

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Scott Hubbs)
)
 v.)
)
The Peoples Gas Light and Coke Company) Docket No. 13-0640
)
Complaint as to billing and/or charges in)
Chicago, Illinois)

**DRAFT PROPOSED ORDER AFTER EVIDENTIARY HEARING OF
THE PEOPLES GAS LIGHT AND COKE COMPANY**

The Peoples Gas Light and Coke Company, (“Peoples Gas”), pursuant to the schedule established by the Administrative Law Judge (ALJ) in this proceeding, hereby submits the following draft proposed order after evidentiary hearing for consideration by the ALJ and the Illinois Commerce Commission (“Commission”).

DRAFT PROPOSED ORDER AFTER EVIDENTIARY HEARING

Complaint as to service in Chicago, Illinois.

Sonya Teague-Kingsley, Administrative Law Judge

I. Procedural History

On November 18, 2013, Scott Hubbs (“Mr. Hubbs” or “Complainant”) filed with the Illinois Commerce Commission (“Commission”) a formal complaint against The Peoples Gas Light and Coke Company (“Respondent” or “Peoples Gas”) alleging he has been improperly billed in the amount of \$9,869.98¹ based upon Peoples Gas’s allegation of gas tampering at his property at 7055 South Aberdeen, Chicago, Illinois (“Property”).

Pursuant to notice given in accordance with the law and the rules of the Commission, this matter came on for status hearings on January 8, 2014, January 30, 2014, March 13, 2014, and April 2, 2014 and an evidentiary hearing was held on January 23, 2015 before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois. Complainant appeared *pro se* and Respondent was represented by counsel. Complainant testified on his own behalf along with a friend, Okema Lewis (“Ms. Lewis”). Respondent

¹ In his Formal Complaint, Mr. Hubbs complains of improper billing in the amount of \$8,732.98, but the evidence presented at the evidentiary hearing indicates that Mr. Hubbs was billed \$9,869.98 in connection with the alleged tampering. (Tr. 113:13-18.)

provided the testimony of Charles Varnado (“Mr. Varnado”), a field service technician, Kim Ternipsede (“Ms. Ternipsede”), a senior account representative in the Revenue Protection Unit (“RPU”), and Diane Harris (“Ms. Harris”), a senior account representative in the Customer Care department. At the conclusion of the hearing on January 23, 2015, the record was marked “Heard and Taken.” Pursuant to the schedule established by the ALJ, draft orders or summaries of positions were to be filed in mid-March 2015. Respondent filed its Draft Proposed Order on March 13, 2015.

I. The Record Evidence

Scott Hubbs stated that he purchased the Property from a Mr. Jackson in either 2004 or 1997. (Tr. 29:22 – 30:9.) He stated that he never lived in the Property. (*Id.* 29:6-9.) Mr. Hubbs stated that he sold the property on April 9, 2009. (*Id.* 29:15-16; 30:11-13; 31:21-32:1.) He stated that Peoples Gas removed the meters from the property in 2009. (*Id.* 24:5-7.)

Mr. Hubbs submitted a copy of his driver’s license, which showed an address on South King Drive, and stated that he has lived in his residence on South King Drive since 1997. (*Id.* 32:2-8.) The photocopy of Mr. Hubbs’s driver’s license was marked as Hubbs Exhibit 1 for identification and admitted into evidence but marked confidential. (*Id.* 34:18-20; 40:10-12.) Since 1997, Mr. Hubbs has had a gas service account with Peoples Gas at his South King Drive residential address. (*Id.* 32:9-33:4.)

Mr. Hubbs submitted a duplicate final Peoples Gas bill for the service address of “7055 S Aberdeen ST Bldg ##Rpu” for the period of June 26, 2009 to January 26, 2012 totaling \$9,869.98. (Group Exhibit 2.) The duplicate final bill, which consists of 32 pages of invoices, was marked as Hubbs Group Exhibit 2 for identification and admitted into evidence. (*Id.* 35:13-14; 40:10-12.) Mr. Hubbs stated that he did not receive the duplicate final bill from Peoples Gas for the Property until he requested it in connection with his complaint to the Commission. (*Id.* 36:18-37:5.) The envelope in which the duplicate final bill was mailed was postmarked August 20, 2013, indicating that Mr. Hubbs likely received the bills in or after late August 2013. (*Id.* 39:6-7.) The envelope was marked as Hubbs Exhibit 3 for identification and admitted into evidence. (*Id.* 39:16-21; 40:10-12.)

Mr. Hubbs questions why he was billed for usage from 2009 to 2012 because “they took the meters out. I thought it was over with; I didn’t have to worry about that because I wasn’t living there.” (*Id.* 25:13-19.) Mr. Hubbs stated that he does not know what the heat source of the building was in early 2009 “because I didn’t go over there.” (*Id.* 46:8-10.)

Upon cross-examination, Mr. Hubbs admitted that he was not sure when he purchased the Property. (*Id.* 40:22-41:8.) Upon reviewing a copy of a Warranty Deed that was entered into evidence as Peoples Gas Exhibit 1, Mr. Hubbs conceded that he “probably” purchased the Property in 1997 and recorded the deed in 2002. (*Id.* 41:9-45:17; 69:20-21.) Mr. Hubbs stated that the Property is a frame two-flat building. (*Id.* 45:18-20.)

Upon reviewing a copy of a document entitled “Articles of Agreement for Deed,” which was marked as Peoples Gas Exhibit 2 (“the Agreement to Sell”) and admitted into evidence, Mr. Hubbs admitted that he did not enter into the Agreement to Sell the Property to Ryeshie

Robinson until April 9, 2012 (not April 9, 2009, as he had testified earlier). (*Id.* 46:18-50:12; 69:20-21.) The Agreement to Sell provided that title to the Property would not transfer until the full purchase price of \$75,000 was paid. (Peoples Gas Exhibit 2 §§ 2-3.). Mr. Hubbs testified that the full purchase price had not been paid. (*Id.* 50:14-51:22.) Mr. Hubbs did not know if he gave the buyer the warranty deed but he stated that he is still holding the mortgage because he borrowed money on the Property. (*Id.* 52:1-8.)

Mr. Hubbs further testified upon cross-examination that in June 2009, when the Peoples Gas meter was removed, Ryeshie Robinson's mother resided in the Property. (*Id.* 52:19-53:1.) Mr. Hubbs stated that his tenant's name was Lori (he did not recall her last name). (*Id.* 55:15-20.) Mr. Hubbs did not know the exact length of time that Lori resided at the Property, but said it was five or six years or more. (*Id.* 53:2-11.) He did not know when Lori first moved in but it was before June of 2009. (*Id.* 53:12-16.) Mr. Hubbs stated that he did not have a written lease with her. (*Id.* 53:20-21.) The oral agreement as of 2009 was that she would pay rent of "like \$700 a month, something like that" plus her utilities. (*Id.* 53:22-54:12.)

