

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Mount Pisgah Missionary Baptist Church :
-vs- :
Peoples Gas Light and Coke Company :
: **03-0124**
Complaint as to estimated back billing :
in Chicago, Illinois. :

ORDER

By the Commission:

On February 27, 2003, Mount Pisgah Missionary Baptist Church ("Complainant" or "Church") filed a verified complaint against Peoples Gas Light & Coke Company ("Respondent" "Company" or "PGL") disputing a bill in the amount of \$5,713.07 received on October 25, 2002. The Complainant alleged that the bill was an estimated back charge and asked the Commission to review the charges for accuracy. The bill was for previously unbilled gas usage for the period of October 25, 2001 to October 2, 2002.

The original complaint was filed pro-se by two of the deacons at the church. When it was determined that this matter could not be resolved, the Complainant requested the opportunity to retain an attorney. After various status hearings and discovery was completed, one of the deacons, who also was going to be a witness for the Complainant, suffered a stroke. Once it was determined that this witness was not going to recover enough to testify, the Complainant substituted another witness.

Pursuant to notice as required by law and the Commission's rules, a hearing was held before a duly authorized Administrative Law Judge on January 13, 2005, at the office of the Commission in Chicago, Illinois. Complainant appeared by counsel and offered the testimony of Lawrence Holt, a boiler technician, Helen Walker, the church secretary and Reverend Joseph Jackson. Respondent appeared by counsel and presented the testimony of Kevin Rice, a Field Supervisor for PGL, Donald Taylor, a supervisor of meter testing and repair for PGL and Brian Schmoltdt, a billing specialist for PGL, in support of its position. At the close of the hearing, the record was marked "Heard and Taken."

The first witness for the Complainant was Lawrence Holt, a boiler technician. Mr. Holt has been in the heating business for about 20 years. He has is familiar with the boilers and the boiler room at the church. Mr. Holt testified that when he was at the Church in October of 2003, he noticed a gas leak. When the boilers were running, a smell of gas was present. He investigated the source of the leak and determined it was

coming from the pump by the meter. The pump was installed by the gas company to pump gas out to run the boilers. Mr. Holt testified that the pump was replaced by the gas company and the leak stopped. When he first was out there servicing the boilers, the pump was red. Now the pump is larger and it is gray. He testified that the leak could have been going on for a while.

On cross-examination, Mr. Holt testified that he has been at the Church quite a few times. He put a new boiler in at one point. Other times he just did maintenance work, flushing the boilers down, cleaning them out and making sure everything was working properly. He did not do any work on the natural gas piping for the building. Mr. Holt did not visit the Church between October 2001 and October 2002. Mr. Holt testified that the pump was about 25 feet from the boiler and it was attached to the meter. When he attempted to clarify this, Mr. Holt testified that the meter was before the pump.

The next witness for the Complainant was Helen Walker, the secretary for the Church. Her duties include opening mail, filing, answering phones, paying bills and keeping records. She testified that as part of her duties, she paid the Peoples Gas bill and made phone calls concerning problems with the bills. Ms. Walker did call Peoples Gas about the October 25, 2002 bill. On November 7, 2002, she called concerning this bill. Her notes indicate that she spoke with a Ms. Davis and a Mr. K. Thomas, a supervisor concerning the disputed bill. The number of the Illinois Commerce Commission was also written on the bill "to request a hearing". She also stated that her notes from November 15, 2002, indicate that "Mr. Harvell is waiting to hear from the Peoples Gas to set up a hearing request".

This witness also testified as to the daily operations of the Church. The Church's regular hours were approximately 8:00 a.m. to 5 p.m. Monday through Saturday. Ms. Walker stated that the Church held services every Sunday, bible studies on Tuesday and Wednesday, as well as special services for holidays. At all other times, the Church was locked. The Church is an old brick building and because some of the congregation is elderly as well as children, the Church is kept at a comfortable level. There is a kitchen at the Church which has a stove. Ms. Walker knows that the gas meter is located in the basement, but she is not sure where. She is not sure how many times anyone from Peoples Gas came to read the meter since she started at the Church in March of 2002.

Reverend Joseph Jackson also testified for the Complainant concerning this dispute with Peoples Gas. He has been the pastor for 9 years and is the "ex officio of all operations of the Church". The Reverend is usually at the Church between 7:00 a.m. to at least 5:00 p.m. sometimes later. He is usually there 7 days a week. Reverend Jackson testified that he often left the Church for lunch, occasional funerals and to visit the sick at the hospital. If he is not there one of the Church officers would be there.

Reverend Jackson testified that he had a problem with what he called an unnecessary and excessive bill for two years back. He thought that the bill received in October of 2002 was much higher than he expected. Reverend Jackson testified that

he recalls three gas leaks found at the Church. The leaks were discovered in 2001, 2003 and in 2004. He testified that the 2003 and 2004 gas leaks were at the meter. He is not sure where the leak in 2001 was located. On cross examination, Reverend Jackson agreed that the price of gas goes up every year. So the cost to heat the Church building would increase.

The first witness for the Respondent was Kevin Rice. Mr. Rice is a field service supervisor for Peoples Energy. He has been a field service supervisor for 8 years and has worked for Peoples Energy for 25 years. He also is familiar with Peoples Gas service and maintenance orders. Part of his job is to investigate gas leaks. Mr. Rice testified that an odorant is put in the gas so that leaks can be detected. He testified that there was no part of the gas meter called the "pump" and what the witness for the Church, Mr. Holt was referring to was in fact a gas valve to turn on and off the gas. The valve can be red or gray depending on the size and manufacturer. He also testified that the valve would be before the meter, so if it was leaking, it would have no effect on the amount of gas that was read through the meter.

The witness testified that according to the records of Peoples Gas, a leak was detected at the Church on October 3, 2000. The records show that the leak was a four inch plug upstream of the meter. Mr. Rice testified that "upstream of the meter" means before the meter. He explained that a leak before the meter would not have an effect on the Church's bill because the leaking gas would not have been registered through the meter. This leak was fixed the same day it was discovered.

Mr. Rice testified that a second leak was discovered on September 28, 2001. The records indicated that the leak was from a three inch plug valve which also was upstream or before the meter. Again, this leak would not affect the amount of gas the customer was billed and the leak was repaired the same day it was discovered.

A third leak was discovered on September 26, 2002. Mr. Rice testified that this leak was from the "chp" which is short for "central heating plant." This is another term for the boiler or the customer's appliance. He testified that Peoples Gas is not responsible for fixing leaks in customer's appliances.

Mr. Rice testified that according to the records, problems were discovered with the boiler at the Church on December 4, 2003. Peoples Gas issued a warning notice that high yellow flames were discovered coming out of the boiler. Mr. Rice explained that this problem could affect the amount of gas consumed by the boiler. This however, was related to the customer's appliance and is not the responsibility of the Peoples Gas.

Mr. Rice testified that all of the problems or leaks at the Church were either before the meter and would not affect the customer's bill or were with the boiler, which is not the responsibility of Peoples Gas to fix.

The next witness for Peoples Gas was Donald Taylor, a supervisor of meter testing and repairs for Peoples Gas. He has worked for the Company for 24 years and is familiar with the equipment maintenance records of Peoples Gas.

Mr. Taylor testified that according to the records at Peoples Gas the meter that was in place during the billing dispute was meter number P1918221. According to the records, the meter was tested on December 16, 1997 and was placed into service on at the Church on March 3, 1998. He testified that according to the records, the meter was working within the range required by the Commission. The Company's records also indicate that the meter was tested on November 15, 2002; one month after the disputed October 25, 2002 bill was issued. He testified that the records showed a result of .09. This is a differential test of the meter and that is perfect.

Mr. Taylor testified that the meter was removed from the Church on December 5, 2003. It was retested on December 18, 2003 and it was working within the Commission's guidelines. He further testified that the meter was again tested on November 10, 2004. At that time the results were well within the Commission guidelines, which is plus or minus four percent after the meter is removed. According to the testimony of Mr. Taylor and the records of Peoples Gas, the meter was working properly at all times while it was installed at the Church.

