STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company
and
The Peoples Gas Light and Coke Company
Proposed General Increase in Rates and Revisions to Service Classifications, Riders, and Terms and Conditions of Service

Docket No. 23-0068
Docket No. 23-0069
(cons.)

VERIFIED APPLICATION FOR REHEARING OF NORTH SHORE GAS COMPANY AND THE PEOPLES GAS LIGHT AND COKE COMPANY
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North Shore Gas Company and The Peoples Gas Light and Coke Company (collectively, the “Companies”), pursuant to Section 10-113(a) of the Public Utilities Act (“PUA”), 220 ILCS 5/10-113(a), and Section 200.880 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice, 83 Ill. Admin. Code § 200.880, respectfully submit this Verified Application for Rehearing (the “Application”) of the Commission’s Final Order, dated November 16, 2023 (“Final Order”).

The Final Order, absent rehearing and correction, will present the Companies with several immediate challenges in delivering safe, reliable natural gas service to their customers in the greater Chicago area. One key element of the Final Order is the Commission’s directive to Peoples Gas to abruptly stop its Safety Modernization Program (“SMP”) and its corresponding disallowance of $265 million from PGL’s test year rate base. Among other serious problems, this directly contradicts existing and forthcoming directives from the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) to accelerate repair and replacement of leak-prone pipe. In this Application, PGL seeks full reversal of this order point and disallowance.
But this Application is not limited to the SMP. It also addresses the Final Order’s $236.2 million reduction to PGL’s rate base, representing a full disallowance of the costs Peoples Gas incurred to replace aging, deteriorated shops and related facilities in Chicago. That disallowance rests on an unexplained departure from the prudence standard that has long governed rate cases in Illinois, and the Commission improperly applied its newly announced standard to past decisions without giving Peoples Gas the opportunity to show that those decisions meet it. If the Commission intends to apply this standard in this case, due process requires the Commission to defer its decision on this issue, consistent with the relief originally requested by the Attorney General (“AG”), and grant Peoples Gas an opportunity on rehearing (or via other procedure) to meet this new standard. Moreover, if the thrust of the Commission’s decision is that Peoples Gas failed to sufficiently consider alternatives to new construction, any disallowance should be limited to the cost difference between those alternatives and the actual project cost, and the parties should have an opportunity to make a record on that point, as well.

This Application also addresses aspects of the Final Order (1) instituting an Integrated Resource Planning (“IRP”) requirement, contrary to statute; (2) setting capital structures that ignore evidence that the Companies’ financial risk is increasing; (3) setting return on equity (“ROE”) lower than any party advocated and not supported by substantial evidence in the record; (4) disallowing recovery for North Shore’s Clavey Road project; (5) disallowing $1.4 million in North Shore’s projected rate case expense; and (6) failing to allow sufficient time to implement ordered changes to North Shore’s billing system. Each of these items justifies rehearing, and collectively they result in a Final Order that is untenable and unprecedented as a matter of Illinois law and Commission practice.
I. LEGAL STANDARDS

The Commission may grant an application for rehearing to reconsider any issue, may consider new and additional facts not presented in the original record, and may rescind, alter, or amend its original order if the Commission has reason to believe that the order “or any part thereof is in any respect unjust or unwarranted, or should be changed.”

See 220 ILCS 5/10-113(a). Rehearing is appropriate to permit the Commission the opportunity to consider additional or new facts that were not present in the original evidentiary record. See, e.g., Marathon Oil Co. v. Ill. Commerce Comm’n, 52 Ill. App. 3d 368, 371–373 (5th Dist. 1977) (finding that it was error to deny an applicant’s request for rehearing to present new evidence, where that evidence would have shown the impact of the Commission’s order on the applicant).

All Commission decisions must be based on the evidentiary record and properly apply the relevant law. 220 ILCS 5/10-201(e)(iv)(A) (requiring reversal of Commission orders where “[t]he findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission”); 220 ILCS 5/10-201(e)(iv)(C) (requiring reversal of Commission decisions that are in violation of law). “[C]ourts may reexamine facts and set aside an order of the Commission if evidence in the record shows the order to be without substantial foundation.” Citizens United for Responsible Energy Dev., Inc. (CURED) v. Ill. Commerce Comm’n, 285 Ill. App. 3d 82, 90 (5th Dist. 1996).

The Commission must also make findings in support of its decision, and justification for those findings must exist in the record. See Commonwealth Edison Co. v. Ill. Commerce Comm’n, 398 Ill. App. 3d 510, 518 (2d Dist. 2009); Commonwealth Edison

As discussed in more detail in Section IV.B.1., the Commission erred as a matter of law in applying a new and legally unsupported standard of prudence when it disallowed the entire $236.2 million cost of Peoples Gas’s new shop facilities from its rate base. The Commission abandoned prudence review as it traditionally has been applied to capital investments in Illinois rate cases for decades. Instead, the Commission applied a new standard that is more like the Commission’s review of capital projects that are subject to Certificate of Public Convenience and Necessity (“CPCN”) review and approval. In prior cases, the Commission has applied a prudence standard that “involves the absence of hindsight and the acceptance of reasonable, but not necessarily optimal, decision-making.” North Shore Gas Co., et al., ICC Docket Nos. 09-0436/09-0437 (cons.), Amendatory Order (Apr. 12, 2011) (Hon. D. Scott, Acting Chairman) at 7, n.24 (“Prudency Defined”).

The Commission has never before required cost-benefit and alternatives analyses for every asset as a prerequisite to inclusion in rate base. Yet here, the Commission appears to have applied the CPCN “least-cost” standard to the shop facilities even though (1) replacement facilities do not require CPCNs under the statute and (2) the Commission in this case ruled that the least-cost standard does not apply in a rate case. Final Order at 10. Worse still, in applying a new standard to Peoples Gas and its shop facilities, the
Commission gave the Company no opportunity to present evidence of the type the Commission now says is required for “capital investment project[s] of this magnitude.” Final Order at 56. Nor did the Commission indicate at what threshold of investment this new standard begins to apply, leaving Peoples Gas and other Illinois utilities unclear as to when they may or may not need to meet the elements of the Commission’s new standard. At the very least, the Commission should defer a ruling on whether the $236.2 million in cost associated with the shop facilities costs should be included in rate base for further fact-finding as the AG proposed in its direct testimony.

II. PROPOSED ADDITIONAL EVIDENCE

In its now-denied Verified Emergency Motion for Clarification of Commission Order dated December 1, 2023 (“Clarification Motion”), Peoples Gas introduced evidence that described four categories of pipe replacement work potentially affected by the Commission’s order to “pause” its SMP. Those statements were verified by certification pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, and Peoples Gas incorporates them herein by reference as proposed additional evidence in support of this Application.

This evidence, which Peoples Gas offers again here, is not “new.” On the contrary, this evidence describing the variety of work Peoples Gas annually performs throughout Chicago is completely consistent with the quarterly SMP reports that Peoples Gas has been filing for years as a result of the Commission’s orders in ICC Docket No. 16-0376. Those reports—which the Commission routinely takes notice of and cited in its Order

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1 See 83 Ill. Admin. Code § 200.880(a) (requiring a brief statement of proposed additional evidence, if any, and an explanation why such evidence was not previously adduced).
(Final Order at 29)—break down the SMP by its constituent programs, and detail spend and progress on each program every quarter.

The Clarification Motion provided this detail by describing the millions of dollars in anticipated 2024 construction work in Chicago that are not related to neighborhood replacement of vintage mains. Peoples Gas provided these construction categories, as well as associated costs, to highlight the unintended consequences of the Commission’s decision to (as Local 18007 put it) “throw[] the baby out with the bath water.” Response of Gas Workers Union Local 18007 at 2. The Commission’s surprising decision to broadly “pause” all $265 million in planned investments, regardless of project category, and including substantial disallowances for several ongoing projects, is the reason why this evidence is being presented again with this Application.

III. ON REHEARING, THE COMMISSION SHOULD REVERSE ITS BLANKET SMP DISALLOWANCE OR, AT A MINIMUM, IDENTIFY NECESSARY 2024 WORK AND PROVIDE RATE REVENUE FOR THAT WORK.

A. The Commission should reverse its $265 million SMP disallowance, which improperly prejudges the future of gas in greater Chicago.

In its Reply Brief on Exceptions (“RBOE”), Peoples Gas described the inherent contradiction in halting SMP while simultaneously ordering yet another investigation of the program. As it stated there,

Any arguments that the Commission should impose new SMP policies . . . in this case contradict arguments that an investigation is needed, and vice versa. Both of these things cannot be true at the same time. If another investigation is essential, then by definition the Commission does not have the information it needs to take substantive action until that investigation is concluded. Yet if the record in this case already reveals that it “is imperative that the Commission act now to rein in the SMP” . . . then it is unclear what purpose would be served by yet another investigation.

NS/PGL RBOE at 23–24.
The ALJ’s proposed order avoided that trap by awaiting additional information from Staff before making any new policy pronouncement on the future of natural gas in Illinois. The Commission could have ordered an investigation without interrupting ongoing work. This would be consistent with how the Commission approached the issue in 2016, when it initiated its “workshop” investigation of the SMP and waited for Kiefner to complete its analysis. See generally Ill. Commerce Comm’n On Its Own Mtn v. The Peoples Gas Light & Coke Co., ICC Docket No. 16-0376. Instead, the Commission walked directly into the trap, abruptly halting the SMP and simultaneously ordering an investigation of whether the SMP should continue. In taking this unusually aggressive approach, the Commission has apparently already prejudged the outcome of the new investigation that will not even begin until 2024. Indeed, it appears the Commission has already concluded that its recently announced “future of gas” proceeding does not have room for significant additional safety and reliability investments in PGL’s gas pipelines under Chicago’s streets.

This broad policy pronouncement stopping all new and typical natural gas utility construction in the City of Chicago, except for narrow, unclear “emergency” circumstances, is expressly tied to conclusions the Commission has already reached about the future of gas. That connection is made clear in the Final Order’s discussion of the “Future of Gas” proceeding, where the Commission states—before having even opened that proceeding—that:

If the decarbonization goals of [the Climate and Equitable Jobs Act (“CEJA”)]) are to be met, the gas distribution system as currently operated will need to change. The Commission will need to better define infrastructure spending by the State’s natural gas utility companies and lay the framework for
how gas system operations will help meet the State’s clean energy goals.

Final Order at 121.

As the Commission is well aware, CEJA means nothing of the sort. Even as it uses this rate case to announce a significant energy policy change that halts any new, significant construction to address the aging natural gas delivery system in the City of Chicago for the foreseeable future, the Commission itself acknowledges that CEJA is limited to decarbonization in the electric sector and “is silent as it relates to the gas system.” *Id.* But even setting aside this authority problem, the point is that without even *beginning* to investigate SMP or the “future of gas” (including the high cost of electrification), the Commission has *already* determined that a new approach to the natural gas delivery system is necessary (“the gas distribution system as currently operated will need to change”) (*id.*) and that it will not authorize any significant spending in the manner proposed by Peoples Gas (“The Commission will need to better define infrastructure spending . . .”) (*id.*). This rejects the Kiefner Report’s recommendations, the Commission’s own prior findings endorsing the pace and scope of the SMP, and the (previously) Commission-approved neighborhood approach, again without any investigation (*id.* at 29–30), and replaces all of this with a new approach to infrastructure spending: the comprehensive Long-Term Gas Infrastructure Plan (*id.* at 119–120).

The Final Order purports to accept the Companies’ position that “[a] rate case is not the best place to address” the “issues raised concerning the ‘Future of Gas’ distribution,” while carving out “SMP project management” and the Long-Term Gas Infrastructure Plan as the only two exceptions. *Id.* at 121. In fact, those two “exceptions” are the new rule: they fundamentally reject Peoples Gas’s current approach to
maintaining safe, reliable gas distribution infrastructure in Chicago while purporting to order an open-minded investigation of the very same thing.

This significant energy policy change is being implemented in a proceeding where no party even suggested this approach and there has been no intervening change in the law. This Commission’s decision fundamentally changes state energy policy for natural gas utilities without the justification of a newly enacted statute. Even the Commission’s broad general regulatory powers under Sections 4-101 and 8-501 of the PUA, 220 ILCS 5/4-101 and 8-501, do not go that far.

The Final Order also ironically both faults Peoples Gas for failing to act quickly enough to address the safety warnings in the Commission-ordered Kiefner study (Final Order at 28), while simultaneously putting almost all natural gas utility construction in Chicago on hold indefinitely. The Kiefner Report recommended that pipeline replacement efforts “should be accelerated as more than 80% of the remaining cast and ductile iron pipes in Peoples Gas’s system have a remaining life of less than 15 years” with most remaining cast iron mains averaging over 90 years old and most of the remaining ductile iron mains averaging over 50 years old. PGL Ex. 1.0 REV at 9. Thus, the Report “concluded that ‘the replacement rate has not been fast enough to compensate for the increase in failure rates expected from the aging system.’” Id. Rather than ordering the Company to continue working urgently toward achieving these recommendations, the Commission ignored them and has put the program to replace aging cast iron and ductile pipes across Chicago on ice.

That places the Final Order in conflict with the direction Peoples Gas received from PHMSA, which over a decade ago issued its “Call to Action” to accelerate the repair,
rehabilitation, and replacement of the highest-risk pipeline infrastructure, with particular attention to cast iron pipe. NS-PGL Ex. 14.0 REV at 20. Contrary to PHMSA’s call to action, this Commission has ordered inaction, leaving PGL governed by conflicting directives from its state and federal regulators.

The Final Order will also make it far more difficult for Peoples Gas to comply with current and forthcoming PHMSA rules. Peoples Gas is already subject to PHMSA’s Distribution Integrity Management Program (“DIMP”) rule (49 C.F.R. § 192.1005), under which Peoples Gas relies heavily on the SMP as an Additional Action to Mitigate Risk. If Peoples Gas is unable to complete the cast iron and ductile main replacement work planned for 2024, it will not be compliant with its DIMP commitments, and any long-term halt to the SMP would require Peoples Gas to develop more targeted Additional Actions to Mitigate Risk.

Additional rules from PHMSA in the near future will compound this problem. The first of these will be PHMSA’s proposed rule on Pipeline Safety: Gas Pipeline Leak Detection and Repair, for which the comment period closes in August. Docket No. PHMSA-2021-0039, 88 F.R. 31890. This rule will likely go into effect in 2024, leaving Peoples Gas unable to comply with the rule’s requirements because the Final Order will prevent it from performing work that the rule will require. PHMSA has also issued a notice of proposed rulemaking (“NPRM”) addressing overpressure protection on low-pressure natural gas distribution systems (Docket No. PHMSA-2021-0046, 88 F.R. 61746), and it is unclear whether Peoples Gas would be able to comply with that rule under the restrictions imposed by the Final Order. The Commission did not consider or even inquire about any of this before it acted.
The Commission has rejected the more measured approach endorsed by the Proposed Order to address the challenges Peoples Gas faces operating one of the oldest natural gas delivery systems in the country. In doing so, it failed to retain even the appearance of impartiality until an SMP investigation was completed and the facts were known. But there is still time to correct course. Peoples Gas asks the Commission to restore SMP authorization and funding until its investigation has ended.

B. Alternatively, at a minimum, the Commission should clarify its Final Order to ensure that certain categories of work are permitted and funded in 2024.

In its now-denied Clarification Motion, Peoples Gas requested that the Commission clarify its Final Order to allow certain categories of work identified as falling under the SMP umbrella to continue in 2024 in the interest of public safety and system reliability. Peoples Gas also requested that the Commission clarify its Final Order to restore $134.4 million to the Company’s rate base and $8.1 million to its revenue requirement to cover the cost of this work:
In this Application, Peoples Gas renews its request for partial program restoration in 2024 as an alternative to the Commission’s broad ban on natural gas utility construction in Chicago. Various intervenors objected to the Clarification Motion as a procedural attempt to circumvent rehearing. To the contrary, as this Application makes clear, Peoples Gas has no intention of avoiding the rehearing process on this important issue, as it understands that seeking rehearing on an issue is a prerequisite to appeal. See 83 Ill. Admin. Code 200.880(d). The Clarification Motion was simply intended to identify as quickly as possible the bare minimum of work that cannot be abruptly abandoned, and to receive clear direction from the Commission as to whether that work is permitted in 2024. The Clarification Motion also addressed the disconnect between the Final Order’s requirement that the Company must “continue to address existing and new leaks as it
would in the normal course of prioritizing customer safety…” and its disallowance of any funding to continue that work. Final Order at 29. The Commission’s order denying Peoples Gas’s Motion for Clarification again warned the Company that it has an “enduring responsibility” to comply with PUA provisions concerning safety and reliability. *North Shore Gas Co., et al.*, ICC Docket Nos. 23-0068/0069 (cons.), Order Denying Motion for Clarification (Dec. 14, 2023) at 2. To be abundantly clear, Peoples Gas takes its safety and reliability obligations very seriously. The Company has served the City of Chicago for over 150 years and it will continue to do the work necessary to comply with applicable regulations, no matter the outcome of this Application. However, the Commission’s continued insistence on having the Company do the work to meet these obligations, while simultaneously denying it the opportunity to recover the cost of doing so, is legal error. See *North Shore Gas Co., et al.*, ICC Docket Nos. 23-0068/0069 (cons.), Peoples Gas’s Verified Reply in Support of Emergency Motion for Clarification of Commission Order (Dec. 8, 2023) at 5–7.

On rehearing, Peoples Gas’s position is that there is no basis to “pause” the SMP at all until the Commission-ordered investigation is completed a year from now. If the Commission declines to grant that relief on rehearing, then Peoples Gas incorporates its Clarification Motion by reference in this Application, and again asks the Commission to grant the requested clarification at the conclusion of the rehearing process. To be clear, the longer the Commission waits to provide clarification, it may come too late to avoid the risks posed by stopping ongoing work and losing the employees and contractors necessary to continue it.

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2 The Clarification Motion and the Company’s Reply in support of that motion are attached to this Application as Exhibit A, and incorporated herein.
IV. ON REHEARING, THE COMMISSION SHOULD REVERSE ITS $236.2 MILLION REDUCTION TO RATE BASE FOR SHOPS AND RELATED FACILITIES.

A. Introduction

The Final Order’s $236.2 million reduction to PGL’s rate base represents a full disallowance of the costs Peoples Gas incurred to replace aging, deteriorated shops and related facilities in Chicago. That disallowance suffers from three fatal flaws.

First, the Commission’s decision on these shops abandons traditional prudence review as it has been applied in Illinois rate cases for decades and replaces it with a new standard for capital expenditures that appears more like the least-cost requirement for projects governed by the CPCN statute, Section 8-406(b), 220 ILCS 5/8-406(b), when these shops—as replacement facilities—did not need a CPCN in the first place. This was not only substantive legal error. It also deprived Peoples Gas of the ability to even develop a record to meet the standard newly announced in this case. If the Commission is unwilling to apply the traditional prudence standard to these projects (and they would clearly meet that standard),3 then it should at least give Peoples Gas the opportunity to satisfy the Commission’s new test on rehearing or, as originally requested by the AG, in some other, separate proceeding.

Second, full disallowance of the shop costs is not supported by the record. No party argued (and the Commission did not find) that Peoples Gas did not need to invest any capital in the shops. If the basis for the disallowance was the Company’s failure to consider certain other alternatives, then the amount of the disallowance should be tied to the difference between the full project cost and the cost of an alternative that was not

3 The extensive evidence supporting the reasonableness and prudence of PGL’s investment in new facilities to replace aging, unsafe shops is summarized in pages 29 through 57 of the Companies’ Initial Brief, and is incorporated herein by reference.
considered but that the Commission deems more reasonable. Currently, the record lacks any evidence on what that alternative actually is and what the corresponding cost would have been, and in fact the Final Decision identifies no lower-cost alternative. This, too, justifies reversal, or at a minimum further proceedings on this issue.

