

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Thomas A. Jakubik	:	
-vs-	:	
Northern Illinois Gas Company	:	03-0367
d/b/a Nicor Gas Company	:	
	:	
Complaint as to interrupted gas service	:	
in Mount Prospect, Illinois.	:	

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

By the Commission:

On June 2, 2003, Thomas A. Jakubik ("Complainant") filed his verified complaint against Northern Illinois Gas Company d/b/a Nicor Gas Company ("Respondent" "Company" or "Nicor") in which he claims that on two occasions Nicor interrupted gas service to 1711 Victoria Dr. Mount Prospect, Illinois- A six unit apartment building under account # 2638506 without notice, causing tenants and the owner personal harm, loss of work, for routine maintenance replacement of meter or regulator.

Pursuant to notice as required by law and the Commission's rules, a hearing was held before a duly authorized Administrative Law Judge on March 31, 2004, at the office of the Commission in Chicago, Illinois. Complainant appeared without counsel and offered his own testimony. Respondent appeared by counsel and presented the testimony of Mr. Thomas M. Moretti and Mr. Bill Kruger, who are Nicor employees, in support of its position. At the close of the hearing, the record was marked "Heard and Taken."

The Complainant testified that he owns a six unit apartment building at 1711 Victoria Drive, Mount Prospect, Illinois. Mr. Jakubik testified that he is a real estate broker who travels through out the county to meet with clients and customers to sell real estate. He is not always available to respond to disruptions of gas services. He indicated that Nicor request to test the gas meter was not an urgent matter. The Complainant stated that he did not receive proper notice from Nicor before his gas service was disrupted.

Mr. Jakubik testified that he was in Denver, Colorado between August 3, 2002 and August 10, 2002. While in Denver, a relative of the Complainant died and upon his return to the area, he attended a wake on August 12th and a funeral on August 13th. When he returned to his office, he read the letter from Nicor stating that his meter needed to be changed. It said within a year they'd like to exchange the meter. That

same day he received a call from a tenant stating that there was no hot water. He went to the building and found a blue tag on the door from Nicor stating that the gas had been turned off. This was the only notice that he received. He stated that this took place on August 5th or August 15th. When he contacted Nicor he was told that they would not return until all of the tenants were home. Mr. Jakubik explained that it was an apartment building and he was not sure when all of the tenants would return. He told them that he had just purchased the building and did not always have the keys to the apartments. After several phone calls, Nicor agreed to go the building and wait. At approximately 7:00 p.m., a Nicor agent contacted him to assist them in the relight. Together access was gained to all apartments and service was restored.

The Complainant testified that Nicor had both his business phone number and his cell phone number. He did not retain any letter he received from Nicor, since he did not believe that Nicor would not attempt to again interrupt his gas service in his lifetime.

On October 24th, the Complainant received a call about 4:00 p.m. from one of his tenants. There was no hot water or heat. He stated that he called Nicor and was told that they would not return to the building unless everyone was there. When he went to the building there weren't any messages, notes, amber letters, 8 and a half by 11 yellow copies. There was nothing at the front door. There was a small blue tag.

On cross-examination, the Complainant confirmed that Nicor has the correct business address and phone number in order to contact him. He indicated that he has owned the building for about 4 years and that gas service has been in his name since he purchased the building. Mr. Jakubik indicated that he visits the property about every 4 days. He travels about 3 times a year and has contractors available to cover any problems. During his trips out of town, no one checks his mail. He does check his phone messages while he is out of town.

Mr. Jakubik testified that he did not think there was any urgency to respond to the meter exchange letter. He also did not learn that the second service disruption was due to a regulator until after serving notice to the Company for information. He stated that the Nicor should have called him to let him know they were responding to a leak.

Thomas M. Moretti testified on behalf of Nicor. Mr. Moretti is employed by Nicor as a customer relations manager. He has been in this particular position for about 5 months, but has been with the Company for over 25 years. His primary task is to handle and process ICC complaints. Mr. Moretti completed an investigation into the complaint in this matter. He also testified that the meter sampling program is required by this Commission. Mr. Moretti stated that the meter at this location was chosen under this program approved by the Commission. The program also has no notice requirements mandated by the Commission. A letter is sent out to the customer informing them that their meter has been selected for replacement. If the customer does not respond to the first letter, a second letter is generated, again asking the customer to contact Nicor to make arrangements for the meter exchange. If there still is no response then the Company goes out and completes the meter exchange. The