The final witness for the Respondent was Brian Schmoldt, a special services representative with Peoples Gas. He has held this position for six years. His job duties include maintaining Peoples Gas' records, reviewing bills and rebilling, if necessary as well as reviewing complaints filed with the Commission. Mr. Schmoldt testified that he investigated the complaint in this matter and is familiar with the Complainant's account. As part of his investigation, he prepared a transcript summarizing the Company's records concerning the Church's account.

According to Mr. Schmoldt, a bill was issued on October 25, 2002 canceling the prior billing from October 25, 2001 to September 23, 2002. This revised bill was based on an actual reading of the meter on October 2, 2002. Mr. Schmoldt testified that this reading alerted the Company that it had underestimated the Complainant's gas usage for this time period. Mr. Schmoldt testified that there was an actual reading on October 2, 2002. The reading on that date was 27374. He testified that the last actual reading prior to that was on October 25, 2001. At that time the reading was 74680. Mr. Schmoldt testified that the October 25, 2002 bill states "current estimate for October 23rd" because the customer was normally billed on the 23rd of the month. He testified that if the Company would have billed the Complainant on October 2 and again on October 23rd, two bills would have been issued in one month. Mr. Schmoldt testified that when gas use has been underestimated, it is Peoples Gas's policy to revise the bill and issue a make up bill. This is what happened in this case.

Mr. Schmoldt testified that according to the Peoples Gas' records, three attempts were made during this time period to read the meter. On December 31, 2001, the Peoples Gas records show that the employee's notes show "No one home". On

February 28, 2002, the notes indicated that the Church was closed. Mr. Schmoldt testified that the records indicated that again on April 29, 2002, no one was present to allow Peoples Gas' employee access to the meter in the basement.

Mr. Schmoldt also testified that the records indicate that Peoples Gas employees had several conversations with Reverend Jackson concerning the adjusted bill. The records indicate that it was explained to Reverend Jackson that the adjustments were made due to underestimating the gas usage of the Church. The records also indicate that the Complainant was offered a twelve month no interest or penalty payment plan and it was not accepted.

Commission Analysis and Conclusions

On February 27, 2003, Mount Pisgah Missionary Baptist Church ("Complainant" or "Church") filed a verified complaint against Peoples Gas Light & Coke Company ("Respondent" "Company" or "PGL") disputing a bill in the amount of \$5,713.07 received on October 25, 2002. The Complainant alleged that the bill was an estimated back charge and asked the Commission to review the charges for accuracy. The bill was for previously unbilled gas usage for the period of October 25, 2001 to October 2, 2002.

The Complainant presented the testimony of Lawrence Holt, a boiler technician. Mr. Holt testified that he was at the Church on several occasions; however he was never at the Church during the time period of the disputed billing. He testified that he recalls a leak at a pump connected to the meter. He could not recall whether the pump was before or after the meter. Mr. Holt also testified that he had no experience with pumps only the boilers.

Helen Walker, the secretary for the Church also testified for the Complainant. Ms. Walker testified to the daily operations of the Church and calls concerning the high gas bills. However, Ms. Walker testified that she never went to the basement of the Church and was not sure where the meter was located. She also testified that she was not aware of any reports regarding gas leaks nor did she ever call the Respondent concerning any gas leaks.

Finally, Reverend Jackson testified on behalf of the Church. Reverend Jackson testified that the billing for the back two years were unnecessary and excessive. He also recalls a leak during the time period in dispute. However, the Reverend was not sure where the leak was in 2001. He also agreed that the price of gas was going up each year and it would cost more to heat the Church.

The Respondent presented three witnesses. Kevin Rice testified that the leaks found at the Church were either before the meter or in the boiler of the Church. The leaks before the meter would not register on the Complainant's account. Any leak in the boiler is the responsibility of the customer and not the gas company.

Donald Taylor also testified for the Respondent. Mr. Taylor testified that the “pump” that Mr. Holt was referring to was actually the gas shut off valve. Any leak at the shut off would be before the meter and would not affect the customer’s bill. He also testified that every time the meter was tested, it was within Commission standards.

Finally, Brian Schmoltd testified for the Respondent. Mr. Schmoltd testified that the reason for the back billing was a meter reading that took place on October 2, 2002. According to the records of the Company, other attempts to read the meter were unsuccessful. He also testified that the reasons for the adjusted bill were explained to Reverend Jackson.