Between June 2009 and February 2012, Mr. Hubbs stated that two other people lived in the Property: Mr. Robinson's grandmother and Lori's sister, whose name Mr. Hubbs could not recall. (*Id.* 55:4-57:4.) He had no agreement with Mr. Robinson's grandmother regarding rent, and Lori's sister paid rent but Mr. Hubbs does not remember the terms of their lease agreement. (*Id.* 55:4-14; 56:3-22.) Mr. Hubbs stated that there were no other residents of the Property between June 2009 and February 2012. (*Id.* 57:1-4.)

Mr. Hubbs states that between June of 2009 and February of 2012, Mr. Hubbs did not visit the Property. (*Id.* 54:14-22.) Mr. Hubbs did not answer the question when he was asked who was monitoring the Property. (*Id.* 54:17-22.) Mr. Hubbs stated that he does not know the size of the furnace at the Property. (*Id.* 57:5-13.) He stated that the hot water tank was "at least 50 gallons." (*Id.* 57:14-20.) Mr. Hubbs stated that there was a gas stove at the Property, but he "really [doesn't] remember" if there were other appliances that used gas. (*Id.* 57:21-58.16.)

When asked whether his tenants had heat or hot water from June 2009 to February 2012, Mr. Hubbs stated that he "really [doesn't] know. I imagine they did. I don't know." (*Id.* 58:22-59:3.)

Okema Lewis testified that Mr. Hubbs authorized her to communicate with Peoples Gas on his behalf. (*Id.* 62:8-12.) She testified that Mr. Hubbs resides at 7023 South King Drive and has resided at that address since she met him in 2006 or 2007. (*Id.* 66:15-22.) Ms. Lewis testified that she assisted Mr. Hubbs in ordering the duplicate bills admitted as Hubbs Group Exhibit 2. (*Id.* 67:13-15.)

Upon cross-examination, Ms. Lewis testified that she has no personal knowledge regarding whether there was tampering with the gas service at the Property and that she has never been to the Property. (*Id.* 67:21-68:4.) In addition, she stated that she has no personal knowledge about whether or when Mr. Hubbs owned the Property. (*Id.* 68:5-9.)

Peoples Gas introduced the testimony of Charles Varnado, a field service technician for Peoples Gas. (*Id.* 71:20-72:11.) Mr. Varnado started working for Peoples Gas in May 1992.

(*Id.* 72:2-4.) He stated that he was initially a meter reader and has been a service technician for about 19 years. (*Id.* 72:5-11.) Mr. Varnado testified that his current job title is Senior Service Specialist #2. (*Id.* 71:22-72:1.) Mr. Varnado stated that at present, he serves primarily as an emergency responder to reports of gas leaks or carbon monoxide, but if needed, he will handle customer requests for gas service. (*Id.* 73:4-12.)

Mr. Varnado stated that he has received extensive training for his job with Peoples Gas. (*Id.* 72:12-14.) He stated that employees must qualify and pass a test for each promotion (“upgrade”), and he has had three upgrades since he became a service person. (*Id.* 72:15-18.) In addition, Mr. Varnado stated that technicians must re-qualify every three years. (*Id.* 72:19-20.) He stated that once a year technicians go to a “refresher course” called “tech training” and that there is “constant training and refreshing.” (*Id.* 72:20-22.) Mr. Varnado stated that these trainings help him to understand utility hookups. (*Id.* 73:1-3.)

Mr. Varnado stated that in 2012, he handled a service call at the Property. (*Id.* 74:1-3.) Mr. Varnado testified that in connection with that service call, Mr. Varnado completed by hand a preprinted form called “Request for Investigation of Unmetered Gas,” which was marked for identification as Peoples Gas Exhibit 3 and admitted into evidence. (*Id.* 74:4-19; 80:12-13.)

Mr. Varnado stated that he was called to the Property on a “Job Code 70,” which means that a customer requested gas service and a meter installation would be required. (*Id.* 75:2-8.) He stated that when he visited the Property on February 3, 2012, he discovered that there was no meter, but there was a “makeshift device” that is “a common setup when the meter’s being bypassed.” (*Id.* 75:9-20.) Mr. Varnado described the device as “two three-quarter shutoff valves, which are valves used to control the flow of gas, two elbows, and a union which connects the gas.” (*Id.* 75:16-19.) Mr. Varnado stated that he had seen this setup before and that it is “a very common occurrence.” (*Id.* 75:21-76:1.) Mr. Varnado stated that the device was “installed and placed to illegally flow -- allow the flow of gas through the customer’s piping.” (*Id.* 76:14-16.)

Mr. Varnado stated that he immediately removed the device, which was not Peoples Gas equipment, because it was an illegal bypass of the meter and because it presented a dangerous condition. (*Id.* 76:2-77:13.) Mr. Varnado stated that the device presented a dangerous condition because when appliance hookups are not professionally inspected, there can be “carbon monoxide, explosions, gas leaks – there’s numerous things that could happen...” (*Id.* 77:17-78:7.) Mr. Varnado testified that he observed that the bypass equipment was connected to a 100,000-BTU furnace and a 50-gallon hot water tank. (*Id.* 77:15-20.) Mr. Varnado stated that after he discovered the setup, he notified Peoples Gas’s Revenue Protection Unit. (*Id.* 77:21-78:7.)

At the conclusion of Mr. Varnado’s testimony, there was no cross-examination.

Peoples Gas introduced a second witness, Kim Ternipsede, a senior account representative in the Revenue Protection Unit (“RPU”). (*Id.* 81:12-82:4.) Ms. Ternipsede stated that she has been employed by Peoples Gas for 33 years and has been assigned to the RPU for the past ten years. (*Id.* 81:22-82:7.) Ms. Ternipsede stated that she has received “lots of training” for her work with the RPU on the subjects of conducting investigations, researching and handling customer inquiries and disputes. (*Id.* 82:14-83:1.) Specifically, she stated that she

has received training in reports of tampering and following Commission regulations regarding estimated billing in case of tampering. (*Id.* 83:7-13.) Ms. Ternipsede estimated that she has handled “thousands” of cases of unauthorized gas usage in her career. (*Id.* 83:14-16.)

Ms. Ternipsede stated that in 2012 she handled a reported tampering case at the Property. (*Id.* 83:17-20.) Ms. Ternipsede stated that she became aware of the case involving the Property when she received the Request for Investigation of Unmetered Gas form completed by Mr. Varnado, Peoples Gas Exhibit 3. (*Id.* 83:21-84:4.) Ms. Ternipsede testified that as part of her investigation, she had access to a report marked for identification as Peoples Gas Exhibit 4 and admitted as evidence that indicated that Mr. Varnado found and removed a “steal” at the Property. (*Id.* 84:11-85:16; 102:4-5.)

