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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
BRIAN BERRY)
)
vs.) No. 11-0190
)
PEOPLES GAS LIGHT AND COKE)
COMPANY)
)
Complaint as to)
billing/charges in Chicago,)
Illinois.)

Chicago, Illinois
April 7, 2011

Met pursuant to notice at 1:30 p.m.

BEFORE:

Mr. John T. Riley, Administrative Law Judge

1 APPEARANCES:

2 MR. BRIAN BERRY
3 1620 West Thorndale Avenue
4 Chicago, Illinois 60660
5 (773) 517-7553

6 Appearing pro se;

7 MR. MARK L. GOLDSTEIN
8 3019 Province Circle
9 Mundelein, Illinois 60060
10 (847) 949-1340

11 Appearing for Peoples Gas.

12 ALSO PRESENT:

13 Ms. Catherine Magee
14 Ms. Cynthia Hood

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SULLIVAN REPORTING COMPANY, by
Julia C. Kurtis, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
None					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None		

1 JUDGE RILEY: Pursuant to the direction of the
2 Illinois Commerce Commission, I call Docket 11-0190.
3 This is a complaint by Brian Barry versus the Peoples
4 Gas Light and Coke Company as to billing and charges
5 in Chicago, Illinois.

6 Mr. Barry, you are appearing without
7 counsel at this time; is that correct?

8 MR. BRIAN BERRY: Correct.

9 JUDGE RILEY: Please be advised that you can
10 obtain counsel anytime you want --

11 MR. BRIAN BERRY: Thank you.

12 JUDGE RILEY: -- and have them file an
13 appearance. It's just that they will have to take
14 the record as they find it. We can't go back and
15 start over.

16 MR. BRIAN BERRY: Okay. That's fair.

17 JUDGE RILEY: Mr. Goldstein, would you enter an
18 appearance for Peoples Gas.

19 MR. GOLDSTEIN: Yes. On behalf of the Peoples
20 Gas Light and Coke Company, Mark L. Goldstein,
21 3019 Province Circle, Mundelein, Illinois 60060. My
22 telephone number is (847) 949-1340. I have with me

1 today Catherine Magee and Cynthia Hood of Peoples
2 Gas.

3 JUDGE RILEY: Thank you.

4 And, Mr. Barry, let's get to your --
5 to your complaint here. I'm not 100 percent sure
6 what exactly the problem is.

7 This all involves 1620 West Thorndale;
8 is that --

9 MR. BRIAN BERRY: Correct.

10 JUDGE RILEY: -- correct?

11 MR. BRIAN BERRY: Now, my understanding is this
12 is just a prehearing --

13 JUDGE RILEY: Conference.

14 MR. BRIAN BERRY: -- conference?

15 JUDGE RILEY: That's right. There's no
16 evidence.

17 MR. BRIAN BERRY: Okay. So there's no
18 evidence. So we're just going through simpli- -- the
19 simplification of issues?

20 Are we going through --

21 JUDGE RILEY: Exactly. Right. To discuss what
22 is the issue and what -- what exactly is the nature

1 of your complaint.

2 MR. BRIAN BERRY: A closed account that was
3 being billed.

4 JUDGE RILEY: All right. 1620 West Thorndale
5 has a closed account?

6 MR. BRIAN BERRY: Yes.

7 JUDGE RILEY: How long ago was it closed?

8 MR. BRIAN BERRY: Approximately 4 years ago.

9 JUDGE RILEY: 4 years ago.

10 And you've been getting billings from
11 Peoples Gas --

12 MR. BRIAN BERRY: Yes.

13 JUDGE RILEY: -- ever since then?

14 MR. BRIAN BERRY: Yes.

15 JUDGE RILEY: Is the -- is this an apartment or
16 a single-family home?

17 MR. BRIAN BERRY: It's an apartment.

18 JUDGE RILEY: And it hasn't been leased by
19 anyone?

20 MR. BRIAN BERRY: No. The -- I own the entire
21 unit. The only device --

22 JUDGE RILEY: When you say -- when you say the

1 "unit," you mean --

2 MR. BRIAN BERRY: I mean the entire building.

3 JUDGE RILEY: The entire --

4 MR. BRIAN BERRY: Correct.

5 JUDGE RILEY: You're the -- you're the owner of
6 the two-flat?

7 MR. BRIAN BERRY: Right.

8 JUDGE RILEY: Okay.

9 MR. BRIAN BERRY: The second floor has one
10 appliance that had utilized gas. That was a stove --
11 a gas stove.

12 JUDGE RILEY: Okay.

13 MR. BRIAN BERRY: That was removed. The gas
14 was turned off. The account was discontinued.
15 There's no gas going up there. The first unit
16 provides the gas for the water heater and the heat
17 and a gas stove that's on the first floor.

