

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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| E. JEROME MALRY,          | ) |              |
|                           | ) |              |
|                           | ) |              |
| Complainant,              | ) |              |
|                           | ) |              |
| vs.                       | ) | No.: 02-0273 |
|                           | ) |              |
| THE PEOPLES GAS LIGHT AND | ) |              |
| COKE COMPANY,             | ) |              |
|                           | ) |              |
| Respondent.               | ) |              |

**RESPONDENT’S REPLY BRIEF**

THE PEOPLES GAS LIGHT AND COKE COMPANY (hereinafter “Peoples Gas”), Respondent herein, by and through one of its attorneys, Greta G. Weathersby, pursuant to Notice dated August 3, 2005 , files its Reply to Complainant’s Brief , and in support thereof states as follows:

Complainant’s Brief fails to address the record evidence that was put forth at the hearing on January 28, 2003 and also in Respondent’s Brief. Complainant primarily objects to the admission of Respondent’s Exhibits 3 and 8 and also summarily argues that Peoples Gas’ bills were incorrect. Complainant’s Brief is silent regarding the \$75,664.40 balance that is owed to Peoples Gas after providing natural gas service to heat the Complainant’s huge commercial apartment building consisting of 39 units.

**I. Respondent’s Exhibits 3 and 8 Should Be Admitted into Evidence as a Part of the Record.**

Peoples Gas’ presentation of Respondent’s Exhibits 3 and 8 at the hearing was in complete compliance with the Illinois Rules of Evidence. Although Complainant states that the best evidence rule would bar admission of Respondent’s Exhibits 3 and 8, Respondent fully

refuted these arguments in its written response filed on February 11, 2003. Therein, Respondent clarified that Exhibit 3, (the "Account Transcript"), was simply a summary of the bills, payments, meter readings and that the Illinois Commerce Commission has required the public utility to provide such Transcripts. (See, Response at Par. 24-26). Moreover, charts and summaries are seen as a form of intelligible presentation. A proper foundation must of course be laid establishing the correctness of the figures in the summary....The originals of the records thus summarized must be made available to the opposite party for examination or copying or both in advance of trial. See, Cleary and Graham's, Handbook of Illinois Evidence, Seventh Edition, § 1001.61. The Account Transcript, Respondent's Exhibit 3, allows any objective third party to understand the totality of the account history as compared with the review of forty or more separate exhibits which are already of record. See, Complainant's Exhibits 1- 44; Respondent's Exhibits 1-8.

As required by the Rules of Evidence, the Complainant already had possession of the underlying gas bills and degree day analysis that were used to compose the Account Transcript. The Complainant having failed to identify any new information or data presented by the Account Transcript, already had in his possession, in advance of the January 28, 2003 hearing, the best evidence. Therefore, the Complainant's objection to Exhibit 3 should be denied.

Similarly, Respondent's Exhibit 8, the meter reading reports, should be admitted into evidence as a reliable business record and Complainant's best evidence objection should be denied. Respondent's Exhibit 8 was the business records of Peoples Gas, Meter Reading Department which showed the meter readers' multiple attempts to gain access at the Complainant's premises and read the meter (Tr. \_183\_) Business records are admissible because their purpose is to aid in the proper transaction of the business and they are useless for that

purpose unless accurate and the motive to falsify is nonexistent. See, Cleary and Graham, Id. at §803.10. The Respondent's testimony at the hearing showed that the meter reading reports were created and maintained independently of Malry's Complaint and a proper foundation was laid at the hearing. (Response, Para 34-37) Complainant's objection would require the Commission to ignore reliable business records which refute the core of the Complaint, which alleges that Peoples Gas never attempted to read the meter.