Company then places a notice for the customer, usually on the front door indicating that the gas service has been shut off and to contact Nicor for reconnection. The witness testified that this program is necessary to make sure the meters are working properly. He testified that the meter exchange was completed in accordance with all Commission rules and regulations. Mr. Moretti also testified about Nicor ex. No. 7, Nicor first revised sheet, number 35, the tariff on terms and conditions. Under Access to Premises : The properly authorized agent for the company shall have free access to the premises for the purpose of inspecting the customer's installation and of reading, examining, repairing or removing the company's meter or other property. He testified that this requires the customer to cooperate and assist the company in gaining access to the meter and other equipment. Mr. Moretti is not aware of any other customer ever filing a complaint claiming insufficient notice with regard to the sample meter exchange program.

Mr. Moretti also testified about the procedure of the Company when a leak is reported. A gas leak is in the Company's opinion, the number one emergency situation. It is Nicor policy not call the customer once a leak is reported. Any little spark, even from a phone call could cause an explosion, if the concentration of gas is great enough. The representative responding does not even ring the door bell. Any electrical charge could ignite and cause an explosion. More often than not the report of a leak is from the customer. So, he did not agree with the Complainant that Nicor should have called him, before responding to the leak.

Bill Kruger also testified on behalf of the Company. Currently he is a centralized locating supervisor. During the time of the occurrences of this complaint, Mr. Kruger was the operations field supervisor. He was supervisor for 20 operations, technicians, mechanics and field service people out of the Park Ridge office. The main responsibility of this office was responding to gas leaks, compliance work, leak survey investigation and meter exchange programs. Most of the training in this area is on the job and not written down for the employees.

Mr. Kruger testified that he was the supervisor during the meter exchange that took place at 1711 Victoria Place, Mt. Prospect. He sent out the two notices and directed his clerk to call the Complainant to advise that the meter exchange would take place. He was advised that the clerk left a message for the customer concerning the meter exchange. The field worker who replaced the meter was able to notify all of the tenants about the meter exchange. Four of the six tenants were home when the exchange took place the other two went to work. Mr. Kruger advised the field worker to proceed with the exchange.

The witness was not personally involved in the second service interruption, which was reported as a gas leak. He did conduct an investigation after the complaint was filed. Mr. Kruger reviewed the order history on page 2 and indicated that a gas leak or emergency call concerning the meter was received on October 24th at 12:05 p.m... It was taken by Operator 416 and scheduled for the same day. The job was completed on the same day by fieldworker 52. The fieldworker found that there was a bad gas

leak passing through the regulator which maintains the pressure to the building. The fieldworker replaced the regulator with a new one. A further review of the incident that day indicates that a blue tag was placed on the front door of the premises. This indicates that the fieldworker did not have access to all apartments in order to reestablish service.

His investigation also turned up a call from the Complainant in this matter. According to the records, the operator entered the following information, "Landlord called and very upset when advised won't turn on gas service until they have access to all apartments. He is calling his lawyer. Landlord does not have access to all apartments, very upset, hung up. Landlord called wanting president, I'm guessing officer (per supervisor) told him to call back during regular business hours." This information was taken by operator 972 on October 24, 2002. Mr. Kruger testified that Nicor is on 24 hours a day and would come out anytime to turn gas back on once there is access to all of the apartments.

Mr. Kruger testified that the fieldworkers do not have access to cell phones in their trucks. They have two methods of communication; one is CAD, (which is computer aid dispatcher) and the other is a voice radio, Motorola radio that they can talk on and communicate with the dispatcher. The company has a policy of not calling the customer concerning a gas leak, because of the danger of an explosion. The fieldworker does not know where the owner or landlord would be at the time of a phone call and any spark, whether the doorbell or from a phone could be enough to set off an explosion. The witness testified that he feels that the blue tagging of the building following the repair of a reported leak and speaking with the tenants was enough notification that the gas service has been disrupted.

On cross-examination Mr. Kruger testified that he did call the Complainant on the night of August 15, 2002 concerning the first service disruption. Mr. Kruger explained that he is a supervisor for Nicor. Supervisors and management employees are entitled to car phones. Fieldworkers do not have access to land lines. Fieldworkers are able to get messages through to customers from the dispatch system. It would be necessary for the dispatcher to call and leave a message from the fieldworker. Fieldworkers cannot be patched through the dispatcher to a land line telephone connection. Again Mr. Kruger testified that the reason for not making phone calls concerning gas leaks is over safety.

