fair and equitable easement. Given the facts and circumstances surrounding the execution of the easement agreement by Peoples and the MWRD, there was no unreasonable delay in providing service to RSI. In effect, RSI argues that Peoples acted in bad faith by refusing to sign the MWRD "Standard Easement" agreement based on an economic decision made by Peoples. Thus, whatever the costs and burdens that were imposed by the MWRD's "Standard Easement" agreement, Peoples should have signed the MWRD "Standard Easement" agreement. RSI's position is that it makes no difference that such inappropriate and unnecessary costs would have to be shared by Peoples and its ratepayers. Not only is this contention absurd and groundless, if the Commission accepts the proposition, Peoples would face the reality with future applicant service installations that Peoples would have to execute easements without regard to the terms. The untenable result is that an applicant for service could choose, for instance, an environmentally contaminated location for Peoples to install its gas service, exposing Peoples and its other customers to significant and unwarranted costs and risks.

7. Peoples Showed Good Faith in its Dealings with RSI by Devoting the Substantial Time and Cost to Work with the MWRD on an Easement that was Appropriate for a Gas Service.

In its Post-Hearing Brief, pages 19-20, as part of its argument that Peoples did not deal in good faith, RSI contends that “Peoples quit dealing with the MWRD as soon as it received the MWRD standard easement.” This contention is patently false and is not supported by the evidence. One need only review the number of written contact between Peoples and the MWRD from January to November 2004 to determine that such a contention is baseless. Even RSI’s own biased review of the so-called Background Facts section of its Post-Hearing Brief, pages 4-12, belies such a fallacy. RSI also argues that Peoples showed bad faith by continuing to deal with RSI, not the MWRD, regarding the grant of an easement. RSI fails to understand that RSI was Peoples applicant for service, not the landlord, the MWRD. It was RSI as the applicant, then the customer, which is responsible for providing “free access.” RSI had to be fully apprised by either directly written to or copied because of this relationship to Peoples as set forth in the Commission’s Rules and Peoples’ tariffs. (Tr. 205 & 242) Importantly, Peoples copied the MWRD in every correspondence to RSI concerning the easement.

RSI also contends that Peoples showed bad faith by objecting to the Phase I and Phase II environmental concerns discussed by Mr. Matuszak in his testimony. (Tr. 211-213 & Respondent’s Initial Brief, pages 23-24) RSI not only contends that this demonstrates bad faith, but also opines that since Peoples witness Steve Matuszak is not an attorney, and not an environmental or land use attorney, he is not qualified to testify to the terms and conditions in the environmental clauses in MWRD proposed easement agreement. This is another “red herring” absurdity tossed about by RSI. As Manager of Environmental Affairs for Peoples, Mr. Matuszak monitors the company’s environmental activities and provides advice on any environmental

provisions that are contained in any agreements entered into by Peoples. (Tr. 203). Moreover, he advised Ms. Ritscherle regarding the environmental provisions during the MWRD negotiations. (Tr. 207) Counsel for RSI objected to Mr. Matuszak's testimony on Phase I and Phase II issues, but the ALJ stated that Mr. Matuszak was an expert on the matter (Tr. 212), and RSI's counsel determined that a sufficient foundation was laid for his testimony. (Tr. 214) What makes this contention even more absurd is the Post-Hearing Brief's acknowledgement on the bottom of page 21, that these environmental issues were removed by the MWRD in the final easement agreement of the parties. Mr. Matuszak also discussed the April 24, 2004 letter of Ms. Morakalis to Ms. Ritscherle, which did not assuage all of Peoples' environmental concerns. (For example, see Tr. 222) Mr. Matuszak noted that there were additional revisions to the environmental provisions as set forth on Joint Stipulation Exhibit 45, dated September 14, 2004, or almost five months after Ms. Morakalis' April 24, 2004 letter. (Tr. 225).

