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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
JESSE J. McNABB,)
) No. 04-0544
-vs-)
)
PEOPLES GAS, LIGHT AND COKE)
COMPANY)
)
Complaint as to)
billing/charges in)
Chicago, Illinois.)

Chicago, Illinois

September 8, 2005

Met, pursuant to notice, at 11:00 a.m.

BEFORE:

MS. CLAUDIA SAINSOT, Administrative Law Judge

1 APPEARANCES:

2

3

4 MR. JUAN OOINK
5 18 West Dundee
6 Wheeling, Illinois 60090
7 appearing for Mr. McNabb;

6

7 MR. MARK L. GOLDSTEIN
8 108 Wilmont Road
9 Suite 330
10 Deerfield, Illinois 60015
11 appearing for
12 Peoples Gas, Light & Coke Company.

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17 SULLIVAN REPORTING COMPANY, by
18 Ann Rogers, CSR

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I N D E X

Witnesses:	Direct	Cross	Re- direct	Re- cross	By Judge
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NONE

E X H I B I T S

For Identification	In Evidence
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NONE

1 JUDGE SAINSOT: By the authority vested in me
2 by the Illinois Commerce Commission I now call Docket
3 No. 04-0544. It is the complaint of
4 Jesse J. McNabb versus Peoples Gas, Light and Coke
5 Company and it concerns billing in Chicago.

6 Will the parties identify themselves
7 for the record, please.

8 MR. OOINK: Juan Ooink, O-o-i-n-k, on behalf of
9 Jesse McNabb.

10 MR. GOLDSTEIN: On behalf of the Peoples Gas,
11 Light & Coke Company Mark L. Goldstein, 108 Wilmont
12 Road, Suite 330, Deerfield, Illinois 60015. My
13 telephone number (847) 580-5480 and I have with me
14 from Peoples Gas Brian Schmoldt, S-c-h-m-o-l-d-t.

15 JUDGE SAINSOT: Mr. Ooink, could you provide the
16 court reporter with your address and telephone
17 number.

18 MR. OOINK: Yes. My address is 18 West
19 Dundee, Wheeling Illinois, 60090 and the telephone
20 number is (847) 215-2600 and it's the Law Office of
21 Steven N. Goldman.

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1 JUDGE SAINSOT: Okay. Before me I have a
2 verified application for a subpoena. There is also a
3 request to amend subpoena duces tecum and I have a
4 motion to quash one of the subpoenas and that is the
5 subpoena requesting Mr. Steven Kroll to appear.

6 Counsel, is there anything you'd like
7 to add.

8 MR. GOLDSTEIN: To my motion to quash? Well,
9 Mr. Kroll testified as the field investigator for
10 Peoples Gas. He went out to the property and he saw
11 that the meter had been tampered with. He took
12 pictures and his field investigation report and
13 everything else that related to his investigation of
14 the meter tampering, including photographs of the
15 meter and the surrounding area around the meter were
16 put into evidence.

17 Your Honor and Mr. McNabb had the
18 opportunity to cross-examine Mr. Kroll. I have never
19 heard of a situation where people have two or three
20 bites of the same apple. Mr. Kroll testified, he was
21 cross-examined and we've

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1 rested. We have nothing else to put in. He has
2 nothing else to add. There is no purpose in this,
3 having him come back before your Honor.

4 I would also add that there is nothing
5 in any of the pleadings up to the time of the filing
6 of the subpoena that requested
7 Mr. Kroll's attendance. The application for
8 rehearing had nothing to say about bringing back Mr.
9 Kroll. As I understood the application for
10 rehearing, what the complainant wanted to do was to
11 provide more Commonwealth electric bills and present
12 witnesses who would testify that during the period in
13 question of the alleged tampering Mr. McNabb didn't
14 not -- was not physically present at his property.

15 So, all in all, I think that if we're
16 going to have anything -- any kind of a hearing
17 process at the Commission, you're only entitled to
18 one bite at the apple. Mr. McNabb never asked for an
19 attorney prior to the time that we had the
20 evidentiary hearing, he did not request an attorney
21 at the evidentiary hearing. It was

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1 only after your Honor issued a proposed order that
2 was in favor of the respondent, Peoples Gas that he
3 went out and got an attorney.