18 JUDGE RILEY: Okay. So the second floor gas
19 has been shut off for about -- for approximately
20 4 years?

21 MR. BRIAN BERRY: Yes.

22 JUDGE RILEY: Were you there when it was shut

1 off?

2 MR. BRIAN BERRY: Yes. I shut it off.

3 JUDGE RILEY: You shut it off?

4 MR. BRIAN BERRY: Yes.

5 JUDGE RILEY: Okay. And it hasn't been rented
6 to anyone?

7 There's no one living there?

8 MR. BRIAN BERRY: No. People live there.
9 There's not a gas stove there.

10 JUDGE RILEY: There's no gas stove?

11 MR. BRIAN BERRY: Right. And that's the only
12 thing that that meter supplies gas for --

13 JUDGE RILEY: Oh, okay.

14 MR. BRIAN BERRY: -- to the gas stove.

15 JUDGE RILEY: It was just a gas -- okay.

16 MR. BRIAN BERRY: Right. So there's no --
17 there's no appliance or any -- any appliance in the
18 entire building that utilizes gas from that meter.

19 JUDGE RILEY: Just to make sure that I'm --
20 we're -- we're on the same page, you're talking about
21 that there's no appliance on the second floor that
22 uses gas; is that correct?

1 MR. BRIAN BERRY: Correct. And any appliance
2 in the entire building, it's either on the first
3 floor or the basement which is a water heater, a
4 furnace in the basement and then a gas stove in the
5 first floor unit.

6 JUDGE RILEY: Okay. So if tenants are living
7 there, how do they get hot water and how do they cook
8 their food?

9 MR. BRIAN BERRY: The first floor -- the
10 basement gas water heater supplies water. And
11 heat -- the gas furnace supplies heat for the entire
12 unit.

13 JUDGE RILEY: Okay. And cooking gas or --

14 MR. BRIAN BERRY: There's no cooking -- there's
15 no gas. There's electric --

16 JUDGE RILEY: Oh, it's an electric --

17 MR. BRIAN BERRY: -- cooking.

18 JUDGE RILEY: -- electric oven/stove.

19 So there's -- put simply, then, the
20 second floor is not using any gas?

21 MR. BRIAN BERRY: None, whatsoever.

22 JUDGE RILEY: It has not used -- it has not

1 used gas --

2 MR. BRIAN BERRY: No.

3 JUDGE RILEY: -- in 4 years?

4 MR. BRIAN BERRY: Correct.

5 JUDGE RILEY: And, yet, you're still getting

6 billed for it?

7 MR. BRIAN BERRY: Oh, up until a certain point,

8 yes.

9 JUDGE RILEY: When did the -- when did the

10 billing stop?

11 MR. BRIAN BERRY: I don't -- I'd have -- I

12 would have to get the records for those -- for those

13 specific dates.

14 JUDGE RILEY: Okay.

15 MR. GOLDSTEIN: Could I interject something,

16 Judge --

17 JUDGE RILEY: Go ahead, Mr. Goldstein.

18 MR. GOLDSTEIN: -- rather than prolong this?

19 The bottom line of it is, on

20 December 3rd, Peoples Gas zeroed out the account.

21 There are no charges on the account for any kind of

22 service that was provided to the second floor

1 account. And there -- and, in my mind, there are no
2 issues left because the account has been zeroed out.
3 Mr. Barry received the bill which shows a zero
4 balance on the account -- an absolute zero account
5 even though, I guess, some argument can be made as to
6 whether Peoples Gas was entitled to continue to bill
7 him.

8 In his complaint, he requested that
9 the Company provide him an explanation of how Peoples
10 Gas was allowed to continue to bill him even though
11 there was no actual gas usage on his gas meter. I've
12 got a motion to dismiss that I'm going to file.
13 There is an explanation of that. I'm going to hand
14 Mr. Barry a copy of that, as well as your Honor.

15 And, as far as I'm concerned, this
16 matter should be dismissed today. Of course,
17 Mr. Barry would have the opportunity to file a
18 response to the motion since he has not seen it. I
19 am going to be filing this with the Commission as
20 soon as possible with the Clerk's Office, and there's
21 nothing left of this complaint.