On the top of page 22 of its Post-Hearing Brief, RSI seemingly attacks the concession made by the MWRD releasing Peoples from paying remediation costs for natural gas emitted into the atmosphere. RSI contends that Peoples should not have been released from liability and all Peoples' easements should contain a clause wherein Peoples would be liable. Fortunately, Peoples has the right and ability to negotiate its own easements, in this instance, with the agreement of the MWRD. Perhaps, if RSI had advised the MWRD to execute Peoples' standard service line agreement in January 2004, this complaint would never have been filed.

RSI goes on to declare that had Peoples simply accepted the MWRD easement, or dealt directly with the MWRD about real issues, RSI would not have incurred costs. RSI then contends that the easement process should only have taken 3-6 months. RSI is wrong on all counts. Peoples has a right and obligation to negotiate easements. Peoples negotiated, at length,

directly with the MWRD on the business, operational and environmental concerns it had with the MWRD easement agreement. Ms. Morakalis acknowledged that many modifications of the easement agreement were made during the course of negotiations. (Tr. 160) Those negotiations concluded with a fully executed easement agreement. RSI simply raises its own “red herring” to suggest that Peoples has no right to negotiate an easement and Peoples did not deal directly with the MWRD. The evidence simply does not support these contentions. The easement process took longer than six months. No time limit was ever established in this case. No time limit could be established. Each negotiation has a life of its own and it would be impossible and unfair to set a time limit on negotiating an easement. This is exactly what RSI is attempting to do and it has no support in this record. A review of pages 16-28 of Respondent’s Initial Brief provides greater detail on the reasons why no time limit was ever established by RSI; RSI never provided “free access;” RSI never established a timeline to determine any delay; and, in the final analysis, RSI never proved that Peoples delayed in providing service to RSI.

B. Reply to RSI’s Remedy Request

On page 12 of its Post-Hearing Brief, RSI contends that at the April 12, 2005 evidentiary hearing, the Administrative Law Judge (“ALJ”) indicated that the Commission rules allowed RSI to continue to argue whether the Commission has authority to recompense it under Section 5-201 of the Act. 220 ILCS 5/5-201. RSI has not told the entire story. The Commission’s Rules of Practice, 83 Ill. Adm. Code 200.150, required RSI to file for interlocutory review from the ALJ ruling of February 15, 2005, denying RSI’s damages remedy, “unless good cause is shown or unless otherwise ordered by the Hearing Examiner (ALJ).” RSI has had ample opportunity to appeal the ALJ’s February 15, 2005, but has failed to do so. RSI has never specified what its damages are, or given a dollar amount to those so-called damages, either in the initial or

amended complaints it filed. Moreover, the ALJ requested that RSI make “a summary offer of proof on the issue” (damages) (Tr. 26), which RSI also failed to do. To raise the damages issue two months after the evidentiary hearing and four months after the ALJ’s ruling is too late and any further attempt by RSI to discuss damages as a remedy should be barred. It is grossly insufficient and improper to consider the outline of damages set forth on page 13 of RSI’s Post-Hearing Brief. The damages outlined lack evidentiary foundation and are unsupported by the record. The Commission cannot and should not allow damages to RSI when it never requested specific damages in its initial and amended complaints and never made an offer of proof as requested by the ALJ at the evidentiary hearing. This portion of RSI’s Post-Hearing Brief should be stricken.

Beginning on page 23 of its Post-Hearing Brief, RSI once again seeks an unspecified amount of money damages in the guise of “recompense.” RSI wrongfully seeks review of the ALJ’s February 16, 2005 ruling that the Commission could not award damages. Rather than cite cases on point or other Commission Orders which awarded damages, RSI merely re-hashes its Response to Peoples Motion for Summary Judgment. RSI provided no new arguments or support for its contention that it should be awarded damages by the Commission. Rather than discuss each point and case raised by RSI, Peoples attaches as Appendix A to this Reply Brief, its initial Reply to RSI’s Response previously filed with the Commission.

Five points must, however, be made. First, no violation of the Act has been proven by RSI. There can be no remedy without a violation. RSI has gas service and has not provided any evidence of damages. It is not Peoples obligation to provide RSI with a legal primer on where and how to seek monetary damages, particularly, as here, where RSI has no right to damages.

