

WARREN and CELESTE TUKES,)
)
Complainants,)
)
v.)
)
PEOPLES GAS LIGHT AND COKE)
COMPANY,)
)
Respondent.)

2009 OCT 13 A 8:18

CHIEF CLERK'S OFFICE

No. 09-0195

COMPLAINANTS' REPLY BRIEF

Complainants' Warren and Celeste Tukes, together and individually, respectfully submit their Reply Brief in response to the Respondent's Reply Brief, which addresses Complainants' Closing Brief, as follows:

INTRODUCTION

In Complainants' Closing Brief and the evidentiary hearing, which took place on August 6, 2009, Complainants raised the following issues:

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.

In addition, Respondent concludes in its Reply Brief that Complainants' gas account charges were proper within the guidelines of 83 Ill. Adm. Code 280.100. Complainant contends that this rule is not an appropriate application for this Complaint since there is no substantiation of "unbilled" service, and Respondent would additionally be in violation of the rule because the applicable period exceeds the one-year allowance by the Commission.

ARGUMENT

I. Was Complainant Due a Credit or Refund "Only" After Actual Reading?

Respondent is incorrect in stating that the second rebilling went back for only one year and thereby is in compliance with 83 Illinois Adm. Code 280.100(a) for unbilled service. The second rebilling clearly represents the period February 2, 2007 to May 1, 2008, which is more than the one year allowed from the actual reading date of April 14, 2008, wherein adjustments were made (Respondent's Ex. 1C). In addition, "rebilling" is only allowed for "unbilled" service, and the service for this period had been billed and paid (Respondents Ex. 1A).

Respondent also fails to address the issue as to its violation of Section 280.75 referred to by Complainant which states that the utility shall refund the overcharge when the billing is found to later be incorrect due to an error in measuring the quantity of service provided. Complainant is due the full credit/refund "only" following an actual reading which renders a credit due. Respondent chose to ignore the actual reading until evidence was provided by Complainant (Tr.30), rather than abide by Section 280.100(e) to investigate abnormalities.

II. Was Respondent Responsive to Complainants' Billing Requests?

Respondent is mistaken by stating the "duplicate bills" and "original bills" are alike. A duplicate is a copy or replica of an original. Respondent provided Complainant with three sets of

“duplicate” bills, none of which was a copy of the other (Complt. Gr. Ex. 6.3-6.15; 6.16-6.31; 6.36-6.60). The actual duplicates of some of the “original” bills were not provided to the Complainant until just prior to the second hearing, along with copies of previous “duplicate bills” submitted to Complainant, which were never received as actual “original” bills. In addition, Respondent has still not presented an original bill or copy for the period April 1-30, 2008, which reflects the details of a refund due to Complainant (Complt Gr.Ex.2e), which was not found among the 73 pages of discovery materials provided to Complainant from Respondent.

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

a. Discovery of First “Rebilling”

In its response, first Respondent mistakenly states that the second rebilling covered only a 12-month period and is therefore within the 83 Ill. Adm. Code 280.100(a)(1). In contrast, the second rebilling, as mentioned above, dates back to February 2007 and covers a 15-month period, longer than the one-year allowance by the Commission. Second, the service was not “unbilled or misbilled” thereby requiring rebilling. The Respondent correctly estimated the original bills in real time during this period based on its own degree-day analysis and prior year’s use. The service utilized by Complainant diminished, and Complainant notified Respondent of decreased use, which is represented on bills subsequent to actual reading of April 2008 (Complainant’s Ex 4). Third, Respondent does not provide any proof of a degree-day analysis applied to the charges for this rebilling. Fourth, the starting point of February 2007 is inappropriate for two reasons: 1) it exceeds the one-year allowance as of the April 2008; and 2) it is based on an estimated reading, not an actual reading, as required for rebilling practices by the Commission. Respondent argues that December 2005 would violate Section 280.100. However, to go back to December 2005 would have actually been correct as the date of the last

actual reading if the account indeed suggested unbilled service; alas, it did not. Finally, the rate charged in the second rebilling is based on estimates and is incorrect because it does not take into account the temperature variances of the degree-day analysis, thereby making the total estimated amount charged to the account for this period unreasonable.

b. Discovery of Yet Another “Rebilling”

Respondent incorrectly states in its Reply Brief that Complainant contends that there are computational errors in the second rebilling. Although several errors are apparent, computational errors were not found by the Complainant in the second rebilling. Complainant does, however, contend that there are computational errors in the first rebilling as indicated in the Closing Brief as well as at the evidentiary hearing. Respondent fails to dispute that computational errors exist in the first rebilling as discovered by Complainant and, as a result, should constitute a waiver of its position on this issue.

IV. Dispute Procedures/Late Fees

Respondent is in error when stating that there is no late fee charged on the 8/08 bill. As is clearly shown (Complt Gr.Ex. 6.52), there is a late fee charged, and improper late fees charged thereafter despite the charges being in dispute.

V. Misrepresentation of Materials Provided During Discovery

Respondent mistakenly asserts that Peoples Gas has provided Complainant with any and all information requested, as indicated in point II above. In addition, the deceptive practices evidenced by Respondent to the Commission concerning this complaint are: 1) the inaccuracy of “actual” meter readings submitted to Commission in its exhibits; 2) misrepresentation of activity dates represented on Account Statement submitted to Commission; 3) incorrectly submitting “duplicate” bills as copies of original bills, when the original bills of two of these “duplicate”

sets were never created or sent to Complainant; 4) submitting “duplicate” bills which ignore payments made by Complainant during period of these billings; and 5) misstating that “all readings subsequent to May 2008 ... were actual readings (Respondent’s Reply Brief, pg. 2)” when, in fact, estimate readings were made on original bills dated August 2008 and September 2008 (Complt Gr.Ex.6.52-53), in addition to the April and May readings (Complainant Gr.Ex. 2a; 2d), following the installation of the ERT device.

