

WARREN and CELESTE TUKES, )  
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Complainants, )  
 )  
v. ) No. 09-0195  
 )  
PEOPLES GAS LIGHT AND COKE )  
COMPANY, )  
 )  
Respondent. )

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CHIEF CLERK'S OFFICE

**COMPLAINANTS' CLOSING BRIEF**

WARREN and CELESTE TUKES respectfully submit their Closing Brief as follows:

**OVERVIEW**

The Complaint, which was filed by Warren and Celeste Tukes ("Complainants" or "Complainant"), against Peoples Gas Light and Coke Company ("Respondent" or "Company"), involves a small single-family residence in which the Complainants reside at 947 E. 100<sup>th</sup> Place in Chicago, Illinois. On April 13, 2009, Complainants filed a formal complaint with the Illinois Commerce Commission ("ICC" or "Commission") for billing discrepancies discovered on bills subsequent to an actual reading taken by Respondent on April 14, 2008. The issues to be decided in this case are that Complainant alleges Respondent violated the following:

1. That in violation of 83 Ill Admin Code 280.75(a), "rebillings" were created to eradicate refunds/credits applied to account.
2. That in violation of 83 Ill Admin Code 500.330(g), statements for gas usage were not transmitted upon request.
3. That in violation of 220 ILCS 5/9-101, unjust and unreasonable charges were added to account on adjustments made following actual reading of April 14, 2008.

4. That in violation of 83 Ill Admin Code 280.160(a) and (d), the discrepancies were not discussed in a bona fide manner by Respondent, and late fees were charged on amounts in dispute pending resolution.
5. That in violation of 815 ILCS 505/2, suppression and omission of critical information necessary for resolution and correction of account was intentional.

Each allegation of the Complaint will be discussed below. As prayed for in the Complaint and as the facts adduced at the hearing support, Complainants ask that the ICC expunge unlawful and erroneous charges to the account, and apply refunds and/or credits and fees as determined by the Commission to the account that are forthcoming as of April 14, 2008.

### **PROCEDURAL BACKGROUND**

The evidentiary hearing before the ICC took place on August 6, 2009. The hearing was conducted before the Honorable Douglas E. Kimbrel, Administrative Law Judge for the ICC. There was one witness who gave testimony at the hearing, Mr. John Riordan, on behalf of the Respondent. Mrs. Celeste Tukes appeared pro se and as representative for both Complainants; Mr. Warren Tukes was not in attendance. The hearing was transcribed by court reporter and transcript pages are consecutively numbered from 1 to 164. All cites to transcripts identify the page number(s). There were also documents, charts and photographs which were admitted as exhibits and where exhibits are referred, they are identified pursuant to the exhibit number attached to them at the hearing. The post-hearing, 60-page Complainants' Group Exhibit #6 submitted into evidence with this Closing Brief by Complainant and pages of which were received from Respondent at hearing is referred to as Cmplt Gr.Ex.#6.(page #).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### **I. Was Complainant Due a Credit or Refund “Only” After Actual Reading?**

The statements of fact for this section are as follows:

1. Complainant, in good faith, initiated a call to the Respondent to take an actual reading when Complainant discovered that: 1) use of service would significantly change after September 2007 due remote care of an elderly relative; and 2) previous readings had been estimated for quite some time. After several attempts with no response by Respondent, finally, on April 14, 2008, Mr. Braxton Hughes, technician employee of Respondent, arrived at residence to make an actual reading of the meter, install an automatic meter reading device, and perform an inside safety inspection (Tr.14-16). Mr. Hughes recorded and verified the actual reading on the meter prior to removing the meter reading device as 7572 therms. Complainant also took a photo of the actual reading of April 14, 2008 (Cmplt Ex.#1).
2. An April 14, 2008 billing was issued to Complainants’ residence reflecting the automatic computerized adjustments as a result of the 7572 reading and showing a credit to the account of \$126.07 (Cmplt Gr.Ex.#2b).

There was not one piece of evidence by Respondent to indicate that the actual reading recorded by Mr. Hughes was incorrect. The preponderance of evidence actually shows the contrary: 1) A photograph reflecting the 7572 reading was taken at the time of the reading; 2) Mr. Hughes was a trained, qualified technician according to Respondent (Tr. 97-98); 3) Respondent’s service order of April 14, 2008 indicated actual reading recorded at 7572 on date of reading (Cmplt Gr.Ex.#6.2); and 4) Mr. Hughes had removed the actual original meter reader from the residence to take back to Company, which the Respondent had access to for an actual viewing of the reading of 7572. Since Mr. Hughes had also performed an inspection at the residence, there was no evidence to assume the reading was incorrect (Tr.80).