4 So as far as Peoples Gas is concerned,
5 this would create a situation where every hearing
6 would never end because we have to keep recalling
7 witnesses after witnesses after witnesses because
8 there would be no end to the hearing process. And so
9 that's the reason for the motion to quash the
10 application for subpoena.

11 MR. OOINK: In support of the subpoena of
12 Mr. Kroll, after reviewing the transcript of the
13 hearing which Mr. McNabb represented himself, a
14 layperson, he has no knowledge of evidentiary issues,
15 no knowledge of any court proceedings, he thought
16 that this was going to be an informal type of hearing
17 which he later found out was not true.

18 Mr. Kroll's testimony is incomplete.
19 Mr. Kroll testifies correctly as
20 Mr. Goldstein states that what he observed at the
21 house when he was there. There is no testimony as to
22 Mr. Kroll's prior knowledge to what the house

1 looked like, whether he even had prior knowledge.
2 I'm not asking to call him to cross him, I'm asking
3 to call him so that we can actually direct him as a
4 witness on behalf of Mr. McNabb to clarify the
5 record. It is -- his testimony is incomplete and
6 basically we are just asking to call him so we can
7 complete the record and we get all of the information
8 so that you can make an informed decision as to Mr.
9 McNabb's liability in this matter.

10 JUDGE SAINSOT: I have a question about the
11 prior knowledge, how will that help.

12 MR. OOINK: It will show that he had no -- I
13 imagine he's going to say either if he had prior
14 knowledge and he had been to the house before that he
15 had seen the gas meter properly installed or he is
16 going to say that he had never been there. It could
17 go to show that -- it goes to show that outside of
18 what he saw at the scene, he doesn't know what the
19 houses looked like before or he may know, I don't
20 know what he knows.

21 JUDGE SAINSOT: Then how would that be

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1 relevant?

2 MR. OOINK: Peoples Gas is alleging some
3 misconduct on Mr. McNabb's --

4 MR. GOLDSTEIN: No we're not, never did.

5 MR. OOINK: People's Gas is asserting that there
6 was some tampering with the gas meter, which also
7 asserts -- which they're saying Mr. McNabb had
8 something do with it because he bought the house, he
9 was the owner of the house. I mean, the record is
10 wrought with them accusing Mr. McNabb of tampering
11 with it.

12 MR. GOLDSTEIN: There is no evidence presented
13 on behalf of Peoples Gas that ever accused Mr. McNabb
14 of tampering with the meter.

15 JUDGE SAINSOT: But I don't think it really
16 matters.

17 MR. GOLDSTEIN: It's irrelevant.

18 JUDGE SAINSOT: I don't think it matters
19 whether you accuse Mr. McNabb of having a house that
20 had meter tampering going on or whether you accuse
21 Mr. McNabb of tampering with the meter because you
22 never really -- your chances of your

1 catching him actually tampering with the meter would
2 be slim. So I just --

3 MR. GOLDSTEIN: The prior knowledge by
4 Mr. Kroll is totally irrelevant to his field
5 investigation, absolutely and completely totally
6 irrelevant.

7 MR. OOINK: That is not true. If Mr. Kroll had
8 information prior to this investigation it is wholly
9 relevant, meaning that if the meter was not tampered
10 with on a date prior to Mr. McNabb taking the
11 ownership of the property, I guarantee Peoples Gas
12 would be bringing that in. I guarantee Peoples Gas
13 would present that as Mr. McNabb -- somebody tampered
14 with that after that point. I guarantee Peoples Gas
15 would bring that in and that is relevant.

16 MR. GOLDSTEIN: That's absolutely irrelevant to
17 this situation. Mr. Kroll made a field
18 investigation. Mr. Kroll reported what his
19 investigation was and that's it. Whether he had
20 prior knowledge or not is not relevant to whether
21 there was tampering by Mr. McNabb or the prior

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1 owner or the prior owner before that.

2 JUDGE SAINSOT: I think it could be,
3 Mr. Goldstein and at this point we are looking to
4 take more complete record, that is the purpose of
5 rehearing. Whether it is or it isn't, we will not
6 know until Mr. Kroll comes in. But I think that it's
7 best to err on the side of completeness in terms of a
8 record. So I am denying your motion to quash the
9 subpoena and I will note that,
10 Mr. Goldstein, that if you're accurate, the worst
11 that has happened is that Mr. Kroll will be here for
12 a very short period of time, which is
13 de minimis harm.