## **II. The Commission's Rules Allow a Public Utility to Provide Estimated Bills.**

Respondent's Brief and the record evidence shows that when Peoples Gas sent a bill based upon an estimated reading, it was because access had been denied. 83 Ill. Admin. Code §280.80 (b)(3) and (4) allows Peoples Gas to make consecutive estimated bills when circumstances are beyond the control of the utility. The Complainant argued that the estimated bills were a violation of the Commission's rules, and argued as follows: "They show no attempt to contact the property manager and provide meter reading on a bi-monthly basis." (Complainant's Brief at 5). But Complainant's own testimony showed that he had only one part-time Manager, Brett Hardt, who had keys to the boiler room. Further, this Manager, did not live at the building and was a manager of Complainant's other seven to eight properties. See, Tr. 51, 77, 96) (Respondent's Brief at 5). This fact coupled with the location of the meter and the numerous locked doors all presented obvious obstacles to Peoples Gas' monthly meter readings. (Tr. 104,106-110).

Additionally, Respondent's Exhibit 8, the records from the Meter Reading Department, showed that Peoples Gas had, in fact, made numerous attempts to read the meter but no one was at the premises. (TR 158) These facts taken together present substantial evidence that that there were circumstances which prevented more frequent access that were beyond Peoples Gas'

control. Section 280.80(b) (3) (4) provides that in such circumstances, estimated bills are appropriate. Accordingly, Peoples Gas was in compliance with 83 Ill. Admin. Code 280.80 (b)(3) and (4) and the Complaint should be denied.

**III. Peoples Gas' Billing of the Account for Unbilled Service is in Compliance with the PUA and the Company's Rules.**

Without refuting or even commenting on the record evidence, Complainant's repetitive argument is that the bills were incorrect. Complainant admits that he received a bill in May, 2001 (Complainant's Brief at 4). He argues that the bill was incorrect and later states that a bill was received in December 2001 for \$50,000, (Complainant's Brief at 5). The Complainant's own testimony confirmed that he had not tried to contact Peoples Gas to provide meter readings or special access to Peoples Gas prior to May, 2001. (Tr. 91). Thus, the Complainant was fully aware that he had been in the premises for a year without receiving a gas bill even though the Complainant most likely continued to pass on heat and hot water costs to his 39 tenants for the one year period between May 17, 2000 and June 15, 2001.

The Complainant received a balloon bill for \$49,293.50. Mr . Schaeffer testified that the bill was based upon 333 days of service for the period between May 18,2000 and July 17, 2001. Exhibit 3, Line 13. Based upon an initial estimated reading and subsequent actual readings and corrections, Peoples Gas rebilled the Complainant \$53,685.62. Exhibit 3, Line 40. This bill was based upon a period of usage between May 17, 2000 and October 2, 2001. Peoples Gas had numerous actual readings which supported the billed amounts. The hearing testimony showed that a review of Company records, show that on August 18, 2000, Peoples Gas obtained a reading of 8595; on July 17, 2001, Peoples Gas obtained a reading of 60128; on August 16, 2001, Peoples Gas obtained a reading of 61298; and on December 2, 2001, Peoples Gas obtained a reading of 63721. This information was set forth in Respondent's Exhibit 3. Also, Mr. Coyle,

Peoples Gas' Field Supervisor, testified that his personal inspection of the meter on April 25, 2002 showed a reading of 99450. (Tr. 104. ) The consecutive sequencing of the actual readings clearly demonstrated that the readings were accurate. Moreover, these actual readings were uncontradicted by any record evidence. Also, Complainant testimony supported Peoples Gas' service at the Premise. He testified that they came out and "for four or five months, I received bills regularly." (Tr. 44).

When the Complainant continued to dispute the amount of the bill, Peoples Gas provided a degree day analysis and recalculated the bills for the period between May 17, 2000 and December 19, 2001. This resulted in an increased amount of \$61,665.39. See, Respondent's Exhibit 6; Exhibit 3, Line 17. Mr. Schaeffer testified regarding the degree day analysis that was conducted for each month and provided the worksheet and the final bill to the Complainant. See, Respondent's Ex. 6. The comparisons showed that when the degree day formulation was used that the customer bills used 6.10 therms per degree day. When compared to the bills based upon the actual reading it was 5.534 therms per degree day which was very close and "consistent". (Tr. 170). Based upon the customer's requested manual rebilling, Peoples Gas determined that the Complainant owed \$61,685.39, at that time. Respondent Ex. 3, Line 17.

The Complainant only questions the reading for August 2000. (Complainant's Brief at 5.), but fails to address the numerous subsequent actual readings and the degree day analysis.

Finally, the Complainant's payment history shows that his monthly payments were less than the amounts owed. See, Respondent's Exhibit 3, Columns labeled "Net bill" and "Payments". The Complainant produced no evidence of payments other than those shown on Respondent's Exhibit 3. The testimony also showed that the payments did not mirror the amounts owed. (Tr. 92-93) (235-238). Further, a simple calculation from the relevant columns

of the Account History show that the Complainant has simply refused to pay the bill which accrued between May 17, 2000 and December 19, 2001 and has made partial payments on the remaining bills since that date leaving Peoples Gas with a total unpaid amount of \$75,664.40 as of January 14, 2003. (Tr. 153).

**IV. In Compliance with 83 Ill. Admin. Code 280.100(d), Peoples Gas Offered Complainant a Payment Plan over Seventeen (17) Months.**

In a nutshell, Section 280.100(d) provides that Peoples Gas must offer a repayment plan to the customer when a balloon bill is issued. 83 Ill.Admin. Code 280.100 (d). See, Respondent's Brief, pages 15-16) Because the Complainant had received a balloon bill, Mr. Schaeffer testified that the Company offered Complainant a repayment plan for 17 months, without any late fees, being added to the account. (Tr. 58). Complainant however, rejected the offer. He testified that he received the offer but didn't have the supporting bill. Clearly, Peoples Gas' action in offering the Complainant payment arrangements to pay the balloon bill was in complete compliance with the governing rules and the Complainant fails to show that Peoples Gas has violated the rules in any manner.

**CONCLUSION**

The Complainant fails to show that Peoples Gas violated the Commission's rules and regulations in any manner. The Complainant's Objections to the admission of Respondent's Exhibits 3 and 8 have no merit and should be denied. Respondent's Brief, on the otherhand, acknowledges that the Complainant went a complete year without a bill and without paying for any gas. Therefore, Complainant's first bill was a balloon bill. Respondent's Brief however also shows how Peoples Gas inspected the premises, photographed the appliances and reviewed the usage, provided bills based upon actual reads, corrected bills when necessary, provided credits for any overpayments based upon estimated bills, provided a detailed month- to month rebill

based upon a degree day analysis and finally offered the Complainant 17 months to repay the balloon bill. The referenced actions taken by Peoples Gas were in complete compliance with the rules and regulations of the Commission.

For the foregoing reasons, the Complaint should be denied and Complainant should be directed to pay his gas bill of \$75,664.40.

DATED: September 16, 2005

Respectfully submitted,

THE PEOPLES GAS LIGHT AND  
COKE COMPANY

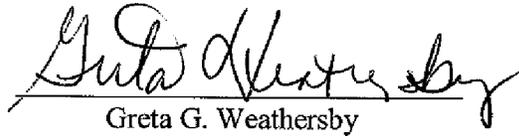
By: /s/ Greta G. Weathersby  
One Of Its Attorneys

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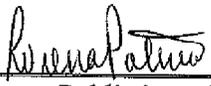
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

**VERIFICATION**

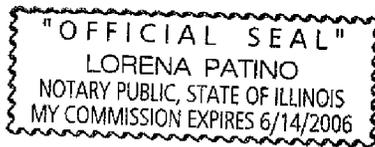
I, Greta G. Weathersby, being first duly sworn upon oath, depose and say that I have read the above and foregoing Respondent's Reply Brief by me subscribed and know the contents thereof; and that said contents are true in substance and in fact.

  
Greta G. Weathersby

SUBSCRIBED AND SWORN  
before me this 16<sup>th</sup> day  
of September, 2005.

  
\_\_\_\_\_  
Notary Public in and for the  
County of Cook, Illinois

My Commission Expires: 6/14/2006



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served this Respondent's Reply Brief by causing a copy to be served by e-docket and mailed to the administrative Law Judge and the Complainant by First Class U.S. Mail, postage prepaid on September 16, 2005.

/s/ Greta G. Weathersby