Second, RSI contends that the three cases cited by Peoples to support the proposition that the Commission lacks jurisdiction to award damages, *Barry v. Commonwealth Edison Company*, *Ferndale Heights Utility Company v. Illinois Commerce Commission*, and *Moening v. Illinois Bell Telephone Company* (citations omitted), are not on point and too old. Unfortunately for RSI, these cases are on point and properly state the law that the Commission cannot award damages. The law has not changed in the last twenty years. RSI is not the first Complainant to seek damages, but the Commission has consistently followed the law and refrained from awarding damages. RSI cannot point to a single Commission Order which awarded damages.

Third, RSI continues to cite the cases of *Peoples Gas Light and Coke Company v. Illinois Commerce Commission* and *Wernikoff v. RCM Telecom Services of Illinois* (citations omitted) for the proposition that the courts have recognized the broad expansion of powers of the Commission. Again, a careful review of these cases does not support RSI's contention. The *Peoples* case is not only off point, but also did not involve damages, only the payment for gas services provided. The *Wernikoff* case concludes that the Commission has jurisdiction of utilities concerning rate reparations claims, but under Section 5-201 of the Act, courts have jurisdiction over damages. (See page 3, of Respondent's Reply)

Fourth, RSI again has failed to cite any Commission cases in which damages were awarded under Section 5-201. There are none. There are, however, at least, four cases in which the Commission ruled that the circuit court and not the Commission has the authority to award damages under Section 5-201. These Commission cases are, as follows: *People of the State of Illinois v. Illinois Bell Telephone Company*, Docket 88-0127, Order dated October 2, 1991(Commission has no authority to determine or award money damages under Section 5-201, rather the authority lies squarely in the courts, at 4); *Patricia Morgan v. Illinois Bell Telephone*

Company, Docket 91-0280, Order dated October 23, 1991 (actions for monetary damages under Section 5-201 belong in a court of law, at 1); *Scott Leber v. GTE North Incorporated*, Docket 92-0352, Order dated April 7, 1993 (no showing of actual damages and proper forum for damages under Section 5-201 is a court of law, at 2); and *Citizens Utility Board v. Illinois Bell Telephone Company*, Docket 00-0043, Order dated January 23, 2001 (Section 5-201 authorizes redress in circuit court for damages caused by a public utility's acts or omissions that violate laws or Commission regulations or orders, at 5).

Finally, as previously mentioned, and contrary to RSI's contention, RSI seeks unspecified money damages for Peoples negligent failure to provide gas service without delay and without discrimination. The Commission cannot award such damages to RSI.

IV. CONCLUSION

RSI's Post-Hearing Brief is littered with speculation about Peoples motives and intent. Rather than stick to the evidence, many of RSI contentions are mere conjecture. RSI has failed to show that Peoples acted in bad faith in its easement negotiations, or that Peoples violated any provision of the Act, Commission's Rules or Peoples' Tariffs. RSI's plea for recompense is no more than a request for unspecified and unproven money damages, which the Commission cannot award.

For all of the reasons set forth in Peoples' Initial and Reply Briefs, Peoples' Motion in *Limine* barring admittance of evidence concerning gas mains or other than service easements should be granted, the Complaint filed by Recycling Services, Inc. (RSI) against The Peoples Gas Light and Coke Company should be denied and in the final order the Commission should urge the MWRD to include the final language in the subject easement in future land right agreements with Peoples.

Respectfully submitted,
THE PEOPLES GAS LIGHT AND COKE
COMPANY


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NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on July 5, 2005, I filed with the Chief Clerk of the Illinois Commerce Commission the Respondent's Reply Brief and Respondent's Draft Administrative Law Judge's Proposed Order, attached hereto, copies of which are hereby served upon you.


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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2005, I served a copy of the attached Respondent's Reply Brief and Respondent's Draft Administrative Law Judge's Proposed Order, by causing copies thereof to be placed in the U.S. Mail, first class postage affixed, or by facsimile as indicated, addressed to each of the parties below:

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

Ms. Claire A. Manning
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