14 MR. OOINK: Your Honor, for the record,
15 Mr. McNabb has just walked in.

16 JUDGE SAINSOT: Okay. Now, that being the case,
17 I'm not sure what you want me to do. Have you
18 amended your subpoenas duces tecum?

19 MR. OOINK: Yes, I filed those and sent them to
20 you, the amended subpoena and the attachment and I
21 have been in contact with Exelon, with ComEd, and
22 they have no objection to the

1 subpoena, getting me the information they have.
2 They have informed me that some of the information
3 that I have asked for since it's so far back they may
4 not have, which is fine.

5 JUDGE SAINCOT: Okay. So your request to
6 amend the subpoenas duces tecum is granted and I will
7 issue an order directing the clerk to issue your
8 amended subpoenas.

9 Now, you have subpoenas duces tecum
10 that are amended and then just regular subpoenas that
11 are not amended; is that correct.

12 MR. OOINK: Correct. The original subpoenas to
13 Com Ed should be removed and the amendment should be
14 the actual subpoena.

15 MR. GOLDSTEIN: Did you provide me with the
16 amended subpoena.

17 MR. OOINK: Yes, I mailed you a copy.

18 MR. GOLDSTEIN: I do not recall receiving it,
19 but I'll look again.

20 MR. OOINK: If you don't have it, just give me a
21 call and I'll fax you a copy.

22 MR. GOLDSTEIN: Your Honor, I want to make it

1 quite clear on the record exactly what Mr. Kroll is
2 going to have to be testifying to at the evidentiary
3 hearing. I'm totally unclear as to what his -- what
4 he should be testifying to.

5 JUDGE SAINSOT: You can work that out on
6 discovery.

7 MR. GOLDSTEIN: I have no questions for him.

8 JUDGE SAINSOT: Right. But it's -- this is the
9 complaint's --

10 MR. GOLDSTEIN: I assume he's being called as an
11 adverse witness by Mr. Ooink because he has no other
12 basis to call him. I am not going to call him as a
13 witness. And so I would like to know what the
14 parameters are of Mr. Ooink calling
15 Mr. Kroll so that he can prepare for these
16 proceedings.

17 JUDGE SAINSOT: Right. That's a fair request,
18 but that is something that you can take up privately
19 with counsel or you can --

20 MR. GOLDSTEIN: I want it on the record. I want
21 --

22 JUDGE SAINSOT: Why?

1 MR. GOLDSTEIN: -- it on the record because all
2 this is totally beyond any kind of hearing process
3 I've ever heard of. So I want it on the record
4 exactly what we're going to be --

5 JUDGE SAINCOT: Well, your request is denied,
6 Mr. Goldstein. This is rehearing, we're taking
7 evidence again, that is the nature of rehearing.
8 So that is what we are all dealing with and both
9 parties can present more evidence.

10 Now, what your opposing counsel is
11 going to do with him is something that you need to
12 ascertain, it is not proper for me to ascertain ahead
13 of a hearing what counsel is -- where counsel is
14 going with live testimony.

15 MR. GOLDSTEIN: Well, his argument seems to
16 contain statements that what he is going to test Mr.
17 Kroll on is his prior knowledge prior to him going
18 out and investigating -- making his field
19 investigation which is all part of the record.
20 And if that's the case, that's all well and good. But
21 if it's anything more than that, then I'd like to
22 know about it.

1 JUDGE SAINSOT: And that's what discovery is
2 for.

3 MR. GOLDSTEIN: That's something that's
4 discoverable?

5 JUDGE SAINSOT: What counsel intends to call a
6 witness and ask him questions about?

7 MR. GOLDSTEIN: Because it's in the nature of
8 really cross-examination since he's got to call him
9 as an adverse witness.

10 JUDGE SAINSOT: But it's still his witness. You
11 call an adverse witness, it's still your witness.

12 MR. GOLDSTEIN: It's his witness.

13 JUDGE SAINSOT: Right.

14 MR. GOLDSTEIN: All right. I'll work something
15 out, I guess.

16 JUDGE SAINSOT: Okay. I'll leave you two to
17 discuss anything you need to discuss, but is there
18 anything else that we need to deal with?

19 MR. OOINK: Not that I'm aware of, no.

20 JUDGE SAINSOT: Okay. Thanks.

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(Whereupon the above
entitled matter
was continued sine die.)