In applying the regulation 83 Ill Admin Code 280.75 to this issue, it states:

“(a) In the event that a customer pays a billing as submitted by a public utility and the billing is later found to be incorrect due to an error either in charging more than the published rate, in measuring the quantity or volume of service provided, or in charging for the incorrect class of service, the utility shall refund the overcharge with interest from the date of overpayment by the customer” (emphasis added).

*“... (c) The refund shall be accomplished either by a credit on a subsequent bill for service or by check if the account is final or if so requested by the customer.”*

Subsequent to the actual reading taken by Respondent on April 14, 2008, the reading reflects that the volume of service provided and paid for was more than that being used, at which point the utility should refund the overcharge.

The ICC recommends that “all utilities shall make an actual meter reading at least every second billing period” (83 Ill Admin Code 280.80a), reasoning that doing so would help to reduce the types of overcharges as reflected here (220 ILCS 8-303). Respondent was negligent in obtaining readings since the last actual reading by the Respondent for this account was December 2005 (Tr.103). Complainant had made several attempts to allow for an actual reading by scheduling appointments online and via telephone (Tr.14). Complainant had also called-in readings to Respondent to notify them of change in usage. Respondent had ample time to discover its negligence with the call-in readings reported previously but took no action (Tr.21; 39).

Further, according to 83 Ill Admin Code 280.100(e):

*“When a utility computer rejects a bill because it is abnormally high or low, and the utility chooses to delay billing by more than five days, the utility must nevertheless send the customer a statement at the regular billing period which shows that billing has been delayed and that an investigation is being conducted by the utility.”*

Even though at the time of the actual reading the recording would have generated a “reject” of the reading due to abnormally low usage (Tr.95), no effort was made by Respondent to investigate the account prior to creating several illegal “rebillings” of the account (Tr.77-78).

Complainant was due a credit/refund only to the account as a result of the actual reading and adjustments made as of April 14, 2008; not the execution of reconstructed billings.

## **II. Was Respondent Responsive to Complainant's Billing Requests?**

The statements of fact for this section are as follows:

3. Complainant called Respondent on May 8, 2008 to report an error in the billing statement received dated May 6, 2008, reflecting an amount due and owing of \$1,149.75 (Cmplt Gr.Ex.#2e). Complainant told Respondent that no previous balance of \$1,181.98 existed on previous bill and that the previous bill actually reflected a credit of \$126.07. The May 6<sup>th</sup> bill also reflected a current "actual" reading of 8572, which was incorrect. Prior to the actual reading adjustment, the previous current estimated reading was 8514, but that had been corrected (Cmplt Gr.Ex.#2a). Respondent's customer service representative said there was no information regarding a credit of \$126.07, or an actual reading of 7572, but would investigate and call back; however, no call was received.
4. Complainant called Respondent and spoke with Customer Service Supervisor Ms. Pittman regarding bill and actual meter reading record; she stated there was no record of an actual reading of 7572. Complainant told Ms. Pittman that a photo had been taken of reading on April 14, 2008 (Cmplt. Ex.#1). She then requested a copy of the photo. Complainant mailed a copy of the photo of the meter reading reflecting a reading of 7572 to Ms. Pittman at Peoples Gas, 130 East Randolph in Chicago, on May 15, 2008. Complainant made a later call to Respondent and was told photo had never been received. Complainant then sent another copy to Ms. Pittman on May 21, 2008.
5. On June 5, 2008, Complainant received a Notice of Disconnection dated 06/04/08 for the amount of \$1,149.75 due before 06/13/08. Complainant called Respondent to discuss account and was told Respondent had no record of a photo received or a technician visiting residence to perform an actual reading reflecting 7572. Complainant then called the Citizens Utility Board ("CUB") to file a complaint against Respondent regarding billing charges. Complainant also asked that the scheduled disconnection of gas service be cancelled due to pending investigation, which it was.

As of May 21, 2008, Respondent's Customer Service representatives had no records of Complainants' original bills and statements, even though Respondent testified that the "correction" to the account in the form of "rebilling" had taken place on May 2, 2008 (Tr. 100). Also, if such correction had been made, it was not reflected on the Notice of Disconnection dated June 5, 2008 received by Complainant.

Complainant had repeatedly requested copies of original billing statements beginning on May 6, 2008, wherein the first indication of erroneous charges had been applied to the account, to verify, examine and discuss with Respondent to resolve the billing discrepancies that were being reflected on the billing statements. Complainant would request copies of the “original” billing statements to correspond with the “rebillings” sent by Respondent to corroborate statement activity. Respondent would state that the “rebillings” were the actual “duplicates” (Tr.75). However, when Respondent submitted discovery package to Complainant on July 9, 2009 (Cmplt Gr.Ex.#6.1-60), Complainant received three different sets of “Duplicate” bills – a copy of the original billing (Cmplt Gr.Ex.#6.36-60); a copy of the “first” rebilling (Cmplt Gr.Ex.#6.3-15); and a copy of the “second” rebilling (Cmplt Gr.Ex.#6.16-31) – all having different dates and charges; none of which duplicated the other, contrary to what Respondent testified (Tr.75). Not only were copies of the original bills included, but a Statement of Accounts dated 03/02/09 reflected all three billings that had been applied to account as of 02/28/07 (Cmplt. Gr.Ex.#6.32-35). Respondent was clearly in violation of 83 Ill Admin Code 500.330(g) which states:

“Each gas utility, upon request by a customer, shall transmit at a minimum a clear and concise statement of the actual consumption of energy by such customer at the customer's present billing address *for each billing period during the immediately preceding twelve-month period* for which that customer was receiving service” (emphasis added).

At a minimum, Respondent should have had on file a copy of the original billing statements to send upon request of customer for the previous 12-month period requested as at May 6, 2008. Respondent was in violation of code when transmission of statements was denied.

### III. Were “Rebillings” in Violation of Commission Regulations?

#### a. Discovery of First “Rebilling”

The statements of fact for this section are as follows:

6. Following CUB’s conversation with Respondent to initiate a billing complaint and notify them that photo existed of actual reading taken on April 14, 2008, Complainant received a bill dated June 9, 2008 from Respondent (Cmplt Ex.#2g). This bill listed adjustments dated from February 2, 2007 through May 1, 2008<sup>1</sup> as “cancelled and revised” prior billing items (Tr.150-153). The total amount due on the bill indicated a balance of \$237.08. Complainant called CUB to report receipt of bill and requested an explanation by Respondent.
7. Complainant received call on June 13, 2008 from Teresa Barragan representing Respondent. She indicated that someone from Company had incorrectly “manually” changed the actual reading done on April 14, 2008 from 7572 to 8572 and made a “mistake” in doing so (Tr.29-30). Ms. Barragan indicated that after adjustments, there was now a balance owing of \$237.08. Complainant informed Ms. Barragan that prior to these “adjustments,” a credit of \$126.07 was reflected on account. Complainant then requested from Respondent an itemization of the computations and any related data for clarification.
8. On June 19, 2008, Complainant received a set of bills, each labeled “Duplicated Bill,” from Respondent for period 02/02/2007 through 06/03/2008 (Cmplt Gr.Ex.#6.16-31).<sup>2</sup> Complainant notified Ms. Barragan that these were not duplicates of previous actual bills for the account that had been issued and paid in real time; they were not representative of the actual usage for the 16-month period. Complainant asked that she send a copy of the original bills for comparison and further discussion (Tr.32-33).
9. Over the next few weeks, Complainant left several messages for Ms. Barragan to call to correct and resolve account, and to obtain the requested copy of the original bills that had not been received, but received no response. Complainant engaged CUB

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<sup>1</sup> The June 9, 2008 bill was the first reference to prior billings dating back to February 2, 2007 and introduced by Respondent. Mr. Riordan stated in testimony that Respondent decided to go back to February 2007 in order to create the “second” rebilling applied to Complainants’ account (Tr.87). Complainant requested data related to prior billings subsequent to rebillings to verify information reflected and use toward resolution of billing discrepancies.

<sup>2</sup> This is actually the first “rebilling” that Complainant received; however, Respondent refers to it as the “second” rebilling (Tr. 87-88). Respondent refers to an initial “first” rebilling in the Transcript that was a mistake, but was not sent to Complainant until result of discussion with Ms. Hood, Mr. Riordan’s supervisor, in March 2009 when the rebilling was referenced and Complainant discovered there had been a previous rebilling (Tr.55-57). This rebilling will hereafter be referred to as the “second” rebilling.

representative, Anna, to mediate discussions and attempt a resolution, but those efforts were unsuccessful. The CUB representative said she would engage a higher level Respondent representative to handle the complaint.

10. Complainant received a call from Mr. John Riordan of Company on August 27, 2008 to discuss account. When asked about additional charges on account, Mr. Riordan told Complainant that he had no record on his computer of any information regarding Complainant's account and therefore could not do anything towards resolution. When Complainant mentioned receipt of "duplicate bills" from Ms. Barragan, Mr. Riordan indicated those were issued to replace the original billing statements. When Complainant asked if that was allowable, Mr. Riordan stated that the Company could pretty much do whatever it wanted to regarding billings. Complainant explained to Mr. Riordan that there was a credit due on the account following the actual reading of April 14, 2008, because of decreased use in gas consumption, and residence was usually unoccupied for long periods of time (Tr.38).
11. Complainant then questioned Mr. Riordan about the beginning estimate of 7100 of February 2, 2007 on the "new" bills, and Mr. Riordan indicated that he had to "start somewhere," and therefore made up a number from which to begin (Tr.38-40). Complainant indicated that there had been call-in readings that would provide a more accurate reading, but Mr. Riordan stated that he could only use Company-read readings. Complainant pointed out that the 7100 was an estimated, not an actual, reading. Also, since the last actual reading was in December 2005, Complainant asked Mr. Riordan why he had not used that figure. He stated their system would not go back to a date that far.
12. Complainant then identified several computation and calculation errors (Tr.123-127; 141), to which Mr. Riordan stated he could do nothing about. He stated that he had "worked" the figures down to \$237.08 that the Complainant now owed. Mr. Riordan stated again that he had no records of previous original bills and that he consequently could not correct the account. Complainant asked if another computer might render the account information accessible, but Mr. Riordan stated he could not do anything because the previous readings had been wiped out. He then said he would send a spreadsheet to show calculations related to account, which did not arrive for several months (Respondent's Ex.#1A).

This is the only set of "rebillings" Complainant received until March 2009. Mr. Riordan never stated that another, or initial, "rebilling" existed and that it was a mistake and allegedly cancelled, although Complainant later determined that erroneous charges had be carried over. So from June 2008 until March 2009, Respondent maintained that this set of "rebillings" were the only record Respondent had in Complainant's account and purportedly reflected the revised

actual usage. However, these “rebillings” were sent as “duplicate bills” and represented by Respondent as the only set of billing statements available (Tr.111).

The errors evident on the set of billing statements were many. First, the Respondent rebilled, or back-billed, for more than 12 months from date of discovery, going back to February 2007 from an actual reading adjustment in April 2008. 83 Ill Admin Code 280.100 states that a “utility may render a bill ... to a residential customer *only if such bill is presented within one year from the date the services or commodities were supplied... No customer shall be liable for unbilled or misbilled service after expiration of the applicable period.*”

Secondly, the Company’s policy to “rebill” is applicable only to *previously unbilled* service. The “rebilling” created for Complainant’s account was for *already billed and paid* service. The policy for overpayments is that of a refund only (83 Ill Admin Code 280.75).

Third, a degree-day analysis approved by the Commission is utilized for estimated bills, which takes into account a base use for service as during the summer months, and a weather-sensitive component for winter usage (HR 102). This analysis also includes the previous year’s actual usage to determine an estimated cost. Respondent’s “rebilling” does not reflect a realistic estimate for either component as shown in the average daily use amounts and total therms used on the comparison chart (Complainant’s Ex.#5), or the statement of account (Cmplt Gr.Ex.#6.). Also, in Chicago, the winters are usually pretty cold, usage for which should be factored into calculations of the rebilling as in previous billings (Complainant’s Ex. #3).

Fourth, the starting point for the rebilling is inaccurate because it begins at an estimated reading rather than an actual reading (Tr.126-127). Respondent’s rebilling on 02/28/07 starts with a current estimated reading of 7100 and a previous estimate of 7033 (Cmplt Gr.Ex.#6.31). To begin a reading with an estimate on an estimate does not engender accuracy. For a legitimate

rebilling to occur, a reading from the last actual reading in December 2005 would have been necessary, albeit unlawful.

Finally, the rebilling reflects unreasonable charges and violates 220 ILCS 5/9-101:

*“All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.”*

The charges made in this rebilling for estimated usage reflect unrealistic amounts.

Complainant’s Exhibit #4 represents usage and charges for recent activity to the account based on minimal usage as stated earlier (Tr.14; 90), being indicative of the change in service consumed over the past several months. For example, with zero consumption where pilot light is off and there is no gas activity at residence on bill dated 03/02/09, the amount due is \$17.60. However, in the rebilling statements discussed here, an unrealistic charge for gas usage of \$22.44 at date 05/31/07 would be impossible during which time the residence was fully occupied and gas service was utilized daily (Cmplt Gr.Ex.#6.27). As a matter of fact, with only the furnace pilot light lit and no other gas activity, the monthly usage at Complainant’s residence on bill dated 12/02/08 is 13 therms with an amount due of \$37.93; it would therefore be next to impossible to render a usage of less than that. The estimation methodology system clearly is not applied for the amounts in this “second” rebilling.

The “second” rebilling applied to the account as illustrated in Respondent’s Exhibit #1C and Cmplt Gr.Ex.#6.16-31 should therefore be expunged based on the foregoing reasons.

**b. Discovery of yet another “Rebilling”**

The statements of fact for this section are as follows:

13. From September 2008 through November 2008, numerous attempts were made by Complainant to achieve a resolution to billing complaints with Respondent. However, calls made to Mr. Riordan received responses of “there is no information in Customer account” or “I am going on vacation” (Tr.45).
14. During this time, Respondent notified CUB by letter that complaint was resolved without having made any contact with or notifying Complainant. Complainant indicated that the billing complaint indeed had not been resolved. CUB representative offered to initiate an informal complaint with the ICC on Complainant’s behalf. Complainant agreed to action.
15. On March 25, 2009, Complainant spoke with Ms. Cynthia Hood, Mr. Riordan’s supervisor, regarding account discrepancies (Tr.55). Ms. Hood was able to retrieve Complainant’s account on computer, review charges and billings, and access original billing statements (Tr.56). During review, Complainant discovered two billing statements that had not previously been received, dated 04/25/08 and 05/02/08. Ms. Hood also indicated that there had been yet another set of “new” bills and charges added to the account, information Complainant had not received nor been notified of previously. Ms. Hood stated that the “new” bills consisted of improperly added charges that the Respondent, specifically, employee Mr. Brian Schmoldt, had added to the account. Ms. Hood said the Respondent had made a “mistake” and had corrected the charges.
16. Complainant informed Ms. Hood that a copy of those “new” bills had not been received by Complainant, along with the bills of 04/25/08 and 05/02/08. Ms. Hood explained that due to the predetermined schedule for the disbursement of bills to customers, the bills may have been accidentally not mailed. Complainant requested that Respondent send a copy of those bills for review, along with the “new” set of bills that were identified as a “mistake,” and any other data and statements, including calculations, related to account during period covered by all “rebillings” created for the account as a result of the actual reading adjustment of April 14, 2008 to current date. Ms. Hood indicated she would delegate the task to Mr. Riordan who would send them within a week.
17. On April 6, 2009, Complainant received copy of a set of bills labeled “Duplicate Bills,” different from original bills received in real time, or “first” set of “Duplicate Bills” received on 06/19/08 (Cmplt Gr.Ex.#6.3-15).<sup>3</sup> This was the set of bills that Ms. Hood and Mr. Riordan referred to as the “mistake” that Respondent made (Tr.81;

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<sup>3</sup> This set of rebillings is the second one received by Complainant in March 2009, but is referred to by Mr. Riordan in the transcript as “first” or “initial” rebilling (Tr.18-109). This rebilling will therefore herein be referred to as the first rebilling.

87). Complainant also received a copy of the missing original bills dated 04/25/08 and 05/02/08 (Cmplt Gr.Ex.#2c-d), and a spreadsheet created by Mr. Riordan delineating account activity (Respondent's Ex. #1A). However, Complainant still had not received the calculations or explanations for additional charges to account, including computational errors found on the spreadsheet created by Mr. Riordan (Tr.116; 119-121).

18. Following several requests for the information which had not yet been received after another week, Complainant left message for Ms. Hood that a discussion without relevant information to review would be futile. Ms. Hood responded that Mr. Riordan had informed her that all the credits were included in the figures represented and the computer system at the Company was very reliable and accurate. Complainant indicated that there were computational errors that needed to be resolved, to which Respondent had no response.
19. Complainant notified ICC representative Mr. Carl Ruiz of intent to file a formal complaint with the ICC against Respondent for unresolved billing issues. Complainant indicated that one year had expired in an attempt to resolve the billing discrepancies on account with Respondent, and rather than risk being in violation of the Statute of Limitations by possibly going another year, the goal was to achieve an expedient resolution.

This "rebilling" is the one in which Complainant had no knowledge of or had received a copy of until March 2009. This one, like the previously noted rebilling above, is also unlawful and improper for some of the same, in addition to different, reasons. An "actual" reading of 8572 was "mistakenly" entered manually to create this rebilling (Tr.81). Although Respondent admits they discovered this rebilling was a "mistake," there are certain items that should be addressed with regard to its relevance in this complaint.

At issue again is the rebilling process; the Company's policy to "rebill" is applicable only to *previously unbilled service* (Tr.101). This "rebilling" was also done on *already billed and paid service*. It was performed due to Respondent's assumption that the actual reading was incorrect (Tr. 81-86). Respondent "discovered" that this rebilling was in error around June 9, 2008 (Tr.87), which coincides with CUB's complaint investigation having produced Complainant's photo of actual reading.

Although Respondent allegedly cancelled this “rebilling,” mistakes in calculations have caused an erroneous charge to be included in amounts applied to account. Respondent claims that a cancellation of billings dated 2/2/07 through 5/1/08 totaled a credit to the account of \$1,922.35 (Respondent’s Ex. #1A). However, in Complainant’s calculations, the total amounted to a credit of \$2,070.77 (Cmplt Ex. #3), whereas Respondent’s figures did not include the \$148.42 credit for cancelled bill of 03/05/07 (Tr.119-121).

This “first” rebilling should have already been cancelled from the account; however, calculation errors exist and should be corrected.

