

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Earl Jerome Malry	:	
-vs-	:	
Peoples Gas Light and Coke Company	:	
	:	02-0273
Complaint as to lack of services at	:	
7455 S. Merrill and request for	:	
audit and investigation in Chicago, Illinois.	:	

ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

By the Commission:

On April 19, 2002, Earl Jerome Malry ("Complainant") filed his verified complaint against Peoples Gas Light & Coke Company ("Respondent" "Company" or "PGL") in which he claims 1) he received no bill for 8 months, the Company erred in identifying the correct meter and in subsequent billing, 2) the Company has failed to respond to his request to resolve the problems, 3) that he send a payment in to the Company for \$5000.00 and it was applied to the wrong account and 4) the Company threatened to shut off gas service to his building at 7455 S. Merrill, Chicago, Illinois.

Pursuant to notice as required by law and the Commission's rules, a hearing was held before a duly authorized Administrative Law Judge on January 28, 2003, at the office of the Commission in Chicago, Illinois. Complainant appeared by his counsel and offered his own testimony. Respondent appeared by counsel and presented the testimony of Mr. Robert Coyle and Mr. Jeffrey Schaffer, who are PGL employees, in support of its position. At the close of the hearing, the record was marked "Heard and Taken."

The Complainant testified that on May 8, 2000, he purchased a building containing thirty-nine apartment units and seven commercial spaces. The apartment building is located at 7445 S. Merrill Drive, Chicago and the commercial spaces are addressed 2136 through 2148 W. 75th Drive. Mr. Malry refers to the building as the "700 building". He recalled that he contacted Respondent on or about May 8, 2000 to have the gas service turned on in his name and he was given an account number at that time. He indicated that the last four numbers of the account was "7022". Upon refreshing his memory the Complainant stated his account number is 4500022187220. Mr. Malry testified that he did not receive a bill for this address until after he contacted the Illinois Commerce Commission. He stated that he sent a letter to the Illinois Commerce Commission on May 1, 2001. He received a response from Jeff Schaffer of Peoples' Energy dated May 18, 2001 indicating that no one was present to meet the

Peoples' employee. Therefore, the meter could not be read and transferred into his name.

Mr. Malry stated that he made several attempts to get the account properly put into his name for the 700 building. He did receive some smaller bills for a service address of 2136 East 75th Street showing the account number of 4500022187220. The complainant paid those bills. He then received a bill showing an account number of 450002157073 for service at 7449 South Merrill Avenue in the amount of \$815.99. The Complainant also paid this bill. Mr. Malry testified that he received a bill dated December 22, 2001 with the account number 450002157073 and the address of 7749 South Merrill Ave. in the amount of \$64,637.43. Prior to this bill, he had never received a bill greater than \$900.00. With the account ending with 7073, he had not previously received a bill over \$100.00.

Complainant next testified that on November 13, 2001 he received a fax from J. Barna of Peoples Energy. He stated that Mr. Barna was "sorry for the delay in this information to you. If you have any questions, feel free to contact me at the number above"... In the last paragraph of the letter it said "We will be more than happy to establish a monthly payment plan for up to 17 months in which to pay off this balance without any late fees being added to the account." Mr. Malry testified that on the 10/21/01 bill he received contained a late charge of \$931.27 and that a late charge was added on just about every subsequent bill he received. Then, on his December 17, 2002 bill, he also was requested to pay a deposit installment of \$2182.00.

Complainant testified that on December 10, 2001 he received a letter from Jeffery Schaffer of Peoples Energy's special services. In the letter the current balance is \$61,685.39. This letter referenced 7449 S. Merrill Ave. building and account number 450002157073. The Complainant indicated that at that point he was concerned that he was billed for not only multiple addresses, but also incorrect addresses since everything referenced 7449 S. Merrill. He stated he even went and checked the deed for his property to verify the address. He thought that maybe the people who came out and read the meter went to 7449 instead of his address. The company has refused to correct the address. The Complainant testified that he attempted to contact Mr. Schaffer several times by telephone and his calls were not returned.

In a last ditch effort to resolve this problem he sent a certified letter to Terry Hall, the CEO of Peoples' Energy. Mr. Malry testified that, in the letter, he asked Mr. Hall to clear up the problem with the wrong address, three accounts and he sent \$5000.00 towards his account. The Complainant stated that this still did not resolve the problem.

The Complainant also testified that Peoples Gas had set up appointments to read the meter and install a remote meter, neither of which was done by the Respondent. On October 2, 2001 an appointment was set up to read the meter. His property manager Brett Hardt waited until 12:00 p.m. and no showed up. Brett Hardt is the only one with keys to get into the boiler room. Finally, Randy from Peoples' called

and set up an appointment to install a remote meter on October 10, 2002. Someone from Peoples called his office and canceled the appointment.

On cross-examination, the Complainant testified that from September of 2000 until the hearing Mr. Brett Hardt was the only one who had access to the room where the meter was located. Mr. Hardt managed all of the Complainant's buildings, so he was not at this building very often. If Mr. Hardt was not at the building, there would be no one to let the Peoples' employee in to read the meter.

Mr. Robert Coyle of Peoples' Gas testified on behalf of the Respondent. Mr. Coyle works as a field supervisor and a No. 8 man. He has worked at Peoples' for 28 years. The witness also does high bill investigations for the company. Based on a complaint filed by Mr. Malry, Mr. Coyle investigated the service provided to the building at 7449 S. Merrill. On April 25, 2002, he and a serviceman met with the complainant and his associate at the 7449 S. Merrill building. There was one meter that supplied the gas for the hot water and heat for the whole building. It was a large boiler furnace CHP (central heating plant), a 1,850,000 BTU hot water boiler and a 250,000 BTU water heater. The furnace was in fair condition and the water heater was fairly new. The water heater needed to be capped, but everything else seemed to be in working order. Mr. Coyle testified that the boiler would burn 1800 cubic feet of gas per hour and the hot water heater will burn 250 cubic feet of gas an hour, just to heat the water. The witness had testified that this boiler and hot water heater serviced 39 apartments, plus stores, for a total of 42 units. However, by stipulation of the parties, it was agreed that this boiler and hot water heater supply only the 39 apartment units.

The Respondent next called Jeffrey Schaffer to testify on its behalf. Mr. Schaffer is a special services supervisor for Peoples' Gas. He has worked for the company for 22 years. His job duties include high bill complaints, informal ICC complaints, Citizen Utilities Board inquiries, Presidential inquiries, Better Business Bureau inquiries and keeper of the records for Peoples Energy. Pursuant to his duties, Mr. Schaffer investigated the complaint of Mr. Malry.

Mr. Schaffer testified that he did an investigation into the account for 7449 South Merrill and for 2136 East 75th Street. Both of these accounts are in the Complainant's name. The 2136 East 75th Street address is the commercial space for the building. The subject of this complaint is only for the 7449 South Merrill account. According to this witness, the Complainant applied for service with Peoples Gas on or about May 17, 2000. When the representative went out to the premises, no one was there to let them in to read the meter. A year went by and a letter was sent by the Complainant in early May of 2001. It was at this time that service was switched into Mr. Malry's name. The first bill sent to Mr. Malry was for the time period of May 17, 2000 to August 18, 2000 in the amount of \$2175.19. The meter was read on August 18, 2000. A subsequent reading took place in July of 2001. At that time, the reading showed a 51,533 meter difference. Mr. Malry was sent a bill for \$49,293.50 for 333 days of service. Through the Commission, Mr. Malry asked for a monthly billing to show where the charges were coming from. After that the rebilling actually decreased the billing by \$4831.77. This

included wiping out late charges. The account was then billed monthly for the time period of November 16, 2001 to April 16, 2002. A reading that took place on April 25, 2002, showed that two estimates were too high. So those bills were canceled out and the balance was reduced by \$7169.01. The balance at that time was \$68,838.43. The next actual reading took place on January 9, 2003. The previous estimates were low and the customer was billed an additional \$6512.14. Because the payments were received late on this account, a deposit of \$6,614.00 was added to the account. At the time of the hearing there was a balance of \$75,664.40 due on account number 4500021577073 for meter number P1683266.

Mr. Schaffer also testified that the bills were being sent to the property address and that it was not until December of 2001 that a request was sent to the Company to have the bill sent to Mr. Malry's office. Mr. Schaffer also did a degree day analysis of this account at the Complainant's request. He was able to confirm the billing at this address was accurate.

The witness next testified about records from the meter department indicating the buildings along the route that the reader could not access the meter. It did not just list the 7449 S. Merrill address on the document. It listed all of the building along this meter reader's route. This is a record kept in the regular course of business by Peoples Gas. In reviewing this record, it shows that the meter reader tried to read the meter at 7449 S. Merrill every other month without success. The entries show no one H-O-M, which according to the witness, means no one was there to allow access to the meter.

