

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Jesse McNabb,	:	
	:	
v.	:	04-0544
	:	
Peoples Gas Light and Coke Company,	:	
	:	
Complaint as to inaccurate billing in Chicago, Illinois	:	

ADMINISTRATIVE LAW JUDGE’S PROPOSED ORDER ON REHEARING

By the Commission:

On August 26, 2004, Jesse McNabb filed a Complaint with the Commission, in which, he alleged that Peoples Gas Light and Coke Company (“Peoples”) incorrectly charged him in the amount of \$6,000 for gas service to 11411 South May Street, in Chicago.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for trial before a duly authorized Administrative Law Judge (an “ALJ”) of the Commission at its offices in Chicago, Illinois, on November 23, 2004. Mr. McNabb testified on his behalf. Ms. Estrada, the Office Supervisor for the Gas Division Detection Area, and Mr. Krol, a field investigator with Peoples’ Revenue Protection Unit, testified on behalf of Peoples. At the conclusion of that hearing, the record was marked “Heard and Taken.” A Post-Exceptions Proposed Order issued on April 6, 2005, finding that Mr. McNabb did not establish that Peoples charged him incorrectly.

On May 5, 2005, Mr. McNabb filed a petition for rehearing, in which, he asserted that he had witnesses who were unavailable at the time of trial to testify. Those witnesses, according to Mr. McNabb, would establish that the subject premises was uninhabitable, vacant and that no gas was consumed during the time period in question at 1141 South May Street. Also, Mr. McNabb could produce electric bills establishing that not enough electricity was consumed at the premises to support gas appliances. (Petition for Rehearing at 3-5). This Commission granted Mr. McNabb rehearing, and on January 4, 2006, trial convened on rehearing. On rehearing, Mr. Willie Traylor and Mr. Ottaway Stewart testified on behalf of Mr. McNabb. Also, Mr. Krol was called as an adverse witness. At the conclusion of the January 4, 2006 hearing, the records was marked “Heard and Taken.”

The Evidence Presented at Trial

Mr. McNabb testified that he bought the house at 11411 South May Street in 1992 and then boarded it up. No one ever lived there. (Tr. 11/23/04 at 15-16). However, on

cross-examination, Mr. McNabb admitted that, from approximately November of 1999 through December of 2000, electricity was being used at the premises. (*Id.* at 17, Complainant's Ex. A). Mr. McNabb offered as exhibits some electric bills for the premises and a citation, dated March 18, 1997, from the City of Chicago, Department of Buildings, listing various building code violations for the premises. One violation listed notes that the building was vacant at that time. (Complainant's Ex. B, p. 1).

Mr. Krol testified that he has been an investigator for Peoples for seven years. In that capacity, he has investigated hundreds of cases involving the theft of gas. (*Id.* at 24-25). On March 10, 2004, Mr. Krol went out to 11411 South May Street. (*Id.* at 24). Mr. McNabb provided him with access to the premises because a prospective tenant had phoned Peoples requesting gas service to the premises. (*Id.* at 20-21).

Mr. Krol examined the gas meter and the pipes going in and out of the meter. (Tr. 11/23/04 at 34-35). On the day Mr. Krol made his inspection, he noticed that the basement back wall and the gas pipes were painted a deep red color. (*Id.* at 33). However, the area above the inlet collar on a gas pipe was not painted. (*Id.*). This fact drew his attention to the inlet nipple, so, Mr. Krol took pictures of the meter and gas pipes at 11411 South May Street. These pictures, as well as the Gas Diversion Field Report Mr. Krol prepared, were entered into evidence. (Respondent's Exs. 2a-2c, 3). When Mr. Krol questioned Mr. McNabb about the meter, Mr. McNabb said that "downtown has all of that information." (Tr. 11/23/04 at 28-29).

Mr. Krol also observed that a rubber gasket was set on the (pipe) threads of the inlet nipple. (*Id.* at 37). He testified that the whole purpose of a rubber gasket is so that the gasket will adhere to the smoothness of the pipe and form a seal. Mr. Krol opined that no gas company serviceman would set a rubber gasket on the threads of the inlet nipple; to do so causes gas leaks. (*Id.* 37). Mr. Krol removed the meter from the premises. (*Id.* at 39).

Mr. Krol explained that once a meter has been taken down, it does not line up exactly the way it was originally set on the pipes. (Tr. 11/23/04 at 35). As a result, a series of dot-like markings, or a "compression ring" appears on the inlet nipple. (*Id.* at 34). Also, the pipes had been painted. When the meter was replaced, it did not match up to the paint line. In his opinion, the meter had previously been taken down by someone other than a Peoples Service Department Employee. (*Id.* at 36, 37).

Ms. Estrada testified that, in his capacity as the Office Supervisor for Peoples Gas Division Detection Unit, he has reviewed hundreds of rebillings. (*Id.* at 47). Ms. Estrada reviewed the rebilling for 11411 South May Street. The rebilling was for the period of time from June 2, 1993, through July 8, 2002, which is the period of time from when Mr. McNabb purchased the premises until the time when gas to the premises was cut off at the main, out in the street. (*Id.* at 27, 47-48).

Ms. Estrada stated that the bill issued to Mr. McNabb was based on degree-day analysis, which is, an average temperature for an average year, but based on a ten-year

average. (*Id.* at 49, Respondent's Exhibit 4). Peoples also looks at previous gas bills to the premises to determine how much gas is typically used at the premises. (*Id.*). Using these criteria, Ms. Estrada calculated how many cubic feet of gas should have been used during the time period in question. (*Id.* at 53). All of Ms. Estrada's calculations were made in a computer. Using the factors cited above, Ms. Estrada determined that the amount of money owed for the gas used during the time period in question was \$6,354.27. (Respondent's Ex. 9). The method Ms. Estrada used to estimate gas usage is the one Peoples personnel always uses to estimate gas usage. (Tr. 11/23/04 at 52).

The Evidence Presented on Rehearing

Mr. Willie Traylor testified that he lives three doors down from 11411 South May Street. (Tr. 1/4/06 at 39). He has lived there since before the time Mr. McNabb bought the property. (*Id.* at 44). From June of 1993 to July of 2002, he was in that house only once, in June of 1997. (*Id.* at 39-40). He has not been inside the premises any other time. (*Id.* at 27).

On the occasion in which Mr. Traylor entered the premises at 11411 South May Street, the door was open, so, he just let himself in. Mr. Traylor did not have permission to be on the premises. (*Id.* at 40). Mr. Traylor testified that the inside of the premises in June of 1997 was a "complete wreck." In his opinion, the house at 11411 South May was not livable. (*Id.* at 43). Mr. Traylor did not recall seeing a furnace or a stove or a hot water heater. There also was no gas meter. (*Id.* at 42). He also stated that, other than Mr. McNabb, he never saw anyone enter or leave the premises during the time period from June of 1993 to July of 2002. (*Id.* at 44-45).

Mr. Traylor also testified as to what his electrical bills were in 1999 and 2000. (*Id.* at 59-64). He did not state what electrical appliances he had in his house.

Mr. Ottaway Stewart is Mr. McNabb's friend. He visited the house at 11411 South May Street once in the winter of 2001-2002 and again three to four times in the summer of 2002. (*Id.* at 112-115; 117). With regard to the visit in the winter of 2001-2002, Mr. Stewart could not recall if there was a furnace or a hot water heater. (*Id.* at 117). At that time, no one was living there. (*Id.* at 122). Regarding the visits in the summer of 2002, Mr. Stewart could not recall if there was a furnace or a hot water heater, or a washer or dryer. He also did not recall whether the house had a stove. (*Id.* at 120-121). He did not know whether anyone was living at the premises in the summer of 2002. (*Id.* at 122).

Mr. Krol testified as an adverse witness. He stated that he had no personal knowledge as to whether a Peoples serviceman tampered with the gas meter at 11411 South May Street. (*Id.* at 91). However, a Peoples serviceman would never have put the meter back in the manner in which Mr. Krol found it at 11411 South May Street. (*Id.* at 92).

Analysis and Conclusions

It is not disputed that Mr. McNabb owned the premises during the entire time from June 2, 1993, through July 8, 2002. Mr. McNabb contends that no gas was used because the house in question was vacant. However, it does not follow that no gas was used during the time period in question just because it was vacant. In fact, the electric bills that Mr. McNabb presented establish that electricity was used at the premises. Mr. McNabb did not present evidence establishing that gas was not used at the premises during the time period in question.

Mr. Krol testified that someone had removed the gas meter. If a gas meter is removed, a person is able to obtain gas without having it register on the gas meter. (Tr. 32). In other words, if a gas meter is removed, a person is able to obtain gas without paying for it. There is no evidence establishing that Mr. Krol's determination that gas was stolen is incorrect.

Credible evidence established that Peoples estimated the amount of gas used at the premises based on previous gas use and degree-day analysis, which is an average temperature for an average year. There is no evidence establishing that the method he used was incorrect, or, that Ms. Estrada used incorrect information when calculating the amount of gas used at the premises at 11411 South May Street.

The evidence presented on rehearing establishes, at best, that between June of 1992 and July of 2002, no one lived at the premises. It does not establish that no gas was used at the premises. While it can be difficult to prove a negative, the fact is that Mr. Krol's testimony established that the meter at the premises was removed by someone other than a Peoples employee. And, Mr. Traylor, a neighbor, indicated that when he visited the premises, he did not see a gas meter. The fact that the property was not inhabited, however, does not mean that gas was not used there.

Mr. Traylor, a neighbor, did state that he did not see a furnace, or other gas-using appliances in the premises on the one occasion he visited the premises, in June of 1997. However, this evidence establishes, at best, only that on that one day, there was no furnace on the premises. And, it does not establish that there were no other gas appliances at the premises. It is noteworthy that Mr. Stewart, Mr. McNabb's friend, visited the premises a few times, but he could not remember whether there were any gas-using appliances on the premises.

In conclusion, Mr. McNabb did not present evidence establishing that the \$6,354.27 gas bill for 11411 South May Street is in error, or, that he is not the person responsible for this bill.

Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Peoples Gas Light and Coke Company is a "public utility" as is defined in the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and of the subject-matter;
- (3) the recitals of fact and conclusions of law in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) the Complaint filed by Jessie McNabb on August 4, 2004 should be dismissed, with prejudice.

IT IS THEREFORE ORDERED that the Complaint filed by Jesse McNabb on August 4, 2004, is dismissed, with prejudice.

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

Briefs on Exceptions due to be filed and served on March 3, 2006.
Reply Briefs on Exception, if any, due to be filed and served March 9, 2006.

Dated: February 22, 2006
Claudia E. Sainsot
Administrative Law Judge
Illinois Commerce Commission