During the cross-examination of Mr. Kruger, the Complainant attempted to introduce evidence concerning another meter exchange at a different residence. The Complainant had not previously disclosed this information to the Commission, nor to the Respondent. The information contained in the new allegation did not concern the address of the property pursuant to this complaint. It also did not concern any information contained in the complaint filed by the Complainant. Therefore, all of the information and discussion concerning this matter was stricken by the Administrative Law Judge.

Commission Analysis and Conclusions

The Complainant in this matter is alleging that the Respondent disconnected his gas service in violation of Section 280.130 of the Illinois Administrative Code. This section of the Code spells out when the Company is allowed to disconnect the service of its customers. The Complainant does not specifically state which section of the Code that the Respondent violated in these two occurrences.

Section 280.130 (2) states as follow: "The utility can discontinue service only after it has mailed or delivered by other means a written notice of discontinuance substantially in the form of Appendix A. Any notice required to be delivered or mailed to a customer prior to discontinuance of service shall be delivered separately form any bill. Service shall not be discontinued until at least five days after delivery or eight days after the mailing of this notice." Appendix A. is a form used by the utilities when the customer has failed to pay a bill or other related charges.

The Respondent mailed a notice to the Complainant at the end of July indicating that the meter needed to be changed. The Complainant acknowledged that he received the letter, but did not think it was necessary to respond to it right away. Because of a trip to Colorado and a funeral, he reviewed the letter on August 15, 2002, the same day the meter was exchanged. A notice was placed on the building by the fieldworker, when the meter was exchanged. The notice indicated that service would not be restored until there was access to all apartments in the building. Mr. Jakubik testified that he did not have access to all of the apartments because he had just purchased the building. Service was restored that day at around 7 p.m.

The Respondent in this matter argues that the meter was properly exchanged under the Meter Exchange Program. The utility also stated that this section of the code does not apply to disruption of service for the meter exchange. Nicor filed with the Commission a plan for this program and it was approved by the Commission. There were no notice requirements spelled out in the plan or by the Commission.

Based on the evidence presented in this matter, the Commission finds that the Complainant has failed to prove a violation of Section 280.130.

On October 24, 2002 a tenant of the Complainant called the utility and complained of a gas smell. The Respondent considers any gas leak a number 1 emergency. A fieldworker for the Respondent arrived at the building and found that the regulator on the meter was leaking. It was necessary to turn off the gas service to replace the regulator. Under Section 280.130 (k) – "Nothing in this section or this Part shall be construed to prevent discontinuance of service for reasons of safety, health, or cooperation with civil authorities." While the representatives of the Respondent could have done a better job of advising the Complainant of the details of this disruption of service, it is clear from the evidence that this disruption was necessary to repair a gas leak.

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Based on the facts of this occurrence, the Commission finds that the Complainant has failed to prove a violation of Section 280.130 for this service interruption.

Based on the foregoing, the complaint should be denied.

The record was marked "Heard and Taken" on March 31, 2004 and all post hearing motions filed by the Complainant and the Respondent are hereby denied.

The Commission, giving due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent, Northern Illinois Gas Company d/b/a Nicor Gas Company, an Illinois corporation engaged in the business of the purchase, production, storage, distribution and sale of gas to the general public in Illinois is a public utility within the meaning of The Public Utilities Act;
- (2) the Commission has jurisdiction over the Respondent and of the subject matter of this proceeding;
- (3) the evidence presented at the hearing support a finding that Respondent's actions with respect to the Meter Exchange Program and the disruption of service on August 15, 2002 were proper;
- (4) the evidence presented at the hearing support a finding that the actions of the Respondent in response to a gas leak due to a faulty regulator on October 24, 2002 were proper ;
- (5) the actions of the Respondent in this dispute were not in violation of 83 Illinois Administrative Code Section 283.130
- (6) this complaint may be properly denied;
- (7) all post hearing motions filed by the Complainant and the Respondent are denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Thomas A. Jakubik on June 2, 2003, against Northern Illinois Gas Company d/b/a Nicor Gas Company be, and the same is, hereby denied.

Administrative Law Judge's Proposed Order

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code Sec. 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	December 28, 2005
BRIEFS ON EXCEPTIONS DUE:	January 11, 2006
REPLY BRIEFS ON EXCEPTIONS DUE:	January 18, 2006

Glenn P. Dolan
Administrative Law Judge