Third, the Commission did not consider all the evidence submitted in the case about why the shops needed to be replaced, and why replacement (as opposed to repair or doing nothing) was prudent. In this regard, the Final Order’s characterization of the Company’s analysis of alternatives is clearly in error.

B. Argument

1. The shops disallowance abandons traditional prudence review and subjects Peoples Gas to a new standard without giving the Company any opportunity to meet that test.

The Final Order’s $236.2 million reduction to PGL’s rate base rests on the Commission’s conclusion that Peoples Gas failed to show that its investment in replacement shops and related facilities was prudent. But what the Final Order says is necessary to show prudence departs drastically from anything resembling what prudence review has long meant in Illinois rate cases.

Specifically, the Final Order “agrees with AG witness Walker that the Company has failed to supply cost-benefit analyses for each facility and a thorough alternatives analysis for each facility that evaluated the cost and operational considerations of repair, repurpose, and replace options.” Final Order at 55–56 (internal quotation marks omitted). It finds that “the Company fail[ed] to show why it could not have pursued” several alternatives, including “[1] the investments identified in the facilities improvement list in the Mortenson report to continue operating existing shops, [2] delay the need to build new
shops, or [3] pursue some combination of the two.” Id. at 56. It also faults Peoples Gas for “provid[ing] no clear indication that it balanced the need for new shops with its other capital investments.” Id. And on top of these “analyses of alternatives” and “cost-benefit projections,” the Commission adds that the Company should have conducted “rate impact assessments” for each facility. Id.

Reading all of this language together, the Commission’s Order imposes a new list of showings a utility must now make before this Commission will deem a prior utility capital investment prudent:

- A “cost-benefit analysis for each facility”;
- A “thorough alternatives analysis for each facility”;
- A showing as to why each alternative not pursued was not feasible;
- An analysis balancing each alternative with other capital investments; and
- A “rate impact assessment[]” for each facility.

And each of those required analyses, in turn, must include at least five alternatives: repair, refurbishment, replacement, delay, and some combination of these—all complete “with supporting documentation.” Id. As at least some of these alternatives will necessarily contain sub-alternatives (move to Parcel A or Parcel B? wait five years or ten?), the required analysis quickly proliferates into a matrix encompassing dozens of possible scenarios, and the required showing quickly becomes impossible.

This is an entirely new regulatory approach to prudence determinations for capital investments before this Commission. And the list of new requirements makes clear that this new approach is not designed to find a reasonable outcome; it is designed to find the best possible outcome. And therein lies the legal problem: prudence review before the
ICC has never meant proving that the utility made the best possible decision. Prudence is “that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made.” Ill. Power Co. v. Ill. Commerce Comm’n, 382 Ill. App. 3d 195, 201 (3d Dist. 2008). Further, “[i]n determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered.” Id. “Hindsight review is impermissible” in the analysis. Ill. Power Co. v. Ill. Commerce Comm’n, 339 Ill. App. 3d 425, 428 (5th Dist. 2003).

As the Illinois Appellate Court has also explained, “the prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being ‘imprudent.’” Id. at 435. In the Commission’s own words, “The prudence standard involves the absence of hindsight and the acceptance of reasonable, but not necessarily optimal, decision-making.” North Shore Gas Co., et al., ICC Docket Nos. 09-0436/09-0437 (cons.), Amendatory Order (Apr. 12, 2011) (Hon. D. Scott, Acting Chairman) at 7, n.24 (“Prudence Defined”); see also id. at 13 (“Again, the Commission does not, in a prudency review, consider whether the alternatives actually chosen were optimal alternatives. Incremental divergence from perfection is not imprudence.”). Instead, “to be imprudent, an action or omission must not only be shown to have been wrong, but to have been outside the realm of reasoned disagreement based on the information available at the time it was made.” Commonwealth Edison Co., ICC Docket No. 16-0259, Final Order (Dec. 6, 2016) at 15.

In short, in making a prudence determination, the ICC has never required an Illinois utility to show that it considered every possible alternative, or even those alternatives the
Commission itself would have considered. See, e.g., Consumer Gas Co., 2018 WL 3993999, at *9 (Ill. Commerce Comm’n, Aug. 15, 2018) (utility expenditure was appropriate even though “there may have been less expensive options available”). Nor does it require any specific economic analyses. See Illinois Power Co., 1992 WL 486361 (Ill. Commerce Comm’n, Feb. 11, 1992) (rejecting argument that utility needed to perform net present value economic benefits test to establish that a new software system was prudent, and finding that failure to conduct this economic analysis was not “a sufficient basis for excluding [the costs of the system] from rate base”).

As the cases cited above confirm, prudence simply requires a showing that the utility acted reasonably based on the information actually available to it at the time. After the fact, it will always be possible to imagine additional alternatives that might have been considered or more analysis that could have been performed. But that is textbook impermissible hindsight review. And now, the Final Order not only applies such review to the shops, but appears to set such review as the new standard for Illinois utilities (“reasonable steps that a utility should take”), at least for “a capital investment project of this magnitude” (Final Order at 56), i.e., with a total cost of at least $236.2 million.4

The Commission’s application of the prudence standard to the shops equates to an application of the least-cost requirement for CPCN work. Because the shops were replacement facilities, Peoples Gas was not required to obtain a CPCN.5 While CPCN

4 This particular language raises an additional question: is the “magnitude” requiring this heightened analysis $236.2 million? Some lower amount? The Order provides no answers to this question, but leaves Peoples Gas and any other utilities subject to a vague and undefined threshold for when this new “standard” is to be applied.

5 Cf. 220 ILCS 5/8-406(b) (“No public utility shall begin the construction of any new plant, equipment, property, or facility which is not in substitution of any existing plant, equipment, property, or facility…”) (emphasis added).
work is subject to a least-cost requirement, the Commission correctly ruled that this requirement does not apply to prudency review in rate cases generally (Final Order at 10) or to the shops work in particular (id. at 56). Yet the level of analysis the Commission stated should have been performed for the shops functionally does require a least-cost demonstration (why else require a cost-benefit analysis for each alternative?) and much more—including the virtually impossible requirement that the utility show "why it could not have pursued" each rejected alternative.


Under the authorities cited above, replacing the traditional prudence standard with these complex, heightened requirements is per se legal error requiring reversal. But if the Commission will not revert to the traditional prudence test, then it must at least permit Peoples Gas to try and meet the new standard announced for the first time in this case. Failure to do even that would layer a denial of due process on top of reversible legal error.

This point was also addressed in Illinois Power Co., where the court also reversed the Commission’s decision because the Commission held Illinois Power to a standard of care that was inconsistent with what it had required in the past. Ill. Power Co. v. Ill. Commerce Comm’n, 339 Ill. App. 3d 425, 439 (5th Dist. 2003). Specifically, the

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6 “The Commission acknowledges that a least-cost standard is not applicable on these facilities.”
Commission faulted Illinois Power for not completing a specific economic analysis before retiring a propane plant. But the court found that the Commission had not required this particular analysis in similar cases in the past; nor could the Commission point to a statutory provision requiring such an analysis. Id. Thus, the Commission had created a standard of care after the fact and “applied it in hindsight to judge the prudence of Illinois Power’s actions.” Id. at 439–440. The Commission’s decision to depart from past practice was afforded less deference than normal and its finding that the economic analysis was required was arbitrary and unreasonable. Id.; see also Aero Mayflower Transit Co. v. Ill. Commerce Comm’n, 699 F.2d 938, 942 (7th Cir. 1983) (“Courts have commonly held that when an agency wants to change a controlling standard and apply it in an adjudicatory setting, parties before the agency must be given notice and an opportunity to introduce evidence bearing on the new standard. Indeed, the ICC itself has stated that, ‘in fairness, standards should not be changed without due notice.’”) (internal citations omitted).

Here, this means that at a minimum, the Commission should defer its decision on this issue and reopen the record so that Peoples Gas has the opportunity to present evidence of the type the Commission has now said will govern its prudence review for “capital investment project[s] of this magnitude.” This was an alternative the AG proposed and, if the Commission intends to stand by this new form of prudence review, it is the minimum that due process requires.

2. A full disallowance is not based on substantial evidence in the record.

In addition to the legal standard and related due process concerns, the Final Order’s shops disallowance also lacks support in the record and is inherently contradictory. The legal error here is the lack of any relationship between the
Commission’s prudence determination (failure to sufficiently vet alternatives) and the
remedy the Commission imposed (total disallowance of the project cost).

On the one hand, the Commission made clear: “No party argues that operating the
legacy facilities without any improvements would have been in the best interests of PGL’s
customers or its employees.” Final Order at 55. In other words, no one thought that doing
nothing was a viable alternative—nor did the Commission so find. But the remedy it
actually ordered—a 100% write-off of the shops—eliminates PGL’s entire $236.2 million
capital investment, just as if Peoples Gas had made no investment in safer and better
working conditions for its employees and did nothing useful for customers at all.

Such a penalty drastically outweighs the perceived infraction. Presumably the
purpose of the Commission’s preferred alternative analysis would have been to identify
alternatives that cost less than the actual project costs—not that cost nothing. Assuming
those alternatives could be identified, any alleged imprudence would be limited to the
difference between those alternatives and the facilities that were built. So any resulting
disallowance should not exceed that amount.

The problem, of course, is that no one advocating a disallowance identified any
actual, viable, less costly alternative to the capital investments Peoples Gas actually
made. Nor did the Commission in the Final Decision. So that leaves the record without a
basis to calculate a reasonable write-off.

In the Companies’ view, the only proper course was for the Commission to deny
any write-off of the shops. If the Commission is determined to impose any disallowance,
it must first permit the parties to develop a record focused on the costs of viable
alternatives. For instance, if further record development shows that PGL’s next best
alternative would have cost only $20 million less, it would be patently arbitrary and
capricious to impose a $236.2 million disallowance for failure to select that alternative.
This, in addition to the new prudence standard applied for the first time to this project, is
a reason to reopen the record for further proceedings on this issue.

3. The Final Order clearly errs in its characterization of the Company’s analysis of alternatives.

Finally, the Final Order’s discussion of the alternatives analysis Peoples Gas did
conduct contains several factual errors and disregards substantial evidence in the record.

The Final Order says “the Company fails to demonstrate that the costs it concurred
here were prudent, after considering alternatives” (Final Order at 55) and “has failed ‘to
supply cost-benefit analyses for each facility and a thorough alternatives analysis for each
facility that evaluated the cost and operational considerations of repair, repurpose, and
replace options’” (id. at 56). To the contrary, Ms. Eldringhoff’s direct testimony included
slide decks for each new facility justifying the need for that facility, alternatives
considered, and the anticipated resulting operations and maintenance savings that would
result from the facilities. In addition, Mr. Weber’s rebuttal testimony described PGL’s
approach to the question of repair versus replacement of the facilities, highlighting the
fact that the Company opted not to replace the majority of its facilities, consistent with
Mortenson’s recommendations. In fact, Mortenson evaluated the condition of several of
the facilities and determined that their condition would allow them to repaired, rather than
replaced, and the Company generally followed those recommendations. See NS-PGL Ex.
19.0 at 7.

See PGL Ex. 3.3, Schedule 1 (North Shop), Schedule 2 (Central Shop), Schedule 3 (Logistics Support
Facility), and Schedule 4 (Central Business District Sub-Shop); NS-PGL Ex. 25.02 (South Shop).
Mr. Weber further explained that among the issues that Mortenson considered in making a recommendation on each facility was whether it could be adapted (i.e., remodeled or refinished) to serve PGL’s needs. See id. He detailed Mortenson’s replacement recommendation for each facility that Peoples Gas did replace. See id. at 9–11 (North Shop); 11–13 (Central Shop); 13–15 (South Shop); 16–17 (Division Street Complex). He explained that Cushman Wakefield’s design plan for the facilities included an assessment of the costs of operating each building versus new construction and renovation scenarios. Id. at 18. And he provided Cushman's score cards for each facility, all of which recommended replacement. Id. at 20 (North Shop); 21 (Central Shop); 22 (South Shop); 23 (Division Street Complex).

Mr. Weber's surrebuttal testimony provided still more detail. He testified that while PGL recognized from the start that it would be extremely challenging to renovate the older facilities, all options were considered, and in some cases Mortenson did recommend continued investment in legacy facilities instead of constructing new buildings. Indeed, in the Executive Summary of its report, Mortenson summarized its analysis for whether each facility should be renovated or replaced, and actually recommended that the majority be kept in service through investments to make them water-tight and structurally sound, and Peoples Gas followed that advice. See NS-PGL Ex. 30.0 at 5. There simply is no record basis for the Commission’s statements on this point; all of the record evidence points in the other direction.

Next, the Final Order focused on the difference between the $69.3 million cost for replacing the North Shop and Mortenson’s estimated cost of $3.9 million to upgrade and repair that facility, stating: “The record is unclear as to whether PGL considered this or
other alternatives when developing a strategy to modernize its facilities, giving the Commission no insight into how PGL concluded all five shops and facilities identified by the AG and PIO needed to be replaced immediately.” Final Order at 56. But Mr. Weber clearly testified that the Mortenson estimates were never intended to be full-cost forecasts to replace the facilities—just preliminary estimates to aid the Company in decision-making. They assumed a generic and much smaller shop, and reflected only hard costs—a fraction of total replacement costs. See NS-PGL Ex. 30.0 at 9–10.

In other words, Mortenson’s estimate was never intended to represent an actionable alternative—developing a detailed cost estimate for upgrade and repair simply was not within Mortenson’s scope of work. See id. And that is even before accounting for the fact that construction inflation rose at 3.65% annually in Chicago over the 2015-2020 period, and with the significant spike in construction costs since 2020, the compound annual growth rate for construction costs in the city from 2015 through 2022 was 6.26%. See NS-PGL Ex. 30.0 at 10. The comparison drawn by the Final Order has no reasonable basis in the record and does not support a finding of imprudence.

This, in turn, refutes the Commission’s finding that Peoples Gas “fail[ed] to show why it could not have pursued the investments identified in the facilities improvement list in the Mortenson report to continue operating existing shops, delay the need to build new shops, or pursue some combination of the two” (Final Order at 56). What Peoples Gas showed was that the facilities improvement list developed by Mortenson was not a list of actionable alternatives at all.

Finally, when the Final Order faults Peoples Gas for failing to provide the types of analysis that the Commission has now announced are “reasonable steps that a utility
should take before initiating a capital investment project of this magnitude” (Final Order at 56), it disregards that the Company’s robust alternatives analysis did include several of these steps, as reflected in the shop-specific alternatives analyses (PGL Ex. 3.3, Schedules 1-4 and NS-PGL Ex. 25.02), the Mortenson report (NS-PGL Ex. 19.02), and the Cushman Wakefield and McKissack/FH Paschen analyses (NS-PGL Ex. 19.01). Both individually and collectively, these extensive analyses would have satisfied any traditional prudence test before the Commission’s decision in this case.

V. ON REHEARING, THE COMMISSION SHOULD REVERSE ADDITIONAL ASPECTS OF THE FINAL ORDER ON IRP, CAPITAL STRUCTURE, ROE, AND THREE ISSUES SPECIFIC TO NORTH SHORE.

A. The Final Order’s IRP requirement is contrary to statute and too vague to implement.

The Commission relied on its plenary authority to require IRPs (or what it called “Long-Term Gas Infrastructure Plans”) to be filed every two years beginning July 1, 2025. Final Order at 119–120. While the Commission has broad plenary authority, it is not unlimited. As the Order recognizes, “it is a well established rule that the express grant of authority to an administrative agency also includes the authority to do what is reasonably necessary to accomplish the legislature’s objective.” Abbott Labs. v. Ill. Commerce Comm’n., 289 Ill. App. 3d 705, 712 (1st Dist. 1997). The corollary to this rule is that there are areas where the General Assembly has not granted the Commission authority, and it does not have jurisdiction to act in those areas.

It is clear that the General Assembly does not intend the Commission to have the authority to implement IRPs for gas utilities. At one time, Illinois law required each electric and gas utility serving more than 20,000 customers to prepare biannual integrated resource plans. The purpose of these plans was to:
ensure the provision of adequate, efficient, reliable and environmentally safe energy services at the lowest possible cost to all Illinois energy consumers and users, and, in doing so, to utilize, to the fullest extent practicable, all economical means of conservation, nonconventional technologies relying on renewable energy resources, cogeneration and improvements in energy efficiency as the initial sources of new energy supply.

111 ILCS § 8-402 (1988). However, this law was amended over 25 years ago to eliminate references to gas utilities. See 111 ILCS § 8-402 (1997). This is a clear indication that the General Assembly has not granted the Commission authority to implement IRPs for gas utilities. See, e.g., In re Detention of Lieberman, 201 Ill. 2d 300, 320–231 (2002) (“A subsequent amendment to a statute may be an appropriate source for discerning legislative intent.”).

Additionally, the General Assembly recently enacted CEJA. That law imposes extensive integrated planning requirements, including many of those contemplated for the Long-Term Gas Infrastructure Plans, but only for electric utilities. See 5 ILCS 5/16-105.17 et. seq. As Chairman Scott recognized during oral argument, CEJA simply does not apply to natural gas utilities. Tr. 18:23–19:4; see also Ameren Ill. Co., ICC Docket No. 23-0067, Tr. 42:20–43:4 (“CEJA went out of its way to prescribe long-term planning—infrastructure planning on the electric side. And you could argue went out of its way to not prescribe that on the gas side.”). Thus, there is no statutory basis for requiring gas utilities to prepare IRPs. Indeed, the history of IRPs in Illinois and the fact that CEJA specifically carves out gas utilities supports the opposite conclusion: the General Assembly has decided that there should not be IRPs for gas utilities. The Order does not engage with these arguments whatsoever, and as a result the Order exceeds the Commission’s statutory authority with respect to IRPs and is subject to reversal on appeal.
The Commission has also failed to adequately define what is expected of the utilities. The ordered IRPs are required to provide a laundry list of information including “at a minimum:”

- List of proposed system expenditures and investments, including analysis of infrastructure needs and detailed information on all planned projects within the action plan;
- Demonstration that each project or program plan complies with all applicable Commission rules and jurisdiction requirements, such as safety and reliability, among others;
- 5-year action plan of investments with a longer-term planning horizon analysis where applicable;
- Estimated total cost and annual incremental revenue requirement of the proposed action plan;
- Explanation for the pace of each project or program, including reasoning as to why the project or program cannot be deferred to future years;
- Comparative evaluations of resource procurements and major capital investments;
- Distribution mapping that identifies areas of constraint and risk, location of planned projects, pressure districts served by each project, and locations of environmental justice communities;
- Description of lowest societal cost gas distribution system investments necessary to meet customer demand and comply with public policy objectives;
- Demonstration that the program or project will minimize rate impacts on customers, particularly low-income and equity investment eligible communities;
- Scenario and sensitivity analysis to test robustness of utility’s portfolio and investments under various parameters;
- Publicly filed workpaper documenting all inputs and assumptions with limited use of confidentiality; and
- Summary of stakeholder participation and input and an explanation of how the Company incorporated stakeholder engagement.

These requirements raise far more questions than they answer. What threshold should be applied to determine which “projects or programs” are subject to the IRP – is it every project of any size? What is required to show that a project “cannot be deferred to
future years”? What is meant by the “lowest societal cost gas distribution system” and what “public policy objectives” should that system be designed to achieve? The Order answers none of these questions, and simply doesn’t provide sufficient notice to the utilities of what is required to comply with the IRP requirements. See People ex rel. Madigan v. Ill. Commerce Comm’n, 2011 IL App (1st) 101776, at ¶ 40 (finding the Commission’s order lacked sufficient detail to comply with the PUA); see also Citizens Util. Bd. v. Ill. Commerce Comm’n, 291 Ill. App. 3d 300, 304 (1st Dist. 1997) (finding the Commission must provide findings and analysis sufficient to allow informed judicial review); Dharmavaram v. Dep’t of Prof. Reg., 216 Ill. App. 3d 514, 530 (1st Dist. 1991) (finding administrative agency is required to present charges which are sufficiently clear and detailed to enable the respondent to intelligently prepare a defense). This is reversible error.

B. The capital structures authorized in the Final Order ignore evidence that the Companies’ financial risk is increasing as reflected in recent gas utility authorized equity ratios.

In its Final Order the Commission adopted Staff’s proposed capital structures with equity ratios of 52.58% for North Shore and 50.79% for Peoples Gas based on their actual capital structures in 2022. Final Order at 166–167. In doing so, the Commission ignored unchallenged evidence that the Companies’ financial risks have increased since 2022. The Commission’s decision also ignores the best, most recent data on authorized natural gas utility capital structures, instead relying on outdated and inaccurate data sponsored by Staff. The most recent and accurate data, presented by the Companies and CUB, show an increase in authorized gas utility equity ratios from 52% in 2022 to 53% to 54% in 2023. The Commission’s conclusions that (1) the Companies have not shown that a
higher equity ratio is needed to support their financial integrity and (2) Staff’s lower equity ratios are reasonable are not supported by substantial evidence and are therefore subject to reversal. 220 ILCS 5/10-201(e)(iv)(A). For these reasons, the Commission should reconsider this aspect of the Final Order and approve the Companies’ proposed capital structures with an equity ratio of 54%.

1. The Companies’ financial risk has increased.

The Commission’s decision ignores the substantial evidence the Companies presented of higher financial risk and therefore the need for higher equity ratios in their capital structures. The Companies’ financial expert, Ms. Bulkley, provided a comprehensive analysis of current and future financial market conditions and concluded that the Companies’ financial risk has risen since their currently authorized capital structures were last set in 2005 and 2021. Notably, “[t]he combination of persistently high inflation, the Federal Reserve’s changes in monetary policy, and the dramatic shifts in market conditions resulting from political influences all contributed to an expectation of increased market risk and an increase in the cost of investor-required return on equity.” NS Ex. 4.0 REV at 14. Inflation remains at its highest level in the last 40 years, and the Fed expects it to remain above its target level over at least the next year and lead to additional increases in the federal funds interest rate. The persistence of inflation and the Fed’s reaction to it have resulted in increased interest rates and the expectation that they will remain high. Id. at 15. Monitoring these financial market conditions, the credit rating agencies have recognized the increase in financial risk affecting the entire regulated utility industry. Moody’s and Fitch have downgraded their outlook for the sector to “negative”
and “deteriorating,” respectively, while S&P has maintained its negative outlook. id. at 69; CUB/PCR Ex. 1.0 at 20.

No party contradicted Ms. Bulkley’s finding of increased financial risk. Staff ignored current financial market conditions altogether. CUB’s cost of capital witness acknowledged high inflation, higher interest rates and degrading credit rating agency outlooks, but claimed that utilities retained investment grade credit ratings and access to capital. CUB/PCR Ex. 1.0 at 11. He also argued that “utility valuations remain robust, even during a period of elevated inflation, rising interest rates, and uncertainty because of geopolitical events around the world.” id. at 23. He ignored, however, the impact that market conditions and increased financial risk will have on the Companies’ financial strength absent supportive regulatory measures like increased authorized equity ratios. The issue is not the Companies’ continued access to capital, but the cost the Companies must incur to access the capital necessary to support continued reliable and safe service to their customers. Ms. Bulkley’s testimony that the Companies’ costs to access capital have increased is uncontradicted, and the Commission erred when it ignored her testimony and maintained capital structures set for the Companies under past financial market conditions without any—much less substantial—evidentiary support.

2. The Commission’s authorized equity ratios are far below those recently authorized for other gas utilities.

All parties agreed that a measure of reasonableness of the Companies’ proposed equity ratio of 54% is the recent average authorized equity ratio for other U.S. gas utilities. However, the Commission relied solely on Staff’s outdated and inaccurate data on this metric, ignoring the Companies’ and CUB’s more recent and more accurate data. In doing so, the Commission acted contrary not only to the preponderance of the evidence, but to
the manifest weight of the evidence. *Citizens Utilities Co. v. Ill. Commerce Comm’n*, 124 Ill. 2d 195, 206 (1988) (“An order of the Commission will be set aside on review if … its findings are against the manifest weight of the evidence.” (citations omitted)).

Ms. Bulkley’s finding of increased financial risk is borne out by the stronger capital structures with higher equity ratios recently authorized for other gas utilities. According to the data presented by Ms. Bulkley, the average authorized gas utility equity ratio has increased from 51.80% to 53.21% in 2023. NS-PGL Ex. 15.0 at 65, Fig. 7. According to the data presented by CUB, the average has increased from 51.84% in 2022 to 54.49% in 2023. CUB/PCR Ex. 1.0 at 7, Table CCW-2.

The Commission ignored these data, instead relying solely on Staff’s calculation of the average authorized equity ratio for gas distribution utilities for the years 2020 through 2022: 51.39%. Final Order at 166. There are two errors in Staff’s average, neither of which is addressed in the Final Order.

First, Staff’s average was outdated, covering the period 2020-2022. As the more recent data presented by the Companies and CUB showed, authorized gas utility equity ratios have risen substantially since the 2020-2022 period, which included the COVID pandemic. The following graph compares the data presented by Staff, the Companies and CUB.\(^8\)

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\(^8\) CUB claims that the Companies are “cherry picking” by focusing on the most recent average authorized gas utility equity ratios. CUB/PCR/City RBOE at 11. Nothing could be further from the truth. The Companies focus on the most recent data because the most recent data is the most relevant data to the point of this rate case, which is to set rates for 2024, and, as shown below, because reliance on the most recent data is the Commission’s “common practice.” CUB also claims that its own authorized equity ratio data for 2023 “represents less than one-third of one year, making it especially susceptible to being skewed by individual outlier data points.” *Id.* at 11–12. CUB cites no record evidence for this opinion, as there is none. Moreover, the Companies provided their own data, which were even more recent than CUB’s.
Second, in addition to being outdated, Staff’s average authorized equity ratio was biased downward by its inclusion of gas utility capital structures authorized in states that include deferred taxes and other credits as zero- or low-cost components in the capital structure. Both the Companies’ and CUB’s averages excluded utilities from these states to avoid this downward bias. NS-PGL Ex. 15.0 at 65 n.95; CUB/PCR Ex. 1.0 at 66 (“As such, the reported common equity ratios in these states would result in a downward bias in the reported permanent common equity ratios authorized for ratemaking purposes within my trend analysis.”).

“It is common practice for the Commission to use the most recent data when establishing rates, to the extent that data exists and is reliable.” Northern Ill. Gas Co., ICC Docket 23-0066, Final Order (Nov. 16, 2023) at 67 (“2023 Nicor”); see also United Cities Gas Co. v. Ill. Commerce Comm’n, 163 Ill. 2d 1 (1994) (ICC properly adjusted gas utility’s allowable costs on finding that jurisdictional pipeline demand charge was based on outdated study regarding demand allocation between utility’s Illinois and Tennessee
service territories). Indeed, in its Final Order in this case the Commission relied on the Companies’ most recent actuarial reports to reflect pension and OPEB balances in the revenue requirements. Final Order at 153. By contrast, with respect to cash working capital, the Commission acknowledged its “common practice,” but found the collections lag data from the Companies lead/lag study unreliable due to the effects of the COVID-19 pandemic and the Commission’s moratorium on disconnections, and set the collections lag by combining the currently authorized collections lag representing the last known reliable data with a current 3-year average. Id. at 101. The Commission made a similar decision in Nicor’s 2023 rate case. 2023 Nicor at 64–65. Thus, in deciding to rely on older data for the collection lag, the Commission explained why the more recent data were unreliable. The Commission did not do so in deciding to rely on Staff’s older data on authorized natural gas equity ratios, and that is reversible error based on the Commission’s own “common practice.”

Absent a showing that more current data is unreliable, it is reversible error for the Commission to rely on outdated and less accurate data and disregard more recent and more accurate data in setting a utility’s rates. No “reasoning mind” would rely on outdated and inaccurate data in lieu of more recent and more accurate data to set a utility’s

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9 The Commission’s “common practice” was on greater display in Nicor’s contemporaneous rate case. There, the Commission established the utility’s capital addition forecast based on a more recent forecast provided by Staff. 2023 Nicor at 56–57. The Commission relied on the Companies’ most recent actuarial reports to reflect pension and OPEB balances in the revenue requirements, stating that the Commission “has not wavered on this issue.” Id. at 86; see also Northern Ill. Gas Co., ICC Docket No. 21-0098, Final Order (Nov. 18, 2021) at 51. The Commission adopted a more recent estimate of company-use gas provided by the AG in lieu of the utility’s own estimate, finding “[i]t is just and reasonable to use the most up-to-date estimates when determining rates. Moreover, the volatility of natural gas prices experienced in 2022 has diminished. Increased pricing stability paired with Nicor Gas’ downward trending usage give further weight to the reliability of the most recently developed estimate.” 2023 Nicor at 91. The Commission adopted a more recent estimate of fleet fuel expense presented by Staff. Id. at 92–93. For customer payment fees, the Commission relied on the “most recent” data provided by the AG. Id. at 95. At the behest of CUB and others, the Commission also relied on the most recent available data available to establish Nicor’s sales forecast. Id. at 159–160.
ratemaking capital structure. *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 405 Ill. App. 3d 389, 398 (2d Dist. 2010) (ICC properly rejected proposed rate discount that was based on an outdated cost of service study).

Courts have reversed agencies that have relied on outdated and inaccurate data when the record contained more recent and more accurate data. In *Dow Agrosciences LLC v. National Marine Fisheries Service*, 707 F.3d 462, 473 (4th Cir. 2013), insecticide manufacturers challenged a biological opinion issued by the NMFS in 2008 because it relied on outdated water monitoring data collected from 1992 to 2006. During the agency proceeding, the manufacturers and several states directed the agency to more recent available data. The Fourth Circuit found that the biological opinion “never adequately explained why it relied on older data despite the existence of new data and the potential drawbacks of using the older data.” 707 F.3d at 472. Acknowledging the agency’s discretion in weighing the record evidence, the court nonetheless held that the NMFS “surely was required to ‘cogently explain why it ha[d] exercised its discretion’ in relying on a data set that was so highly criticized.” *Id.* at 473 (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 48 (1983)). The agency should have “at the very least, analyze[d] the new data or explain why it nevertheless chose to rely on the older data.” *Id.* (citing *Sierra Club v. U.S. Envt’l Prot. Agency*, 671 F.3d 955 (9th Cir. 2011) (EPA’s approval of state implementation plan under Clean Air Act arbitrary and capricious when agency failed to consider available updated emissions inventory data)). As the Ninth Circuit explained, reviewing courts “should not silently rubber stamp agency action that is arbitrary and capricious in its reliance on old data without meaningful comment on the significance of more current compiled data.” 671 F.3d at 968; see also *Flyers Rts. Educ.*

The Commission has acted arbitrarily and capriciously by relying on outdated and inaccurate data on authorized gas utility equity ratios in lieu of more current data without any explanation. If the Commission considered the more current data on authorized gas utility equity ratios, it would find the Companies’ proposed equity ratio of 54% justified by their increased financial risk and well aligned with the most recent authorized equity ratios authorized for other gas utilities.

3. Staff’s “financial strength” analysis is irrelevant.

The Final Order also cites Staff’s determination that the overall Staff-sponsored revenue requirement would support an implied A2 credit rating from Moody’s. Final Order at 166. Neither Staff nor the Commission explain, however, how this determination supports Staff’s proposed capital structures. In fact, the common equity ratios proposed by the Companies and Staff are all consistent with an A2 Moody’s credit rating. Staff’s analysis based on its overall revenue requirement simply does not address the question of whether the Companies’ proposed capital structures are reasonable. In other words, Staff’s analysis does not prove that the Companies’ proposed equity ratio is higher than necessary to maintain an A2 Moody’s credit rating. Based on the record of this proceeding, common equity ratios of 54% are supportive of the Companies’ current
financial strength and credit ratios and are not excessive under the financial market conditions expected to prevail when the Companies’ new rates are in effect.

Staff has argued that “if two capital structures both allow the Companies to maintain their financial strength, but one is more costly than the other, it would be unjust to approve the capital structure which is more costly to ratepayers.” Staff RBOE at 16. But this is inconsistent with the Commission’s rejection of a least-cost standard to govern utility rates. Final Order at 10. The standard for a utility’s ratemaking capital structure is reasonableness. 220 ILCS 5/9-201(c); 2021 North Shore at 51 (“a utility could use the test year period for capital structure provided it was reasonable”). The Companies established by a preponderance of the evidence that their proposed equity ratios are reasonable under current financial market conditions.

C. **The Final Order sets ROEs for both Companies that are anomalously low in light of basic market realities.**

1. *The evidence of increased cost of equity since 2021 is conclusive.*

In setting the Companies’ ROE at 9.38%, the Commission ignored conclusive evidence that the Companies’ cost of equity has increased since the Commission set North Shore’s ROE at 9.67% for a 2021 test year. 2021 North Shore at 87. In that case, the Commission rejected Staff and CUB ROE recommendations of 9.35% and 9.30%, respectively, as “too low to maintain the utility’s financial integrity and attract capital on reasonable terms.” 2021 North Shore at 86. Setting the Companies’ ROE at 9.38% in this case cannot be squared with that finding in light of the subsequent increase in the Companies’ equity cost.

No party disputed that interest rates have increased *over 200 basis points* since the 2021 North Shore case. NS Ex. 4.0 REV at 28, Fig. 6. Interest rates are a primary
driver of utility equity costs. “Interest rates and utility share prices are inversely correlated, which means that interest rates result in declines in the share prices of utilities and vice versa.” Id. at 22. In other words, as interest rates rise, so does the utility’s cost of equity.

The increase in the Companies’ cost of equity is seen in all the cost of equity models in the record. In the 2021 North Shore case, Staff’s models generated an average 9.35% cost of equity, compared to 9.89% in this case, an increase of 54 basis points. Compare 2021 North Shore at 72 with Staff Ex. 3.0 at 26. Likewise, compared to the 10.00% ROE she recommended in the 2021 North Shore case, Ms. Bulkley found the Companies’ cost of equity in this case to be in the range of 10.25% to 11.25%. Compare 2021 North Shore at 54 with NS Ex. 4.0 REV at 7. And CUB’s ROE witness found the Companies’ cost of equity in this case to be in the range of 9.20% to 9.80%, up from the 9.10% to 9.50% range calculated by CUB’s ROE witness in the 2021 North Shore case. Compare CUB/PCR Ex. 1.0 at 3 with 2021 North Shore at 79. The following graphic shows how the Commission’s decision to reduce the ROE from the 2021 North Shore result contradicts these results of the various cost of equity estimation models:10

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10 For cost of equity results expressed as ranges, the graph uses the midpoints.
Finally, although the Commission does not set ROEs based on the ROEs authorized for other gas utilities, it has found national average authorized gas utility ROEs to be “useful benchmarks.” 2021 North Shore at 87; see also Nicor Gas Co., ICC Docket No. 17-0124, Final Order (Jan. 31, 2018) at 101. According to data supplied by CUB, the average authorized gas utility ROE in the last 8 years is 9.60%. CUB/PCR Ex. 1.0 at 5, Table CCW-1. After dipping during the COVID epidemic, the ROE average rose from 9.50% in 2022 to 9.70% in 2023. Id. The following graph shows the incongruity of the Commission’s ROE decision in this case compared to its decision in the 2021 North Shore case and the national trend:
Here are the average ROEs authorized by the Commission for the Companies, Nicor and Ameren for 2018-2023 plotted against the national average ROEs, showing that the ROEs the Commission authorized this year are anomalously low:
The Commission’s 9.38% ROE for the Companies is well below the 8-year average authorized gas utility ROE of 9.60% and even further below the 2023 average of 9.70%. The Final Order lacks any explanation for this anomalously low ROE. The Commission provided no findings or analysis to square its 9.38% ROE with the comparative data. For this reason, the Commission’s decision lacks findings or analysis sufficient to allow an informed judicial review. 220 ILCS 5/10-201(e)(iii). “For a court to evaluate the Commission’s decision, the rationale that the Commission used has to be discernable from its decision. If the rationale is obscure, the court should send the decision back to the Commission and order the Commission to explain itself better.” Save Our Ill. Lands v. Ill. Commerce Comm’n, 2022 IL App (4th) 2100008, ¶ 56. The Commission failed even to acknowledge that the ROE it was setting in this case was significantly lower than the ROE it set for North Shore in 2021, much less provide a rationale for doing so in light of the conclusive evidence that the Companies’ cost of equity has increased since 2021.

The Commission’s 9.38% is also contrary to the manifest weight of the evidence that the Companies’ cost of equity is higher now than it was when the Commission set North Shore’s ROE at 9.67% in 2021. “A finding or conclusion of fact is against the manifest weight of the evidence only if the finding or conclusion is arbitrary, unreasonable, or not based on the evidence or only if it is clearly evident, from the record, that the trier of fact should have reached the opposite finding or conclusion.” Save Our Illinois Lands, supra, at ¶ 41.11 Here, there is no record evidence that supports the Commission’s conclusion that the Companies’ cost of equity has declined since 2021.

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11 The manifest-weight standard is the same standard as the substantial-evidence standard under 220 ILCS 5/10-201(e)(iv)(A). Id. at ¶ 38.
The Commission’s ROE decision is also arbitrary and capricious. 220 ILCS 5/10-201(e)(iv)(A). The Commission has in past cases rejected ROE recommendations that were anomalously low. See, e.g., Illinois-American Water Co., ICC Docket No. 16-0093, Final Order (Dec. 13, 2016) at 66. Just two years ago the Commission rejected Staff and CUB ROE recommendations of 9.35% and 9.30%, respectively, as “too low to maintain the utility’s financial integrity and attract capital on reasonably terms.” 2021 North Shore at 86. The Companies’ cost of equity is unquestionably higher now than it was in 2021. An ROE of 9.38% is equally “too low” for current financial market conditions.

“No matter how much discretion the Commission is afforded under the Act, its decisions are entitled to less deference when it drastically departs from past practice.” Bus. & Pro. People for Pub. Int. v. Ill. Commerce Comm’n, 136 Ill. 2d 192 (1989); Ill. Power Co. v. Ill. Commerce Comm’n, 339 Ill. App. 3d 425, 439 (5th Dist. 2003). Indeed, “sudden unexplained changes” in an agency’s policy or practice “have often been considered arbitrary.” Greer v. Ill. Housing Dev. Auth., 122 Ill. 2d 462 (1988).

And, as the Commission has previously warned, “An authorized return that is not competitive will deter continued investment in the State of Illinois. A reasonable ROE helps ensure that the company can attract capital in order to meet the Commission required infrastructure needs.” Northern Ill. Gas Co., ICC Docket No. 18-1775, Final Order (Oct. 2, 2019) at 119. An ROE of 9.38%, when the current average gas utility ROE is 9.70%, will not assure confidence in the financial soundness of the Companies and will reduce their competitive access to capital markets.

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2. **The Commission’s adjustment to the Staff CAPM lacks an evidentiary basis.**

The Commission reached its 9.38% ROE by adjusting Staff’s CAPM result. Final Order at 209. The Commission based its adjustment on the finding that Staff’s forward-looking market return (Rm) estimate “is significantly higher than the 10.79% Rm estimate determined [by CUB] using the FERC’s method which, similar to Staff’s method, estimates the forward-looking market return through a constant growth DCF model applied to the dividend-paying companies of the S&P 500.” *Id.* This finding is clearly in error, because Staff too employed the FERC method (as did the Companies). Indeed, all three parties calculated their Rm estimates based on the FERC method, namely a constant growth DCF model applied to the dividend paying companies in the S&P 500. *See* Staff Ex. 3.0 at 19 (12.65% Rm estimate); NS Ex. 4.0 REV at 44–45 (12.64% Rm estimate); CUB/PCR Ex. 1.0 at 57–58 (10.79% Rm estimate). The Final Order provides no rationale for choosing CUB’s application of the FERC method over the applications of the same method by Staff and the Companies. With the Staff and Companies results virtually equal, the CUB calculation is an anomaly. The weight of the evidence in this case favors Staff’s Rm estimate.

The Commission also found that Staff’s 12.65% Rm estimate was “notably higher than long-term expected market returns published by U.S. financial institutions” and provided by CUB. Final Order at 209; *see* CUB/PCR Ex. 1.0 at 59. But this can also be said for CUB’s 10.79% Rm estimate, which was also much higher than those returns, which were in the range of only 4.7% to 8.2%. Given that all of the parties’ Rm estimates were “notably higher” than these particular expected market returns, the Commission’s finding that Staff’s return was higher does not by itself support rejecting it in favor of the
CUB’s return. The Commission’s finding is therefore arbitrary and contrary to the manifest weight of the evidence.

3. **There is no evidentiary or theoretical basis for the Staff debt risk adjustment to ROE.**

The Commission accepted Staff’s 6-basis-point downward adjustment to reflect a purported difference in risk between the Companies and the proxy group of publicly traded holding companies used in the cost of equity estimation models. Final Order at 209–210. But there is no factual basis in this record—theoretical or otherwise—for adjusting a utility’s cost of equity based on a purported difference in debt risk as reflected by credit ratings.

Because equity risk reflects many factors other than debt risk, any adjustment to the model-derived cost of equity requires consideration of all the relevant factors. The Companies’ cost of equity witness, Ms. Bulkley, performed precisely such an analysis in assembling the proxy group. She used seven screening criteria to evaluate the comparability of the proxy group holding companies to the Companies in terms of business and financial risk, and debt risk as represented by credit ratings was only one of these. NS Ex. 4.0 at 30–31. She also evaluated the Companies’ business and financial risks relative to those of the proxy group, including consideration of capital expenditure requirements, capital investment tracking mechanisms, regulatory risks including factors specific to Illinois regulation, and size risk. *Id.* at 51–67.

Staff performed no such comprehensive comparison of the Companies’ equity risk to that of the proxy group. Rather, Staff simply derived an “average” Moody’s credit rating for the proxy group, found that it was slightly lower than PGL’s Moody’s rating, and concluded that the Companies had less debt risk than the proxy group. Staff then adjusted
its model-based cost of equity downward by 6 basis points, which represented the difference in the Companies’ cost of debt compared to the proxy group’s hypothetical cost of debt. Staff’s adjustment had nothing to do with equity risk or cost.

The Companies acknowledge that this debt risk adjustment has been a component of Staff’s ROE methodology and the Commission has accepted such adjustments in prior cases. But the record in this proceeding includes no evidentiary or even theoretical basis for adjusting a utility’s cost of equity based on a hypothetical difference in debt risk. The conceptual basis for the Staff debt risk adjustment is a fiction. A utility’s credit rating reflects only its risk of defaulting on its debt obligations. The risk to equity holders is greater and can be incurred even when the utility meets its debt obligations. “While a utility may still be able to meet its debt obligations, the variation in revenues increases the risk of earnings available to equity holders and risk of earning less than the utility’s authorized ROE.” NS-PGL Ex. 26.0 at 3. “[W]hile credit rating agencies consider the business risks of an individual company when establishing its debt credit rating, they do not conduct a comparative analysis of business risks relative to the proxy group.” NS Ex. 4.0 REV at 32 (emphasis added).

Nor did Staff conduct a comparative analysis of business risks relative to the proxy group in deriving its cost of equity adjustment. In focusing solely on debt risk differences, Staff did not perform the kind of comprehensive comparison of business and financial risks that is necessary to determine whether the Companies’ equity risk is comparable to the proxy group’s. Ms. Bulkley did so, and concluded that the Companies have greater equity risk than the proxy group. NS-PGL Ex. 15.0 at 32–33.
In the end, Staff’s debt risk comparison is only one part of a multi-faceted comprehensive comparison of business and financial risks that is necessary to compare the Companies’ and the proxy group’s equity risks and determine if the model-derived ROE requires adjustment. A debt risk comparison alone proves nothing with respect to the overall comparability of a utility and a proxy group for the purpose of determining the utility’s cost of equity.

For these reasons, the Commission’s acceptance of Staff’s debt risk-based adjustment to the Companies’ ROE lacks any evidentiary basis in the record, is contrary to the manifest weight of the evidence, and is subject to reversal. 220 ILCS 5/10-201(e)(iv)(A).

4. The Commission should set the Companies’ authorized ROE at 9.89%.

For the foregoing reasons, the Commission should take into consideration the conclusive evidence that the Companies’ cost of equity has increased since 2021, reverse the two bases for its 9.38% ROE—its adjustment to Staff’s CAPM result and its acceptance of Staff’s 6-basis-point debt risk adjustment—and set the Companies’ authorized ROE at 9.89%, which is equal to the unadjusted Staff estimate of the Companies’ market cost of equity and virtually equal to the Companies’ compromise request of a 9.90% ROE.

D. The Final Order’s disallowance of North Shore’s Clavey Road Project fails to identify any imprudence or unreasonableness within North Shore’s control.

The Final Order adopts the AG’s proposed disallowance of $1.689 million in project costs for North Shore’s Clavey Road Project in Highland Park, representing 44% of the cost of that project. Final Order at 35–36. The disallowance is based on a benchmarking
method proposed by the AG and exceeds the $1.54 million variance between the anticipated cost of this project and its actual cost. *Id.*

It is undisputed that the reason for the significant variance in the cost of this project was that Highland Park’s design plans, which North Shore relied upon to design its facilities, were changing and contained errors. See NS-PGL Ex. 14.0 REV at 13; NS-PGL Ex. 25.0 at 15. Yet the Final Order penalizes North Shore for Highland Park’s errors, concluding that “North Shore did not provide the timeline of the project, project design, permit review milestone dates, or descriptions or dates of the alleged changes or errors to justify its assertion that the additional costs were unavoidable, unforeseen, and out of the Company’s control.” Final Order at 35.

That statement entirely disregards the extensive testimony of North Shore witness Eldringhoff on this point. Ms. Eldringhoff explained the nature of the mid-project changes and resulting cost overruns in detail. Specifically, she addressed how (1) Highland Park revised its sewer main design, installing it deeper than originally designed for 875 feet of its length; (2) a water main in the same area was deeper than shown on drawings for 1,000 feet, also requiring the gas main to be installed deeper than planned; and (3) a temporary storm sewer leaked heavily into the gas pipe tie-in opening, which required continuous draining. Ms. Eldringhoff testified that these issues “could not have been anticipated.” NS-PGL Ex. 14.0 REV at 13–14; NS-PGL Ex. 14.01. The AG did not respond to any of this evidence, leaving it uncontested.

Because it was *undisputed* that these costs were outside North Shore’s control, North Shore’s prudence and reasonableness cannot be in question, and the Commission cannot disallow costs without a finding that North Shore was imprudent. So it is unclear
what purpose would be served by still more detail like “permit review milestone dates.” The Commission concluded as recently as last December that “[i]t is unreasonable and contrary to decisional prudence standards to expect the planning, designing, and estimating to be 100% accurate. Holding [a utility] to this standard is unfair because the conditions surrounding these types of projects are unpredictable from the design stage to the construction stage.” *Ameren Ill. Co*, ICC Docket No. 20-0323, 2022 WL 17960444, at *40 (Dec. 15, 2022). The same is true here. The Commission should reverse this disallowance on rehearing.

**E. The Final Order’s disallowance of $1.4 million in North Shore’s projected rate case expense is based on an approach the Commission explicitly rejected as recently as North Shore’s last rate case.**

The Final Order adopted the AG’s recommendation to disallow $1.401 million (40%) of North Shore’s projected rate case expense. Final Order at 139. Its rationale for doing so was that North Shore’s “projected rate case expense is significantly higher than expenses similarly situated Illinois utilities seek to recover in rate cases pending before the Commission.” *Id.* The Commission also found it unreasonable for rate case expense to represent 18.7% of North Shore’s proposed rate increase. *Id.* Finally, the Commission criticized North Shore for redacting its legal bills in submitting them for Commission review, which the Commission found did not comply with the Commission’s Rules (specifically 83 Ill. Admin. Code 288.100(a)) and Section 9-229 of the PUA, 220 ILCS 5/9-229. None of these rationales justify the disallowance, and the Commission should reverse it.

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12 The Commission also disallowed $172,000 in Peoples Gas’s projected rate case expense, based on the same rationale as the disallowance for North Shore. Peoples Gas disagrees with that rationale for the reasons explained in this section, but does not seek rehearing on this disallowance.
When the Commission says North Shore’s rate case expense is significantly higher than for similarly situated utilities, it cannot mean this in an absolute sense. At $3.48 million, North Shore’s projected expense for this rate case was the second lowest of Illinois’ five major gas utilities. (AG Ex. 5.00 at 8). So the Commission must mean North Shore’s expense is significantly higher on a per-customer basis, as the AG argued. Id. at 9. But this is purely a function of the fact that North Shore has far fewer customers than the other four major gas utilities. Id. Limiting North Shore’s rate case expense based on customer headcount simply penalizes North Shore for being small.

The AG’s “reasonableness” adjustment, as adopted by the Commission, limits North Shore to legal expense of $338,647 to fully prosecute a rate case. AG Ex. 5.01 NS, Schedule A4. This is less than the filing fee for the rate case itself, and less than the funding North Shore is required to provide to opposing intervenors. See 220 ILCS 5/9-229. Not only is there no precedent for placing a dollars-per-customer cap on a utility’s rate case expense, but as recently as North Shore’s last rate case, the Commission implicitly rejected just such a cap, holding that “there is a certain amount of work that must be done to prepare for a rate case regardless of the size of the utility.” North Shore Gas Co., ICC Docket No. 20-0810, Final Order (Sept. 8, 2021) at 15 (“2021 North Shore Order”).

This is yet another one of the Final Order’s “sudden unexplained changes” in this agency’s policy or practice that “have often been considered arbitrary.” Ill. Council of Police v. Ill. Labor Rels. Bd., 404 Ill. App. 3d 589, 596 (1st Dist. 2010) (quoting Greer v. Ill. Housing Dev. Auth., 122 Ill. 2d 462, 506, (1988)). Again, “no matter how much discretion the Commission is afforded under the Act, its decisions are entitled to less

Furthermore, a cost-per-customer cap on rate case expense is contrary to public policy. Any natural gas rate case entails significant legal work (including significant discovery burdens) irrespective of a utility’s size or customer count. In this rate case alone, the parties served well over 950 discovery requests on North Shore, many of which were complex and contained multiple sub-parts. NS-PGL Ex. 23.0 at 11. And there has been a trend toward greater intervenor participation in rate cases in recent years; indeed, there are almost as many intervenors in North Shore’s case as in Peoples Gas’s case.

These are just a few examples of the numerous issues that come up in any case, whether for a larger utility or a smaller utility. Adopting a per-customer cap on rate case expense would unreasonably impact small utilities, which have every bit as much right as larger utilities to litigate rate cases and to seek to recover their cost of providing utility service to customers. No doubt this is precisely why the Commission rejected this approach as recently as North Shore’s last rate case.

Moreover, the record lacks substantial evidence as to why $2.09 per customer—the basis of the AG’s “reasonableness adjustment”—is the “right” amount. AG witness Ms. Selvaggio simply chose that amount because it is the highest per customer among the Illinois gas utilities other than the Companies. AG Ex. 5.0 at 15–16. But Ms. Selvaggio undertook no analysis of the stakes or complexity of any of the individual utilities’ rate cases, much less the relationship between any utility’s number of customers and the legal work necessary for that particular utility’s rate case. She did not explain why, for example,
$2.09 per customer is reasonable for Ameren but $2.55 per customer for Peoples Gas is not. There is no methodological basis for this adjustment.

The Commission’s concern that it is unreasonable for rate case expense to represent 18.7% of North Shore’s proposed rate increase suffers from the same flaws. It stands to reason that the utility with by far the lowest number of customers will also have the lowest operating costs and thus the lowest absolute rate increases year over year. So if, as the Commission has found, “there is a certain amount of work that must be done to prepare for a rate case regardless of the size of the utility,” then the smallest utility’s rate case expense will always be higher than other utilities’ as a percentage of the proposed rate increase. This says nothing about the reasonableness of costs one way or the other.

As for the Commission’s concern with redactions to legal bills, the only redactions complained of by any party related to certain invoices for Stephenson Schroeder Ltd. provided in the Company’s rebuttal testimony as NS-PGL Ex. 13.03 Confidential. AG Ex. 5.00 at 12–13. But as Ms. Selvaggio and the Final Order itself acknowledges, the Companies provided a second set of these invoices with reduced redactions. Id. (citing Data Request TM 1.02 Attach02 NS-PGL SUPP02); Final Order at 139, n.2. So as a factual matter, by the time of the Commission’s decision, the redactions of concern had already been addressed. The Final Order focused on the initial invoices (NS-PGL Ex. 13.03 Confidential) and found that those invoices were excessively redacted, but it made no finding as to whether the revised redactions cured the problem. Final Order at 139. Instead, it simply noted that the AG continued to recommend its proposed disallowance notwithstanding this update. Id. at n.2.
If the Commission did not review the revised redactions to determine whether they comply with the Commission’s Rules or Section 9-229 of the PUA, it cannot cite redactions to the original invoices as the basis for any disallowance; it has not even reviewed the evidence necessary to make that determination. Moreover, Stephenson Schroeder’s projected expenses for North Shore represent only $330,000 (19%) of North Shore’s total projected rate case expense in the test year (AG Ex. 5.00 at 15), so even if redactions to some of those invoices were problematic, it would not justify the Commission’s $1.4 million reduction to North Shore’s projected rate case expense. There were hundreds of pages of unredacted invoices submitted for legal work in these rate cases (see NS-PGL Cross Ex. 21.0), so the Commission’s overall conclusion that it could not determine what work was being performed is baseless. The Commission should reverse this disallowance on rehearing.

F. The Final Order does not allow sufficient time for North Shore to make ordered changes to its billing system.

The Commission ordered North Shore to change from daily billing of fixed charges to monthly billing. Final Order at 284. North Shore will be unable to complete the necessary changes to its billing system to make this change by January 1, 2024, and therefore requests an extension of the deadline to do so until May 1, 2024, with permission to implement its newly approved rates now using the daily billing approach until that time.¹³

Fixed charges can be billed to customers on either a monthly or daily basis. When they are billed daily, the fixed charge on the customer’s bill will reflect the number of days

¹³ North Shore filed a standalone Motion for Relief from Commission Order on this issue, which the Commission denied on December 14, 2024. During the discussion of that Motion, Chair Scott invited the Company to request relief in its Application for Rehearing.
in the billing period. As the Order recognizes, whether fixed charges are collected on a monthly or daily basis will not affect revenues collected from customers. Id. Two years ago, in North Shore’s last rate case, the Commission approved North Shore’s request to switch from monthly to daily billing of fixed charges. 2021 North Shore at 94–95. Then, in the Order in this docket, the Commission reversed course and ordered “North Shore to revert to a monthly charge.” Final Order at 284. Putting aside the merits of this ordered change in practice, the reality is that significant information technology work will be needed to allow North Shore’s billing system to implement the Commission’s order. The Company estimates that it will be able to complete this work by May 1, 2024 and asks for relief from the Order to allow it the time to make the necessary changes, while also allowing it to continue using daily billing with its newly authorized rates in the interim.

The original change from monthly to daily calculation and billing of fixed charges pursuant to the Commission’s order in ICC Docket No. 20-0810 required approximately five months of programing and adjustments to the billing system. A similar time frame is required to convert the North Shore system back to monthly billing. Reinstatement of monthly billing at North Shore will require a number of changes to the functionality of the Company’s current billing system including recoding of the billing system, full testing to ensure the changes from daily to monthly fixed charge calculations result in accurate customer bills, and further testing to ensure that the changes are reflected accurately in monthly, quarterly and yearly financial reporting.

North Shore offered this evidence with its now-denied\(^\text{14}\) Expedited Motion for Relief from Commission Order (North Shore Gas Co., et al., ICC Docket Nos. 23-0068/23-0069

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(cons.), Verified Expedited Motion for Relief from Commission Order (Nov. 27, 2024) at 1–2) and offers it again now in support of rehearing. Prior to the Final Order, North Shore could not have reasonably anticipated that the Commission would reverse its own order from North Shore’s last rate case (2021 North Shore at 96) and require North Shore to revert to monthly fixed charges after ordering North Shore to convert to daily fixed charges just two years ago. Now that the Commission has moved in this unanticipated direction, North Shore offers this evidence to show the soonest it can reasonably comply with the Commission’s about-face on this issue.

VI. CONCLUSION

For the reasons stated in this Application, the Companies respectfully request rehearing of the Final Order and, in particular, rehearing on the following issues:

1. The Final Order’s directive “pausing” the SMP without making clear which work is permitted to continue in 2024 (Final Order at 29–30).

2. The Final Order’s disallowance of all revenue requirement for SMP work—a $265 million reduction—while requiring certain SMP work to continue unfunded (id.).

3. The Final Order’s $236.2 million reduction to PGL’s rate base for costs incurred to replace shops and related facilities, including the unexplained departure from the traditional prudence standard (id. at 55–56).

4. The Final Order’s adoption of an IRP requirement (id. at 119–120).

5. The Final Order’s adoption of unreasonable, unsupported capital structures and ROEs of 9.38% for both Peoples Gas and North Shore (id. at 201).
6. The Final Order’s disallowance of North Shore’s Clavey Road Project (id. at 35–36).

7. The Final Order’s disallowance of $1.4 million in North Shore’s rate case expense (id. at 139–140).

8. The Final Order’s unrealistic and unreasonable deadline for changes to North Shore’s billing system (id. at 284).

Simultaneous with this application, the Companies have filed a motion for correction to request some technical calculations in the Commission’s Order. The Companies filed that motion consistent with the manner in which such correction requests have been handled historically in the rate case context. However, if the Commission determines that the issues raised in that motion require rehearing, the arguments stated in the motion for correction are hereby incorporated herein by reference as if set forth in full in this application for rehearing, and the Companies request rehearing on those points.

Finally, the Companies request that in its order or ruling regarding this rehearing request, the Commission include a clarification of the Final Order indicating that rate base and revenue requirement amounts disallowed by that Order shall be recoverable by the Companies if the Companies ultimately prevail on their request for rehearing and/or on a subsequent appeal.

Dated: December 15, 2023

Respectfully submitted,

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The Peoples Gas Light and Coke Company

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in the foregoing Verified Application for Rehearing of North Shore Gas Company and The Peoples Gas Light and Coke Company are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Theodore Eidukas