#### **IV. Dispute Procedures/Late Fees**

The statements of fact for this section are as follows:

20. Complainant first called Respondent in May 2008 to initiate an investigation of billing statement received May 6, 2008. An informal complaint was filed with CUB in June 2008, disputing the billing charges on the account from that date.
21. Although Complainant had called and sent letter to Respondent that bill amount of \$305.17 was being disputed, as shown on bill dated 10/01/08 (Cmplt Gr.Ex.#6.54), subsequent billings reflected late charges on the amount. Disputed amount was changed on those billings to \$260.04 without any resolution having occurred or notice to Complainant of change, giving Respondent opportunity to charge late fees on the difference (Cmplt Gr.Ex.#6.55-60). Complainant called Respondent to dispute amount and remove late charges since account was being investigated and amount of \$305.17 was still being disputing pending resolution, but to no avail.

Complainant first noticed a billing error in May 2008, and called the Company to report the incorrect billing. As 220 ILCS 5/9-252.1 states:

“...Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing.”

Therefore, Complainant is in full compliance with this statute of limitations. Any documentation requests made subsequent to that time relate to dates reflected on billings after May 2008 and materials received by Complainant from Respondent.

By charging late fees on disputed amounts, Respondent is in violation of 83 Ill Admin Code 280.160(d) which states: "Only net rates shall be charged on any disputed bill paid within fourteen days of resolution of the dispute if the complaint was filed before the bill became past due." Current bills have been paid prior to expiration of due date; disputed amount has not been resolved by Respondent or changed by Complainant as reflected on billings; and dispute has not been resolved nor complaint closed during period of disputed amount. Therefore, all late fees as of bill dated 08/04/08 (Cmplt Gr.Ex.#6.52-60) should be credited to account since they are unlawful charges.

#### **V. Misrepresentation of Materials Provided during Discovery**

Respondent continues to withhold material information regarding billing statement and/or information for bill dated 05/06/08, wherein a credit of \$135.87 was due, then deducted, with no verification or explanation of amount provided, violating statute 220 ILCS 5/5-202.1 (Respondent's Ex. 1A) (Cmplt Ex.#2e). Respondent also provided materials to Complainant during Discovery indicating that each and every bill provided to Complainant was a duplicate of the original bills, which is false (Tr.75); Respondent suppressed critical information vital to the resolution of billing discrepancies on Complainants' account by not sending bills dated 04/25/08 and 05/02/08 in a timely manner (Tr.56); and Respondent transmitted bills reflecting unreasonable and unjust charges to the account with no itemized explanation or justification (Cmplt Gr.Ex.#2d-g). Statute 220 ILCS 5/5-202.1 states:

“(a) Any person or corporation, as defined in Sections 3-113 and 3-114 of this Act, who knowingly misrepresents facts or knowingly aids another in doing so or knowingly permits another to misrepresent facts through testimony or the offering or withholding of material information in any proceeding shall be subject to a civil penalty. Whenever the Commission is of the opinion that a person or corporation is misrepresenting or has misrepresented facts, the Commission may initiate a proceeding to determine whether a misrepresentation has in fact occurred. If the Commission finds that a person or corporation has violated this Section, the Commission shall impose a penalty of not less than \$1,000 and not greater than \$500,000. Each misrepresentation of a fact found by the Commission shall constitute a separate and distinct violation. In determining the amount of the penalty to be assessed, the Commission may consider any matters of record in aggravation or mitigation of the penalty, as set forth in Section 4-203, including but not limited to the following:

“(1) the presence or absence of due diligence on the part of the violator in attempting to comply with the Act;

“(2) any economic benefits accrued, or expected to be accrued, by the violator because of the misrepresentation; and

“(3) the amount of monetary penalty that will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with the Act.

“(b) Any action to enforce civil penalties arising under this Section shall be undertaken pursuant to Section 4-203.”

Respondent’s actions lead Complainant to wonder if 220 815 ILCS 505/2 also should be applied in this case because of lack of due diligence of Respondent in compliance with this statute, which states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, *with intent that others rely upon the concealment, suppression or omission of such material fact*, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, *in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby*. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.”

Complainant is reliant upon Respondent to represent fairly and equitable any billings and charges for its services. To discover that such deceptive activities and calculations were

employed to mislead the Complainant regarding monies owed and services provided is disheartening. The Commission even recommends in its “Report Concerning the Billing Practices of Public Utilities Providing as Service to Consumers in Illinois” dated September 2001 regarding billing disputes that:

“Commission rules require that utilities make personnel available during business hours to hear customer complaints and that such personnel is authorized to act on behalf of the company to resolve disputes. Utilities train customer service representatives to recognize and address individual customer inquiries and complaints resulting from utility errors and lack of customer understanding. This is the point at which *the utility has the responsibility and the opportunity to determine why the customer’s bill is abnormal...*

“Abnormally high bills can occur for a number of reasons. Quality control checks performed by the utility billing systems and manually detect most problems and prevent erroneous bills from being issued. However, errors can occur. It is important to determine whether those bills are high as the result of errors or if they are in fact accurate. *When a customer contacts the utility with a high bill complaint, it is the responsibility of the utility to take the complaint seriously and investigate the complaint. Utilities must make available to customers personnel whose skills are consistent with the nature of the difficult job they perform. Utilities should explore methods for identifying underlying problems based upon complaints reported by individual customers.* In other words, learn from individual complaints.”