22 JUDGE RILEY: Well, I think -- let me ask

1 Mr. Barry this:

2 Are you complaining that you were
3 billed and paid certain amounts --

4 MR. BRIAN BERRY: Billed and paid --

5 JUDGE RILEY: -- after you had --

6 MR. BRIAN BERRY: I paid --

7 JUDGE RILEY: -- shut --

8 MR. BRIAN BERRY: -- I paid --

9 JUDGE RILEY: -- after you had shut the gas
10 off?

11 MR. BRIAN BERRY: Correct.

12 JUDGE RILEY: That's what you're complaining
13 about?

14 MR. BRIAN BERRY: Yeah. In the -- well,
15 there's other things to this, too.

16 With this, they have greatly
17 negatively impacted my credit report; and I'm not
18 looking just for the credit report to be fixed from
19 this point going forward. There's more than this
20 than just whatever amount you're deeming to be
21 written off.

22 And, now, my understanding of this,

1 this is not the venue or the point where this is
2 going to be tried or evidence is going to be
3 presented. My understanding was -- and you said this
4 was a conference hearing. We were going to try to
5 simplify the issue; amend the pleadings; develop the
6 dockets. It seems like we're trying to -- to try
7 this right now.

8 JUDGE RILEY: No, we're not. No.

9 MR. BRIAN BERRY: Okay.

10 JUDGE RILEY: I assure you, there's no evidence
11 being presented. No determinations are going to be
12 made.

13 MR. BRIAN BERRY: Okay. So -- so I really
14 don't -- I'll take your motion, but I don't need to
15 hear any more evidence or perspective of Peoples Gas.
16 I've done this for 4 years with you people. I am
17 done dealing with you people. I'm going to deal with
18 the Commerce Commission. After I hear from them, I
19 will go forward.

20 MR. GOLDSTEIN: Well, I suggest strongly you
21 read --

22 MR. BRIAN BERRY: I appreciate that --

1 MR. GOLDSTEIN: -- the motion to dismiss.

2 Will you let me finish?

3 MR. BRIAN BERRY: No. I don't want Counsel's
4 advice or --

5 MR. GOLDSTEIN: I have a right to speak just as
6 you --

7 JUDGE RILEY: Off the record. Off the record.

8 (Whereupon, a discussion was had
9 off the record.)

10 JUDGE RILEY: Mr. Goldstein, finish your
11 remarks.

12 MR. GOLDSTEIN: Judge, I filed -- I'm going to
13 file the motion to dismiss.

14 JUDGE RILEY: We understand that.

15 MR. GOLDSTEIN: I'm going to request, as part
16 of the motion, that Mr. Berry be given 14 days to
17 respond to the motion and then I be given 7 days to
18 reply thereafter. I strongly suggest, before we have
19 an evidentiary hearing in this matter, that you rule
20 on the motion to dismiss. I believe there is no
21 issue of artifact (phonetic) involved in this matter
22 and the evidence is quite clear.

1 JUDGE RILEY: All right. Mr. Barry, let me
2 explain the procedure.

3 Before you would be able to do
4 anything additionally legal -- I anticipate that you
5 are considering an actual lawsuit --

6 MR. BRIAN BERRY: Yes.

7 JUDGE RILEY: -- in the state courts. In order
8 to get there, you're going to have to exhaust your
9 administrative remedies which would mean an
10 evidentiary hearing at this level. And, at that
11 point, we would set a date and you would have to
12 bring in evidence of precisely how much you were
13 billed; how much you feel was wrongly billed; why you
14 feel it was billed incorrectly. And then
15 Mr. Goldstein would present his case as to why
16 everything was -- was properly taken care of.
17 That's -- that's the situation.

18 MR. BRIAN BERRY: Okay.

19 JUDGE RILEY: He has presented me with a motion
20 to dismiss.

21 Mr. Goldstein, I understand this has
22 not yet been filed --

1 MR. GOLDSTEIN: Correct.

2 JUDGE RILEY: -- with the Clerk's Office?

3 Okay. When I do get a filing date
4 from the Clerk's Office, then I will advise you --
5 advise Mr. Barry. He will have X number of days to
6 respond. I believe the rules do say 14 days, but
7 it's at the discretion of the ALJ to change that.

8 I will set a deadline for your
9 response.

10 MR. BRIAN BERRY: I understand.

11 JUDGE RILEY: And when I do get the response, I
12 will either act to grant or deny the motion. And if
13 it comes down to granting the motion, it would have
14 to come from the Commission. That would be an order
15 entered by the Commissioners. Only they can dismiss
16 a case, ultimately. I can't do that.

17 That's where we stand right now. It
18 sounds like the parties are about as far apart as
19 they can get. I don't know what sum of money is
20 involved.

21 You say you're going to have to get
22 certain records from Peoples Gas to determine that?

1 MR. BRIAN BERRY: Yes.

2 JUDGE RILEY: I don't know if that's going to
3 be possible. Mr. Goldstein does not seem to be the
4 least bit inclined to cooperate insofar as he feels
5 that there are just no issues whatsoever in this
6 matter.

7 That's where we are right now.

8 MR. BRIAN BERRY: That's fine. I understand
9 their point of view.

10 JUDGE RILEY: All right. Then the next order
11 of business then would be, Mr. Goldstein, to get this
12 matter on file with the Clerk's Office. Get your
13 motion to dismiss on file.

14 MR. GOLDSTEIN: I understand that, Judge.

15 JUDGE RILEY: And, Mr. Barry, is there anything
16 else from your standpoint now?

17 MR. BRIAN BERRY: No. That's it. That's it.

18 JUDGE RILEY: All right. Mr. Goldstein, did
19 Peoples Gas have anything to add to what we've
20 already --

21 MR. GOLDSTEIN: I have nothing else to add,
22 Judge. I just suggest that we set another hearing

1 date.

2 JUDGE RILEY: I'm not going to do that until I
3 get the -- until we find out what the --

4 MR. GOLDSTEIN: All right.

5 JUDGE RILEY: -- the motion to dismiss.

6 MR. GOLDSTEIN: That's fine.

7 Are we going to continue this
8 generally, Judge?

9 JUDGE RILEY: Well, as a matter of fact, I
10 don't -- I didn't want to set a date, but I don't
11 want to continue it generally.

12 You say you'll get this thing on file,
13 what, the next day or two?

14 MR. GOLDSTEIN: Yes.

15 JUDGE RILEY: All right. Then let me look at
16 some dates here.

17 So if you would get this thing on
18 file, say, Monday, I most likely would give him,
19 Mr. Barry, 2 weeks to -- that would take us to the
20 25th for his response.

21 MR. GOLDSTEIN: And I would file the -- any
22 reply by June 1st.

1 JUDGE RILEY: Okay. By when?

2 MR. GOLDSTEIN: June 1st.

3 JUDGE RILEY: June 1st?

4 MR. GOLDSTEIN: I'm sorry, May 1st.

5 I'm sorry. I'm looking at the wrong
6 month.

7 I'm sorry, May 2nd.

8 JUDGE RILEY: All right. Now, what I would do
9 is, I would set this -- this is going to be a very
10 tentative date depending on the results of the motion
11 to dismiss. So I will have the Clerk's notice
12 send -- or Clerk's Office send out a notice of
13 this -- of -- of the next date, but it is going to be
14 flexible and very possibly subject to change.

15 But let's just set it down for Monday,
16 May 16, for the time being and just leave it at that.

17 MR. BRIAN BERRY: That's fine. I'm down the
18 street. So...

19 JUDGE RILEY: All right. That's fine.

20 MR. GOLDSTEIN: Would it be in the afternoon,
21 Judge? I have a matter in the morning.

22 JUDGE RILEY: Another 1:30?

1 MR. GOLDSTEIN: 1:30 is fine.

2 JUDGE RILEY: All right. And that will be for
3 status.

4 Let me retract that.

5 Why don't we say that would be for
6 evidentiary hearing. And if -- depending on
7 circumstances, we can reduce it to a status, if need
8 be.

9 MR. GOLDSTEIN: Okay.

10 JUDGE RILEY: But we'll -- we'll leave it at an
11 evidentiary hearing, at this point.

12 All right. Anything further?

13 MR. BRIAN BERRY: No. That's it.

14 JUDGE RILEY: All right, then.

15 MR. BRIAN BERRY: All right.

16 JUDGE RILEY: Mr. Goldstein, anything further
17 from you?

18 MR. GOLDSTEIN: I have nothing else, Judge.

19 JUDGE RILEY: All right, then. We'll leave it
20 at that.

21 MR. BRIAN BERRY: Thanks a lot.

22 JUDGE RILEY: Okay.

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(Whereupon, the above-entitled
matter was continued to
May 16, 2011, at 1:30 p.m.)