

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

James H. Canel :
vs- :
North Shore Gas Company :
 : **08-0562**
Complaint as to billing/charges in :
Glencoe, Illinois. :

PROPOSED ORDER

By the Commission:

On October 6, 2008, James H. Canel ("Mr. Canel" or "Complainant") filed a verified complaint against North Shore Gas Company ("Respondent" "Company" or "North Shore") in which it is alleged that North Shore issued a bill with unreasonable charges for the gas consumption at 344 Surfside Place in Glencoe, Illinois.

Pursuant to notice as required by law and the Commission's rules, two status hearings took place. The Complainant was present and the Company was represented by Counsel. When it was apparent that the matter could not be resolved, an evidentiary hearing was scheduled. A hearing was held on March 24, 2009 before a duly authorized Administrative Law Judge, at the office of the Commerce Commission in Chicago, Illinois. Complainant appeared Pro-se and offered his own testimony. Respondent appeared by counsel and presented the testimony of John Riordan, Eduardo Arce, Mary Saunders, Samuel Adams, Laura Stevens and Nichole Cutler. Due to post hearing motions and filing of exhibits, on May 20, 2009 the record was marked "Heard and Taken."

Position of the Parties

James Canel

North Shore Gas Company claimed Mr. Canel owed it \$2530.03 for natural gas service from 3-20-08 to 4-22-08 at his residence at 344 Surfside Place in Glencoe, Illinois. According to the Complainant, that single bill exceeded the total cost of natural gas service to the Canel's residence for most twelve month periods from 5-94 through 2-09 (the period for which Canel's records were available). The range of charges for a consecutive twelve month period was a low of \$1701.72 to a high of \$3853.65. For the month of April during the 15 year period the bill ranged from a low of \$102.86 (4-29-99) to a high of \$259.23 (5-2-03), with the exception of April, 2008.

Mr. Canel's first notice of the April 2008 bill was receipt of a "Final Notice Prior to Disconnection" dated 5-23-08 from North Shore, demanding a payment of \$2530.03. That statement advised him that "you must pay the total amount due immediately to avoid loss of gas service. We have reported your payment history to a credit bureau..." The Complainant never received the actual April 2008 bill. Upon receipt of the notice, Mr. Canel called North Shore and complained. On May 30, 2008 North Shore reacted to that complaint and initiated a "high bill inquiry." It dispatched Samuel Adams, an employee of North Shore since 1972, to investigate the matter. He was the only employee of the Company who ever inspected the residence concerning the high bill complaint. On June 4, 2008, Adams visited the residence, inspected the residence, documented his findings and concluded: "Cannot see \$2500.00 gas bill here." In a telephone call to North Shore while Mr. Adams was present at the residence, Mr. Canel talked to "Tricia." The Complainant asked Samuel Adams to relate his findings to Tricia. Adams told Tricia "Yeah cuz that's a \$2500. You know it's a good size home but it's not no \$2500. It only has got two furnaces and a water heater and like with the high bill complaint cuz I don't see where these people use this much gas... I just don't see 2500. I don't see how 2500 I'm just wondering if somebody hit the meter and it went from 7 to 9." North Shore resists Canel's complaint on speculation that there was a leak in a gas line to the gas grill at the residence. During the pendency of Canel's dispute, the Company has added late fees and finance charges to the net amount it claims is owed, and has treated this single dispute as though it is multiple separate disputes.

North Shore Gas

The North Shore Gas Company contends that the Complainant, James H. Canel, owes a \$2,530.03 gas bill for gas consumed at Complainant's residence, 344 Surfside Place, Glencoe, Illinois ("Home") for the months of March and April 2008. Respondent' contends that a gas line leak to Complainant's gas grill at his Home caused the large gas consumption, which, in turn, caused the large gas bill. Complainant contends that he did not use the gas, there was no leak, and he has been overbilled by the Respondent. North Shore argues that based on the evidence and the facts in the record, the Commission should find: 1) Complainant has not sustained his burden of proof; 2) Respondent's April 22, 2008 gas bill correctly measured Complainant's gas usage for March and April; and 3) the complaint should be denied.

The Hearing

The Complainant is an attorney and North Shore was represented by counsel. Mr. Canel presented his own testimony and the Company presented six witnesses. At the outset, it should be noted that all of the witnesses, the Complainant and the six Respondent witnesses were called as adverse witnesses.

The first Respondent witness examined by the Complainant was Mary Saunders, a pipe fitter. Ms. Saunders investigated a gas leak at the Complainant's Home on February 20, 2008. She had no independent recollection of visiting the Home; however, her investigation report indicated that there was a gas odor at the end of the Home's

driveway. Her report, Respondent's Exhibit 1A, indicates that the Complainant called North Shore Gas complaining of a gas leak. Ms. Saunders noted that the gas odor emanated from a neighbor's residence where work was being done. She found no gas leak at the residence.

The second Respondent witness was Eduardo Arce, who, in April 2008 was an account representative in the billing department. As part of his duties as an account representative, he reviewed bills determined to be too high or low. He would compare a current bill with previous bills and if, he believed the current bill was too high, he would send out a meter reader to verify the meter reading. While he had no independent recollection of the Complainant's gas account, Respondent's Exhibits 2A indicated that he issued an order of verification and Exhibit 2B and 2C indicated that the gas meter reading was verified at an index of 9169. The reading, which the Complainant was billed to as of April 22, 2008 was 9149. He then issued the \$2,530.03 bill to the Complainant.

The next Respondent witness was Samuel Adams. Mr. Adams is a service fitter with the North Shore Gas. On April 25, 2008, he visited the Home and verified the 9169 meter reading. He only read the meter and did not go into the backyard. He found nothing physically wrong with the gas meter. (Tr. 118) He did not examine the grill or the line running to the grill. (Tr. 118-119)

Mr. Adams made a second visit to the Canel's residence on June 4, 2008 based on a high bill complaint by the Mr. Canel. At that time, he read the gas meter and checked the appliances in the Home. He found no gas leaks in the Home. He opined that the bill could not be so high based upon the gas appliances that the Complainant had in the Home. (Tr. 103) He repeated that opinion in a transcribed telephone conversation on that date. He did opine that if the line running to the grill had been cut, the gas bill would be higher. (Tr. 122)

The fourth Respondent witness was Laura Stevens, a pipe fitter. On June 5, 2008, Ms. Stevens visited the Home. While she had no independent recollection of visiting the residence, her notes were memorialized on Respondent's Exhibits 4B and 4C. On Exhibit 4A, a service order was generated as a result of a call being made stating that the customer (Complainant) smelled a gas odor outside, but was not sure where. At the Home, she performed a standing meter test, Exhibit 4B, which indicated a leak in the fuel line to the grill. On Respondent's Exhibits 4B and 4C, she noted that she could not find the origin of the leak. Ms. Stevens described how a standing meter test is done. All of the gas appliances are turned off, and then the gas is turned on and the meter is watched for five minutes to see if there is any movement of the foot dial. If there is any movement it would indicate a leak. (Tr.145) Ms. Stevens detected the leak by taking the standing meter test of the valve running separately from the Home gas meter. (Tr. 138) She explained that the test involves turning on the valve and it spinning and when it stops when it is turned off that indicates that the line is leaking.

Nichole Cutler, the fifth Respondent witness, is a supervisor in the billing department. Ms. Cutler described her two conversations with the Complainant. Her first conversation occurred on June 6, 2008. Complainant requested to have his gas meter tagged, tested and changed. The meter was successfully tested and changed. (Tr. 156) She noted that there was a potential gas leak of the gas grill. (Tr. 160)

The second conversation occurred on July 23, 2008 after the meter was tested on June 30, 2008. Ms. Cutler informed the Complainant that the meter was tested and passed and his gas bill was correct. (Tr. 160-161) She testified that her investigation of Complainant's bill consisted of the passed meter test and the leak of the gas line. She testified that Mr. Adams only documented that there was no leak inside the Home gas appliances and he did not document any of the outside gas appliances.

Ms. Cutler testified that based on her July 23, 2008 conversation with the Complainant, she closed his dispute. Since the dispute was closed and there was no payment, the amount owed was no longer in dispute and the Home was subject to disconnection. (Tr. 179)

Respondent's final witness was John Riordan, a billing supervisor in the customer relations department of Peoples Gas, an affiliate of North Shore Gas. Among other things, his department handles informal and formal disputes at the Commission. Mr. Riordan explained the billing and dispute process. He testified that the Respondent considered Complainant's billing issues as three separate disputes; one that was handled by Ms. Cutler and closed on July 23, 2008, a second, the informal complaint that was completed on August 29, 2008, and, the third, the formal complaint filed by the Complainant.

Mr. Riordan outlined for the Complainant the bases for the various gas bills he received from April 22 through December 18, 2008, Respondent's Exhibit 7, explaining how the Respondent derived the various bill amounts.

The Complainant then testified on his own behalf in this matter. The gas appliances in the house when they moved in were two furnaces, a gas starter for a gas log, a gas stove, a gas grill and a gas dryer. Throughout their period of time at the home, the furnaces have been changed three times, the last change occurred in the fall of 2007 to a more high efficient energy furnace. The gas hot water heater is 75 gallons. The gas grill was changed two or three times over the course of that period. The present grill was put into place sometime around 2001 or 2002. The gas use in the house is unchanged. Mr. Canel and his wife have lived in the residence throughout the period of time they have owned the house. Their children are now grown and out of the house. The house is equipped with computer-controlled thermostats that have setbacks. Mr. Canel presented Exhibit 9 which recaps the gas bills at the residence from his check registers dated from May 4, 1994 to the present, the last several pages reflect printouts from the gas company as well as the last several bills ending with the last bill in February of 2008. He testified that he believes from a review of all of the bills,

that the July 2008 bill in the amount of fifty-one dollars and some cents was not paid and is due and owing.

The first knowledge the Canel had of this disputed gas bill was not a billing statement for the April service, it was the same day a disconnect notice dated in May of 2008 was received with the May bill. The May bill showed the graph for the amount of consumption for April that caused Mr. Canel to contact North Shore and request somebody to come out and check for the high bill. Prior to that time, the only contact he had with the gas company in 2008 was a call because of a gas smell in the driveway in February. A representative of the gas company came out, went through the house and could find no obvious source of gas, including the backyard where she went with a sniffer device up and back. She did comment to him that the gas line to that grill was a kind of plastic line that tended to deteriorate over time, but she found no evidence of a leak. The North Shore employee did find a leak in a valve in the kitchen stove top unit, she disconnected that valve by shutting it off, but he called his plumbing contractor in her presence so she agreed not to disconnect the entire stove top unit. This was because the contractor came out that day repaired the leak.

In response to the complaint about the high gas bill, Sam Adams, a North Shore employee, came out to inspect the residence. When he arrived at the house, he got out of the truck and said "where's the new swimming pool". Mr. Canel responded that there is none. Mr. Adams then meticulously went through the house with the Complainant and inspected all of the appliances in the house. Mr. Canel even took apart the cover on the new furnace and he wrote down some information in order to perform some calculations. Mr. Adams walked out and talked about the gas grill in the back. According to the Complainant, Mr. Adams said that the gas grill could not possibly explain the amount of gas consumed in the house even if it was leaking. , though there was no evidence found that there was a leak. Mr. Canel called the gas company in his presence and Mr. Adams had a conversation with Trish at the gas company. Mr. Adams then told Mr. Canel that he could do nothing about the gas meter and whatever the problem was with the gas meter. He gave him Mark Iman's card and instructed the complainant to contact Iman. When I called Iman, he gave me Nikki Cutler's phone number and said I would have to talk to her, because he couldn't handle the matter with Mr. Canel.

The Complainant called Ms. Cutler and left messages for her over several days. She ultimately got back to him and they discussed the bill. He advised her that a person from her company had suspected that there was a leak in the gas line for his outdoor grill. In the conversation with Ms. Cutler, she said that it could not be the gas grill unless there was evidence of yellow grass or dead plants. She added that it couldn't possibly explain the amount of gas represented by the bill. Ms. Cutler recognized that there was a dispute and said she would arrange to get the meter pulled. She said that that would take weeks and that Mr. Canel shouldn't expect to hear anything back for a while. Ms. Cutler told Mr. Canel that because the bill is disputed not to pay anything, once she puts it into dispute, it remains in dispute and will remain in dispute until the matter is resolved.

On June 5, 2008, North shore employee, Laura Stevens came out and inspected the residence. She went into the house and disconnected all of the gas appliances except the gas grill to see if the meter does something in the backyard. Ms. Stevens went to the backyard and she turned on the gas valve and she watched that for a while. Ms Stevens indicated that she thought the needle was moving. She suspected that the gas line may be leaking to your grill and she suggested it be replaced. She did not disconnect the line or the valve. There's a petcock valve which she did turn off and she suggested it be looked at for a leak. Ms. Stevens then went in the house and re-started all of the gas appliances.