In cases before the Commission, the Complainant has the burden of proof to establish that the Respondent has violated a provision of the Public Utilities Act or the Illinois Administrative Act. Under Section 83 Ill. Admin. Code § 280.80 (a) a utility is to “make an actual meter reading at least every second billing period”, and under Section 83 Ill. Admin. Code § 280.80 (b) (1) a utility is allowed to estimate a customer’s bill when it has made appropriate and reasonable attempts to read the meter, including but not limited to, making an appointment with the customer, scheduling readings for times other than normal business hours, and/or providing postal cards on which the customer may record the reading and mail it to the utility. The Respondent showed that it unsuccessfully attempted to read the meter at the Church on three separate occasions, however, it took none of the steps to reasonably attempt to read the meter. Moreover, there is no indication that Peoples Gas’ made any reasonable attempts to read the meter for a five month period of time -- from April 29, 2002 to October 2, 2002. Therefore, the Commission finds that the bill should be adjusted to reflect the Company’s failure to attempt to read the meter during those five months. In doing so, the Commission directs Peoples Gas to reduce the disputed amount of 10,905 cubic feet of gas by five-twelfth’s. This is based on the balance bill presented by the Respondent to the Complainant after 12 months. The total amount of the balance bill is \$5,713.07. Therefore, seven-twelfths would amount to \$3,332.62.

In addition, the Commission wants to ensure that the action taken in this complaint case does not simply shift the recovery of charges from this particular customer to customers in general at the next rate case. We will be looking carefully at that time to make sure the Company has proven that reductions of outstanding balances, whether through Commission determinations (as in the instant case) or voluntary action by the Company, do not affect the overall calculation of appropriate percentages of uncollectibles. In other words, we want to make sure that the impact of a Commission decision like this one is different than the impact caused by customers simply not paying their bills. While it is too late to take a closer look at this issue in Peoples Gas’ current rate case, the Commission puts the Company on notice that such documentation should be provided in direct testimony of its next rate case.

Moreover, the Company should file a report with the Chief Clerk’s Office, with a copy to the Commission’s Manager of Accounting, within 45 days of the order date in this proceeding that provides this assurance. This report should include, but not be

limited to, the journal entries that the Company made on its books as a result of this order, a narrative explaining the journal entry, and the Company's proposed regulatory treatment of the event in the Company's next rate case.

A proposed order was issued on November 20, 2006. No exceptions were filed by either party.

Based on the foregoing, the complaint filed by Mt. Pisgah against Peoples Gas is granted in part, and the Company's recovery is reduced by five-twelfths of the balance billed amount that was included in the October 25, 2002 bill.

Findings and Ordering Paragraphs

The Commission, giving due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent, Peoples Gas Light & Coke Company, an Illinois corporation engaged in the business of the purchase, production, storage, distribution and sale of gas to the general public in Illinois is a public utility within the meaning of The Public Utilities Act;
- (2) the Commission has jurisdiction over the Respondent and of the subject matter of this proceeding;
- (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 4600 South King Drive were proper;
- (4) the evidence presented at the hearing support a finding that the meter at 4600 South King Drive was operating properly and accurately recording Complainant's usage in accordance with Commission guidelines;
- (5) the amount in dispute is improper, due to the failure of the Company to reasonably attempt to read the meter for five months;
- (6) Complainant owes the Respondent the dollar amount equal to seven-twelfths -- \$3,332.62 -- of the balance billed 10,905 cubic feet of gas;
- (7) Respondent is required to file a report with the Chief Clerk's Office, with a copy to the Commission's Manager of Accounting, within 45 days of the order date in this proceeding. The report should provide the journal entries that the Company made on its books as a result of this order, a narrative explaining the journal entry, and the Company's proposed regulatory treatment of the event in the Company's next rate case.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Mount Pisgah Missionary Baptist Church on February 27, 2003, against Peoples Gas Light & Coke Company be, and the same is, hereby partially granted.

IT IS FURTHER ORDERED that all motions, petitions, and objections made in this proceeding which are not disposed of, be and are hereby disposed of consistent with the ultimate conclusions contained herein.

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

By Order of the Commission this 19th day of December, 2006.

(SIGNED) CHARLES E. BOX

Chairman