Ms. Ternipsede stated that she prepared a report dated February 3, 2012 indicating that she billed an account for unauthorized usage. (*Id.* 85:18-86:12.) This report, which reflects that the bill was issued to Scott Hubbs at the Property address, was marked as Peoples Gas Exhibit 5 for identification and admitted into evidence. (*Id.* 85:18-86:12; 102:4-5.)

Ms. Ternipsede described the process for projecting usage when a tampering situation is found. (*Id.* 86:15-100:21.) Ms. Ternipsede stated that she billed the usage at the residential heating rate because that is the appropriate rate where, as here, the building had three or fewer units and the technician had reported that the device had been connected to a furnace. (*Id.* 87:2-11.)

Ms. Ternipsede testified she reviewed Peoples Gas records to determine the start date of the unmetered usage. (*Id.* 87:15-89:2.) These records indicated that the last time that there had been a meter at the Property was June 25, 2009. (*Id.*) This business record was marked for identification as Peoples Gas Exhibit 6 and admitted into evidence. (*Id.* 87:15-89:2; 102:4-5.) Ms. Ternipsede stated that she used the following day, June 26, 2009, as the start date for the calculation of projected usage because she determined that the Property was receiving unmetered gas from June 26, 2009. (*Id.* 90:5-91:2.) She based this conclusion on the fact that even though the Property was occupied, and the Property got its heat and hot water through gas service, no one ever called to complain that there was no heat or hot water, which leads to the reasonable inference that there has been tampering and that gas is being acquired illegally. (*Id.* 90:5-91:2.) Ms. Ternipsede stated that February 3, 2012, the date Mr. Varnado removed the device, was the date that the unauthorized usage ended. (*Id.* 75:9-11; 86:13-16.) Ms. Ternipsede stated that, in sum, the tampering period was from June 26, 2009 to February 3, 2012. (*Id.* 86:13-16; 88:15-89:1.)

Ms. Ternipsede stated that she used a form called the Meter Index Worksheet for Heating DTOs to calculate the estimated usage for the tampering period in accordance with the Commission’s regulations. (*Id.* 91:21-93:3.) The worksheet was marked for identification as Peoples Gas Exhibit 7 and admitted into evidence. (*Id.* 91:21-92:8; 102:4-5.) Ms. Ternipsede stated that her projection of estimated usage was based on the actual usage from the year immediately prior to the removal of the meter, adjusted for degree days. (*Id.* 93:12-94:13; 96:5-97:14.) She stated that she calculated both the heating factor (for the gas furnace) and the non-heating factor (for all non-heating appliances) for the period from June 26, 2008 to June 25, 2009. (*Id.* 93:4-94:18.) Ms. Ternipsede stated that based on her calculations, the heating factor

for the previous year was 4.833 CCFs (centum cubic feet, or 100 cubic feet) per degree day and the non-heating factor for the previous year was 0.485 CCFs per day. (Ex. 7; Tr. 93:12-94:18.) Ms. Ternipsede's report indicates that based on these two factors, she projected the usage from June 26, 2009 to February 3, 2012 to be 12,215 CCFs of gas. (Ex. 7; Tr. 95:1-3.)²

Ms. Ternipsede stated that the 12,215 CCF projection resulted in a total bill of \$9,869.98. (*Id.* 95:4-96:5.) The bill was marked as Peoples Gas Group Exhibit 8 for identification and admitted into evidence. (*Id.* 95:13-20; 102:4-5.) The bill was dated February 4, 2012 and was addressed to Scott Hubbs, the owner of the property, at 7023 South Aberdeen St. Fl. 1. (Peoples Gas Exhibits 1 and 2; Peoples Gas Group Exhibit 8.)

At the conclusion of Ms. Ternipsede's testimony, there was no cross-examination.

Peoples Gas introduced a third witness, Diane Harris, a senior account representative in the Customer Care department. (Tr. 103:6-15.) Ms. Harris stated that she has worked for Peoples Gas for a total of 27 years. (*Id.* 104:6-8.) Ms. Harris testified that her previous positions included handling large-volume accounts for the transportation department, working as a customer service representative, and serving as a lead, where she trained customer service representatives in handling calls. (*Id.* 104:9-105:7.)

Ms. Harris stated that she has received training regarding her duties, which include being courteous, polite, and professional in handling the customers and their inquiries; explaining the Part 280 tariffs to customers; and explaining the actual gas bill, meter readings, and components of the bill. (*Id.* 103:16-104:2; 105:9-19; 105:16-19.) She testified that part of her training includes keeping records of certain actions that she takes with respect to customers. (*Id.* 105:20-106:1.)

Ms. Harris testified that there came a time that she was assigned to handle the account at the Property. (*Id.* 106:2-6.) She stated that she reviewed the file and determined that Peoples Gas had not recorded a turn-on order for the Property from June 25, 2009 until 2012. (*Id.* 106:10-14; 107:13-22.) This indicates that Peoples Gas had not provided authorized, metered gas service at the Property after June 25, 2009.

Ms. Harris stated that the final bill for unauthorized service at the Property, Group Exhibit 8, was never paid. (*Id.* 106:15-108:6.) Ms. Harris testified that the account was then transferred to a collection agency on June 12, 2012, but the account was later transferred back to Peoples Gas when the account was not successfully collected. (*Id.* 108:7-109:9; 110:3-12.)

Ms. Harris testified that an October 4, 2013 Peoples Gas bill indicates that at some point, the unpaid balance of \$9,869.98 from the final bill to Mr. Hubbs at the Property was transferred to Mr. Hubbs' account at his residence, 7023 South King Drive. (*Id.* 110:13-112:13; 114:11-17.) The October 4, 2013 bill was marked for identification as Peoples Gas Exhibit 9 and admitted

² Although the transcript indicates that Ms. Ternipsede testified that she calculated the projected usage at 12,215 cubic feet, she either misspoke or was misquoted. (Tr. 95:1-2.) Exhibit 7 states that the projected usage was 12,215 CCF (one CCF = 100 cubic feet), not 12,215 cubic feet. (Ex. 7.) Ms. Ternipsede used the figure of 12,215 CCF, not 12,215 cubic feet, when she actually billed the projected usage, indicating that the correct projected usage figure was 12,215 CCF. (See Group Ex. 8.)

into evidence. (*Id.* 110:13-22; 123:21-22.) The service classification for both the account at the Property and the 7023 South King Drive account was residential heating. (*Id.* 114:11-17.)

Ms. Harris testified that on August 16, 2013, she spoke to Ms. Lewis regarding a Citizen's Utility Board complaint regarding the outstanding balance on Mr. Hubbs' account at his residence on 7023 South King Drive. (*Id.* 115:14-117:8.) Ms. Harris testified that she explained to Ms. Lewis the history of the account and the current amount due. (*Id.* 116:26-117:1.) A printout of Ms. Harris's note to the computerized file regarding this conversation was marked as Peoples Gas Exhibit 13 and admitted into evidence. (*Id.* 115:14-117:8; 123:21-22.)