Finally, the witness testified about the billing history on this account. Mr. Schaffer testified that sometimes the Complainant under paid the current charges and sometimes he overpaid the current charges. According to the witness, Mr. Malry was billed for the gas usage for the 39 unit apartment building and it does not make a difference what the address is on the bill. There is no doubt in Mr. Schaffer's mind that the bill was for usage shown by the meter that was viewed by Mr. Coyle.

During the hearing, Complainant objected to Respondent's Exhibit No. 3 and 8. The Respondent presented both of the exhibits at the time of the hearing. Exhibit No. 3 was an account transcript of the subject property for the time period in question. Exhibit No. 8 was a meter reading report that was kept by the meter reading department at Peoples Gas. The Complainant was given seven days to file an objection and the Respondent was given seven days to respond.

Commission Analysis and Conclusions

The Complainant's alleges improper billing and other improper actions by the Respondent and that he should not be responsible for all of the charges and late charges billed to this account. The Complainant testified that he did everything he could to get the billing straightened out. Mr. Malry admitted that it was difficult to get access to the meter for this building. The front door and the boiler room were both kept locked. The only one who had access to the boiler room was the building manager, who did not

live at the property. He testified that the Respondent did not read the meter for this property. The Complainant's allegations are not supported by the evidence in this matter. According to the records, the meter was read on August 18, 2000, July 17, 2001, August 16, 2001 and December 2, 2001. It was also read by Mr. Coyle on April 25, 2002.

Mr. Robert Coyle testified on behalf of the Respondent. He stated that he was present at the building to meet with the Complainant and his representative. This took place on April 25, 2002. The large boiler furnace and hot water heater furnish heat and hot water for the 39 apartment units. The boiler furnace would burn 1088 cubic feet of gas an hour and the hot water heater will burn 250 cubic feet of gas an hour. This testimony was not refuted by the Complainant.

Mr. Bill Schaffer also testified on behalf of the Respondent. He testified that the service was not put into Mr. Malry's name until May of 2001. The meter was read on August 18, 2000. A bill was sent out for the period of May 17, 2000 to August 18, 2000. The meter was also read in July of 2001. At that time, Mr. Malry was billed for 333 days of service. Through the Commission, at Mr. Malry's request the billing for this property was recalculated. Adjustments and corrections were made on the bills sent to the Complainant.

Furthermore, according to the degree day analysis performed by the Respondent, the Complainant's gas usage was not substantially different from the previous billing received for the 7449 S. Merrill building. Thus, this establishes that the gas usage for the building was consistent with the billing received by the Complainant.

The record shows that the Respondent did work with the Complainant to straighten out the problems with this account. The building was supplied with gas service for 333 days without any payments for the usage. The large bill for this time period should not have been a surprise for him. The Company showed that it worked with the Complainant to verify that the bills were accurate. He did send in payments, but admitted that he did not always pay the "net charges". The Company required the deposit because of the irregular payments by Mr. Malry. The Complainant also did not accept the offer from the Respondent to make payments without interest and penalties for the 17 month period.

The Respondent's Exhibit No. 3 is an account transcript of the account for his property. Nothing contained in this document was not previously received and reviewed by the Complainant. Respondent's Exhibit No. 8 was a meter reader's report that was kept in the regular course of business. The Respondent laid a proper foundation for a record kept in the regular course of business. Therefore, the objection of the Complainant is denied and both of these documents are admitted into the record.

Based on the foregoing, the complaint is 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, Peoples Gas Light & Coke 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 reading Complainant's meter, and billing Complainant for the service, at the 7449 S. Merrill building were proper;
- (4) the evidence presented at the hearing support a finding that the meter at the 7449 S. Merrill building was operating properly and accurately recording Complainant's usage in accordance with Commission guidelines;
- (5) the amount in dispute is properly due and owing to Respondent from Complainant;
- (6) Respondent's Exhibits No. 3 and No. 8 are admitted into the record;
- (7) Complainant owes the Respondent \$75,664.40 as of January 14, 2003 based on the evidence for account number 4500021572073 and meter number P1683266;
- (8) this complaint may be properly denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Jerome Malry on April 19, 2002, against Peoples Gas Light & Coke Company be, and the same is, hereby denied.

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:	January 20, 2006
BRIEF ON EXCEPTIONS DUE:	February 3, 2006
REPLY BRIEF ON EXCEPTIONS DUE:	February 10, 2006

Administrative Law Judge
Glennon Dolan