

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Unicorn Oil Corporation,	:	
	:	
v.	:	05-0684
	:	
Peoples Gas Light and Coke Company,	:	
	:	
Complaint as to inaccurate billing in Chicago, Illinois	:	

ADMINISTRATIVE LAW JUDGE’S PROPOSED ORDER

By the Commission:

On May 20, 2003, Unicorn Oil Corporation (“Unicorn”) filed a complaint against Peoples Gas Light and Coke Company, (“PGL”) Docket 03-0339. The Commission dismissed that docket for want of prosecution on July 13, 2005. However, dismissal of that docket was without prejudice. (Docket 03-0339, Order of July 13, 2005). On October 21, 2005, Unicorn filed the instant Complaint, which is a refile of the 2003 Complaint. In the instant Complaint, it contested a gas bill in the amount of \$5,178.79.

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 June 20, 2006. At the conclusion of the trial, the record was marked “Heard and Taken.”

Helen Crawley is the President of Unicorn. Unicorn is an oil distribution company it occupies approximately 16,500 sq. feet of space. (Complaint, Attachments). She testified that in February of 2003, a PGL employee reconnected gas to Unicorn after it had been turned off. (Tr. 28-29). When the PGL employee turned Unicorn’s gas on, he cut into a pipe, causing gas to “flow down like water.” (Tr. 29). Later, Ms. Crawley smelled gas. She and her daughter found gas near the door to the front office. (Tr. 30). They then left the premises. (*Id.*).

According to Ms. Crawley, when she arrived at Unicorn the next morning, the place was full of gas. The first group of PGL employees who came out to correct the situation were the “ones who did it.” They opened up all the doors and then said that nothing was wrong. (Tr. 30-31).

After that crew left, Unicorn employees closed up the doors. However, gas filled up the place again. A Unicorn employee called PGL again and a manager at PGL, a young lady, came out to Unicorn. That manager stated that the previous PGL employee did not “cut the stuff on properly.” She called the crew back at 11:00 in the morning. The crew searched the premises. They could smell gas but they could not find it. (Tr. 31). Then,

they went back near a heater and the gas was just coming down from overhead. Gas was just flowing down on them. (Tr. 31-32).

She also testified that earlier that morning, one of the "top managers" had come out to turn the gas on and install a new meter. He had a problem turning the gas on. When he installed the new meter, he saw that "the hand (on the meter) was jumping." He told Ms. Crawley that she had a small leak. (Tr. 33). At Ms. Crawley's request, PGL employees tested the hot water tank and a furnace. They found gas leaks at both places. (Tr. 34). The leak to the hot water tank was around the valve to the hot water tank. (Tr. 34).

Later, Ms. Crawley testified that when a PGL employee came out on February 24, 2003, he was not able to turn the gas off. (Tr. 49). A "top manager" came out on February 25th and shut the gas off. (Tr. 50). In the process, that manager shut off a "quarter valve," which "messed up" Unicorn's gas heating system. (Tr. 50). Ms. Crawley opined that the PGL employee did not know how to light (the pilot light to) that system because that employee used a match. However, that system had an automatic lighter. (Tr. 50-51). According to Ms. Crawley, when the PGL employees turned one of Unicorn's furnaces on, that employee should not have touched any of the valves. All that person should have done was light the furnace. (Tr. 34).

Ms. Crawley stated that all of the gas leaks occurred on the "housepiping," not gas pipes leading into the gas meter. (Tr. 37). All of the leaks occurred on pipes that Unicorn owned or rented, not on PGL-owned pipes. (*Id.* at 42-3).

On February 24, 2003, a PGL employee issued a warning notice to Unicorn. That warning advised that he inspected the "housepiping" and Unicorn needed to have a contractor locate and repair all of the leaks in the housepiping. He also advised that gas was turned off at the outside valve and the appliances were left inoperative. Ms. Crawley signed that document, thereby acknowledging receipt, on February 24, 2003. (Joint Ex. A at 2.)

On February 25, 2003, PGL personnel issued a customer service repair bill to Unicorn. (Tr. 33). That warning advised that an electric gas valve would not open. (Tr. 52). It also advised that Unicorn had gas leaks in the gas cocks at the overhead heaters and at a union on the water heater. (Tr. 42; joint Ex. A, p.1).

On February 26, 2003, a PGL employee issued another warning notice and advised Unicorn therein that its "warm air furnace" and the electric gas valve would not open. It also advised that Unicorn should have a contractor correct this problem. The furnace was left inoperative, but, the gas was not shut off. (Joint Ex. A at p. 3).

Ms. Crawley hired a contractor to repair the gas leak. However, she did not have the contractors' bill at trial. (Tr. 52-3). When asked by counsel for PGL why she did not call a contractor after the PGL employee issued the warning notice, Ms. Crawley stated that at this point in time the gas was off. (Tr. 53, 55-6).

Ms. Crawley testified that when Unicorn moved in the building in September of 1999, PGL tested the whole gas system in the building and approved it. (Tr. 34-5). She said that no one has touched the gas system since then, except for when she had a new heating and air conditioning system installed. (Tr. 34-5).

PGL issued Unicorn a gas bill for the time period from February 24, 2003 through March 7, 2003. The total bill was for \$5,795.31. \$1,930.76 of that amount was a previous balance and \$2,864.55 was the current charge. (Respondent's Cross Ex. 1). Unicorn disputes the \$3,800 bill, and it disputes another \$2,000 in interest and late fees. (Tr. 28-9). Ms. Crawley is of the opinion that Unicorn should not be charged for the gas that was recorded at Unicorn's meter when there was a gas leak. (Tr. 47).

Brian Schmoltdt is a bill investigator at PGL. He has been a bill investigator at PGL for eight years. (Tr. 67). He testified that on March 14, 2003, PGL employees changed the meter at Unicorn Oil. At that time, the previous meter was read. (Tr. 74-5).

Analysis and Conclusions

The evidence presented by Unicorn did not establish that a PGL employee caused the leaks to Unicorn's furnaces and hot water heater. While Ms. Crawley testified, essentially, that a PGL employee caused gas leaks at Unicorn, she contradicted herself on several key issues, such as when a PGL employee turned the gas off and what a PGL employee did while turning the gas back on. She did not state what PGL employees were doing when tampering with the "housepiping," the portion of the pipes, for which, PGL is not responsible, when turning the gas back on. Nor is it obvious, since there normally would be no need to adjust the "housepiping" when turning gas on or off. There is also no evidence that turning the gas on improperly would cause an internal gas leak.

Moreover, when asked by counsel why she did not have a contractor come out and fix the leaks when a PGL employee issued a warning notice, initially, Ms. Crawley did not answer the question. (Tr. 53-55). When pressed, she stated that the gas was not on at that point in time. (Tr. 55). However, this contradicts her testimony that the gas was restored to Unicorn on February 25, 2003. (Tr. 62). It also contradicts Joint Ex. A, at p. 3, which indicates that on February 26, 2003, Unicorn's gas was restored. In short, Ms. Crawley was not a credible witness.

Additionally, except for testimony regarding a PGL employee's attempt to ignite a furnace pilot light, there is no credible evidence indicating that PGL employees even did work on the internal "housepiping." While Ms. Crawley stated, essentially, that a PGL employee cut into an internal pipe, she did not state that she saw this employee do the work, or, other facts establishing that she had personal knowledge as to what the PGL employee did. Ms. Crawley's testimony did not provide the factual foundation necessary for consideration of these factual conclusions. (See, e.g., *Fraley v. City of Elgin*, 251 Ill. App. 3d 72, 76-77, 621 N.E.2d 276 (2nd Dist. 1993)).

Unicorn also did not produce any record from the repairs resulting from the damage a PGL employee allegedly did to the internal pipes at Unicorn. Ms. Crawley admitted, however, that she had a contractor fix the leaks to Unicorn's gas pipes. (Tr. 52-3).

And, with regard to the attempted ignition of the furnace pilot light, while Ms. Crawley testified that lighting it with a match was improper because it had an automatic pilot light, there is no evidence that use of this incorrect procedure would cause a gas leak. Further, apparently, the automatic ignition was not functioning. (Joint Ex. A at p. 3).

Finally, Ms. Crawley's own testimony establishes that she herself let the gas leak out of Unicorn's internal pipes without taking the steps necessary to turn the gas off, or, have the pipes repaired. The "housepiping" is something for which the owner or lessor is responsible. (Tr. 42-43). Ms. Crawley testified that when the gas was first reconnected, she and her daughter smelled gas. However, she and her daughter just left the premises. (Tr. 30-31). After being advised on February 24, 2003, that Unicorn had leaks in its internal pipes, and it needed to have a contractor repair those leaks, Ms. Crawley did not retain a contractor for at least two days. (Joint Ex. A, at pp. 1-3).

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 Unicorn Oil Corporation on October 21, 2005, should be dismissed, with prejudice.

IT IS THEREFORE ORDERED that the Complaint filed by Unicorn Oil Company on October 21, 2005, 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.

Dated: August 21, 2006
Claudia E. Sainsot
Administrative Law Judge
Illinois Commerce Commission

Briefs on Exception to be filed and served on August 31, 2006.
Reply Briefs on Exception to be filed and served on September 6, 2006.