One of the documents misrepresented by Respondent to Complainant and the Commission is an Account Statement which purportedly represents activity in Complainant’s account as it relates to this case (Respondent Ex. #1A). Respondent also discusses in detail the entries recorded on the statement and suggests that they are correct and based upon Company records (Tr.76-90). However, in the following chart created by Complainant, it represents what the Account Statement would reflect had the entries indeed been correct. The first half of the chart (up to the double line) represents Respondent’s Exhibit #1A from the (\$126.07) credit reflected at date 04/14/08. The bottom half of the chart represents the suggested credits and debits that should be correctly applied to the account as calculated by Complainant:

Date*	Bill Amount	Late Charges	Account Balance	Remarks
04/14/08	-\$1,188.66	-\$28.16	(126.07)	Credit balance as a result of actual meter reading of 7572; automatic bill cancellation from 9/5/07-4/14/08
04/25/08	-\$315.22	-\$2.32	(443.61)	Respondent cancelled bills from 4/4/07-9/5/07 to create first incorrect rebilling of 4/14/08
04/14/08	\$1,563.27		1,119.66	Respondent created first incorrect rebilling and charged total amount to bill; bill not sent to Complainant until 4/6/09
04/30/08	\$62.32		1,181.98	Total incorrect current gas charge reflecting charges for estimated reading after ERD had been installed
05/06/08	-\$135.87		1,046.11	Credit reflected for cancelled bill of 4/1/08-4/30/08 which has not yet been received by Complainant
05/01/08	\$103.64		1,149.75	Total incorrect current gas charge reflecting charges for estimated reading after ERD had been installed; total amount due of \$1,149.75 is disputed
06/03/08	\$54.55	\$16.94	1,221.24	Total current gas charge; however, total amount due still be disputed
06/09/08**	-\$1,922.35	-\$16.94	(718.05)	Credit reflected for cancelled billings for 2/2/07-5/1/08; amount should include credit for 3/5/07 of \$148.42 to bring total payments applied to account for this period after cancelled billings to \$866.47
06/09/08	\$900.58		182.53	Amount charged to account and reflected on bill as Revised Prior Billing for period 2/2/07-5/1/08; Respondent's second rebilling
06/03/08	\$54.55		237.08	Total current gas charge being disputed
06/09/08***	-\$54.55		182.53	Gas charge in dispute
06/09/08	-\$900.58		(718.05)	Second billing should be cancelled; in violation of several regulations
06/09/08	-\$148.42		(866.47)	Payment applied to account on 3/5/07 but deleted in first rebilling calculations; credit total of \$866.47 brings account back to correct status before erroneous and disputed charges
04/25/08	\$315.22	\$2.32	(548.93)	Debit payment back to account after second rebilling is cancelled from 4/25/08 cancellation for first rebilling
05/06/08	-\$135.87		(684.80)	Credit for cancelled Prior Bill of 4/1/08-4/30/08 applied to account but mistakenly debited in 6/9/08 calculations for cancelled billings
05/06/08	\$25.33		(659.47)	Amount for total gas charges that are correct; remainder reflected on bill is incorrectly estimated (Cmplt Ex.#2e; Resp Ex.#1C)
06/09/08	\$54.55		(604.92)	Total gas charge owed
07/01/08	\$22.96		(581.96)	Total gas charge owed
08/04/08		-\$3.84	(585.80)	Late charge added on amounts being disputed; total current charge of \$62.36 reflects incorrect estimated amount after ERD was installed, was later corrected
09/02/08	\$19.61	-\$3.91	(570.10)	Total gas charge owed; late charge incorrectly added due to amounts in dispute, should be credited to account
10/31/08		-\$0.71	(570.81)	Late charged added to bill while amounts are in dispute
02/02/09		-\$0.70	(571.51)	Same as above
03/02/09		-\$4.91	(576.42)	Same as above
05/01/09	\$331.62		(244.80)	Credit, plus any interest and fees included as deemed by Commission, should be applied to account which reflects a total disputed amount of \$331.62
				Plus interest/fees

\*Dates reflected on first half of chart (before double border) are dates Respondent used on Resp Ex. #1A; dates below line are actual bill dates used by Complainant (Cmplt Gr.Ex. #2b-g; Cmplt Gr.Ex.#6.51-60)

\*\*Amount of \$1,922.35 includes \$1,563.27, \$62.32, -\$135.87, \$103.64, \$54.55 and \$274.44, but should also include \$148.42 since bill of 3/5/07 was cancelled in this calculation.

\*\*\*From this point forward, Complainant illustrates how entries on Resp Ex.#1A should appear with corrections to account

As can clearly be seen, the Respondent's activity statement contains several computational errors that have not been corrected and need to be for the resolution of this Complaint.

### **CONCLUSION AND PRAYER**

What should have been a simple refund/credit to the Complainant's account has become an extensive hodgepodge of documentation, and blatant violations of codes and policies on the part of the Respondent. Much time, energy and expense has been employed for a complaint that should have easily been resolved prior to the need to file a formal complaint with the Commission. Unfortunately, the costs involved are usually passed on to the consumers.

Respondent has clearly violated aforementioned regulations at issue. But most importantly, the rebillings charged to the account are unjust and unreasonable and should definitely be expunged. They are illegal and unjust in cases where bills have already been paid and there is no underbilling. Estimation methodology analyses are in place to protect the utilities from drastically undercharging for service rendered; trade laws are in place to protect consumers from such practices as mentioned above -- as are the Commission regulations to protect customers from formidable utility companies.

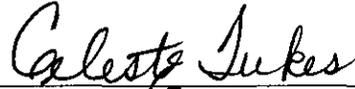
For all of the foregoing reasons, Complainants respectfully pray for the following relief and judgment in favor of Complainant to:

1. Fully expunge "second" rebilling from account in the amount of \$900.58;
2. Debit \$443.61 from 04/25/08 bill to account;
3. Credit to account amount owed from "first" rebilling of bill that was alleged cancelled in the amount of \$148.42;

4. Credit to account total late fees charged to account as of July 2008 of \$14.07;
5. Credit to account of \$135.87 as credit due from 4/1/08-5/1/08 cancellation;
6. Debit amount of \$122.45 owed to account for period May 2008 through September 2008;  
and
7. Credit to account any interest and/or fees as established by the Commission on refund  
and/or credit amounts;

As reflected in detail on page 17 of this Complaint.

Respectfully submitted,



Celeste Tukes, Complainant



Warren Tukes, Complainant

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947 East 100<sup>th</sup> Place  
Chicago, IL 60628  
(773) 412-6082  
[celestetukes@hotmail.com](mailto:celestetukes@hotmail.com)

**IN PROCEEDINGS BEFORE  
THE ILLINOIS COMMERCE COMMISSION**

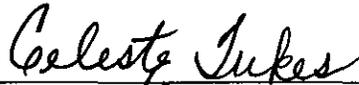
WARREN and CELESTE TUKES,	)	
	)	
Complainants,	)	
	)	
v.	)	No. 09-0195
	)	
PEOPLES GAS LIGHT AND COKE	)	
COMPANY,	)	
	)	
Respondent.	)	

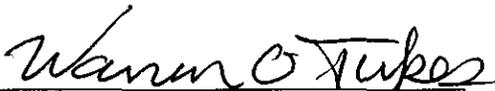
**NOTICE OF FILING**

To: Attorney Mark L. Goldstein	Administrative Law Judge Douglas E. Kimbrel
3019 Province Circle	Illinois Commerce Commission
Mundelein, IL 60062	160 North LaSalle Street, C-800
	Chicago, IL 60601

PLEASE TAKE NOTICE that on this date, Complainants in the above-captioned case, by U.S. mail, filed the attached Complainants' Closing Brief and Complainants' Group Exhibit #6 with the Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, a copy of which is hereby served upon you by U.S. mail.

Dated: September 9, 2009

  
\_\_\_\_\_  
Celeste Tukes, Complainant

  
\_\_\_\_\_  
Warren Tukes, Complainant

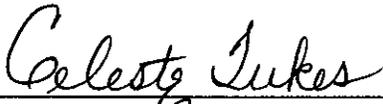
Warren and Celeste Tukes  
947 East 100<sup>th</sup> Place  
Chicago, IL 60628  
(773) 412-6082  
[celestetukes@hotmail.com](mailto:celestetukes@hotmail.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of this Complainants' Closing Brief and Complainants' Group Exhibit #6 on this date of September 9, 2009 by causing a copy to be sent by U.S. mail to:

Attorney Mark L. Goldstein  
3019 Province Circle  
Mundelein, IL 60062  
MLGLAWOFFICES@aol.com

Administrative Law Judge Douglas E. Kimbrel  
Illinois Commerce Commission  
160 North LaSalle Street, C-800  
Chicago, IL 60601  
ekimbrel@icc.illinois.gov

  
\_\_\_\_\_  
Celeste Tukes, Complainant