

Docket No: 05-0684
R.O.M.: 10/31/06
Deadline: 11/14/06

MEMORANDUM

TO: The Commission

FROM: Claudia E. Sainsot, Administrative Law Judge

DATE: October 27, 2006

SUBJECT: Unicorn Oil Corporation
-vs-
The Peoples Gas Light and Coke Company

Complaint as to billing/charges in Chicago, Illinois.

Application for Rehearing filed by Unicorn Oil Corporation

RECOMMENDATION: Deny Rehearing.

The Procedural History

On October 21, 2005, Unicorn Oil Corporation (“Unicorn”) filed the instant Complaint, contesting a gas bill in the amount of \$5,178.79 issued by The Peoples Gas Light and Coke Company (“Peoples”). An Administrative Law Judge’s Proposed Order was properly served on the parties on August 21, 2006. Neither party filed a brief on exceptions.

On September 27, 2006, this Commission issued a final order. Unicorn filed a Petition for Rehearing on October 25, 2006. In that Petition, Unicorn does not state why it raises issues for the first time in a Petition for Rehearing.

Waiver

Unicorn’s failure to file any Briefs on Exception constitutes waiver of its right to raise the issues now. (See, e.g., *People v. Carter*, 362 Ill. App. 3d 1180, 1188, 841 N.E.2d 1052 (4th Dist. 2005)). However, even if the issues raised were not waived, rehearing should be denied.

The Applicable Legal Standards for Granting Rehearing

This Commission’s Rules of Practice provide that after issuance of an order on the merits by the Commission, a party may file an application for rehearing. This Commission

must grant or deny such application, in whole or in part, within 20 days of the date, on which, it receives such a petition. (83 Ill. Adm. Code 200.880(d)). An application for rehearing “shall contain a brief statement of proposed additional evidence, if any, and an explanation why such evidence was not previously adduced.” (83 Ill. Adm. Code 200.880(a)). As shall be explained below, the Petition for Rehearing does not set forth any facts or law establishing entitlement to rehearing.

Background

Unicorn disputed a \$3,800 gas bill, which accrued approximately \$2,000 in late charges and interest, which it claimed was for gas it did not use. It contended, essentially, that gas poured through its pipes as a result of the negligence of a Peoples employee, and, therefore, it should not be required to pay for that gas. (See, e.g., Tr. 29).

At trial, Unicorn’s President, Ms. Crawley, testified that Unicorn’s gas was disconnected in February of 2003. When a Peoples employee reconnected the gas, gas leaked into the internal “house piping.” (Tr. 37). The leaks were at cocks at the overhead heaters and at a union on a water heater. (Tr. 42). Ms. Crawley also stated that there was a gas leak near a furnace. (Tr. 32). In February 24, 2003, a Peoples employee issued Unicorn a written warning advising of these leaks. (Tr. 43-44). When she discovered the gas leak, Ms. Crawley left the premises. (Tr. 30).

The Administrative Law Judge’s proposed Order and the Final Order concluded that Unicorn did not prove that a Peoples employee caused the gas leaks or caused Unicorn to incur unnecessary gas charges.

Uncapped Gas Pipes

Unicorn alleges that PGL employees negligently reconnected gas to an uncapped gas pipe when it reconnected gas to Unicorn after disconnection. Citing the transcripts at p. 27, Unicorn avers that when Ms. Crawley testified that Peoples employees “opened up a valve and gas just flew,” what she really meant was that upon reconnection, a Peoples employee negligently opened up a gas line to the warehouse, which was separate from the gas line to Unicorn’s offices, one that had previously been closed. (Petition for Rehearing at 1-2). However, at trial, Unicorn was represented by counsel. Ms. Crawley testified as to the events that occurred when Peoples’ employees reconnected the gas to Unicorn. She did not state any facts indicating that Unicorn’s warehouse’s gas line was separate from that to Unicorn’s office. (See, e.g., Tr. 29-30). She also never mentioned a cap on any gas pipe. Nor did she state any facts indicating that Peoples’ employees should have known not to turn any gas valve on.

Now, Unicorn contends that it should be allowed to present evidence, on rehearing, establishing that a Peoples employee improperly turned on the gas line to its warehouse. (See, affidavit attached to Petition for Rehearing). It does not explain why this evidence was not presented at trial. Indeed, the affiant, Ms. Crawley, testified at trial. Unicorn did not

establish that it has newly-discovered evidence or explain why Ms. Crawley did not testify as to these facts at trial. This argument is meritless.

The Burden of Proof

Citing no law, Unicorn contends that the final order erroneously placed the burden of proof on Unicorn to provide receipts and documents regarding the repairs to its furnace and water heater that Unicorn claims were necessary due to the negligence of the Peoples employees who turned the gas back on. Unicorn avers that the gas line with the leaks was not at the furnace, which served the office. Instead, it was at an uncapped pipe in the warehouse. (Petition for Rehearing at 2; affidavit at 2).

However, as the Petitioner, Unicorn had the burden to prove that the actions it complained of violated the Public Utilities Act. Moreover, the final order merely noted that Unicorn did not present evidence establishing that Peoples violated the Public Utilities Act. In that vein, it noted that Unicorn did not present the repair receipts. The final order did not place any special onus on Unicorn to produce documentation regarding the repairs to its furnace and water heater.

Moreover, Ms. Crawley testified that the leaks were at overhead heaters and at a union on a water heater. (Tr.42). She also stated that there was a gas leak near a furnace. (Tr. 32). Unicorn provides this Commission with no explanation as to why it should be allowed to present evidence, now, that appears to contradict the evidence it presented at trial. It also does not state any facts establishing that Ms. Crawley could not have testified to the facts in her affidavit at trial. This argument is also meritless.

It is clear that Unicorn is not entitled to rehearing. The Commission should deny its request.

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