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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS

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COMMERCE COMMISSION

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CHIEF CLERK'S OFFICE

Jerome Malry

-vs-

Peoples Gas Light and Coke Company

02-0273

Complaint as to lack of services at
7455 South Merrill and request for
Audit and investigation in Chicago, Illinois

COMPLAINANT'S BRIEF ON EXCEPTIONS

Pg 3, Paragraph 1, 2nd and 3rd sentences.

'Mr. Hardt (Hart) managed all of the Complainant's buildings, so he was not at this building very often. If Mr. Hart was not at the building, there would be no one to let the Peoples' employee in to read the meter.'

1. These two sentences are neither a statement of fact nor reflected in the record and should be deleted. There is neither written nor spoken testimony entered in the record which indicates Mr. Hart being unavailable when he was needed at any of the Complainant's properties.

Pg 2, Paragraph 3, 3rd sentence.

'Based on a complaint (complaint) filed by Mr. Malry, Mr. Coyle investigated the service provided to the building at 7449 S. Merrill building.'

2. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill.

Pg 3, Paragraph 2, 4th sentence.

'On April 25, 2002, he and a serviceman met with the complainant and his associate at the 7449 S. Merrill building.'

3. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this

complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill.

4. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill.

Pg 3, Paragraph 4, 1st and 2nd sentence.

'Mr. Shaffer 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.'

5. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill.
6. Furthermore the Respondent's own testimony confirms that Mr. Malry only applied for one service 'to succeed the services into his name for the building service.' No where else in any document does the evidence indicate that Mr. Malry applied for any other service. Refer to **Exhibit A**, Page 156 of hearing, lines 3 –14,. Also refer to **Exhibit B**, Page 210, lines 3 – 6. Mr. Mohd Alsaad of the Merrill Mini Mart was in business at his business address of 2136 East 75th Street the entire period in which PE was billing Mr. Malry for his account. He was not a 'previous customer' as Mr. Shaffer testified. Refer to **Exhibit C**, Page 201, lines 8 – 20. and **Exhibit 6** of hearing.

Pg 3, Paragraph 4, 3rd sentence.

'2136 East 75th Street address is the commercial space for the building.'

7. This is not a statement of fact. This sentence should be changed to read: 2136 East 75th Street address is one of the seven commercial addresses of the building. Refer to **Exhibit D** : lines 10 – 14, Page 30 of Transcription of the hearing.

Pg 3, Paragraph 4, 4th sentence.

'The subject of this complaint is only for the 7449 South Merrill Account.'

8. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill

Pg 3, Paragraph 4, 6th sentence.

'When the representative went out to the premises, no one was there to let them in to read the meter'

9. This sentence is not a statement of fact . According to the Respondent's own testimony and records, the representative went out to a non existent premise.

10. Refer to **Exhibit E**: (Respondent's Exhibit 8 which shows the actual PE routing schedule for May 19, 2001) The fifth entry shows one of the tenant of the subject property address as 7455 South Merrill yet 6th entry for the building meter (Bill Conforti prior owner of 7455 S. Merrill) shows the address of 7749;both the tenant meter and the house meter are located in the same building, with one entrance with the mailing address being 7455 S. Merrill.

11. Refer to Respondent's **Exhibit 8** of hearing which confirms a total of nine missed or 'no show' appointments by Mr. Malry for a period from May 1, 2001 through November 16, 2002 for the address of 7449 S. Merrill. In hearing it was established that 7449 is not the address of Mr. Malry's building on Merrill. The correct address as listed on this complaint is 7455 S. Merrill. It was further determined in hearing that the 7449 S. Merrill is a non existent address. Refer to **Exhibit F**, Page 66, lines 13-21. In testimony Mr. Malry stated that to date the Company has refused to correct the 7449 address to the accurate address as filed in this action, 7455. Refer to **Exhibit G**, Page 67, 14-15. This is confirmed by the fact that the all of the testimony and records for the Respondent reference the 7449 address.

12. Complainant testified that on October 2, 2001, his Property Manager waited until noon for a 10:00AM scheduled appointment with the Company to read the meter. He referred to a office task that indicated there was a no show by the Company . Refer to **Exhibit H**, Page 35, lines 11 – 15, and **Exhibit 42A** . Complainant then refers to office memo that indicates that a Mr. Barna had called and left a message that he was eager to resolve a bill. Mr. Malry testifies that he had not received a bill and the Barna replied that he would get something to him right away. Refer to **Exhibit I**. Page 36, lines 4 – 7 and **Exhibit 42b**. Referring to an office memo, next Mr. Malry testifies that he received a call from Ms. Pound at ICC on Thursday, November 29th, 2001 that the Company (PE)told her that the first billing was for a dryer and laundry facility on the property. Mr. Malry informed her that there was no machinery on the premises.(refer to **Exhibit J**, Page 36, lines 19-22, Page 37, lines 1-4. and **Exhibit 43**

Page 4, Paragraph 1, 6th sentence

'Because the payments were received late on this account, a deposit of \$6,614 was added to the account.'

