

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Vernetta McCree :
-vs- :
Northern Illinois Gas Company : **15-0475**
d/b/a Nicor Gas Company :
: :
Complaint as to inaccurate billing in :
Riverdale, Illinois. :

PROPOSED ORDER

By the Commission:

I. Procedural History

On August 17, 2015, Vernetta McCree (“Complainant”) filed with the Illinois Commerce Commission (“Commission”) a formal complaint against Northern Illinois Gas Company d/b/a Nicor Gas Company (“Respondent” or “Nicor”), alleging that she has been overbilled for years due to gas leaks, and has also been double billed, at her residence at 463 W. 144th St., Riverdale, Illinois.

Pursuant to notice as required by law and by the rules and regulations of the Commission, a prehearing conference was held in this matter on September 29, 2015, before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois. This matter was continued for status to November 9, 2015, at which Respondent’s counsel stated he had received Complainant’s request for a meter test and replacement. A status scheduled for January 19, 2016 was canceled because the meter test had not been conducted. This matter was continued to February 25, 2016, at which time Respondent’s counsel disclosed that the meter test had been conducted. This matter was continued for evidentiary hearing to May 11, 2016.

Joseph McCree testified on Complainant’s behalf. Complainant submitted Group Exhibit 1 – Respondent bills dated March 7, 2014, August 7, 2014, September 5, 2014, October 6, 2014, November 5, 2015, December 8, 2015, January 7, 2016 and February 5, 2016.

Mark Maple, Senior Engineer in the Commission’s Safety and Reliability Division, testified at the evidentiary hearing. Kyra Mitchell, Supervisor of Quality Assurance and Customer Relations at Nicor, testified on behalf of Respondent. Respondent submitted Exhibit 1 – February 22, 2016 Staff report of the test of Complainant’s meter; Exhibit 2 -

Statement of Account for Complainant's Account; Exhibit 3 - Meter Reading History for Complainant's Account; and Exhibit 4 – Account Summary for Complainant's Account.

At the conclusion of the hearing on May 11, 2016, the parties' exhibits were admitted into evidence and the record was marked "Heard and Taken." Complainant at all times appeared *pro se*. Respondent was represented by counsel.

II. Complainant's Position

Mr. McCree testified that he has been the owner of the property in question since 1999. The building is a multi-unit structure with a single heating account in Complainant's name. Mr. McCree testified that Respondent's Exhibit 1 states that Mr. Maple arrived at the premises on February 17, 2016, accompanied by Leonard Greenwood, a Nicor serviceman, who was there to test the meter. Mr. Maple refereed the test. Nicor attempted to shut off the gas, but was initially unable to because the meter, located outside the structure, was covered with ice and snow, and the line was frozen. Once the ice and snow were cleared away, the gas was shut off, but the parties noticed a crack in the meter index.

Mr. McCree testified that it was his contention that, because the meter was located outside the building, the ice and snow caused it to malfunction. In his opinion, the seal was cracked and leaking gas, which allowed water and ice to penetrate the meter. A meter can register air just as it does gas if the seal is cracked. He could also smell the odor of gas periodically due to the damage. He stated that meters should be replaced every ten years, yet this meter had not been replaced since 1994, even though Nicor claims it had been replaced when he purchased the building in 1999. He also stated that Nicor has never visited the property to perform any maintenance on the meter.

Mr. McCree testified that the meter was replaced on February 17, 2016, not in 2009 as Respondent asserted. He explained that if Respondent had replaced the meter in 2009, they would have had to contact him to gain access to each unit to turn the pilot light back on, and no one from Respondent did that.

Mr. McCree testified that when he arrived for the meter test, Nicor was already blowing air and water through it. He witnessed the removal of the top of the meter and saw that the plate was still on, yet the photos he subsequently received showed that the plate had been removed.

Mr. McCree testified that once the bills began to increase, he turned the boiler off during the milder days in an attempt to reduce the charges, yet the increases continued. He testified that the building is only half occupied with six tenants, and vacant units are not heated, so he could not understand why the bills were \$3,000 to \$4,000 per month.

The meter reading for the period December 7, 2015 to February 14, 2016 was 38 therms used, yet other periods showed 220 therms. Mr. McCree stated that he could not understand such a substantial fluctuation in usage when he had not done anything differently with the building, and he had not moved any new tenants in. The only

explanation is a defective meter, particularly since the new meter readings are more moderate.

He testified that it was his understanding from the Public Utilities Act (“Act”) and regulations that an actual meter reading should be conducted every second billing period, yet he was billed based upon successive estimated readings from November 2013 through March 2014, and from March 2015 through May 2015.

Mr. McCree testified that he believed that overcharges to the building resulted from a defective meter, because it had not been replaced until recently. He testified that a bill dated January 7, 2016, based upon the old meter reading, came to \$13,500.61. Another bill dated February 5, 2016 charged \$13,089.00. The latest bill he received, based upon the new meter reading, was dated April 7, 2016 for \$14,216.24, including \$218 in late fees and other charges.

III. Respondent’s Position

Ms. Mitchell sponsored Respondent’s Exhibit 2, which shows all of the financial activity on Complainant’s account. She explained that the orange data reflect the date that charges were removed from Complainant’s account in 2013 to show where the zero balance begins. Pink data show both the billing charges and, under the heading “Billing Dates”, the months of service that were billed. The yellow data are late charges of 1.5% of the amount due, assessed pursuant to Commission regulations. The “Balance” column contains a running total of the amount due on the account. The late charge of \$14.94 assessed on September 27, 2013 was based upon 1.5% of the balance of \$1,450.91.

Ms. Mitchell testified that blue data indicate payments received. Respondent received a \$300 payment from Complainant on October 23, 2013 that reduced her balance from \$2,092.19 to \$1,792.19. The last bill Complainant contests was issued February 5, 2016 for \$13,089.24.

Ms. Mitchell sponsored Respondent’s Exhibit 3, which she testified stores all of the meter reads on an account for a specific meter. To ensure proper billings in the event of multiple estimated reads, if the next actual read is greater than the read billed to the customer, the estimated reads remain on the account. The estimated reads from November 2013 through March 2014 were followed by a regular, or actual, read on April 7, 2014. She testified that the document could reflect whether there were problems with prior meter reads by the word “prorate”, however it does not describe what the problem was.

Ms. Mitchell testified that the reading of 35553 on December 7, 2015 was actual, as was the reading of 35591 on February 4, 2016. The difference between the two readings is found in the column headed “Read Difference” and reflects 38 cubic feet (“CCF”) of gas used for that period.

Ms. Mitchell testified that Complainant's usage from May 21, 2015 to May 26, 2015 was 38 CCF, and her usage from October 5, 2015 to December 7, 2015 was 412 CCF, leading her to conclude that the 38 CCF of gas used for the two-month period from December 7, 2015 to February 4, 2016 was extraordinarily low. All of the readings were actual.

Ms. Mitchell sponsored Respondent's Exhibit 4, a bill issued to Complainant on May 6, 2016 for \$14,684.74. She testified that it is the most current bill on the account and she believed it to be accurate.

On cross examination, Ms. Mitchell testified that she has never been employed as a meter reader and does not supervise or work in billings. She explained that the areas she supervises are impacted by billings, so she is required to have knowledge of billings, meter reading histories, and how to read a meter. She testified that she has read 500 meters and has taught over 200 people how to read meters. Ms. Mitchell added that she does not actually enter meter data into a computer. She stated that meters can be read electronically or visually, but Complainant's meter was not read electronically.

Ms. Mitchell stated that some of the meter readings on Respondent's Exhibit 3 were not necessarily made by meter readers. If someone other than a meter reader is called out to the premises, they will read the meter at that time and Exhibit 3 will reflect that. Exhibit 3 shows visits on May 21, 2015 to turn the meter on and May 26, 2015 to ensure that the meter was not leaking and was otherwise working properly. A visit occurred on June 4, 2015 in response to a report of a leak, and a follow-up visit was made on June 5. The June 16, 2015 visit was for pipe maintenance.

In response to why Respondent missed a reading in February 2014, but made visits on November 4 and November 17, 2014, Ms. Mitchell stated that the November 17 visit would have been a follow-up for routine maintenance on Respondent's gas line, since Respondent is preparing to replace gas lines in Complainant's area.

Ms. Mitchell explained that the five consecutive estimated bills from November 4, 2013 to March 7, 2014 resulted from a missed read on February 5, 2014, due to a snow day. She stated that under Section 8-303 of the Act and 83 Ill. Adm. Code 280.80, the utility may bill based upon consecutive estimated readings if it attempts to read the meter every other month. (The cite to Subsection 280.80 refers to the version prior to the amendment of Section 280 on November 1, 2014.) She reiterated that Respondent has 2.1 million customers and if a billing cycle is missed, it cannot go back and read the meter for that cycle.

With regard to the February 4, 2016 bill covering the period from December 7, 2015, Ms. Mitchell testified that she did not know what the actual weather conditions were or what the average temperature was in December 2015. She also did not know if any gas was actually consumed, she simply took the figures from Exhibit 3.

Ms. Mitchell testified that estimated readings are generated by a system that automatically looks at the history of the account from the prior year, and factors in what the temperature and usage were at that time. She added that other factors may also be considered, such as whether a customer is no longer at the premises or whether the premises were winterized. As long as an actual read is in line with a previous estimated read, and is also in line with usage from the prior year, other factors are taken into consideration and the system generates a bill.

Ms. Mitchell testified that she could not explain why the April 7, 2014 reading of 25864 was higher than previous winter month readings. She said she could explain how the numbers on the document relate to other numbers, but she had not entered the data itself. She also had no way of knowing whether the meter produced a faulty reading in April 2014.

IV. Referee Test

Mr. Maple testified that every three years, Commission engineers are required to visit the shops of gas utilities in Illinois to review their test procedures and inspect their test equipment to ensure all of it is working properly. He stated he uses his own Commission gas meter to determine whether the utility is in compliance with 83 Ill. Adm. Code 500.

Mr. Maple explained that when a customer requests a referee test, he observes the removal of the old meter and installation of the new meter. He then personally takes the meter to the utility's meter shop and verifies that the utility's personnel properly tested the meter. He reviews the records to determine that the test equipment has been recently certified, and then disassembles the meter to determine that all parts are in operating order. Mr. Maple testified that he has been auditing utility test shops for the entire 18 years he has been with the Commission and he has conducted approximately 18 referee tests.

Mr. Maple testified that he was present when the meter was removed from the apartment building. He testified that prior to the test, to ensure accuracy, it was necessary to acclimate the meter to room temperature, so room-temperature air was blown through the meter. He also checked the serial numbers to ensure the correct meter was being tested and, in accordance with 83 Ill. Adm. Code 500, he also checked Respondent's certification records to determine that its equipment had been certified within the last three years. He further checked the temperature records to make sure the temperature in the proofing room was stable. Mr. Maple also found a Nicor test meter similar in size to Complainant's meter and had the Nicor meter tested with the same equipment that would be used to test Complainant's meter to determine that the test equipment was operating properly, which it was.

Mr. Maple testified that when Complainant's meter was tested, the dials were not spinning the index to get a reading, however the inner workings of the meter could still be tested without the index, and could produce reliable results. The test results showed that

Complainant's meter was 100.04% accurate, which is within the range of accuracy required by statute.

Respondent's personnel then inspected the inner workings of the meter and found considerable damage. Respondent's Exhibit 1, which Mr. Maple testified he prepared following the meter test, shows a photo of Complainant's meter still attached to the building, but cracked at the bottom of the index. (Fig. 1). Figure 2 shows the broken index cover with the tamper seal intact, but the entire housing is broken off from the top of the meter so that it could be tipped back and forth. Figure 3 shows a broken index mount where screws would mount the index to the meter. Figure 4 shows the screws missing from the index face, causing the index to remain open on one side (Fig. 5). Figure 6 shows the missing index screws and the drive shaft that connects the index to the inner workings of the meter. The drive shaft is supposed to be threaded and have a spinning mechanism on it, however the mechanism is missing and the threads have been smoothed down. (Fig. 7). The drive shaft was also bent. (Fig. 8).

Mr. Maple testified that it was his opinion that the index was damaged due to tampering, and he did not believe that Complainant could have been overcharged. If the index was not spinning, the meter would not be registering usage. A meter leak would not result in an overcharge, because the meter only registers gas that passes through it and a customer would be billed only for what the meter registers.

On cross examination, Mr. Maple testified that his experience in testing Nicor meters came solely from his employment with the Commission. He has also had additional classroom training in the operation of gas meters, but not specifically with Nicor meters.

Mr. Maple acknowledged that Complainant arrived halfway through the acclimation process, but was present for the entire meter test. He explained that because the Complainant was late arriving, the acclimation process was begun to ensure that the test was completed before the shop closed.

He testified that the ice and snow shown on the meter could not have caused the damage. (Resp. Ex. 1, Figure 1). He conceded that damage could occur if a large piece of ice fell from the structure, but that was not the situation with Complainant's meter, because so much of the damage was internal. It would have to have been caused by a tool used with human force. Mr. Maple testified that he was not aware of any regulations requiring meter installation to be above ice and snow levels to avoid damage.

Mr. Maple testified that the tamper-proof seal was intact when the meter was taken apart, but the plastic housing was broken. The meter could be tipped back for access to the inner workings without disturbing the seal. The purpose of the seal is to show whether someone removed a particular screw, which in this case wasn't necessary because the plastic housing around the screw had been broken.

Mr. Maple testified that he did not have a photo of a drive shaft showing one with threads. He stated that the threads are necessary, however, because the shaft has to connect to the index in a way that makes the dials spin. If the threads are missing, the proper connection cannot be made. He stated that even though the meter was purchased in 1994, the threads could not have been worn down over time, because there is nothing that the shaft would come into contact with to cause such wear. He said he had never seen a drive shaft worn down in any of the tests he had done.

Mr. Maple testified that Complainant may not have been present when the meter was taken apart to reveal the missing screws, but she was present for the meter test. Disassembling the meter was in addition to the test to determine if further damage had occurred. He explained that meters are not typically taken apart to that extent, but enough damage had been revealed to conclude tampering and warrant further inspection. Mr. Maple testified that he could offer no proof that damage to the meter had not occurred after Complainant left, but Complainant was present when the index cover was removed and she witnessed all of the damage, including the bent shaft.

On redirect, Mr. Maple testified that he and Nicor personnel thought it possible that the missing screws (Resp. Ex. 1, Fig. 6) could be located under the metal cover (Resp. Ex. 1, Fig. 7). When the cover was removed, that was where they found them.

V. Commission Analysis and Conclusions

As the party initiating the complaint, Complainant bears the burden of proof in this matter. (English v. Village of Northfield, 172 Ill. App. 3d, 344; 526 N.E. 2d 588 (1988)).

The issue raised by Complainant is whether her Nicor gas account was overcharged due to a damaged meter, or gas leaks, or by estimated readings.

Complainant's case centered to a large degree on the premise that ice and snow had damaged the meter to such an extent that it could not record usage accurately. (Tr. at 134, 152). The Commission finds that it is beyond dispute that the meter was damaged, however the cause of the damage is not in issue. (Resp. Ex. 1, Figs. 2-8; Tr. at 80-81). The salient point is that, with Mr. Maple overseeing the process, Respondent was still able to test the inner workings of the meter and found it to be 100.04% accurate. (Resp. Ex. 1 at 2; Tr. at 79). This percentage is within the range of accuracy required by 83 Ill. Adm. Code 500.190(a). Furthermore, Respondent's Exhibit 1 and Mr. Maple's testimony describe in extensive detail the procedures followed both prior to and during the test itself. (Tr. at 76-77).

The Commission also finds that the damage to the meter could not have caused the overcharges. The dials were unable to spin because the meter's driveshaft had been smoothed down and could not, therefore, properly connect to the index. (Tr. at 78-79, 104). If the dials do not spin, gas going through the meter will not be recorded and the usage will not be billed. (Id. at 82). Thus, the damage to the meter would have caused the Complainant to be undercharged, not overcharged.

Similarly, the Commission finds that Complainant could not have been overcharged due to leaking gas. Mr. McCree testified that he and his tenants could smell gas when Respondent was digging up his backyard and parking lot. (Tr. at 141-143). Gas, however, flows through each location before reaching the meter. Any gas that escapes prior to reaching the meter would not be recorded as usage and would also not be billed. (Id. at 83).

Further support that Complainant was not overcharged is reflected in a bill issued February 5, 2016, covering December 7, 2015 to February 4, 2016, showing usage of 38 cubic feet. Respondent's witness described 38 CCF as extraordinarily low usage, particularly when compared with another 38 CCF measured from May 21, 2016 to May 26, 2016. (Tr. at 178-179). The Commission agrees with Respondent's characterization, insofar as the February 5, 2016 bill reflects usage for two winter months.

Complainant also referenced consecutive estimated readings, which are described as excessive and are prohibited by Section 8-303 of the Act and 83 Ill. Adm. Code 280.80 up to November 1, 2014, and 83 Ill. Adm. Code 280.90 after November 1, 2014. (Tr. 145-147). The parties also mentioned estimated readings in their closing briefs. (Comp. Br. at 3-4; Comp. Reply Br. at 2; Resp. Br. at 5).

The Commission finds that consecutive estimated readings are permissible pursuant to the cited statute and regulations, under specific circumstances. Aside from that, however, the Commission can find no evidence providing a direct link between the estimated readings and the alleged overcharges. The mere mention that consecutive estimated readings are excessive is insufficient to enable the Commission to find that Complainant was overcharged.

Complainant's Group Exhibit 1 is comprised of nine separate bills issued to Complainant from February 5, 2014 through February 4, 2016. During this period, Complainant's total balance increased from \$4,321.02 to \$13,089.24. Readings were a mix of estimated and actual. However, only four of the bills reflect a payment made, and the amounts remitted range from .022% to .044% of the total balance. Respondent's Exhibit 2 shows that no payments were made for the periods 02/05/14 - 03/07/14, 03/07/14 - 04/07/14, 04/07/14 - 05/07/14, 05/07/14 - 06/06/14, 06/06/14 - 07/08/14, 09/05/14 - 10/04/14, 11/04/14 - 12/05/14, 12/5/14 - 01/07/15, 01/07/15 - 02/06/15, 02/06/15 - 03/09/15, 04/08/15 - 05/07/15, 05/07/15 - 06/05/15, 06/05/15 - 07/08/15, 08/05/15 - 09/04/15, 09/04/15 - 10/05/15, 11/05/15 - 12/07/15, and 12/07/15 - 02/04/16. The payments that were made during these periods follow the same percentage pattern shown on the four bills in Complainant's Exhibit 1.

Respondent's Exhibit 4 shows Complainant's total balance had increased to \$14,684.74 on May 6, 2016. The Commission notes that, pursuant to Section 280.120 (effective 11/01/14), a residential customer owing a past due amount shall be eligible for a deferred payment arrangement, provided that the customer has not failed to complete a previous deferred payment arrangement in the past twelve months. Also, under Section 280.120(b)(2)(C), at the utility's discretion, a residential customer owing a past due

amount, who is not automatically eligible for a deferred payment arrangement under subsection (b)(1), may enter into a deferred payment arrangement to retire the debt.

The Commission concludes that the meter test showed that Complainant's meter accurately measured gas usage, and that Complainant was not overcharged by inaccurate meter readings caused by damage to the meter or by leaking gas. Furthermore, Complainant was not overcharged by estimated readings. Complainant has not sustained her burden of proof and the Complaint should be denied.

VI. 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 August 17, 2015, Vernetta McCree filed a complaint against Northern Illinois Gas Company d/b/a Nicor Gas Company alleging that she had been overbilled because of a meter that was damaged and leaking;
- (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;
- (3) Complainant's evidence failed to prove that she had been overbilled due to a meter that was damaged or leaking or by estimated readings;
- (4) the referee test shows that Complainant's meter at all times registered gas usage within the range of accuracy required by 83 Ill. Adm. Code 500.190(a);
- (5) Complainant has been correctly billed for gas service up to May 6, 2016;
- (6) Complainant has failed to sustain her burden of proof; and
- (7) the complaint should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the complaint filed by Vernetta McCree on August 17, 2015 is denied.

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.

DATED:	August 5, 2016
BRIEFS ON EXCEPTIONS DUE:	August 19, 2016
REPLY BRIEFS ON EXCEPTIONS DUE:	August 26, 2016

John T. Riley,
Administrative Law Judge