

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

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CHIEF CLERK'S OFFICE

Earline Ruffin :
-vs- : 04-0535
The Peoples Gas Light :
and Coke Company :
:
Complaint as to denied service :
based on a previous tenant's :
bill in Chicago, Illinois. :

RESPONDENT'S MOTION TO DISMISS
OR, IN THE ALTERNATIVE
MOTION TO REOPEN THE RECORD

Now come the Respondent, The Peoples Gas Light and Coke Company, by and through its attorney, Mark L. Goldstein, and moves the Illinois Commerce Commission ("Commission") to dismiss this matter pursuant to Section 10-108 of the Public Utilities Act ("Act") (220 ILCS 5/10-108), or, in the alternative, Motion to Reopen the Record pursuant to 83 Ill. Adm. Code Sections 200.190 and 200.870, respectively, as follows:

1. On August 23, 2004, the Complainant, Earline Ruffin filed the instant complaint against the Respondent.
2. On October 15, 2004, an evidentiary hearing was held and both Complainant and Respondent were represented by counsel and presented witnesses, and those witnesses were cross-examined. At the conclusion of the hearing, the record was marked "Heard and Taken."
3. On May 25, 2005, the Administrative Law Judge issued an Administrative Law Judge's Proposed Order ("ALJPO") finding in favor of the Complainant.

4. On June 10, 2005, the Respondent filed its Brief on Exceptions, and, on the same date, filed a Motion to Reopen the Record and Motion for Additional Hearing, a copy of said Motion to Reopen is attached hereto and made a part hereof as Appendix A.

5. On June 21, 2005, Complainant filed a Reply to Respondent's Brief on Exceptions and Respondent's Motion to Reopen the Record in which the Complainant requested that the Respondent's Motion to Reopen the Record be denied.

6. Pursuant to Section 10-108 of the Act, on August 23, 2005, the one year deadline for the Commission to issue a final Order expired. At that time, no party had requested and there was no agreement of the parties to extend the one year deadline beyond August 23, 2005.

7. On January 17, 2006, the ALJ issued an Administrative Law Judge's Revised Proposed Order ("Revised ALJPO") which, essentially for the same reasons, again found in favor of the Complainant. The Revised ALJPO correctly found that the complaint was brought pursuant to Section 10-108 of the Act. With respect to Respondent's Motion to Reopen, the Revised ALJPO stated: "A ruling on the Motion to Reopen is held in abeyance pending the Exceptions and Replies to Exceptions. (See: Page 1 of Revised ALJPO)

8. Section 10-108 of the Act reads, in relevant part, as follows:

Whenever there shall be a filed complaint under Article IX of this Act regarding the rates, charges, classifications or services of a public utility, the Commission shall make and render findings concerning the subject matter and facts complained of and enter its order based thereon not later than one year after the filing of such complaint unless all parties to the complaint proceeding under Article IX agree to a period of greater than one year provided that any agreement to extend the one year period must be for a specified period of time not exceeding 60 days. The parties may enter into more than one agreement to extend time. (Emphasis supplied)

9. In the next succeeding paragraph, Section 10-108 allows the filing of complaint in the circuit court for an emergency order of mandamus to compel the Commission to enter an order within 60 days of the expiration of the one year period or within 60 days of the expiration of the agreed extension period. No such complaint has been filed in the circuit court.

10. The language of Section 10-108 is mandatory and this matter should be dismissed.

11. In the alternative, Respondent renews its Motion to Reopen Record as set forth originally on June 10, 2005, attached hereto and made a part hereof as Appendix A. However, the renewal of the Motion is not and should not be construed as a waiver of Respondent's right to a dismissal order in this matter, or construed as a request to extend the time in which the Commission may issue an order herein.

WHEREFORE, Respondent, The Peoples Gas Light and Coke Company respectfully requests, as follows:

- 1) this complaint be dismissed, or in the alternative,
- 2) the record be reopened for an additional hearing as set forth on the Motion to Reopen the Record, attached as Appendix A.

Respectfully submitted,
The Peoples Gas Light and Coke Company

By: 
Mark L. Goldstein, Its Attorney

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Deerfield, IL 60015
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STATE OF ILLINOIS

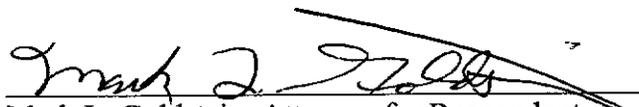
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NOTICE OF FILING

TO: Parties on Certificate of Service

PLEASE TAKE NOTICE that on January 27, 2006, I filed with the Chief Clerk of the Illinois Commerce Commission the Respondent's Brief on Exceptions to Administrative Law Judge's Revised Proposed Order and Respondent's Motion to Dismiss or, in the Alternative, Motion to Reopen the Record, attached hereto, copies of which are hereby served upon you.


Mark L. Goldstein, Attorney for Respondent
108 Wilmot Road, Suite 330
Deerfield, IL 60015
(847) 580-5480

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2006, I served a copy of the attached Respondent's Brief on Exceptions to Administrative Law Judge's Revised Proposed Order and Respondent's Motion to Dismiss or, in the Alternative, Motion to Reopen the Record, by causing a copies thereof to be placed in the U.S. Mail, first class postage affixed, addressed to each of the parties indicated below:

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

Mr. Walter Soroka
Attorney for Complainant
39 S. LaSalle St., Suite 1015
Chicago, IL 60603

Mr. John T. Riley
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601


Mark L. Goldstein