13. Refer to **Exhibit K** which includes exhibits 4 – 14 of the hearing, monthly Company statements indicating timely payments. Beginning with the first billing received for this property (exhibit 4 of hearing) payments were made in a timely manner. Although these PE billings were for the wrong meter assigned to Mr. Malry's account, he paid as requested for the months requested: June, July, August, Sept., Oct, and November 2001. In December 2001, however, PE mailed a statement for the correct meter with the wrong service address of 7449 to Complainants office for the period as stated on the PE bill: 7-17-01 to 08-16-01. This bill too was paid in full when it was received; the amount of this bill of \$815.99 was paid by the Complainant (refer to **Hearing Exhibit 13**. Unlike all of the other bills mailed him, this bill was manually generated and in a different format. This is verified by the fact that as indicated in exhibits 4 – 12 of the hearing, above the CUSTOMER AND SUMMARY of USAGE line is a format for the Bill Date, Account Number, Payment Due Date and Amount Due. For this July bill only, there is no such format. (refer to exhibit 13). This entire section is missing from this billing because PE informed the Complainant that it was manually generated and subsequently mailed to the Complainant's office. Records will reflect that this is the first bill with the account of 4 5000 2157 7073 that the Complainant received. The following month, January 2002, the standard format appeared on the billing.

The Respondent's testimony is that Mr. Malry underpaid this July bill paid in December 2001, and subsequently was the basis for a deposit request. Refer to **Exhibit L**, Page 235, lines 12 – 22, Page 236, lines 1 – 18. The fact is Mr. Malry did not receive this July bill until December at which time he paid it in full immediately. Also, Respondent testimony is that the building house meter bills were being mailed to the non existent address of 7449 South Merrill until December at which point Mr. Malry received this first bill he ever received for the house meter. Refer to **Exhibit M**

The letter to Mr. Hall referenced in the Proposed Order Pg. 2, penultimate paragraph, refer to **Exhibit N**, indicates that the \$5000 check was misapplied to the wrong account, refer to Exhibit E, (originally Exhibit 36 of Hearing). However, the Respondent's testimony is that no payment was received for the Feb. 18, 2002 billing due Refer to **Exhibit O**, Page 237, lines 6 – 14 where in actuality it was received by the President of Peoples Energy as indicated in the February 15, 2002 letter to the President.

This statement is not substantiated by fact and should read as follows: ' A deposit of \$6, 614 was added to the account. Records reflect that there is no justification offered the Complainant for this requirement.

Page 4, Last paragraph,

'Mr. Malry admitted that it was difficult to get access to the meter for this building'

14. This statement is not factual. Nowhere in the transcript does Mr. Malry make this admission. This sentence should be removed.

Page 5, first 2 lines:

'He testified that the Respondent did not read the meter for this property.

15. This is not a statement of fact. Complainant did not categorically state that the Respondent did not read the meter for the property. Complainant stated that appointments were frequently missed and the records of the Respondent contained the wrong address which both exacerbated the problem and cast doubt on the truth and accuracy of all of the Respondent's records, including the records of when the meter was actually read.

Page 5, Paragraph 1, lines 2 – 5:

'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.

16. According to the records should be changed to: according to the **Respondent's** records, which indicate a non existent address of 7749 S. Merrill. Refer to Respondents **Exhibit 8**. The meter reading of August 18, 2000 did not result in subsequent billing to the Complainant and should so noted. The July 17, 2001 meter reading did not result in subsequent billing to the Complainant and should be so noted. The August 16, 2001 meter reading did not result in subsequent billing to the Complainant and should be so noted. The December 2, 2001 meter reading did not result in subsequent billing to the Complainant and should be so noted.

Page 5, Paragraph, Paragraph 4,

'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.'

17. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this

complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill. This sentence should be deleted.

18. 'previous billing' does not specify period or date. Furthermore, conflicting testimony offered by the Respondent first reports that the building meter includes the commercial spaces (75th St) Refer to **Exhibit P**, lines 20 -22; Page 106 and line 1, Page 107. Later this testimony is reversed and reported that the meter did not include the commercial spaces. Refer to **Exhibit Q**, Lines 20-22, Page 122; and line 1, Page 123, (Exhibit 1 at hearing). Accordingly, it is not clear whether the prior billing was accurate..