Respondent also is incorrect by indicating that the Chart prepared by Complainant on pg. 17 of Complainants’ Closing Brief was not presented at the evidentiary hearing as part of the evidence. To the contrary, Complainant not only presented the information contained in the Chart at the evidentiary hearing, but cross-examined Respondent in detail and quite extensively regarding it (Tr.114-143). Respondent was not denied its entitled due process; Complainant actually suggested that Respondent review the information more closely following the hearing if necessary (Tr.122). Complainant specifically pointed out the items on the top part of the Chart that were incorrect and solicited explanations from Respondent. The bottom part of the Chart is simply a summary by Complainant that shows the corrections necessary as a result of the hearing. The information contained on the Chart is extracted from the 73-page discovery materials provided to Complainant from Respondent and simply represents a more intelligible form of presentation. Respondent already had this information in its possession, and no new information or data is presented on the Chart. Actually, the claim that Respondent was denied due process and would object to the Chart rather than evaluate the errors and discrepancies found is a perfect example of Respondent’s previous unresponsive actions toward resolving this complaint, as was evident in discussions with Complainant leading up to the formal Complaint

being filed with the Commission. Therefore, Respondent's objection to Complainants' Chart should be denied.

Respondent's explanation of the \$718.05 "credit" shown on the Account Statement (Respondent's Ex. 1A) is deficient. By the date of June 9, 2008, Respondent had actually cancelled \$866.47 in payments that had been made by Complainant and applied to the account in order to create the rebillings. The \$718.05 represents only partial credit; the full \$866.47 should have been applied, or credited, to the account. Respondent also states in its Reply Brief that "Respondent's Ex. 1A and the top of the Chart showing an amount owed of \$217.08 is correct." However, Respondent's Ex. 1A and the top of the Chart of the Complainants' Closing Brief in fact show an amount of \$237.08. Either way, both amounts are incorrect; Complainants owe neither amount.

Finally, Respondent is correct on one point – when referring to the credits owing to the Complainants' account, it states "When their (Complainants) account was rebilled, that credit was eaten up by the rebills" (Respondent's Reply Brief, pg. 5). This appears to be the exact reason why the rebills were created in the first place. To summarize, following several attempts by Complainants to have Respondent perform an actual reading at residence due to reduction in service usage, an actual reading of 7572 was eventually done on April 14, 2008, producing a credit to the account. Rather than verify the reading with the serviceperson, or inspecting the actual meter reading device that was in its possession, Respondent hastily created a new billing, or "rebilling," by overcharging service and inexplicably adding \$1,563.27 to Complainants' bill dated May 2008, incurring an amount due rather than credit owing (Complainant Gr.Ex. 2d). This billing was not sent to Complainant until almost a year later in March 2009 when Mr. Riordan's supervisor was contacted regarding the Complaint (Tr.55-57), but the lump-sum

total along with other erroneous charges were included on subsequent bills. It was not until Complainant submitted proof of actual meter reading to the Citizen's Utility Board when Respondent applied a "credit," although not inclusive of all inappropriate charges. Respondent then created yet another billing, or "rebilling," in order to "eat up" the credits applied to the account under the pretext of "unbilled service." However, since there was no "unbilled service," Respondent had to go all the way back to February 2007 through May 2008 and cancel already billed and paid for service in order to create a period in which minimum monthly charges could be applied to cover the outstanding credits due to Complainant.

Based on the inconsistencies, discrepancies and violations committed by both the first and second rebillings, both rebillings should be totally removed from the account due to their inappropriateness.

CONCLUSION AND PRAYER

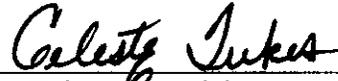
Based on the evidence presented, Complainants respectfully and continues to pray for the following relief and judgment in its favor to:

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 that was alleged cancelled for bill paid 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 the Complainants' Closing Brief.

Respectfully submitted,



Celeste Tukes, Complainant



Warren Tukes, Complainant

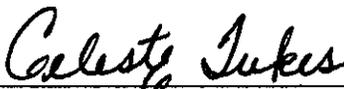
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Complainants' Reply Brief on this date of October 9, 2009 by causing a copy to be sent by U.S. mail to:

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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

**IN PROCEEDINGS BEFORE
THE ILLINOIS COMMERCE COMMISSION**

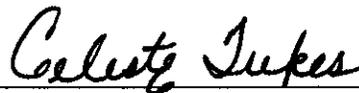
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NOTICE OF FILING

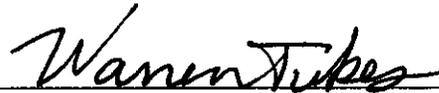
To: Attorney Mark L. Goldstein	Administrative Law Judge Douglas E. Kimbrel
3019 Province Circle	Illinois Commerce Commission
Mundelein, IL 60062	160 North LaSalle Street, C-800
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PLEASE TAKE NOTICE that on this date, Complainants in the above-captioned case, by U.S. mail, filed the attached Complainants' Reply Brief 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: October 9, 2009



Celeste Tukes, Complainant



Warren Tukes, Complainant

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