

PEOPLES GAS LIGHT AND COKE COMPANY,

Case No 206-0339: 45
7/27/05 9:23 AM

Plaintiff,

CHIEF CLERK'S OFFICE

v.

AFD INDUSTRIES,

Defendant

Complainant's Brief on Exceptions

TO: Illinois Commerce Commission

AFD provided documents that provide a clear timeline of the earliest possible installation and start up of the "drying rooms" connected to the meter in question. It is fact that these "drying rooms" could not be operated with the "old" meter that was replaced on February 9, 2005. This was not disputed and is supported by the fact, the new, larger meter was requested. Further support shows that the third "drying room" was not put into production until 11/1/05. It is not possible for AFD to have used any significant amount of gas prior to 2/9/05.

Due to Peoples Gas not providing "actual" reading invoices, AFD had no knowledge that the volumes of gas which Peoples Gas later claimed, were consumed via this meter.

The usage calculations compared to usage provided by Peoples Gas would indicate a very unlikely (impossible) scenario. These calculations from Mr. Long indicate that more gas was used than the Drying rooms could consume at full capacity during certain periods. When these rooms are running, they heat the remaining portions of the warehouse space so much, that ventilation is required to cool the warehouse space. That fact brings the accuracy of these calculations into question. These calculations show higher usage than the theoretical maximum capacity of the "drying rooms" during some periods and much lower usage than theoretical maximum capacity during other periods. In fact, these "drying rooms" average about 30% to 35% of theoretical maximum capacity consumption. This was AFD's working knowledge based on historical consumption of other "drying rooms" else where at that time. This fact is supported by the other meter that AFD was using at that time. Peoples Gas was aware of this and Peoples Gas did not dispute this point or that these "drying rooms" do not operate at full theoretical capacity.

The "Fire Date" of the first drying room was indeed on 1/6/05, however, AFD provided work receipts that indicate the room would "Flame Out" and this was not corrected until 2/9/05.

Regarding the date of the tenant occupancy of the 180,000 sq.ft. adjacent to the AFD operations of that time, the note that Mr. Westveer's testimony was not consistent may have been due to confusion during the testimony that was not brought to his attention to correct. AFD was not aware that they need proof as to this tenant and is providing it with the attached document that indicates SOLO had a lease through November of 2005. They were, in fact there. Given that that space was occupied and the meter in question served that space, it is likely that gas was used before and after 2/9/05 by the heating system connected. Mr. Long's testimony supports that heating that space could consume the quantities of gas which passed through the meter. Even after Solo vacated this space, heat would have been implemented to keep the area above freezing to preserve the Fire Suppression system. Most warehouses are maintained around 50 degrees F. After November 30, 2005, gas was very likely used to heat this space. The ONLY source of this gas would have been from the meter that AFD believed serviced, only them.

During the testimony of Mr. Long(after AFD ceased operations), AFD learned for the first time that the piping inside of the facilities serviced the space previously occupied by Solo (180,000 sq.ft.). This piping system in the facility is extremely complicated and there are other meters serving the 250,000 sq.ft. facility. It is unlikely that anyone other than a gas or plumbing professional could have determined that the AFD meter serviced this large space of Solo (180,000 sq.ft.) It is also important to point out that Mr. Long reviewed the facilities at the request of AFD to help determine why such large volumes of gas were invoiced to AFD. This review/evaluation occurred while AFD was still operating on the Meter in dispute. Mr. Long testified that during this evaluation, he realized that the meter serviced heaters in the 180,000 sq.ft. space and did NOT notify AFD about it.

AFD understood the consumption of their operations and if provided "actual" meter readings, would have quickly realized that gas was: 1. not being metered correctly, 2. leaks after the meter, or 3. being consumed by another user on the piping system. It was only after a significant number of requests to Peoples Gas, that AFD started receiving invoices. It was even later that Peoples started to provide an occasional "actual" meter reading. This is all on the record.

AFD also understood that they may have been responsible for gas used on a meter that they had "in their name". It is NOT possible that AFD used that quantity of gas.

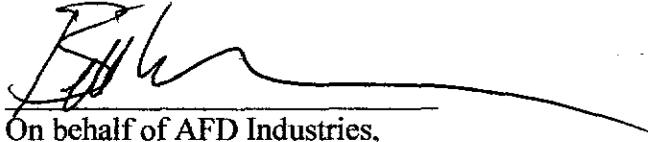
It is NOT possible that AFD had used that quantity of gas.

AFD had no possible way of determining if one or more users were "sharing" their meter, until, the requested meeting with Peoples Energy. Even after this meeting, Peoples Energy personnel did NOT share their knowledge that more space was connected to their meter. Only after AFD operations ceased did this information become apparent, therefore, AFD had no chance to correct the piping on their meter. It is clear that the additional space was indeed connected the meter in question and that there was gas usage in that space. It is also clear that Peoples Gas knew this situation existed and did not inform the AFD staff.

AFD was proactive to resolve billing issues with Peoples Gas, and made an attempt to resolve the issue with out expensive legal assistance. Peoples Gas made such significant errors with invoicing and resolution issues that they indeed were devastating to the AFD business operations.

AFD respectfully requests that the ICC supports the claim that Peoples Gas over invoiced the "AFD Consumption" by \$130,376.91 or more. AFD also defers any judgment that differs from this requested amount to be the responsibility of Solo and the landlord, Ashley Capital, LLC.

Dated this 22nd day of September, 2007.


On behalf of AFD Industries,
Bill Westveer

Certificate of Service

I certify that on September 22, 2007, I mailed the foregoing Complainant's Brief on Exceptions, by causing a copy of the same to be served by U.S. Mail, first class postage prepaid, on the parties indicated below:

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