

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Verna L. Bethea and Webelene Bethea :
-vs- :
The Peoples Gas Light and Coke Company : **03-0390**
 :
Complaint as to billing in Chicago, Illinois. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On June 12, 2003, Verna L. Bethea and Webelene Bethea (“Complainants”) filed a verified Complaint with the Illinois Commerce Commission (“Commission”) against The Peoples Gas Light and Coke Company (“Respondent” or “Peoples”) regarding billing issues in Chicago, Illinois. Pursuant to notice given in accordance with the law and rules and regulations of the Commission, this matter was heard on June 25, 2003, and on September 10, 2003, by a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois. Complainants appeared at the hearings pro se. Respondent appeared by counsel.

Respondent filed a Motion to Dismiss (“Motion”) on August 18, 2003, asserting that the statute of limitations had expired. On September 30, 2003, Complainants filed a Response to the Motion that chronologically detailed the billing problems mentioned in the Complaint. Respondent filed a Reply thereto on October 15, 2003.

The Administrative Law Judge’s Proposed Order was served on the parties on January 9, 2004. Complainant wrote a Brief on Exceptions by letter dated January 22, 2004 (“BOE”), which was deemed to have been timely filed after an issue with the original service was addressed. Respondent did not file a Brief in Reply to the Exceptions.

II. POSITION OF COMPLAINANTS

According to the Complainants, Peoples issued a bill on or around June 26, 1997, totaling \$1,340.11. They note that this amount is substantially higher than those of other billing periods. Complainants also point out that they had received estimated bills for the previous eight consecutive months. They further assert that the meter is located under their porch in a locked enclosure, and that no one was at home to provide access to the meter on the day it allegedly was read, June 23, 1997.

In an attempt to resolve the issue, Complainants state that they contacted various customer service representatives at Peoples. As a result, Complainants aver, Peoples performed a special reading of their meter. Complainants note that Peoples first sent a letter dated October 9, 1997, stating that their account was over-billed and that a corrected bill would be sent. Complainants also state, however, that Peoples subsequently sent a letter dated December 3, 1997, stating that the account was undercharged rather than overcharged, and its previous letter was sent in error. Complainants further assert that, in letters dated November 10, 1997, and December 19, 1997, they requested that the Consumer Services Division audit their account with Peoples. Copies of those letters were attached to Complainant's Response to the Motion to Dismiss.

The issue persisted. Complainants state that service was disconnected on June 10, 1998. They also indicate that they obtained legal counsel in connection with this matter on or about February 5, 1999. Complainants explain that the amount due on the account had grown to over \$4,950 by May, 2002. Complainants admit in their Complaint that the balance in May, 2002, was due in part to high commodity costs in 2001. They state further that Peoples disconnected service for a second time on May 26, 2002, and that service was restored the following week after payment of the balance owed.

Complainants also explain that they filed a complaint in the Circuit Court of Cook County on June 18, 2002, but that the matter was not heard because the Complainants had not exhausted their administrative remedies at the Commission. On or about January 7, 2003, Complainants filed an informal complaint with the Commission, and on June 12, 2003, Complainants filed the verified Complaint that began the instant Docket.

III. POSITION OF RESPONDENT

In support of its Motion, Respondent asserts that language in the Complaint indicates that it is based on an allegedly incorrect bill dated June 26, 1997. Respondent also points out that the Complainants admit receipt of the bill, and thus knowledge thereof, at about that time.

Peoples further explains that Section 9-252.1 of the Act (220 ILCS 5/9-252.1) requires that a complaint regarding an incorrect billing must be brought within two years from the time that the customer has knowledge of the billing error. Respondent asserts that, while the Complaint indicates that certain steps were taken in an attempt to resolve the bill dispute with Peoples, approximately six years elapsed before the instant Complaint was filed. As a result of the running of the statute of limitations contained within Section 9-252.1, Respondent argues that the Commission no longer can hear the Complaint.

Respondent also argues that the contact between the Complainants and the Consumer Services Division was not sufficient to constitute the filing of a complaint. If the Commission views it as such, however, Peoples alternatively argues that the

initiation of an informal complaint does not toll the statute of limitations, whose time has now passed. Even if the informal complaint does toll the statute of limitations, however, the informal complaint period, and therefore the amount of time tolled, is limited to 28 days by 83 Ill. Adm. Code 280.170(c). Peoples therefore asserts that, under any one of these scenarios, the Complaint is barred by Section 9-252.1.

IV. COMMISSION CONCLUSION

Section 9-252.1 of the Act states, in relevant part, that:

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

220 ILCS 5/9-252.1. Complainants admit receipt of, and therefore knowledge of, the billing at issue on or about June 26, 1997. Section 9-252.1 allows two years from that date for the filing of a complaint with the Commission.

Complainants' Response to the Motion to Dismiss sets forth a chronology of the events they assert are related to the Complaint. For the purpose of deciding the Motion, the Commission accepts these allegations as true. The Commission nonetheless concludes that the underlying issue in the Complaint is the unresolved bill from June, 1997. The statements and allegations made in the Complainant and the Response to the Motion are rooted in that bill. Accordingly, Section 9-252.1 bars the issue, because more than two years passed between the point at which Complainants had knowledge of the bill and the time at which the Complaint was filed.

Furthermore, the actions of the Complainants in the two years following the June, 1997, bill do not amount to a successfully filed complaint. The requirements for a complaint merely include a concise statement of the acts or omissions by the respondent that comprise some violation of the Act or the rules and regulations of the Commission, as well as the specific relief requested. 83 Ill. Adm. Code 200.170. Prior to the filing of the instant Complaint, however, there is no indication that Complainants ever stated their claim and sought a hearing on it.

The letters upon which Complainants rely do not amount to a statement of a claim. When viewed in the light most favorable to the Complainants, the letters establish several facts. On October 8, 1997, a special meter reading was requested by Complainants; the following day Respondent mailed a letter stating that the account was over-billed and a correction would be issued. Complainants contacted the Consumer Services Division of the Commission on November 10, 1997, to inquire about the correction. In response to the inquiry to the Commission, Respondent stated in its letter dated December 3, 1997, that the account was under-billed rather than over-billed. Finally, on December 19, 1997, Complainants sent another letter to the Consumer Services Division concluding that they were over-billed.

The letter dated December 19, 1997, suggests disagreement by Complainants with the findings of the informal investigation, as provided in the December 3, 1997, letter from Respondent. If so, Complainants should have filed their complaint and obtained a hearing at that time. The letter dated December 19, 1997, does not suggest a new issue, and, in fact, requests the same investigation already completed.

During the two years following the June, 1997, bill, Complainants had contact with the Respondent on their own, through their counsel, and through the Consumer Services Division of the Commission. Ultimately, however, Complainants have the responsibility to pursue their claims fully and properly. After the statute of limitations has run, they can not obtain relief that they failed to seek while they had a live claim.

Based on the foregoing, the Commission concurs that Section 9-252.1, in effect, bars the entire Complaint. Accordingly, Respondent's Motion to Dismiss should be granted. Having reviewed the entire record and being fully advised in its premises, the Commission is of the opinion and finds that:

- (1) Respondent, The Peoples Gas Light and Coke Company, is an Illinois corporation engaged in the purchase, storage, distribution, and sale of gas to the public within Illinois, and, as such, is a public utility within the meaning of the Public Utilities Act;
- (2) during the time material to this proceeding, Complainants received gas service from Peoples;
- (3) the Commission has jurisdiction over the parties and the subject matter herein;
- (4) the factual findings and conclusions set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Motion to Dismiss filed by Peoples on August 18, 2003, should be granted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed on June 12, 2003, by Verna L. Bethea and Webelene Bethea against The Peoples Gas Light and Coke Company be, and the same is hereby, dismissed with prejudice.

IT IS FURTHER ORDERED that any objections, motions, or petitions not previously disposed of are hereby disposed of in a manner consistent with the findings of this Order.

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

By Order of the Commission this 26th day of May, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman