

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Michael Kreith :
-vs- :
Peoples Gas Light and Coke Company : **14-0087**
 :
Complaint as to trespassing and stealing :
property in Chicago, Illinois. :

ORDER

By the Commission:

On January 28, 2014, Michael Kreith (“Complainant” or “Mr. Kreith”), filed a complaint against Peoples Gas Light and Coke Company (“Respondent”) pursuant to Section 10-108 of the Act (220 ILCS 5/10-108) (“the Act”), alleging that on November 13, 2013, four of Respondent’s representatives, whose identification was concealed, illegally entered his property at 10550 S. Homan Ave., Chicago, IL, trespassed upon his property, removed his gas meter, illegally confiscated his 30-pound brick magnet, and falsely accused him of stealing gas. Complainant was informed by employee #14308 in a verbally abusive manner that the meter and the magnet were being taken because he had been stealing gas and Respondent wanted the evidence. When he informed them that he would call the police, they insisted that they were the police. He then called 9-1-1 and accused Respondent of theft and trespassing. Complainant stated that he was given a business card for Peoples Gas and was told to deal with them.

Complainant also alleged that he was unable to reach anyone at Peoples Gas after trying all day November 14, 2013. Later that day he filed a report with the Chicago Police Department, alleging theft of the confiscated magnet.

Complainant further alleged that on November 16, 2013, he received a bill from Respondent charging him \$1940.17 for unmetered gas. The bill contained a new account number and the meter number shown was different from the meter that had been removed.

Complainant next alleged that Respondent’s file #13U0723 contains a letter addressed to him containing unsubstantiated accusations that an illegal natural gas connection had been removed and that tampering had occurred on equipment owned by Respondent.

Complainant last alleged that on November 19, 2014, Reuben Mercado of Respondent’s Customer Support, issued an email stating that “It was detected Mr. Kreith

was being deceptive as a customer”, but the e-mail failed to substantiate “Account was being monitored”, “Magnet attached to meter”, and “Pictures were taken”.

Complainant requested Respondent’s timeline, evidence and work order that pertained to sending a four-man crew to his home to trespass, steal and confiscate the meter on November 13, 2014. He also wanted the Commission to investigate why Respondent could falsely accuse him of theft, why its employees could claim to be police officers, and why they could trespass and steal without just cause.

Complainant also requested that \$5000 in costs associated with the hardships imposed upon him to be made the responsibility of Respondent, and that employee #14308 be disciplined for verbally assaulting him.

Complainant later filed an amended complaint, the details of which are set forth below.

I. Background

Pursuant to notice required by the rules and regulations of the Commission, a prehearing conference was scheduled in this matter on February 25, 2014, before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois. Complainant appeared pro se and Respondent appeared by counsel. At the February 25, 2014 prehearing conference, Complainant stated that he is a roofer and uses tarps to haul debris to trash cans on his property. When he dumps his tarps he sweeps up, but uses the magnet to pick up any nails or screws that he may have missed. (Tr. 2/25/14 at 5). He also stated that without a meter, his dwelling has no gas service.

Respondent’s counsel stated that Respondent had recorded nearly a full year of zero usage at Complainant’s premises, so two of Respondent’s employees and two off-duty Chicago police officers in the employ of Guardian Security, conducted a routine inspection of the meter. They found it had been covered and located behind some debris. They also found the magnet, which is often used to interfere with the electronic reading device (“ERT”), on top of the meter. Respondent determined from an actual reading of the meter that 1700 therms of gas had not been recorded in the previous 12 months, so Complainant was billed accordingly.

This matter was continued to March 25, 2014, initially for evidentiary hearing. On March 19, 2014, Respondent filed a Motion to Continue Evidentiary Hearing, stating that it had received Complainant’s first set of data requests on March 14, 2014, and it was highly unlikely that the discovery issues raised could be resolved prior to the scheduled hearing.

Respondent also filed a Motion to Dismiss on March 19, 2014, stating that Complainant alleges common law tort claims, seeks monetary damages and injunctive relief not within the scope of the Commission’s jurisdiction.

The ALJ granted the Motion to Continue Evidentiary Hearing for the sole purpose of conducting a status, not an evidentiary hearing. On March 25, 2014, the ALJ set April 8, 2014 for Complainant's answer to the Motion to Dismiss. Respondent's reply would be due on April 15, 2014. This matter was continued generally.

On April 22, 2014, the ALJ denied Respondent's Motion to Dismiss and set May 13, 2014 for status. On May 13, 2014, this matter was continued for status to June 24, 2014 to allow Respondent time to file an answer and to raise affirmative defenses, and to complete Complainant's request for a meter inspection. On June 24, 2014, Complainant agreed with Respondent that the relief he sought pertaining to trespassing and theft was beyond the Commission's jurisdiction to grant. Complainant stated that he would file an amended complaint contesting only the bill for approximately \$1700. The parties also agreed that there was no need for Respondent to file an answer to the original complaint. The ALJ continued this matter to August 5, 2014 for status.

On July 10, 2014, Complainant filed an Amended Complaint alleging that he had been falsely accused of tampering and stealing gas in the amount of \$1690.17. He stated that he wanted all charges dropped and his meter reinstalled at Respondent's expense.

On August 5, 2014, this matter was continued for evidentiary hearing to September 18, 2014, to allow time for Complainant to inspect his meter. This matter was then continued to October 29, 2014 for evidentiary hearing. On October 9, 2014, Respondent had filed a Motion in Limine to bar all parties from making any mention whatsoever, or from introducing any evidence, directly or indirectly, of trespassing or theft of property, leaving the only issue before the Commission Respondent's charge to Complainant of \$1690.17 for unbilled usage. Complainant did not object to the Motion in Limine and the ALJ granted it.

Staff conducted a test of Complainant's meter on September 16, 2014, which was presented as evidence at hearing. The parties and Staff convened for hearing on October 29, 2014. Complainant appeared pro se, Staff and Respondent appeared by counsel. Complainant testified in his own behalf and submitted Exhibit 1, Peoples Gas bill dated November 14, 2013; Exhibit 2, Historical Gas Usage; Exhibits 3A and 3B, Meter Reading Histories.

Respondent presented the testimony of Eric Pryde, Utility Specialist Number 1; Anthony Blasgen, Field Investigator; Thomas Stonis, Supervisor, Measurement Department; and Kim Ternipsede, Senior Account Representative. Respondent submitted Exhibit A, Service Order; Exhibit B, meter photographs; Exhibit C, ERT diagrams; D, Therm usage; E, Meter Reading History (Complainant's Exhibit 3A); F, Duplicate Peoples Gas bill, February 25, 2014; G, Hypothetical Peoples Gas Bill.

Staff presented the testimony of Eric Lounsberry, Supervisor, Gas Engineering Section. Staff submitted Exhibit 1.0, Referee Test of Complainant's Meter. At conclusion of the hearing on October 29, 2014, the parties' exhibits were admitted into evidence and the record was marked "Heard and Taken."

On December 24, 2014, Respondent filed a Closing Brief. Complainant declined to file a Closing Brief and did not file a Reply Brief. On February 5, 2015, the ALJ issued a Proposed Order in the matter. Respondent filed a Brief on Exceptions on February 18, 2015. Complainant did not file a Brief on Exceptions or a Reply Brief on Exceptions.

II. Complainant Position

Mr. Kreith sponsored Complainant's Exhibit 1, which showed that he was being billed for approximately 1700 therms of unmetered gas, and he wanted Respondent to explain how they had determined that. He stated that Respondent was using an actual meter reading as compared to the ERT reading, and the numbers did not match up and were not synchronized. He testified that Exhibit 1 also displays meter number PGDD020, which was not his meter.

Mr. Kreith sponsored Complainant's Exhibit 2, which showed that for June 14, 2012, the actual meter reading was 9843, and on November 8, 2012 it read 8744, an approximately 1000 therm difference. He stated that if he was to be charged by the ERT reading, it had to be synchronized to the actual reading.

Mr. Kreith testified that he submitted Exhibit 2 to show that the reading on November 8, 2012, 8744, was lower than the reading on June 14, 2012, 9843. He stated that, because November reading was lower than the June reading, he was not certain that an ERT reading taken from a van would be the same as an actual reading.

Mr. Kreith sponsored Complainant's Exhibits 3A and 3B, which were provided to him by Respondent. Exhibit 3A shows a reading of 9274 on October 9, 2013. He testified that the next reading on November 13, 2013 was 1014, the reading at the time Respondent removed the meter. Respondent is charging him the resulting difference, but is doing so by comparing an ERT reading to an actual reading. The reads need to be synchronized.

Mr. Kreith testified that he presented Exhibit 3B to contrast the 8615 ERT reading of June 11, 2012 to the 9843 actual reading of June 14, 2012, shown on Exhibit 2.

III. Respondent Position

A. Direct Testimony of Mr. Pryde

Mr. Pryde sponsored Respondent's Exhibit A, a Service Order completed as a result of the meter removal at 10550 S. Homan Ave. on November 13, 2013. He testified that he took an actual meter reading of 1014 at that time, which appears on Exhibit A under "current read". He testified that the meter is a diaphragm-type, designed for single family homes.

B. Direct testimony of Mr. Blasgens

Mr. Blasgens testified that his employee identification number is 14308. He testified that he was familiar with the meter removal at 10550 S. Homan Ave. on November 13, 2013,

and sponsored Respondent's Group Exhibit B, photographs of the meter that he had taken. He said that the photograph marked B1 was the first one he took and reflects the premises just as he found it on arrival. He stated that he did not at that time move the trash receptacle or the grill that was laying on its side.

Mr. Blasgens testified that photograph B2 shows the meter precisely as he found it. He said the black box to the left of the meter, a large magnet, is also as he found it and was not moved. Photograph B3 is another picture of the meter with the magnet next to it. Photograph B4 is a picture of the ERT head on top of the meter and photograph B5 shows rust spots from the bottom of the magnet on to the ERT head.

Mr. Blasgens testified that photograph B1 was taken to show that objects blocked a view of the meter from the street. He confirmed that photograph B2 shows exactly where the magnet was when he first viewed it. No other employees of Respondent would have moved the magnet.

C. Direct testimony of Mr. Stonis

Mr. Stonis sponsored Respondent's Exhibit C, which depicts a two-page diagram. He testified that page 1 portrays a circuit board located inside the ERT, the function of which is to keep track of the volume of gas going to the meter by use of a switch that opens and closes. As the ERT keeps track of the gas usage, it transmits that usage by way of a signal to be read by a Peoples Gas van.

Mr. Stonis testified that page 2 shows a reed switch that the magnet would cause to lock in a closed position and not allow it to release. As the magnet is removed from the switch area, the switch will go back to the open position. Referring back to page 1, Mr. Stonis testified that a magnet inside the ERT opens and closes the reed switch as the dials turn. When the switch opens and closes, it counts the gas that flows through the meter. A large magnet outside the ERT, depending upon where it is placed, can keep the reed switch locked in either the open or closed position. The large magnet will not allow the small magnet to change the state of the switch. If the switch is locked in the closed position, the ERT cannot measure gas usage.

Mr. Stonis testified that a mechanical index, located on the meter itself, also measures gas usage, and a large magnet outside would not affect its ability to register gas flow. Even if the reed switch was locked in the closed position, the mechanical index could track the volume of gas used.

Mr. Stonis testified that a powerful magnet causing a strong electromagnetic force could affect the switch if it was right next to the meter or laying on the ground. He testified that he did not know if the magnet, as shown in Respondent's Exhibit B2, would affect the meter. He also stated that it would not be known if the magnet would force the ERT to be open or closed all the time.

Referring to Respondent's Exhibit C, page 2, Mr. Stonis testified that the magnet could draw the two filaments together from the position depicted. He said he did not have any evidence, but if the magnet was placed on the opposite side of the switch, it would not allow the magnet inside the ERT to close. It would be pulling in the open position. The magnet, depending upon where it is placed, will not allow the reed switch to change its state, whether it is open or closed.

D. Direct testimony of Ms. Ternipsede

Ms. Ternipsede sponsored Respondent's Exhibit D, showing historical gas usage for Complainant's address from 2000 through 2013. She testified that Exhibit D was created from actual reads uploaded into Respondent's system to be kept as historical data. She stated that there was nothing abnormal about the usage from 2000 through 2010, but from 2011 through 2012, there was an inconsistent drop and a complete lack of usage for several months.

Ms. Ternipsede sponsored Respondent's Exhibit E (Complainant's Exhibit 3A), explaining that it represents each of the readings that the automatic device picked up for each month beginning March 10, 2011, until the actual read was taken in November 13, 2013.

Ms. Ternipsede sponsored Respondent's Exhibit F, a duplicate bill that shows 1740 cubic feet of gas ("CCF") that had not been billed between the last ERT reading and the actual reading. She explained that the ERT reading on October 9, 2013 showed 9274 CCF used. The meter cycled up to zero and started again from number one. By the time of the actual read on November 13, 2013, it read 1014 CCF, which is actually 11014. Subtracting 9274, the difference is 1740 CCF used, but for which payment had not been made. Once the service technician enters the reading, the billing process is automatic. It registers the last reading, 9274, and issues a bill for an amount based upon what the CCF would be.

Ms. Ternipsede testified that Respondent had been billed regularly in 2011, 2012 and 2013, and he had paid the sums owed. Exhibit F was generated strictly upon the actual usage obtained on November 13, 2013. It does not charge Complainant for any usage for which he had previously paid.

Ms. Ternipsede also sponsored Respondent's Exhibit G, a bill created from historical data to show what the estimated, but unbilled, usage would have been from November 14, 2012 to November 13, 2013, a one-year period where it appears the ERT device was not giving proper reads. The \$856.81 total accurately represents the amount the Complainant would owe for that period solely for the unused gas, but it was not issued to him.

Ms. Ternipsede acknowledged that Exhibit F shows a physical reading of 1014 and an ERT reading of 9274. She also acknowledged that Complainant's Exhibit 2 shows a physical reading of 9843 on June 14, 2012. She further acknowledged that Complainant's Exhibit 3A showed a different reading during the same period.

Ms. Ternipsede testified that even if a customer did not use gas for a year, Respondent could still estimate usage, because it had 13 years of historical data. She conceded that if someone shut their gas off, they would have no usage. She testified that the 1740 CCF of gas shown on Complainant Exhibit 3A was the volume of gas Respondent was certain had been unbilled while there were problems with the ERT readings.

Ms. Ternipsede testified that Complainant's Exhibit 1 shows a different meter number, because in cases of suspected tampering, Respondent disassociates Complainant's actual account from the other account on which it bills. Meter #PGDD020 is a dummy meter used to separate bills for Complainant's regular usage from the bills produced by the dummy meter. Exhibit 1 shows the additional usage without additional customer charges and fees, to ensure that he is not double billed, but the meter does not actually exist. Complainant's actual meter number is P2228582.

IV. Staff Position

Testimony of Mr. Lounsberry

Mr. Lounsberry sponsored Staff Exhibit 1.0, a three-page letter to Complainant dated September 16, 2014, which he testified he had prepared and signed. Mr. Lounsberry testified that he had Respondent's computer shop personnel obtain an ERT reading, and then he had them pass approximately 200 cubic feet of air through the meter. He then had them obtain a second reading from the ERT to verify that it showed the same volume of usage as his mechanical index. Both the ERT and the mechanical index registered the same volume of usage, and the meter was functioning properly.

V. Commission Analysis and Conclusions

83 Ill. Adm. Code 280.100 (a)(1) permits a utility to bill a residential customer for service, only if the bill is presented within one year from the date the service was supplied. Section 280.100 (c)(1) removes the one-year restriction when tampering is found. Under Section 280.100 (c)(2), if the utility alleges tampering, it shall have the burden of proving, by a preponderance of the evidence, that the meter had been tampered with, the customer benefitted from the tampering, and that the utility's rebilling is reasonable.

Complainant's allegations in this matter evolved from contesting the \$1690.17 charge for unbilled usage, theft of personal property and trespass by Respondent, and a demand for \$5000 for the hardships imposed by Respondent, to contesting only the reduced charge of \$1468.86 for unbilled usage. (Respondent Ex. F). Respondent maintained throughout that Complainant had tampered with the meter by using the magnet to distort readings.

The substance of Complainant's case is that Respondent failed to produce sufficient evidence to charge him for unbilled usage. He produced evidence purporting to show that actual meter readings were not synchronized with ERT readings taken from Respondent's van (Comp. Exs. 1, 3A and 3B), and that at least one meter reading was actually lower than previous readings. (Comp. Ex. 2).

a. Meter Test

The Commission finds foremost that Complainant's meter, #2228582, accurately measured gas usage. Staff Exhibit 1.0 contains a detailed description of the testing procedures to which the meter was subjected, and also includes the results of Respondent's test on February 4, 2014, plus the test Mr. Lounsberry supervised on September 9, 2014. Staff Exhibit 1.0 states that the September 9 test determined that the average accuracy of the meter was 99.5%, which is well within the range of accuracy specified in 83 Ill. Adm. Code 500.190. (Staff Ex. 1.0 at 2).

Staff Exhibit 1.0 also states that Mr. Lounsberry had further conducted an inspection of Respondent's meter shop to verify that its testing equipment and procedures met the standards contained in Section 500. Mr. Lounsberry found no issues with either the equipment or the procedures. (*Id.*).

b. Unsynchronized Readings

Complainant Exhibit 2 contains a chart of historical gas usage showing an actual reading of 9843 on June 14, 2012, and a lower ERT reading of 8744 on November 8, 2012. Complainant Exhibit 3A shows a June 11, 2012 reading of 8615, which Exhibit 3B identifies as a van (ERT) reading.

It is readily apparent that these particular readings are not synchronized and Respondent stipulated that the readings on Exhibit 2 were "off" (Tr. 10/29/14 at 74). The Commission, however, does not find any basis to extrapolate these two disparities into a general finding that all ERT readings vary from what an actual reading would show.

c. Tampering

Respondent argued that it is not pursuing Complainant for tampering charges, but the Commission should find that tampering occurred. (Resp. CB at 4, ftnt. 2). Respondent contends that Complainant distorted the meter readings by use of the magnet, keeping it on top of, or in close proximity to, the meter so as to interfere with the meter's inner mechanism. Mr. Blasgens testified that Respondent's Exhibit B2 shows the magnet next to the meter, just as he found it, and no other employees would have moved it. (Tr. 10/29/14 at 84-85 , 87-88). Respondent Exhibit B5 clearly suggests that the magnet had been, at some point, placed on the top of the ERT, as indicated by the strip of rust on the bottom of the magnet corresponding to the strip of rust on top of the ERT. (*Id.* at 86).

Mr. Stonis testified that a large magnet, depending upon its placement, can keep the reed switch inside the meter either open or closed. It will not allow the magnet inside the switch to change its state, but will remain locked in whatever position the outside magnet forces it into. A large outside magnet will force the read switch to stay closed and prevent the ERT from recording gas usage. (*Id.* at 99).

The Commission is persuaded by a preponderance of the above evidence that Complainant used the magnet to directly or indirectly interfere with the meter readings. (Resp. Exs. B1, B2, B5). The Commission finds that whether the magnet was placed on top of the meter or otherwise in close proximity to it, Complainant's purpose was to cause the meter reed switch to lock in the closed position and prevent the ERT device from correctly registering the volume of gas consumed.

d. Unbilled Service

When Respondent removed Complainant's meter on November 13, 2013, Mr. Pryde testified that he took a final actual reading of 1014. (Tr. 10/29/14 at 80). As the prior reading on October 9, 2013 was 9274, Complainant was calculated to have consumed 1740 CCF of unbilled gas in just 35 days. Given that the Complainant's total usage during 2013 from the first January reading to the October 9 reading was only 482 CCF, the Commission is at a loss to understand how Complainant could have consumed 1740 CCF in just over a month.

Following the 9274 ERT read for October 9, 2013, subsequent reads are: 9315 dated November 7, 2013, a system estimate labeled "CANCELLED"; 1014, an actual read dated November 14, 2013, also labeled "CANCELLED"; 9315 dated November 7, 2013, a system estimate labeled "BACKOUT"; 9315 a third time dated November 7, 2013, labeled "ACTIVE", "CO EST"; and 1014 again, an actual read labeled "BACKOUT". (Comp. Ex. 3B). Each of the 1014 readings were either cancelled or backed out. The only reading designated ACTIVE after the 9274 reading is the 9315 CO EST reading dated November 14, 2013. Complainant's unbilled usage between the 9274 ERT reading and the 9315 CO EST reading comes to 41 CCF, which is far more in line with the usage shown in the months leading up to October 2013: June 2013-18 CCF, July 2013-23 CCF, August 2013-24 CCF, and September 2013-22 CCF. (*Id.*).