Page 5, Paragraph 5, 2nd sentence.

'The building was supplied with gas service for 333 days without any payments for the usage.'

19. Records will reflect that after the Complainant made many exhaustive calls to PE in an effort to receive a bill to make payment, it was only after the Complainant complained to ICC that the first bill was sent, and it was subsequently paid immediately. However, it needs to be clarified that these bills were incorrect, recited the wrong meters, accounts and addresses and were paid. The Complainant testify^{ed} that he notified PE of the fact that he was receiving bills with two different account and thereafter received a BILL with the address of 7449 S. Merrill with a different account number. Complainant further testified at the hearing Refer to **Exhibit R**, hearing, page 44, lines 1-8 that Mr. Barna frantically called on or about November of 2001 and said that PE made a mistake with the billing The first bill for the amount of \$815.99 received by Complainant in December of 2001 which was the total amount due and was paid immediately. This statement does not reflect the circumstance of why payments were not made and as such is slanderous in nature and should be stricken from the records. Refer to **Exhibit S**, Page 28, lines 20-22, **Exhibit T**, Page 39, lines 9 - 11,

Page 5, Paragraph 5, 3rd and 4th sentences:

'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.'

20. Respondent's own testimony verifies differing amounts for the same established period of gas usage. Testimony of the Complainant indicates that his concern was for the accuracy of the bill. This statement does not accurately characterize the Complainant's response and as such should be stricken from the record. Refer to **Exhibit U**, Page 145, lines 9 – 12 and **Exhibit V**, Page 147, lines 5 – 7 Because the Respondent failed to read the meter insuring the most accurate

21. billing, and secondly, having read the ^{PE}wrong meter at 2136 East 75th Street after having been contacted by the ICC, ~~the~~ did not work with the Complainant. Testimony collaborated by both the Complainant and Respondent that Complainant applied for and was given only one account with the Respondent for subject property at 7455 South Merrill. Records will reflect that in actuality the only account Mr. Malry opened was incorrectly attached to one of the current commercial accounts of 75th Street, Mr. Mohd Alsad (Exhibit C, hearing exhibit 5) Refer to **EXHIBIT W**, Page 27, lines 12 – 19 and **EXHIBIT X**, Page 128, lines 14 – 18.

Page 5, Paragraph 5, 6th and 7th sentences:

The Company required the deposit because of the irregular payments by Mr. Malry. This is a misstatement of fact. Records reflect that Mr. Malry made timely payment and

Respondent misapplied one payment (see #7) This sentence should be stricken from the record.

Page 5, Paragraph 6, 1st and 2nd Sentence.

'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.

22. Respondent's Exhibit No. 3 was not previously received and reviewed by the Complainant. Furthermore, the Hearing Officer stated that the Respondent has an ongoing duty to supplement discovery. This was not done. Refer to **Exhibit Y**, Page 132, lines 18 – 22, Page 133, all. As such, this sentence should more accurately read: 'Nothing contained in this document was previously received and reviewed by the Complainant.' Respondent offers Exhibit 3 as evidence when in actuality this is a compilation of data which is not done in the ordinary course of business. It is an attempt to circumvent the evidence which the Complainant presented and further it does not reflect all of the account numbers, meter numbers and addresses that the Complainant has been complaining of for the duration of his attempt to receive proper service billing for this one account.

The Respondent states "because the Commission years ago requested us to do this very thing. That they felt our records—it would be easier for the Commission to make determinations on cases by looking at a running transcript or a running account and so Peoples Gas is just complying with that." (page 133 of hearing, line 6-13) . This is obviously an advantage that the Commission has allowed PE to have. When has it been only the administrator of justice to have convenience when it impairs the perceived impartiality of the Commission; as such this is a travesty. Mr. Schaffer's testimony itself leads doubt to the accuracy as well as the veracity of this document.

The top of the document makes a slanderous statement, without proof it reads 'Mr. Malry originally requested service on May 17, 2000, but missed his turn on appointment. Consequently, the service remained on in the prior customer's name until May 17, 2001'.

However, no where in this document is the prior customer's billing statement for the period of May 17, 2000 to May 31, 2001. The question as the Complainant has begged for is, WHERE ARE THOSE BILLS, EVEN IF THEY ARE IN THE WRONG NAME?

Respondent's Exhibit 8, allegedly shows appointments that were missed by the Complainant, however, there is no date shown for the period of May 17, 2000 thru May 19, 2001.