During the course of the summer Mr. Canel took her advice and contacted his heating contractor, Carlson, to come out and look at replacing the gas line to the grill. They came out and were uncomfortable about replacing the line to the grill because there's an underground sprinkler system. They wanted to know where the lines ran before they would do anything to replace the gas line to the grill. He contacted North Shore Lawn Sprinkler who originally installed the grill and gas line. North Shore had no drawings for where the lines ran and Carlson said he was uncomfortable replacing the line because he didn't want to cut any of North Shore's lines. So he contacted North Shore Lawn Sprinklers and said he'd like to get this gas line replaced to the grill. It was ultimately replaced in late August or September. They could not trace the existing gas line because it didn't have a tracer on the plastic pipe, so it was easier for them to run a new line out to the grill.

The Complainant provided photographs which were taken in November when he realized this case was going to go to hearing. He testified that the photographs truly and accurately portray the similar condition and structure with respect to exhibit 1 C, however, 1 C is the replaced gas meter which the Company replaced in late June. Mr. Canel stated that Nikki Cutler never got back to him, so he called her on July 22nd and left a message on her phone. She returned the call on July 23rd and indicated that she had looked at the records, looked at everything involved in the case and she said the gas bill is the gas bill. Mr. Canel responded to her that she didn't solved the problem, you can't explain to me where this gas went, Mr. Adams and nobody else can and I have no good explanation. It's not my meter, it's your meter. I don't know who makes it, I don't know who maintains it, and I don't know who manufactures it. All I can tell you is there is no way we could have consumed that amount of gas. The conversation broke off after a period of time with no resolution of anything. A day or two later the Complainant received another notice about disconnect from the gas company. He placed several calls to Ms. Cutler and she never returned his phone calls.

It was at that point that he called the Illinois Commerce Commission and initiated the informal complaint process. During that informal complaint process he received two or three calls from unidentified people at North Shore Gas or Peoples Gas. The first two said they would get back to him and the third one caught him while he was driving the car and he said he would call her back. Mr. Canel tried for a day or two to call her back, but she never returned his call. Finally he traced the number from his cell phone and got a hold of her back. Mr. Canel indicated that the company representative just said-

“well, the meter is what the meter says and it's not our business to decide what you do with gas”. It was at that time he began the process of initiating the formal complaint.

Commission Analysis and Conclusions

James Canel is alleging North Shore Gas Company issued a bill with unreasonable charges for the gas consumption at 344 Surfside Place in Glencoe, Illinois. A bill of \$2530.03 was issued by the Respondent for the period of March 20, 2008 to April 22, 2008. According to the Complainant this bill exceeded the total annual gas cost for his residence for most of the years he has resided at this home.

The Complainant testified on his own behalf in this matter. Mr. Canel contends that he did not use the gas, there was no leak, and he has been overbilled by the Respondent. There were a total of 6 witnesses for North Shore Gas. As previously indicated all of witnesses were called as adverse witnesses. Most of the Company witnesses had no recollection of visiting the Complainant's home or dealing with this problem. In their testimony the Company witnesses contend that there was a leak in the gas line leading to the outdoor grill.

This Commission derives its authority solely from the Public Utilities Act. (220 ILCS 5/1-101 et. seq.) Because the Commission is purely a statutory creation and possesses no inherent or common law authority, its jurisdiction is limited by the Act. The Commission's subject matter jurisdiction gives us the power to hear and determine a particular class of cases and the authority to grant the relief requested.

After reviewing the entire record, the Commission concludes that the Complainant failed to prove his case. Even though he claims that there was no way that they used that much gas over the one month period, there is no proof submitted in the record. The burden of proof is on the Complainant to show that the gas was not used or that the problem was on the Company's side of the equipment. This was not accomplished in this matter. Therefore, the Complaint filed by James Canel against North Shore Gas Company is hereby denied.

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, North Shore Gas Company, an Illinois corporation engaged in the business of supplying gas service 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 billing the Complainant for the service, at 344 Surfside, Glencoe, Illinois, were proper;

- (4) the findings of fact and the conclusions of law set forth in the prefatory portion of this Order conform to the evidence of record and the law and are hereby adopted as findings of fact and law herein;
- (5) the amount in dispute was properly due and owing to Respondent from Complainant;
- (6) this Complaint may be properly denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by James Canel on October 6, 2008, against North Shore Gas Company be, and the same is, hereby denied.

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.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLIES ON EXCEPTION DUE:

November 6, 2009
November 20, 2009
November 30, 2009

Glennon P. Dolan,
Administrative Law Judge