Ms. Harris stated that spoke to Ms. Lewis again on August 28, 2013 regarding the amount due and how it was calculated. (*Id.* 117:14-118:8.) A printout of Ms. Harris's note to the computerized file regarding this conversation was marked as Peoples Gas Exhibit 12 and admitted into evidence. (*Id.* 117:14-118:8; 123:21-22.)

Ms. Harris testified that on September 17, 2013, she spoke to Ms. Lewis, who stated that the new owner purchased the property approximately a year ago, that the deed has never been recorded, that the new owners state that they have hot water, and that Mr. Hubbs was not responsible. (*Id.* 118:9-119:9.) Ms. Harris testified that there was no record that Mr. Hubbs called Peoples Gas between 2009 and 2012 to report that he was not responsible for any usage at 7055 South Aberdeen. (*Id.* 119:11-17.) A printout of Ms. Harris's note to the computerized file regarding this conversation was marked as Peoples Gas Exhibit 14 and admitted into evidence. (*Id.* 118:9-119:9; 123:21-22.)

Ms. Harris stated that Mr. Hubbs never paid the balance that was transferred to his account at 7023 South King Drive and that as a result, the gas at his residence was disconnected. (*Id.* 119:18-120:7.) Ms. Harris stated that as a courtesy, Peoples Gas suspended the account with the outstanding balance and opened a second account, allowing his residential service to be reconnected, and effectively giving Mr. Hubbs a clean slate. (*Id.* 120:9-120:4.)

Upon cross-examination, Ms. Harris testified that after a meter is removed from a residence, it's the company's assumption that no gas is being used or should be used. (*Id.* 126:8-127:2.) Mr. Harris testified further that if a technician is sent out and finds an illegal connection, that connection will be removed for the safety of the customer. (*Id.* 127:3-6.) Ms. Harris stated that once a meter is removed, there are no readings on the meter. (*Id.* 127:7-8.) Ms. Harris testified that because the residence is the owner's property, the owner must supply entry to the premises. (*Id.* 127:13-14.) Ms. Harris testified that Peoples Gas does not automatically go out to inspect premises where there is no service. (*Id.* 127:15-128:15.) On redirect, Ms. Harris stated that it is the owner's responsibility to know what is going on in a building he owns. (128:22-129:3.)

Upon examination by the ALJ, Ms. Harris testified that Mr. Hubbs' name became associated with the account at the Property address on April 2, 1997. (*Id.* 133:8-18.) Ms. Harris stated that although Peoples Gas has no record that Mr. Hubbs personally requested that the account be set up in his name because the records from 1997 have been purged, Peoples Gas would not set up an account in his name unless he requested it. (*Id.* 133:19-134:17.) Ms. Harris testified that she does not know of any record that Mr. Hubbs ever requested disconnection of the

service at any time at the Property address. (*Id.* 134:18-21.) Ms. Harris testified that she did not know if Peoples Gas's records reflect who made the call requesting service in 2012 that led to the technician coming to the Property and discovering the tampering. (*Id.* 134:22-135:8.) Ms. Harris stated that she did not pull the records showing when Mr. Hubbs turned on his service at 7023 South King Drive, but it is her understanding that he has had service in his name at 7023 South King Drive. (*Id.* 135:10-21.) Ms. Harris testified that she did not pull up the start date because the complaint was not associated with the South King Drive address, but instead with the Property. (*Id.* 136:1-8.)

Ms. Harris further testified that the property owner is responsible for the building account that supplies the heat and hot water to the tenants, which was set up separately from the first and second-floor meters for cooking gas only, which were paid by the tenants. (*Id.* 136:20-138:13.)

Ms. Harris also stated that under Commission rules, unpaid residential heating balances may be transferred to other residential heating accounts held by that customer. (*Id.* 143:5-21.)

The ALJ recalled Mr. Hubbs for examination. (*Id.* 146:16-18.) Mr. Hubbs testified that his oral agreement with the people who lived at the Property was that they would pay their utilities. (*Id.* 147:3-7.) Mr. Hubbs also testified that he doesn't have a key to the basement of the Property. (*Id.* 147:8:11.)

On re-cross, Mr. Hubbs testified that the tenants did not open their own accounts to pay their utilities. (*Id.* 147:20-148:2.) He stated that he never called Peoples Gas to tell them that he was not responsible for the gas at the Property. (*Id.* 148:10-16.)

On further questioning from the ALJ, Mr. Hubbs stated that he never lived at the Property. (*Id.* 149:8-12.)

III. Commission Analysis and Conclusions:

Scott Hubbs has brought his complaint to the Commission alleging he is not responsible for the gas bill at the Property he owns. Although his arguments are not clear, the Complainant appears to argue that he is not responsible for the unauthorized usage because his tenant agreed to pay for her utilities and because he did not receive notice from Peoples Gas of the unauthorized usage until 2013.

Witnesses for Peoples Gas provided evidence that showed that its technician discovered tampering at the Property on February 3, 2012 and that there had been no meter on the premises from June 26, 2009 until the tampering was discovered. Peoples Gas also introduced evidence that Mr. Hubbs has owned the Property for all of the relevant time period (from 1997 to the present). Its witnesses also provided evidence that Mr. Hubbs was associated with the account at the Property until the June 25, 2009 disconnection. Finally, witnesses for Peoples Gas provided evidence that Mr. Hubbs's residential account at 7023 South King Drive was the same service classification – residential heating – as the 7055 South Aberdeen account.

The Commission takes judicial notice of Section 13-196-410 of the Chicago Municipal Code, which provides that the owner of a building with a common heating plant must supply

heat from September 15th of each year to June 1st of the succeeding year to the units served by that heating plant. (See Chicago Municipal Code Section 13-196-410 attached to this Draft Proposed Order as Exhibit A.) Mr. Hubbs points to no exceptions to this ordinance, and neither Peoples Gas nor the Commission were able to locate any authority to support Mr. Hubbs's argument that an owner may shift its responsibility to provide heat from a common plant onto a tenant who agrees to pay the gas usage associated with her unit. Moreover, based on Mr. Hubbs's frequent lapses of memory, including his initial denial that he even owned the Property at the time in question, we do not find credible Mr. Hubbs' testimony that he had an agreement with his tenant that she would pay for the heat for her unit.

When the utility alleges a customer has received service by tampering pursuant to 83 Ill. Admin. Code 280.100(c),³ the utility must prove by a preponderance of the evidence that the customer's meter has been tampered with, that the customer has benefitted from the tampering and that the utility's rebilling is reasonable. In this matter, we find that Peoples Gas has met its burden. The testimony of Peoples Gas witnesses shows that the equipment in Mr. Hubbs's basement was tampered with after a shutoff by Peoples Gas. The Commission concludes that there was tampering for the purpose of improperly diverting gas to the Property. As the owner of the Property, Mr. Hubbs benefitted from the usage because it discharged his responsibility under the Chicago Municipal Code to ensure that the building units had heat from the common heating plant in the basement of the building he owned. We also find it is reasonable to conclude that the residents maintained other gas appliances their apartments.

Although it is true that Peoples Gas has not offered direct evidence that Mr. Hubbs tampered with the gas meter, there is sufficient evidence to infer that someone with access to the Property tampered with the gas equipment and that Mr. Hubbs benefitted from the usage. Since at all relevant times, Mr. Hubbs was the owner of the property and collected rent from tenants residing on the property, he benefitted from the tampering situation when he collected rent from his tenants, and we find that he is responsible for the gas bill. See *Ivie Clay v. Peoples Gas Light and Coke Co.*, Ill. C. C. Case No. 09-0621, 2011 WL 1051681 (Order dated Mar. 9, 2011) attached to this Draft Proposed Order as Exhibit C and *Evans v. Peoples Gas Light and Coke Co.*, Ill. C. C. Case No. 90-0130, 1990 WL 10554026 (Order dated June 27, 1990) attached to this Draft Proposed Order as Exhibit D.)

The Commission also finds that the final bill at the Property offered by Peoples Gas for unmetered usage from June 26, 2009 to February 3, 2012 is reasonable and proper.

Further, although Mr. Hubbs does not explicitly contest the propriety of transferring the bill from the Property to 7023 South King Drive, the Commission finds that the final bill at the Property was properly transferred to Mr. Hubbs' account at 7023 South King Drive. A utility is allowed to transfer past due utility service bills from a previous service account to that customer's other service account under 83 Ill. Admin. Code 280.50⁴, subject to the transfer of

³ Although Part 280.100 of Title 83 of the Illinois Administrative Code was amended in 2013, the version of the regulation in force at the time of discovery of the tampering applies. This analysis is based on the provision in the force from 2009-2012, which is attached hereto as Exhibit B. The Commission makes no finding with respect to whether it would reach a different result under the regulation in force from 2013 to the present.

⁴ Although Part 280.50 of Title 83 of the Illinois Administrative Code was amended in 2014, the version of the regulation in force at the time of the transferred balance applies. This analysis is based on the provision in the force

balance is between the same class (e.g., residential) of service. The transferred balance of the account at 7055 South Aberdeen, Chicago, Illinois was unpaid. The transferred balance was under Peoples Gas' Service Classification 1 heating. The account transferred to at 7023 South King Drive is under Peoples Gas' Service Classification 1 heating. As there is an unpaid balance for the same class of service – residential heating – and both were the responsibility of Mr. Hubbs, the transfer was proper.

Therefore, we find Mr. Hubbs's complaint should be denied.

Findings and Ordering Paragraphs:

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

1. The Peoples Gas Light and Coke Company is a "public utility" as defined in the Illinois Public Utilities Act;
2. the Commission has jurisdiction over the parties and the subject matter of this Proceeding;
3. the findings of facts and law reached in the prefatory portion of the Order are supported by the record and are hereby adopted as findings of fact and law;
4. Complainant is responsible for the billed usage from June 26, 2009 to February 3, 2012 for unmetered gas service at 7055 South Aberdeen, Chicago, Illinois, in the amount of \$9,869.98;
5. the Complaint filed by Scott Hubbs against Peoples Gas Light and Coke Company on November 18, 2013 should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Scott Hubbs against Peoples Gas Coke and Light Company be, and is hereby denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-110 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.

DATED: _____, 2015

BRIEFS ON EXCEPTIONS DUE: _____, 2015

REPLY BRIEFS ON EXCEPTION DUE: _____, 2015

* * * * *

in 2013, which is attached hereto as Exhibit E. The Commission makes no finding with respect to whether it would reach a different result under the regulation in force from 2014 to the present.

WHEREFORE, Peoples Gas respectfully requests that its Draft Proposed Order After Evidentiary Hearing as submitted herein be adopted, and that the Commission grant any and all other appropriate relief.

DATED at Chicago, Illinois on this 13th day of March, 2015.

Respectfully Submitted,

**THE PEOPLES GAS LIGHT AND COKE
COMPANY**

By: /s/ SANDY L. MORRIS

Sandy L. Morris, Esq.

An Attorney for The Peoples Gas Light
and Coke Company

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EXHIBIT A

[Print](#)

Municipal Code of Chicago

13-196-410 Residential buildings – Heat to be furnished.

Every family unit or rooming unit to which heat is furnished from a heating plant used in common for the purpose of heating the various rooms of the dwelling shall be supplied with heat from September 15th of each year to June 1st of the succeeding year so that the occupants of a family unit or rooming unit may secure, without such undue restriction of ventilation as to interfere with proper sanitary conditions, a minimum temperature of 68 degrees at 8:30 a.m. and thereafter until 10:30 p.m. and 66 degrees at 10:30 p.m. and thereafter until 8:30 a.m. averaged throughout the family unit or rooming unit.

(Prior code § 78-39; Amend Coun. J. 2-25-88, p. 10733; Amend Coun. J. 3-9-05, p. 43526)

EXHIBIT B

West's Illinois Administrative Code <small>Currentness</small>
Title 83: Public Utilities
Chapter I: Illinois Commerce Commission
Subchapter B: Provisions Applicable to More Than One Kind of Utility
Part 280: Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service (<u>Refs & Annos</u>)

83 Ill. Adm. Code 280.100

280.100 Unbilled Service

a) A utility may render a bill for services or commodities provided to:

- 1) A residential customer only if such bill is presented within one year from the date the services or commodities were supplied, or
- 2) A non-residential customer only if such bill is presented within two years from the date the services or commodities were supplied.

b) No customer shall be liable for unbilled or misbilled service after expiration of the applicable period except in those instances to which 83 Ill. Adm. Code 500.240(a), 83 Ill. Adm. Code 410.260(c), or the following subsections of this Section apply.

c) Tampering

- 1) When there has been tampering with wires, pipes, meters or other service equipment and the customer has enjoyed the benefit of such tampering, the utility is not restricted to the above time limitations on unbilled service. When a utility applies this provision to bill for service which occurred outside the applicable time limitations, a customer may dispute the bill under the provisions of Sections 280.160 and 280.170 of this Part. The customer shall be responsible for all service usage, and the utility may bill the customer for all service usage during the period the tampering occurred. Customers may be billed for diverted service not used by that customer if that customer had knowledge of or consented to the diversion.
- 2) If a utility alleges that tampering has occurred, the utility shall have the burden of proving, by a preponderance of the evidence, that the customer's meter has been tampered with, that the customer has benefitted from the tampering and that the utility's rebilling is reasonable.

d) When past due bills occur following the issuance of a "make-up" bill for previously unbilled utility service resulting from two or more consecutive estimated bills, utility billing error, meter failure, or undetected leakage or undetected loss of service, except in situations where tampering is involved, and where the "make-up" bill exceeds the otherwise normal bill for such billing period by 50%, a utility shall review the bill with the customer, and shall offer to accept payments toward the liquidation of the amount over a normal bill over a period mutually agreed to by the utility and the customer.

280.100 Unbilled Service, 83 IL ADC 280.100

This period of time shall be at least as long as the period over which the excess amount accrued. Where the excess billing resulted from undetected leakage or loss of service, the period shall be extended so that the bill rendered will not be greater than a normal bill, plus 50%.

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.

Credits

(Source: Amended at 16 Ill. Reg. 11023, effective July 1, 1992)

Current through rules published in the Illinois Register dated December 28, 2012

83 ILAC § 280.100, 83 IL ADC 280.100

End of Document

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EXHIBIT C

2011 WL 1051681 (Ill.C.C.)
Slip Copy

Ivie Clay
v.
Peoples Gas Light and Coke Company

09-0621

Illinois Commerce Commission

March 9, 2011

ORDER

Complaint as to service in Chicago, Illinois.

BY THE COMMISSION:

I. Procedural History:

On December 30, 2009, Ivie Clay (“Ms. Clay” or “Complainant”) filed with the Illinois Commerce Commission (“Commission”), a formal complaint against The Peoples Gas Light and Coke Company (“Respondent” or “Peoples Gas”) alleging she has been improperly billed in the amount of \$7,837.10 based upon Peoples Gas’ allegation of gas tampering at her property at 6411 South Winchester, Chicago, Illinois (“Property” or “Residence”).

Pursuant to notice given in accordance with the law and the rules of the Commission, this matter came on for status hearing on February 4, 2010 and an evidentiary hearing was held on April 22, 2010 before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois. Complainant appeared *pro se* and Respondent was represented by counsel. Complainant testified on her own behalf along with her tenant, Johnnie Ray Russell (“Mr. Russell”). Peoples Gas provided the testimony of Anthony Blasgen (“Mr. Blasgen”), a field investigator in the Gas Diversion and Detection Department, and Susan Anderson (“Ms. Anderson”), a Billing Department Representative specializing in gas theft. At the conclusion of the hearing on April 22, 2010, the record was marked “Heard and Taken”. A proposed order was served on the parties on December 3, 2010. A Brief on Exceptions was filed by the Complainant on December 22, 2010, followed by a Reply Brief on Exceptions filed by the Respondent on January 19, 2011.

II. The Record Evidence:

Ms. Clay stated she purchased the Property in November, 2004 and the service was originally in the name of Kensha Clay, her daughter. The gas service remained active until July 2005 and her daughter moved out of the Property in January 2006. Ms. Clay testified that in October 2009, Peoples Gas arrived to the property to establish gas service for her new tenant Johnny Ray Russell, who requested service at her property under his own account. Ms. Clay testified that Mr. Russell allowed Peoples Gas access to the basement. During the visit, Ms. Clay stated the service representative discovered evidence of tampering on the meter bars and as a result, the representative was required to report it to Peoples Gas. Ms. Clay testified that soon thereafter, Peoples Gas refused Mr. Russell gas service at her residence. On or about November 13, 2009, Ms. Clay stated she received correspondence from Peoples Gas informing her she was being billed for gas usage obtained with an illegal connection. The Complainant questioned how it was possible for her to incur a \$3,000 bill when there was no meter at the Property. Ms. Clay testified she did not understand why she was suddenly being billed for illegal gas service.

Complainant introduced the November 13, 2009 letter and billing statements she received after the Peoples Gas representative visited the property in October 2009. Ms. Clay testified she had not had a meter at the property since 2006. The Complainant also entered into evidence another letter from Peoples Gas dated March 11, 2006 that confirmed her gas service was disconnected as of July 29, 2005. The letter also indicated that Peoples Gas’ records showed gas was used

illegally at the Property. Ms. Clay also produced her own photos of the gas lines in her basement. She noted the house was originally installed with lines for two separate meters, but at the time she bought the property there was only one active line and one meter. Ms. Clay testified the gas line was locked and never connected in any way. The Complainant acknowledged her furnace in inoperable and her home is heated by propane gas. Ms. Clay also stated she maintains a 40-gallon hot water tank in her basement. Ms. Clay argued that Peoples Gas cannot prove its claims against her as they are based on assumptions and not grounded in fact.

Upon cross-examination, Ms. Clay continued with her claims and also on questioned the timing of Peoples Gas' billing her for the unmetered gas usage. Ms. Clay argued she was unaware of the outstanding balance or any allegations of gas theft until after Peoples Gas inspected her basement and subsequently sent her written notice.

Ms. Clay introduced Mr. Russell as her witness. Mr. Russell testified he originally resided at the Property from 2005 to 2006, at the same time as Mr. Clay's daughter. Mr. Russell stated he initially called Peoples Gas to request gas service for his rental unit in October 2009. At the time, Peoples Gas told Mr. Russell he had an outstanding balance owed from the time period when he lived his previous residence. After Mr. Russell paid the bill; he requested new service at Ms. Clay's property, which prompted Peoples Gas to visit the residence on November 11, 2009. Mr. Russell confirmed the gas meter in the basement was missing at the time of the Peoples Gas inspection.

Upon cross-examination, Mr. Russell re-stated his original testimony and maintained he leased a unit in the property sometime in 2009. The witness confirmed he did not know that Ms. Clay had an unpaid balance for gas service when he called to set up his service at her home. After a brief re-direct examination from Ms. Clay, the Exhibits A - E were admitted into evidence.

Peoples Gas introduced the testimony of Anthony Blasgen, a field investigator for the Gas Diversion and Detection Department. Mr. Blasgen testified he has been employed by Peoples Gas for 23 years and has been assigned as a field investigator for the last five years. During his tenure at Peoples Gas, Mr. Blasgen estimated he has investigated between 1,500 and 2000 alleged gas thefts. The witness initially visited the property on October 27, 2009 and was refused access. At the time, Mr. Blasgen noticed the buffalo box on the adjacent parkway was missing and there was signs of digging in the areal the buffalo box should have been located. Mr. Blasgen returned to the property on November 2, 2009, with a permit to begin excavation on the parkway. This time Mr. Blasgen testified he noticed the gas line was connected with authorization from Peoples Gas. Mr. Blasgen reported his observations to the Peoples Gas and ordered personnel to cut off the main service line at the property.

Mr. Blasgen stated her returned to Ms. Clay's residence on November 6, 2009, and found the parkway in a condition that was different from how he left it. Mr. Blasgen took pictures of the parkway and came back to the residence on November 9, 2009, where he was not given access to inspect the property. Mr. Blasgen returned to the property at third time on November 10, 2009. This time Mr. Russell allowed him to see the basement where Mr. Blasgen took additional pictures. The witness noted the tabs and lock on the meter bar were missing, the meter bar collars were scratched, and gas service to the property was unprotected overall. Mr. Blasgen also testified he saw the sleeves on the back of the meter bar were also missing and there were significant signs wrench marks on the inlet nipple that accessed main gas line.

Mr. Blasgen stated he recalled Peoples Gas shut off service at the buffalo box and the main gas line on July 13, 2009.

During cross-examination, Mr. Blasgen concluded the gas service equipment showed signs of significant tampering which caused him to order the service shut off altogether.

Peoples Gas also introduced a second witness, Susan Anderson, a Customer Service Representative in the Billing Department for the past 24 years. Ms. Anderson stated she has performed over 8,000 billing account reviews and was the representative that re-calculated and adjusted the charges on Ms. Clay's account.

Ms. Anderson introduced Ms. Clay's billing history and noted Peoples Gas originally disconnected her gas service and locked the meter on July 29, 2005. Prior to the initial disconnection, the gas service account was billed Ms. Clay's daughter, Kensha Clay. Ms. Anderson stated that Peoples Gas tried unsuccessfully to gain access to the residence on April 6, 2006 and service to the buffalo box was cut off at that time. Ms. Anderson stated Peoples Gas' records show what on December 24,

2007, the gas meter was activated without authorization and the service technician shut the gas off for a second time.

Ms. Anderson testified she issued a bill for metered gas service between August 1, 2005 and August 31, 2006 in the amount of \$3,772.81 on November 12, 2009.

Ms. Anderson further testifies she estimated billing for unmetered gas between November 13, 2006 and November 2, 2009. Ms. Anderson stated she set the time period based upon winter usage and the appliances present at the residence at the time. She testified that Peoples Gas determined the property was equipped with a 160,000 BTU furnace and a 34,000 BTU hot water tank. Ms. Anderson stated Ms. Clay's bill was calculated using the degree days multiplied by the normal consumption in the average home, per appliance. The witness testified her calculations resulted in total bill of \$7,837.10 for unmetered gas.

At the conclusion of Ms. Anderson's testimony, there was no cross-examination and counsel for Peoples Gas admitted Exhibits 1 - 11 into evidence.

III. Commission Analysis and Conclusions:

Ivie Clay has brought her complaint to the Commission alleging she is not responsible for the gas bill at her residence because Peoples Gas has been unable to prove she participated in gas diversion. The Complainant maintains Peoples Gas has no direct witnesses to gas theft at the Property and that she presently uses propane heating. Ms. Clay argued that that Peoples Gas is prohibited from billing her for gas service, since the meter was returned to the Company, prior to the billing period in question.

Witnesses for Peoples Gas provided evidence that showed its investigator made attempts to gain access to the property to no avail. Peoples Gas employees testified to several instances where its representatives disconnected the gas only to find service was inexplicably reconnected at the buffalo box and main line even after the meter was shut off in December, 2007. The field investigator's pictures and testimony clearly show evidence of unauthorized digging in the parkway near the buffalo box and tampering with the gas equipment in the basement.

When the utility alleges a customer has received service by tampering pursuant to 83 Ill. Adm. Code 280.100(c), the utility must prove by a preponderance of the evidence that the customer's meter has been tampered with, that the customer has benefitted from the tampering, and that the re-calculated bill is reasonable. In this matter, we find Peoples Gas has met its burden. The testimony of both Peoples Gas witnesses and photos clearly show the equipment in Ms. Clay's basement and the adjacent parkway has been tampered regularly over a number of years, after numerous shut offs by Peoples Gas. The Commission concludes there was a consistent pattern of tampering for the purpose of improperly diverting gas to the residence. We believe it is obvious that the Complainant benefitted from the diverted gas usage in her home since she admits to having a 40-gallon hot water tank in the residence. We also find it is reasonable to conclude Ms. Clay maintained other gas appliances in the home. The Complainant's testimony regarding her daughter's responsibility for the gas bill prior to July 29, 2005 is immaterial and does not absolve Ms. Clay from her responsibility for the gas bill between after August 1, 2005.

Although it is true as Ms. Clay stated Peoples Gas did not offer direct evidence she benefitted from illegal gas usage, there is sufficient evidence to infer that she or someone with access to her residence tampered with the gas equipment. Since at all relevant times, Ms. Clay was the owner of the property; we find she is responsible for gas bill. The Commission also finds the re-calculated bill offered by Peoples Gas for usage from August 1, 2005 through August 31, 2006 in the amount of \$3,772.10 and the unmetered usage from November 13, 2006 to November 2, 2009 in the amount of \$7,837.10 is reasonable and proper. Therefore, we find Ms. Clay's complaint should be denied.

Findings and Ordering Paragraphs:

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

1. The Peoples Gas Light and Coke Company is a "public utility" as defined in the Illinois Public Utilities Act;

2. the Commission has jurisdiction over the parties and the subject matter of this Proceeding;
3. the findings of facts and law reached in the prefatory portion of the Order are supported by the record and are hereby adopted as findings of fact and law;
4. Complainant is responsible for the billed usage from August 1, 2005 to August 31, 2006 for metered gas service at 6411 South Winchester, Chicago, Illinois in the amount of \$3,772.81;
5. Complainant is responsible for the billed usage from November 13, 2006 to November 9, 2009 for unmetered gas service at 6411 South Winchester, Chicago, Illinois in the amount of \$7,837.10;
6. the Complaint filed by Ivie Clay against Peoples Gas Light and Coke Company on December 30, 2009 should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Ivie Clay against Peoples Gas Light and Coke Company be, and is hereby denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-110 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 9th day of March, 2011.

DOUGLAS P. SCOTT

Acting Chairman

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EXHIBIT D

1990 WL 10554026 (Ill.C.C.)
Slip Copy

Richard L. Evans
v.

The Peoples Gas Light and Coke Company. Complaint as to billing and request for refund in Chicago, Illinois.

90-0130

Illinois Commerce Commission

June 27, 1990

ORDER

By the Commission:

On March 21, 1990, Richard L. Evans ("Complainant") filed the captioned verified complaint against The Peoples Gas Light and Coke Company ("Respondent") requesting a refund due to excessive billing in Chicago, Illinois.

Pursuant to notice and the rules and regulations of the Commission the matter was heard before a duly authorized Hearing Examiner at the Commission's Chicago Offices on May 3, 1990. Complainant appeared pro se and Respondent appeared by counsel. At the conclusion of the hearing, the record was marked "Heard and Taken." The Hearing Examiner's Proposed Order was served on the parties. No exceptions thereto were filed.

FACTS

The Complainant is the owner of an apartment building at 6548 South Justine Street, Chicago, Illinois. The building consists of two apartments. His complaint concerns only the front apartment of the building which he leases to tenants. The dispute that is the subject of his complaint arose in December of 1989, when his new tenant discovered that she could not receive gas service from Respondent. Complainant was advised by Respondent that \$1,040.14 was due and owing on that account due to an unmetered gas situation. In order to allow his new tenant to obtain service, Complainant paid that amount and service was initiated at the residence in the name of the new tenant. Thereafter, Complainant brought this complaint to recover that amount which he contends was the responsibility of a former tenant, Gwendolyn Larkins. Complainant testified that Ms. Larkins was his tenant from November 1987 until November 1988. There was no written lease arrangement between tenant and landlord. It is undisputed that for a time beginning in November 13, 1987, Gwendolyn Larkins was the customer of record with Respondent at the subject premises.

Respondent offered the testimony of five witnesses in support of its position. The following series of events occurred according to the testimony of the witnesses. On November 14, 1987, Gwendolyn Larkins became a customer of Respondent at the Justine apartment, On September 24, 1988, her gas service was discontinued and locked off by Respondent for non-payment. A witness for Respondent testified that on that date he locked off the meter which had a reading of 3995.

No other account activity took place until a routine inactive service investigation took place on December 19, 1989. On that date, two of Respondent's witnesses testified that they investigated the meter at the subject premises and found a sophisticated bypass situation which allowed the flow of gas to the apartment without the benefit of metering the flow. At this point, the meter still read 3995 on its dial. Another witness performed and sponsored a degree day analysis for the period from September 24, 1988 to December 19, 1989. The analysis used historical data from the previous year and resulted in the \$1,040.14 amount due on the account.

DISCUSSION AND CONCLUSION

Respondent has clearly established a case of meter tampering. Complainant has offered nothing to contradict this. As of

September 24, 1988, when the meter was locked off there was no customer of record at this premises. When the tampered situation was discovered on December 19, 1989, by Complainant's own admission, Gwendolyn Larkins had previously vacated the apartment. Complainant would have the Commission hold Gwendolyn Larkins responsible for the unmetered gas, however, there is no actual proof that she was even a tenant there after the September, 1988 lock-off. The degree day analysis supplied by Respondent appears reasonable and used the preferable historic usage method in its calculations. That analysis went uncontroverted by Complainant. Complainant is the owner of the building and contends he was receiving rents during the lock-off period. Therefore, the Commission can conclude that Complainant received a benefit from a tampered situation. There is no amount due and owing on the subject account and Complainant is not entitled to a refund. This complaint is properly denied.

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Peoples Gas Light and Coke Company is an Illinois Corporation engaged in the business of providing gas service to the general public and, as such, is a public utility within the meaning of The Public Utilities Act;
- (2) the Commission has jurisdiction of the parties and the subject matter herein;
- (3) on March 21, 1990, Complainant filed his complaint with the Commission alleging that he was entitled to a refund in the amount of \$1,040.14 from Respondent for gas service at 6548 South Justine;
- (4) Respondent established that the meter at the premises owned by Complainant had been tampered after September 24, 1988;
- (5) Respondent discovered the tampered situation on December 19, 1989 and rebilled the account using historical usage resulting in a bill for \$1,040.14 for unmetered gas service;
- (6) Complainant, as the owner of the subject premises received the benefit from the provision of unmetered gas service;
- (7) Complainant produced no credible evidence that he should not be held responsible for a bill in the amount of \$1,040.14; Complainant is not entitled to a refund from Respondent;
- (8) the subject complaint should be denied.

IT IS THEREFORE ORDERED that the complaint filed herein be, and the same is hereby, denied.

By the Order of the Commission this 27th day of June, 1990.

(SEAL)

(SIGNED) TERRENCE L. BARNICH

Chairman

EXHIBIT E

West's Illinois Administrative Code <small>Currentness</small>
Title 83: Public Utilities
Chapter I: Illinois Commerce Commission
Subchapter B: Provisions Applicable to More Than One Kind of Utility
Part 280: Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service (<u>Refs & Annos</u>)

83 Ill. Adm. Code 280.50

280.50 Applicants for Service

- a) If, after a review of its own past service records, a utility finds that an applicant for residential service has failed to pay for past due utility service for the same class of service furnished to him/her at the same or at another address, or if the credit score of the applicant for residential service does not meet or exceed the predetermined minimum credit score selected by the utility using a credit scoring system (see Section 280.40), a utility may refuse to provide service, unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 and/or enters into a deferred payment agreement pursuant to Section 280.110. A utility that elects to use a credit scoring system shall file a tariff describing its practice of using a credit scoring system. For purposes of this subsection, a utility may refuse to provide service if the applicant is liable for a past due bill for utility service pursuant to Section 15 of the Rights of Married Persons Act [750 ILCS 65/15], unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 and/or enters into a deferred payment agreement pursuant to Section 280.110.
- b) If, after a review of its own past service records, a utility finds that an applicant for non-residential service has failed to pay for past due utility service for the same class of service furnished to him/her at the same or at another address, or if the applicant for non-residential service is unable to establish satisfactory credit references, a utility may refuse to provide service, unless the applicant, at the option of the utility, pays any past due bill and/or provides a deposit pursuant to Section 280.70 and/or enters into a deferred payment agreement pursuant to Section 280.110.
- c) A bill for one class of service (residential or non-residential) shall not be transferred to a bill for the other class of service, nor shall the bill for one form of utility service (such as gas) be transferred to a bill for another form of utility service (such as electric). Service shall not be denied for nonpayment of bills for merchandise or nonutility services.
- d) If a utility takes applications for service by telephone from third parties or users who will not be the customers of the service, and if the utility does not verify the third party or user application with the customer, the utility shall not be entitled to collect from the customer of the service if the customer disclaims any responsibility for requesting the service; provided, however, that users will be responsible for paying for their use.
- e) A utility shall not require a deposit based on a credit scoring system if the applicant for residential service is eligible for the Low Income Home Energy Assistance Program (LIHEAP) or provides proof of identity fraud.
- f) A utility that elects to utilize a credit scoring program for applicants for residential service shall collect the following data and maintain such data for a period of five years following its collection:

- 1) the number of credit scores requested for applicants;
- 2) the number of applicants who received passing credit scores;
- 3) the number of applicants who received failing scores;
- 4) the number and total amount of deposits obtained from applicants subject to the credit scoring program;
- 5) the number of times a security deposit was waived for low-income applicants and for other applicants, with stated reasons for the waiver;
- 6) the number of disconnections of service for applicants who failed to pay the required deposit; and
- 7) the number of formal or informal complaints alleged by applicants regarding the use of credit scoring or the requirement to pay a deposit based on the credit scoring program.

Credits

(Source: Amended at 27 Ill. Reg. 4527, effective April 01, 2003)

Current through rules published in the Illinois Register dated December 27, 2013.

83 ILAC § 280.50, 83 IL ADC 280.50

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the Draft Proposed Order by placing a copy thereof in the United States mail with first class postage affixed or electronic mail addressed to each of the parties of record in Ill. C. C. Docket No. 13-0640.

Dated at Chicago, Illinois on this 13th day of March, 2015

By: /s/ SANDY L. MORRIS
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