Page 5, Paragraph 6. Last paragraph.

'Therefore, the objection of the Complainant is denied and both of these documents are admitted into the record.'

23. This sentence should be amended to read: 'Therefore, the objection of the Complainant is sustained for Exhibit No. 3 and is stricken from the record; the objection of the Complainant for Exhibit No. 8 is denied and is so admitted into the record.'

Page 6, (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.'

24. This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill. Respondent's records and testimony indicate that the billing was sent to this non existent address. Refer to **Exhibit Z**, Pg 154, line 5. (3) should properly be amended to read: (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 7455 S. Merrill building were improper

Page 6, (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'

This is not a statement of fact. This is not the address of the subject property. This address should be changed to the address as properly filed under this complaint, 7455 S. Merrill. There is no such address in Chicago as 7449 S. Merrill. The testimony by the witness for the Respondent (Schaffer) identified a document that was presented as a transcript of the account for 7449 S. Merrill from May 2000 up to current, January 14, 2003. Refer to **Exhibit AA**, Pg 131, lines 20-22, Pg 32, lines 1 – 2. The document to which the witness refers does not completely and accurately contain all of the transactions, accounts and addresses for Mr. Malry's building account. Therefore, based on the inaccurate and incomplete offer of evidence as reflected in the Respondent's **Exhibit 3**, no determination can be made. Heretofore, Complainant's exhibit shows that the Respondent's Transaction Account as referred to Exhibit 3 is not complete and should not be allowed. Therefore, the sentence should be amended to read: 'the evidence presented at the hearing do not support a finding that the meter at the 7455 S. Merrill building was operating properly or improperly in accurately recording the Complainant's usage in accordance with Commission.

Page 6 (5)

'the amount in dispute is properly due and owing to Respondent from Complainant;'

25. Besides the question of the accuracy of the usage amount, the amount prayed for does not credit the Complainant the security amount held by the Respondent. (Property no longer owned by the Complainant) nor credit the payments made for the building account that were applied to other accounts. Refer to **Exhibit K** (Includes exhibits 4 -12 from hearing) (5) should properly read: 'the amount in dispute is not properly due and owing to Respondent from Complainant.'

Page 6(6)

'Respondent's Exhibits No. 3 and No. 8 are admitted into the record;

26. Refer to 15/16. (6) should properly read: (6) Respondent's Exhibit No. 8 is admitted into the record.

Page 6(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;

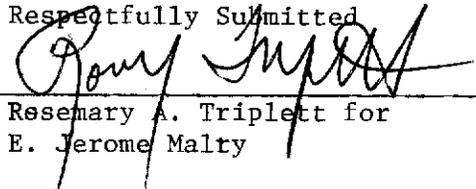
27. Refer to 20. (7) should properly read: Complainant does not owe \$75, 664.00. The record shows that amounts were paid that were not credited to Complainant;s building account. Complainant prays for attorney fees and costs.

Page 6

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 denied.

28. Due to all of the foregoing exceptions, should be changed to read: 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 granted as to the audit and investigation of People's Gas Light and Coke.

Respectfully Submitted



Rosemary A. Triplett for
E. Jerome Malry

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT FIRST DISTRICT**

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

NOTICE OF FILING

To:	Gerard T. Fox	Administrative Law Judge Glennon P. Dolan
	Greta G. Weathersby	Illinois Commerce Commission
	Attorneys for Respondent	160 North LaSalle Street, Ste. C-800
	The Peoples Gas Light and	Chicago, Illinois 60601 – 3104
	Coke Company	gdolan@icc.illinois.gov
	130 East Randolph Drive, 20 th Floor	
	Chicago, Illinois 60601	

PLEASE TAKE NOTICE that on this date Complainant in the above-captioned case filed by U.S. Mail Complainant's acceptations to ***Administrative Law Judge's Draft Proposed Order*** in the above-captioned case.

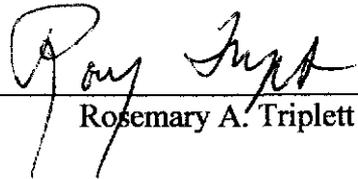
DATED: February 3, 2006

By: /s/ Rosemary A. Triplett
Rosemary A. Triplett
Attorney for Plaintiff

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CERTIFICATION OF SERVICE

I, Rosemary A. Triplett, an attorney, on oath state: I served this Notice of Filing and by mailing a copy to the person (s) whose name (s) appear (s) above at the address (es) appearing above and depositing same in the U.S. mail before the hour of 5:00 p.m. on February 3, 2006.



Rosemary A. Triplett