Furthermore, the Commission is unclear with regard to the purpose of a particular segment of Mr. Stonis' testimony. He first described the mechanical operation of the reed switch and how it could be manipulated by the magnet to misread gas usage. (Tr. 10/29/14 at 95-99). He later testified that there was another device on the meter itself called a mechanical index, which would be unaffected by the magnet. Even if the magnet kept the reed switch closed to prevent the ERT from recording gas usage, the mechanical index would still track the actual volume of gas flowing through the meter, as the following colloquy discloses:

Q (Respondent's counsel): "So a large magnet will force the reed switch to stay closed?"

A (Mr. Stonis): "Correct."

Q: "And if it stays closed, can the ERT device keep count of how much gas is actually being used on that meter?"

A: "No, the ERT cannot."

Q: "Is there another device on the meter that also keeps track of the amount of gas that's used at that address?"

A: "Yes. It's a mechanical index."

Q: "Okay. The mechanical index – where is the mechanical index? Is it on the meter itself?"

A: "It's on the meter itself."

Q: Okay. And when a large magnet is brought in the proximity of the mechanical index, does the magnet affect that index's ability to register *how much* gas is being used?"

A: "No, it does not."

Q: "Okay. So then is it fair to say that if a large outside magnet is keeping the reed switch closed on the ERT device, that it won't read how much gas is actually being used, but the index will keep track of *how much* gas is actually being used?"

A: "That's correct."

(*Id.* at 99-100; emphasis added).

Mr. Lounsbury also testified that he had Respondent's personnel "get an ERT reading and then I had them run approximately 200 hundred cubic feet of air through the ERT...and had them get another reading *to verify that the ERT was showing the same volume of usage as the mechanical index and they both showed the same.*" (Tr. 10/29/14 at 92; emphasis added).

Respondent provided further corroboration in its Closing Brief, stating that even if a large outside magnet is brought into the proximity of the meter, the mechanical index will continue to register the volume of gas used. (Resp. CB at 3). This testimony runs directly counter to Respondent's claim that Complainant is liable for unbilled usage. If the mechanical index was on the meter, according to the cited testimony it would correctly track usage regardless of the magnet. The placement and corresponding effect of the magnet would be irrelevant. The testimony does not alter the Commission's finding that tampering occurred, but because of the presence of the mechanical index on the meter, the Commission finds that gas usage was properly recorded, and Complainant is not liable for unbilled usage. Respondent's calculation of Complainant's unbilled service, as shown on Respondent's Exhibit F, is unsupported by the evidence. Based on this finding, Respondent should refrain from collecting the alleged unbilled service charge through its Uncollectible Expense Adjustment (Rider UEA).

Respondent also calculated a separate bill for one year of gas usage as an alternative, if the Commission did not find tampering. (Resp. Ex. G). This would comply with Section 200.180(a)(1). However, as the Commission has determined that Complainant did tamper with his meter, Respondent Exhibit G is moot.

VI. Exceptions

Respondent argued that, under revised Section 280, Section 280.90(b)(4) states that a reading provided by a remote reading system or device shall be considered an actual read. The Commission does not contest either that a remote reading of the ERT constitutes an actual read, or that such a reading is permitted under Respondent's tariffs. (Resp. BOE at 3). However, Respondent also argued that Section 280 does not require an actual read

to also be taken from the mechanical index. If it did, there would be no need for, or validity to, the ERT readings, as no meter reads would be considered actual. “(T)herefore, the fact that there was a properly functioning mechanical index on the meter when the ERT was being tampered with has no relevance to this case, other than the fact that *it allowed Respondent to know exactly how much gas Complainant used that was not billed.*” (Id.; emphasis added).

Referring again to the cited testimony of Mr. Stonis (at 9-10, above), the mechanical index is located on the meter itself, and when a large outside magnet was used to interfere with the ERT, the mechanical index was unaffected. (Tr. 10/29/14 at 99-100). Far from being irrelevant, the mechanical index is at the center of the issue. The Commission is at a loss to understand from Respondent’s evidence why unbilled usage could not be calculated when there was a properly functioning, unimpaired mechanical index on the meter accurately measuring gas usage. The mechanical index was used to calculate unbilled usage, but was not used to calculate the usage in the first place. It appears to the Commission that, even though the ERT readings were faulty, if Respondent had taken the readings from the mechanical index initially, it could have avoided the issue of unbilled usage altogether.

Respondent also stated that, “because we had a properly functioning mechanical index on the meter, we know exactly how much gas Complainant was not billed.” (Resp. BOE at 4). This statement again raises the question as to why there was unbilled usage, when the necessary readings could have been taken from the mechanical index.

The Commission is also unclear as to why Respondent calculated unbilled usage of 1740 CCF by subtracting the reading on October 9, 2014 from the reading for November 13, 2014, then stated that the usage was “not for the time period of 10/3/14 (sic) to 11/13/14.” (Resp. BOE at 4, ftnt. 1). The Commission can see no other relevance for these dates. Further complicating this issue is Respondent’s Exhibit D, which is replete with dates in 2011 and 2012 for which no therm usage was recorded. This appears to the Commission to be precisely the time period for which unbilled usage should have been calculated.

Respondent’s citation to pages 126-128 of the October 29, 2014 transcript further fails to shed any new light on the issue of unbilled usage. (*Id.*) The Commission can discern no connection between Respondent’s use of a “dummy meter” to calculate the unbilled usage and the October 9, 2014-November 13, 2014 time period.

The Proposed Order also states that “...Complainant is not liable for unbilled usage”. (at 10). To clarify, this specific Complainant is only considered not liable in this specific Docket, because Respondent’s evidence did not sufficiently explain why the mechanical index readings were not used to calculate unbilled usage, or why unbilled usage was calculated using the period October 9, 2014 to November 13, 2014.

VII. Findings and Ordering Paragraphs

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

- (1) on January 28, 2014, Michael Kreith filed a complaint against Peoples Gas Light and Coke Company alleging that it had trespassed upon his property, removed his gas meter, illegally confiscated his 30-pound brick magnet, falsely accused him of stealing gas by tampering, was verbally abusive toward him, and billed him \$1940.17 for unmetered gas; Complainant seeks the evidence and work order that caused Respondent's employees to visit his premises, \$5000 for the hardships caused him, and employee #14308 to be disciplined;
- (2) Respondent is an Illinois corporation engaged in furnishing natural gas service to customers in Illinois and, as such, is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105);
- (3) on March 19, 2014, Respondent filed a Motion to Dismiss on the grounds that the common law tort claims, monetary damages and injunctive relief sought are not within the scope of the Commission's jurisdiction;
- (4) on April 22, 2014, Respondent's Motion to Dismiss was denied;
- (5) on July 10, 2014, Complainant filed an Amended Complaint alleging that he had been falsely accused of tampering and stealing gas in the amount of \$1690.17;
- (6) on October 9, 2014, Respondent filed a Motion in Limine, barring all parties from raising issues of theft of property and limiting evidence to the charge of \$1690.17 for unbilled service; the Motion in Limine was granted on October 23, 2014;
- (7) on September 16, 2014, Staff conducted a test of Complainant's meter;
- (8) a hearing was conducted in this matter on October 29, 2014, at the conclusion of which the Docket was marked "Heard and Taken";
- (9) Staff provided evidence that Complainant's meter accurately measured gas usage at all times;
- (10) Respondent provided evidence that it sought the lesser sum of \$1468.86 in unbilled usage from Complainant;
- (11) Complainant used the magnet to tamper with his gas meter;

- (12) Complainant's gas usage was properly recorded, as Complainant's meter contains a mechanical index that is unaffected by the magnet;
- (13) the complaint should be granted and Complainant should not be required to remit the sum of \$1468.86 for unbilled usage.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Michael Kreith on January 28, 2014 is granted, and Complainant is not required to remit the sum of \$1468.86 for unbilled usage.

IT IS FURTHER ORDERED that any petitions, objections, or motion made during the course of this proceeding are disposed of in a manner consistent with the findings and conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 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 22nd day of April, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman