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**INITIAL BRIEF OF**
**ILLINOIS STATE PUBLIC INTEREST RESEARCH GROUP, INC.**

Dated: April 3, 2024
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I. INTRODUCTION

On November 16, 2023, the Commission issued a Final Order in this consolidated rate proceeding initiated by the Peoples Gas Light and Coke Company (“PGL” or the “Company”) and North Shore Gas Company (“NSG” and together with PGL “NSG-PGL”) at the beginning of 2023. See Final Order. PGL had sought approval of $265 million in anticipated 2024 test year spending associated with its “System Modernization Program” (“SMP”), a multi-decade effort to address the elevated risk of PGL’s iron pipe infrastructure and upgrade PGL’s system from low to medium pressure. Recovery of these costs in a rate case was not necessary for PGL in previous years because of 220 ILCS 5/9-220.3, which authorized PGL to implement a “Qualifying Infrastructure Plant” (“QIP”) surcharge on its customers’ bills to pay for SMP expenditures, moving these expenditures outside of traditional rate case review. See People ex rel. Raoul v. Ill. Commerce Comm’n, 2019 IL App (1st) 180679-U, ¶¶ 42, 58. However, because 220 ILCS 5/9-220.3 expired at the end of 2023, this proceeding was the Commission’s first opportunity to fully assess the merits of PGL’s SMP spending outside of its QIP reconciliations.

As explained in its Final Order, the Commission attempted to evaluate the prudence and reasonableness of PGL’s planned SMP spending, ultimately finding PGL’s explanations significantly wanting, and disallowed its $265 million request. Final Order at 28-29 (“PGL provided no specific justification for continuing to fund the entire SMP at the requested level.”). It ordered PGL to “paus[e] SMP until the Commission can determine, in a separate proceeding . . . the optimal method to” achieve the SMP’s pipe replacement goals. Id. at 29. That “separate proceeding” has begun in ICC Dkt. No. 24-0081,¹ but in the meantime, the Commission was clear that PGL was still expected to continue critical, legally-mandated work “related to

¹ Illinois State Public Interest Research Group, Inc. (“PIRG”) has also intervened in ICC Dkt. No. 24-0081.
emergency response to leaks, pipe breaks or other critically important safety measures, such as PHMSA designated grade 1 leaks.” *Id.*

Following the Commission’s decision, PGL subsequently sought rehearing to place back into its revenue requirement a number of spending categories contained within the SMP but not part of the Neighborhood Program. PGL claimed that that pausing all SMP work would result in numerous unintended and dangerous consequences for the public, including limiting PGL’s ability to respond to emergencies and finish work already in-progress. The Commission granted limited rehearing and stated that this rehearing would “focus exclusively on the 2023 SMP work-in-progress and emergency work, specifically addressing: (1) the extent to which works-in-progress must be permitted to continue in 2024 [and] (2) whether and to what extent emergency work is part of SMP.” Tr. of Proceedings, 1/3/24, at 14:9-16. The rehearing process revealed that:

- The Company includes within SMP a previously undescribed and unnamed emergency, safety, and reliability (“ESR”) program which includes emergency, system improvement (“SI”), and public improvement (“PI”) work.

- PGL has an overexpansive definition of emergency work and has used this emergency category to proactively respond to problems that could become an emergency. Testimony from the City of Chicago and the Deputy Commissioner of the Chicago Department of Transportation (“CDOT”) describes how they believe that PGL has used this overexpansive definition of emergency to obtain project permits and bypass formal review processes.

- The SI and PI projects included within the ESR program are not tied to emergencies and suffer from the same problems as the Neighborhood Program. As such, the Commission should review the SI and PI categories in its investigation to determine if these programs are “the most practical, cost-effective and expedient method to retire all CI/DI pipe.” Final Order at 29.

- After the Commission issued its “pause” on November 16, 2023, PGL continued other types of work, in direct violation of the Commission’s order, and seeks cost recovery for those projects on rehearing. (*Compare* AG 18.01, AG Ex. 10.02 *with* AG 19.02, AG Cross Ex. 1.) Moreover, other projects that began before November 16, 2023 may have been pre-excavation, or in a state where they
otherwise could have been paused, and thus could have been paused on November 16, 2023. However, the Company did not provide data in this proceeding allowing the parties to understand the status of projects on that date.

To rectify these issues, the Commission should:

- Shift recovery of the costs PGL requests in this rehearing to the Company’s next rate case, at which point the Commission will have been able to review the prudence of these spending categories in the SMP investigation;
- Pause all non-UMRI driven SI and all non-City of Chicago-directed PI projects, and
- Require the Company to submit a compliance filing describing the precise state of all work-in-progress projects it had begun as of November 16, 2023.

Shifting cost recovery to the Company’s next rate case is appropriate because the Company failed through its rate case and this rehearing to provide sufficiently disaggregated SMP cost data which would allow the parties to understand which 2024 projects PGL should obtain cost recovery for at this time. Moreover, shifting cost recovery does not prevent the Company from recovering its costs in the future if the projects have merit. If the Commission decides that PGL should be afforded some cost recovery at this time, it should look to the Attorney General’s proposed allowance for emergency work advanced in its testimony. (AG Ex. 14.00 REV, at 10:169-170.) However, shifting cost recovery is the most appropriate action because it will allow the Commission to conduct the SMP investigation and determine whether the existing spending categories within the SMP should continue.

II. LEGAL STANDARD

Section 1-102 of the Act establishes four overarching objectives for public utility regulation in Illinois: (a) efficiency, (b) environment quality, (c) reliability, and (d) equity. 220 ILCS 5/1-102. Guided by these overarching objectives, the Act contains more than fifteen provisions aimed at guiding the Commission’s judgment. Among them is a provision requiring
the Commission to “consider and evaluate all supply and demand options … to determine how utilities shall meet their customers’ demands for public utility services at the least cost.” Id. at 5/1-102(a)(ii). That provision is relevant to the Commission’s charge on rehearing, in which it is considering whether to allow PGL’s proposed emergency and in-progress work to move forward, and relatedly, what PGL may recover for that work from ratepayers now versus later.

Fundamentally, in this rate case, the Commission must establish rates that are just and reasonable. 220 ILCS 5/9-201(c); 220 ILCS 5/9-101. Illinois courts have held the Commission must analyze the impact of the utility’s proposed tariffs on consumers to reach a just and reasonable determination. See Abbott Laboratories v. Ill. Com. Comm’n, 289 Ill. App. 3d 715-716 (1st Dist. 1997); Citizens Util. Bd. v. Ill. Com. Comm’n, 276 Ill. App. 3d 730, 738 (1st Dist. 1995) (citations omitted). Ultimately, the public must “pay no more than the reasonable value of the utility’s services.” Id. And in order to establish rates, the Commission must determine PGL’s rate base. The Commission can only approve for inclusion in rate base the utility’s investments which “are both prudently incurred and used and useful in providing service to [the] public utility[’s] customers.” 220 ILCS 5/9-211. Further, the Commission must determine whether the costs of those investments are reasonable. Business & Prof’l People v. Ill. Com. Comm’n, 146 Ill.2d 175, 196 (1991).

III. SCOPE OF REHEARING

The Commission granted limited rehearing in this case at its January 3, 2024 Open Meeting. Chairman Scott announced the Commission’s decision to “grant[] a limited rehearing related to [PGL’s SMP]. Rehearing will focus exclusively on 2023 SMP work-in-progress and emergency work, specifically addressing: 1) the extent to which works in progress must be permitted to continue in 2024[; and] 2) whether and to what extent emergency work is part of
SMP.” Tr. of Proceedings, 1/3/24, at 14:9-16. It also “grant[ed] rehearing on 2023 SMP work-in-progress to determine whether, and to what extent, [PGL’s] revenue requirement should increase to account for this work” as well as whether the revenue requirement should increase for emergency work, as well. Id. at 15:8-15. Thus, the scope of this rehearing is effectively limited to two topics: (i) which projects within the $265 million are truly necessary to continue in 2024 despite the Commission’s ordered pause, and (ii) what costs, if any, should PGL be allowed to add to its revenue requirement.

As noted below, the Company attempts to recover costs for a number of projects outside of the Commission’s limited scope or has otherwise not presented sufficient data to allow the parties to identify the projects that should continue in 2024. For example, the Company started a number of projects after November 16, 2023. It also did not provide data allowing the parties to understand what in-progress projects could be stopped as of that date.

Similarly, the Company has attempted to fit into the “emergency” category identified by the Commission a number of projects which are not true emergencies and which implicate the same concerns that resulted in the pause of the SMP. These questionable projects include PI projects not strictly necessary or directed by the City of Chicago, SI work not driven by the Company’s primary risk-ranking metric, and “emergency” scenarios that do not involve active leaks, or involve sub-Grade 1 leaks. All three of these spending categories implicate broader concerns expressed by the Commission about how the SMP should operate and how PGL should prioritize projects. Thus, the Commission should review these projects in the Company’s next rate case after it reviews the SMP in the investigation. This overexpansive definition of emergency and the resulting confusion exists because PGL failed to previously provide evidence of SMP sub-program costs, and did not make clear in the underlying case that its SMP
expenditures included a substantial budget for “emergency” work. Final Order at 28-29; see also Tr. of Proceedings, 1/3/24, at 14:17-15:7. The Commission should not reward the Company for failing to disclose these sub-programs and costs by approving these projects within this limited rehearing.

A. SMP Work in Progress.

B. Emergency Work.

C. Revenue Requirement on Rehearing

IV. COMMISSION ORDERED INFORMATION REQUIREMENTS

V. SMP WORK IN PROGRESS

PGL proposes to increase its revenue requirement to recover its costs for 91 “work-in-progress” projects for which the Company says work already began in 2023. (NS-PGL Ex. 50.06.) As PIRG understands it based on the evidence on rehearing, “work-in-progress” projects may include Neighborhood, High Pressure, SI, and PI projects. PIRG takes issue with two types of work-in-progress projects: projects which began after the Commission paused the SMP program on November 16, 2023, and projects which were in progress as of the Commission’s order, but which are at a point where the Company could safely stop further work. For the first category, the record shows PGL continued to do unnecessary work after the Commission ordered it to pause. These projects had not reached the excavation phase and discovery from PGL suggests they could have been halted. For the second category, PIRG believes that for projects where PGL has begun excavation, work should be allowed to continue through restoration. However, the Company did not provide data describing the stage of each of its ongoing projects as of November 16, 2023, when the Commission ordered such work paused. (PIRG Cross Ex. 1.0 at 43.) Moreover, even if many work-in-progress projects had meaningfully
advanced by November 16, 2023, PGL may have been able to safely stop these projects. The Commission should address these issues by shifting cost recovery for these work-in-progress projects to a future rate case where they should be subject to a risk of disallowance. To inform the discussion about the prudency of these projects in that future rate case, PIRG requests that the Commission direct PGL to submit a compliance filing describing the state of these work-in-progress projects—with specificity—as of November 16, 2023.


Of the in-progress projects identified in NS-PGL 50.06 REV, six began after November 16, 2023, and one began just two days prior. These projects carried a total forecasted cost of $13.7 million, according to Column K of the spreadsheet PGL submitted as NS-PGL 50.06 REV. While PIRG argues below that the Commission should defer judgment on all of PGL’s SMP work-in-progress costs at this time, it is critical that the Commission defer cost recovery for projects PGL began or advanced past their earliest stages after being told to stop on November 16, 2023.

PGL began six projects post-November 16, 2023: Cragin Phase 19 - MX1350979, Chatham Phase 15 - MX3915091, Dickens & St. Louis - MX4197413, Milwaukee & Farragut - MX4240981, Monticello & Devon - MX4543391, and Eastwood & McVicker - MX46669277. PGL attempts to explain why it started work on these projects after the Commission paused the SMP in its rebuttal testimony on rehearing. (NS-PGL Ex. 52.0 at 34:636-35:658.) However, a deeper look at the record evidence casts doubt on PGL’s claims that it either needed to start work, or could not stop the start of work, in the days following November 16, 2023. For example, PGL claims in testimony it had already begun to “mobilize[]” labor and resources related to two of these six projects—Cragin Phase 19 - MX1350979 and Chatham Phase 15 -
to project sites before the Final Order was issued, and thus needed to complete work already begun. (NS-PGL Ex. 52.0, at 34:642-42.) However, in response to a data request, PGL clarified that it had not begun excavation and was entirely in the “preconstruction” phase of these projects: that is “calling for digs, marking the utility locations, running cameras through the sewer and cleaning the sewer.” (PIRG 11.04, PIRG Cross Ex. 1.0.) Given that PGL was able to pause other projects during this time, (PIRG 11.04, PIRG Cross Ex. 1.0, AG 18.01 Attach01), and that it had several days’ advance notice between the Final Order and the date PGL began excavation, it is not clear why PGL could not also halt work on these projects.

The record highlights other concerns for the four other post-November 16, 2023 projects—Dickens & St. Louis - MX4197413, Milwaukee & Farragut - MX4240981, Monticello & Devon - MX4543391, and Eastwood & McVicker - MX46669277—which all began more than 10 days after the Final Order was issued. (NS-PGL Ex. 52.0, at 34:644-655; NS-PGL Ex. 50.06 REV.) PGL’s testimony identified these four projects as SI, and in rebuttal testimony stated that two were driven by UMRI, while two were driven by “unique circumstances.” (Id.)

However, PGL has not provided meaningful evidence that the 2 UMRI-driven projects—Monticello & Devon - MX4543391 and Eastwood & McVicker - MX46669277—were actually “emergencies” within a reasonable definition of the term, such as being responsive to active Grade 1 leaks. PGL instead claims that it needed to address these projects because otherwise it would have to monitor the leaks through “quarterly leak surveys.” (PIRG 11.03, PIRG Cross Ex. 1.0.) This appears to be a minor cost to bear and hardly indicative of an emergency given the Commission’s order pausing all work. Likewise, the Company’s testimony does not indicate the other two post-November 16, 2023 projects were undertaken due to an active or anticipated emergency, but instead, were started to pre-emptively address previously troubled pipe segments.
Again, it is not clear why the Company needed to pursue these projects given the Commission’s order.

PGL also has other projects where it appears it could have stopped as of November 16, 2023, or shortly thereafter. For example, for Budlong Woods Phase 6, the Company did not start construction on N. Talman Ave., W. Gunnison St., and N. Fairfield Ave. until after November 16, 2023. (NS-PGL Ex. 50.05 (Part 3), at 35-36.) The Company did not present data showing that it needed to continue the project after completing restoration of N. California Ave. and W. Ainslie Street, and the Company appears to have opened new streets through this project up after it was ordered to pause. Id.

Moreover, many of PGL’s other work-in-progress projects were mid-phase as of November 16, 2023 but may have been able to be safely stopped. PIRG agrees with the City of Chicago that a good marker of whether a work-in-progress project should continue after November 16, 2023 is whether the project was post-excavation as of that date. (COC Ex. 7.00 at 4:78-80.) However, PGL has not provided the data necessary to determine whether projects were pre-excavation and thus could be stopped. In contrast to projects like Budlong Woods Phase 6, PGL presented timelines showing that many of its projects were in the middle of a phase or a construction activity on November 16, 2023. (See NS-PGL Ex. 50.05; NS-PGL Ex. 50.06 REV.) However, what is not clear from the rough timelines given in NS-PGL Ex. 50.05 and NS-PGL Ex. 50.06 is whether, within that phase or construction activity, PGL had begun excavation.

For example, for Garfield Ridge Phase 11 the Company’s records stated that it started construction on November 15, 2023. (NS-PGL Ex. 50.05 (Part 1) at 18.) While possible, it is hard to believe that the Company had completed enough work such that the only feasible solution is to allow the Company to continue this work all the way to the end. To further
understand the status of projects like these, PIRG asked the Company to describe whether it began excavation for each project in the work-in-progress category before November 16, 2023. (PIRG Cross Ex. 1.0 at 43.) PGL responded that it does not track excavation separately, thus denying PIRG the ability to understand where projects like Garfield Ridge Phase 11 were in the construction schedule. Thus, the record suggests that PGL could have safely stopped projects like Garfield Ridge Phase 11 but the parties were unable to determine the status of these projects in this rehearing.

Thus, PGL has not shown that it either needed to start work, or could not stop the start of work, for projects begun shortly after November 16, 2023. Moreover, the Company has not shown that all parts of its in-progress projects must continue or that they were post-excavation and thus should be finished.

**B. The Commission Should Not Approve Work-In-Progress Costs At This Time.**

Based on the foregoing, the Commission should defer recovery of the costs from PGL’s work-in-progress to the Company’s next rate case where they may be subject to disallowance. To facilitate the Commission’s review in that subsequent rate case, it should order PGL to make a compliance filing following rehearing which provides all of the information necessary to determine whether these projects had reached a construction activity as of November 16, 2023 (namely, excavation) that warrants recovery for these projects. That way, PGL can preserve its opportunity to request cost recovery in a future rate proceeding, should it be able to sufficiently demonstrate that these were prudently-incurred costs related to construction projects that had meaningfully progressed before the Commission paused SMP work. And the Commission can use this compliance filing to understand whether and how the Company violated the Commission's order. This process also dovetails with the Commission’s plans to thoroughly
investigate the SMP in ICC Dkt. No. 24-0081, wherein it will consider the prudency of the project types currently included in work-in-progress.

VI. EMERGENCY WORK

The Commission limited the scope of this rehearing to identifying “whether and to what extent emergency work is part of SMP.” (Tr. of Proceedings, 1/3/24, at 14:9-16.) Presumably, what the Commission sought to do through granting rehearing is to understand how PGL includes emergency work in the SMP, how to ensure PGL can continue addressing emergencies going forward, and possibly, to provide cost recovery for those projects. Neither PIRG nor any other party to this proceeding has suggested that PGL should not respond to undeniable emergencies, i.e., a Grade 1 leak or any condition creating an imminent risk of harm.

However, PGL’s testimony and data request responses show that the Company has an expansive and inconsistently-applied definition of what constitutes “emergency work,” with the only constant being that PGL’s definition goes beyond dealing with imminent threats to public safety. And the Company seeks cost recovery in this limited rehearing for all projects it labels emergency. Based on its testimony and definition of ESR, PGL appears to view emergencies as encompassing actual emergencies, any situation where a non-emergency problem arises that could lead to an emergency the future (SI), and any situation where a third party is performing underground work in a public way that provides PGL the opportunity to conduct pipe replacement (PI).

PGL’s overexpansive definition of emergency makes it difficult to determine which projects must proceed following this rehearing and which should pause, much less which merit cost recovery. As such, PGL essentially carries through the problems the Commission identified in its Final Order where it stated that “PGL provided no specific justification for continuing to
fund the entire SMP at the requested level.” Final Order at 28-29. The solution is not necessarily to pause all suspect projects and prohibit cost recovery outright, however. Instead, the Commission can allow the projects PGL has questionably identified as “emergency” work within SMP to continue for the time being (but not the SI or PI projects described below), proceed with the planned SMP investigation in 24-0081, and defer the Company’s cost recovery for all claimed “emergency” projects within the disallowed $265 million until the Company files a new rate case informed by the SMP investigation.

As an alternative to total deferment of emergency costs, the Commission could fairly grant PGL a budget for emergency expenses based on its prior years’ actual emergency expenditures in the amount of $28,515,829, as recommended by the Attorney General. (AG Ex. 14.00 REV, at 10:169-170.)

A. PGL Does Not Have a Consistent, Shared, Or Reasonably Narrow Definition Of “Emergency” Work.

At the highest level, PGL places “emergency” work within a broad category of projects it calls “ESR,” short for “emergency, safety, and reliability.” (NS-PGL Ex. 50.0, at 3:48.) In NS-PGL Ex. 50.01, the Company identifies seven categories of project it considers emergency projects within the ESR framework for 2024: (i) Grade 1 leaks (one project), (ii) Grade 2 leaks (twenty-five projects), (iii) Grade 3 leaks (three projects), (iv) poor supply problems (six projects), (v) sewer conflicts (one project), (vi) corrosion (five projects), and (vii) coupling remediation (four projects). For the reasons described below, it is unclear why the Commission should consider many of these projects, aside from Grade 1 leaks, to be emergency work.

At start, the Commission must have a definition of emergency to evaluate the Company’s emergency projects. CDOT provides a clear and concise definition of both “emergency” and attendant “emergency work” that should guide the Commission’s review of these projects:
EMERGENCY – A situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract, or franchise to be continuously maintained.

EMERGENCY WORK – Work necessary to correct a situation which constitutes an evident and immediate hazard to life, health, or property, endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract, or franchise to be continuously maintained, for which it is impractical to secure a permit before work commences. Such term shall not include work on new construction, upgrades or maintenance of existing hardware, continuation of an existing permit that has expired or will expire imminently or any other work which is not necessary to correct a condition likely to cause such hazard or imminent interruption.

(COC Ex. 7.01 at 126 (emphasis added).) The Attorney General’s panel offered a similar definition of emergency work as projects which address “emergency conditions or imminent safety or reliability concerns.” (AG Ex. 10.0 at 15:256-57.) Thus, the Commission should conceive of emergency work as work which is necessary to prevent an imminent interruption of service or danger to public safety, and not reliability projects which upgrade existing pipe.

To better understand PGL’s definition of emergency, PIRG asked the Company to provide a list of its emergency work projects conducted over the past three years. It categorized responses by whether they were related to a Grade 1 or Grade 2 leak, a poor supply problem, a corrosion-related issue, a third-party conflict (i.e., a situation where a third-party is going to excavate at the site of a pipe), or “something else.” (PIRG 9.03, PIRG Cross Ex. 1.0.) The Company stated that it could not differentiate between Grade 1 and Grade 2 leaks in its records, id., but still identified 600 projects in response to this data request. 40 of these projects were for “something else,” covering a range of situations: extending a main to service a customer, replacing a main in “poor” condition, and retiring out-of-use mains. (PIRG 9.03 Attach01 SUPP,
These “something else” projects do not serve to prevent an imminent interruption of service or danger to public safety.

The City of Chicago further comments on the Company’s expansive definition of emergency in its testimony. CDOT disavowed the concept of “short cycle,” a term for emergency used by PGL, as having any meaning in the City’s permitting process, (COC Ex. 7.00, at 5:102-114), and stated that it is clear that the Company uses its “short cycle” designation to describe a host of other work not directly related to “responding to and addressing … leaks on the Company’s system.” (NS-PGL Ex. 50.0, at 13:236-240.) Although PGL and CDOT meet regularly, with PGL having a routine presence at Division of Infrastructure Management (“DOIM”) meetings, (COC Ex. 7.00, at 21:475-476), and despite PGL comprising more than half of the 453,016 dig tickets issued in the past three years, (COC Ex. 7.00, at 22, Table 1), the Deputy Commissioner’s testimony makes abundantly clear that CDOT and PGL do not share a consistent definition of what an emergency is. As stated by Deputy Commissioner Kalayil, “many of the projects described by PGL as [emergencies] do not meet CDOT’s definition of . . . emergency work . . . . Without DOIM’s prior knowledge or permission . . . PGL has performed significant non-emergency construction projects . . . without the required . . . prior review and approval.” (COC Ex. 7.00, at 5:102-114.) The AG panel similarly found that “the types of work identified in the ESR . . . classifications do not represent activities that are entirely in support of addressing emergency conditions and or imminent safety or reliability concerns.” (AG Ex. 10.0 at 14:239-241.)

In total, PGL appears to define “emergency” work within the SMP to include a wide variety of circumstances that are not consistently defined. PGL defines emergency to include far more projects than those defined as emergencies by CDOT or those that respond to Grade 1
leaks. Thus, the Commission should defer recovery for these projects, or alternatively, adopt the AG’s recommendation.


As noted above, only one PGL emergency project currently identified addresses a Grade 1 leak. (NS-PGL Ex. 50.01.) PIRG recognizes that PGL is required to respond to Grade 1 leaks. Grade 1 leaks are defined as “[a] leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous.” (AG Ex. 10.03, at 1.) These are the sorts of imminent threats to public safety that the Commission’s Final Order clearly authorized PGL to address and which CDOT defines as emergency.

The problem on rehearing is that PGL has failed to clearly justify why the other forty-four 2024 projects that do not address Grade 1 leaks should be considered emergencies and included within the SMP program. (NS-PGL Ex. 50.01.) The Company should be allowed to continue work on these non-Grade 1 projects for the time being. However, its cost recovery for these emergency projects should be deferred until PGL’s next rate case, at minimum, at which time the Commission will have had the benefit of considering the scope of the SMP during the SMP investigation. If the Commission wishes to grant cost recovery to the Company to address emergencies, even with the Company’s overexpansive definition, the Commission could fairly grant PGL a budget for emergency expenses based on its prior years’ actual emergency expenditures in the amount of $28,515,829, as recommended by the Attorney General. (AG Ex. 14.00 REV, at 10:169-170.) This budget is also generous given that it is based on PGL’s actual costs for the last four years (not projected costs, which were significantly lower) and included
projects beyond Grade 1 and Grade 2 leaks. Thus, the budget provides funding for PGL’s overexpansive definition of emergency projects.

1. **Grade 2 Leaks Carry Risk But Are Not True “Emergencies” Unless Sufficiently Supported.**

PGL identifies twenty-five projects driven by Grade 2 leaks, which by definition are non-hazardous at the time of detection, but justify repair within 15 months based on probable future hazard. (AG Ex. 10.0, at 17:297-300; NS-PGL Ex. 50.01.) When PGL was asked in a data request how such projects constitute “emergencies,” it furnished the definition of a Grade 2 leak without providing the date such leaks were discovered. (AG Ex. 10.00, at 17:301-304; AG 18.04(d).) It is PGL’s burden in this case to demonstrate what work must continue on an emergency basis while the SMP investigation is underway, and as to Grade 2 leaks, it has failed to meet its burden.

PIRG acknowledges that PGL must address Grade 2 leaks at some point given the potential risk of a Grade 2 leak escalating to Grade 1. That situation would be a true emergency. Similar to Grade 3 leaks, anticipatory work to proactively respond to Grade 2 leaks may be a reasonable component of a properly prioritized integrity management strategy. However, PGL has not presented data allowing parties to accurately assess the risks of its Grade 2 leaks because the Company has not furnished the information necessary to assess which Grade 2 leak projects can be delayed, *i.e.*, those where a leak was discovered recently versus those where a leak has already sat for close to 15 months. (AG Ex. 10.0, at 17:297-300; NS-PGL Ex. 50.01.) In a situation where PGL recently discovered a Grade 2 leak, the project would not be an “emergency” project under CDOT’s definition. Moreover, as noted above, CDOT has expressed concern about the Company’s definition of emergency compared to CDOT’s definition, and it would be appropriate to remove Grade 2 leaks (which are not necessarily emergencies) from the
SMP’s emergency spending as a result. (Compare COC Ex. 7.01 at 126 with AG Ex. 10.0, at 17:297-300; id. at COC Ex. 7.00, at 5:102-114.)

Ultimately, PIRG requests that the Commission continue to defer cost recovery for PGL’s planned emergency work related to Grade 2 leaks given that PGL and the City do not agree on the term “emergency.” That is, “[a] situation endangering the public safety or causing or likely to cause the imminent interruption of service required by law, contract, or franchise to be continuously maintained.” (COC Ex. 7.01 at 126.)

2. **Grade 3 Leaks Are Not “Emergencies.”**

By definition, a Grade 3 Leak is “non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous,” requiring in response a “reevaluation during the next scheduled survey, or within 15 months of the date reported[.]” (AG Ex. 10.03, at 3.) As such, Grade 3 leaks on their own are generally not considered emergencies at all. (AG Ex. 10.00, at 16:288-17:292.) PGL’s direct testimony notes this fact, (NS-PGL Ex. 50.0 at 12 n.7), but it has still identified three Grade 3 leak-driven projects as emergency work for 2024. (See NS-PGL Ex. 50.01.) PIRG acknowledges PGL’s desire to address leaks before they worsen, but the Company has supplied no objective means of differentiating between situations in which it must respond to a Grade 3 leak because it will imminently elevate to Grade 2 or Grade 1, versus situations in which it simply wants to proactively address a Grade 3 leak. The former situation could theoretically become an emergency—the latter is not, and how such anticipatory work is prioritized is ultimately one of several questions to be addressed in the ongoing SMP investigation. The Commission should not permit recovery of costs for these projects in this proceeding.
3. **Poor Supply Problems and Pipe Corrosion Are Not Inherently “Emergencies.”**

PGL defines poor supply as instances where pressure in the main has dropped to a level where service to customers has been interrupted or is likely to be interrupted, typically due to obstructions in the main. (COC 9.65, NS-PGL Ex. 52.11.) PGL states that this it considers these projects emergency work because customers will experience outages due to low pressures if this obstructed main is not replaced. (NS-PGL Ex. 52.0 at 30.) This definition, however, illustrates that this work is proactive reliability work, and not emergency work that PGL must imminently address. PGL should continue to be allowed to respond whenever service has been interrupted, but again, its cost recovery should be deferred until the SMP investigation resolves.

Similarly, PGL identifies three projects that have the purpose of replacing “aged, leak prone pipe, [that was] at risk for emergency leaks.” (COC 9.64, NS-PGL Ex. 52.10.) The driver of these projects was listed as “corrosion” in NS-PGL Ex. 50.01, Schedule 1, yet there were no pipe segments to be installed at the project sites. The Company further explained in response to a data request that “[t]here were corrosion prevention requirements pursuant to PHMSA 192 for these main segments that would have required additional maintenance to remediate. Since these mains were no longer directly supplying customers and no longer needed for flow and pressure to adjacent areas, it was decided that the most productive, efficient, and financially responsible way to address the corrosion requirements was to retire these leak-prone mains. They are included in 2024 emergency work because the project sites have not yet been fully restored.” (COC 9.64(c), NS-PGL Ex. 52.10.)

Thus, such corrosion-related projects do not inherently constitute emergencies and were only included as emergency work because the worksites have not been not restored, which similarly applies to the Company’s work-in-progress projects that are not labeled as
emergencies. While PGL must restore any project sites where it has already begun excavation, it
should not be allowed to recover its costs at this point for corrosion-related work not specifically
related to an active emergency. The Commission should defer cost recovery for these projects.

4. **Coupling Problems Potentially Caused by PGL’s Own Errors Are Not “Emergencies.”**

PGL identified “coupling remediation” as a driver of short-cycle projects. The Company
defines these as situations where “the incorrect stiffener may have been used to internally
support the coupling that ties new main to existing main. Without the correct stiffener, the tensile
strength of the fitting is reduced putting the coupling at a greater risk of leaking.” (NS-PGL Ex.
52.13.) The Company did not state the cause of this incorrect stiffener installation. PGL’s
definition of coupling remediation conflates the concepts of “emergency” and “proactive”. Both
concepts are necessary in utility risk management, but the Commission has ordered the Company
to pause its work unrelated to emergencies while the SMP is under investigation. A greater risk
of leaking is not the same as an actual leak, and planned projects to rectify errors possibly caused
by the Company cannot be considered a bona fide emergency. PIRG notes that it is also more
than a little unfair to ratepayers to ask them to cover the costs of mistakes the Company or its
contractors may have made in previous pipe replacement work while said work is under
investigation for failing to properly prioritize risk reduction, dramatic cost overruns, and
management inefficiencies. The Commission should defer cost recovery for this work.

C. **Non-UMRI-Driven SI Work Should Be Paused.**

As part of its ESR program, PGL asks for recovery of both system improvement (SI) and
public improvement (PI) projects, even though the Commission’s stated scope for rehearing is
limited to identifying emergency projects. PGL defines SI as work addressing “specific targeted
problems wherever they are in the City and . . . focused on areas where there are many leaks, or
where specific operational issues threaten to disrupt service to customers.” (NS-PGL Ex. 50.0 at 15:286-288.) Through SI projects, PGL seeks to advance the goals of the SMP by replacing vulnerable pipe and upgrading the Company’s system from low-pressure to medium-pressure. (NS-PGL Ex. 50.0 at 17:325-28.) Given the Commission’s prior conclusion that all of PGL’s proposed work under the SMP requires investigation, and in light of the evidence on rehearing, the Commission’s pause on SMP work ought to continue for all SI projects that are not driven by the UMRI risk-ranking. The Commission should likewise continue to defer cost recovery to a future rate case for all SI projects, given outstanding questions about risk prioritization and cost overruns within the SMP as a whole.

The Company utilizes two risk-ranking methodologies to rank its SI projects. They are the Uniform Main Ranking Index (“UMRI”) and the System Improvement Shop Requested Priority Risk Score Template (the latter of which was produced for the first time in this entire case in PGL’s rebuttal testimony on rehearing).² (NS-PGL Ex. 52.0, at 24:491-504, 27:554-559; NS-PGL Ex. 52.05.) However, not all of the Company’s projects are risk-ranked. For 2024, PGL identified two UMRI-driven SI projects out of twelve total. (PIRG 10.05, PIRG Cross Ex. 1.0; COC 10.81; COC 10.81 Attach01; NS-PGL Ex. 52.09.) In its rebuttal testimony, it also identified another eight projects where its System Improvement Shop Requested Priority Risk Score Template was a “relevant consideration,” of which six were of “high” priority and two were “medium” priority. (NS-PGL Ex. 52.0, at 24:502-505.)

² “UMRI is the acronym for Uniform Main Ranking Index. The significance of UMRI in the project name is that it is a UMRI project, which means that it is a compliance driven SI project aimed at addressing the replacement of vulnerable pipe segments with higher probabilities and consequences of failure. [PGL] addresses any emerging need to replace vulnerable pipe segments through the UMRI index, which is a tool that maintains historical information on individual pipe segments and creates an “index factor” for each segment based on past performance indicators on the pipe, and a defined project tracking approach.” (AG 18.04, AG Ex. 10.05.)
The Commission should pause the non-UMRI projects because PGL has not shown that (1) continuing non-UMRI projects is appropriate given that one of the Commission’s reasons for ordering the investigation was motivated by its concern with “PGL’s management of [the Neighborhood Program’s] prioritization of pipeline replacement,” or (2) that non-UMRI-driven SI projects in 2024 rise to the level of an emergency. Final Order at 27.

First, the Company has not shown that its non-UMRI SI projects are the product of robust risk-ranking, which was one of the Company’s main reasons for pausing the SMP in the first place. The Company explains that it selects its non-UMRI projects through field inspection identified by “customer complaints, customer requests or ongoing / recurring operational issues such as: low or no pressure in the distribution system[.],” or through a low pressure, single contingency outage report. (NS-PGL Ex. 52.07 at 1, 5-6.) This selection process appears to be based on reports to the Company, rather than motivated by factors such as pipeline age and type. The Commission expressly stated that a concern it has with the SMP is whether the program is properly prioritizing projects. Final Order at 27. These non-UMRI projects suffer from the same problem in that the Company is not engaging in comprehensive review of the conditions on its system to identify projects. At this point, the parties have not had sufficient time to evaluate the accuracy, consistency, or relevance of the System Improvement Shop Requested Priority Risk Score Template ranking method, produced for the first time just days before the evidentiary rehearing. As such, this ranking method is precisely the type of methodology that the Commission should investigate in ICC Dkt. No. 24-0081—but it should not be used to justify SI projects on rehearing.

Second, the Company has not shown that these projects rise to the level of emergency which this limited rehearing is meant to address. For example, in response to Attorney General
Data Request 18.02(b), which asked PGL to “[c]onfirm that each project defined as ‘system improvement’ is to address an active reliability or safety issue that, absent the immediate work, represents an imminent threat to safety and/or reliability,” PGL responded, “In the Company’s judgment each project is necessary to ensure safety and/or reliability.” (AG 18.02(b), AG Cross Ex. 1.) The Company declined to state that the SI projects represent an imminent threat to safety and reliability and did not provide any evidence justifying its conclusion that the projects are necessary.

The way in which PGL identifies its non-risk-driven work further undercuts the notion that these projects are emergency work. In describing how it selects and executes on these projects, the Company stated that “PGL typically controls the scope and sets the initial schedule of all other SI projects that are not compliance driven [i.e., driven by the UMRI index]. In a given calendar year, the schedules may shift as PGL coordinates with the various entities through the design process and adapts to field conditions as needed.” (AG 18.09, AG Cross Ex. 1.) The record shows that PGL selects these non-risk-matrix-driven projects on its own and largely executes them on its own, while freely shifting schedules as warranted. This is not an “emergency” scenario.

Finally, PIRG notes that even PGL’s UMRI-driven SI projects raise some cause for concern about the Company rushing to perform work that could be delayed without an immediate threat to public safety or system reliability. In its rebuttal testimony, PGL stated that “UMRI projects have to be initiated within one year after first being identified, and if they are not initiated require constant monitoring.” (NS-PGL Ex. 52.0, at 34:646-647.) However, in response to a data request, the Company clarified that “constant monitoring” actually entails a “quarterly leak survey” in which a “contractor driv[es] a methane-detecting vehicle through the
area of interest.” (PIRG 11.03, PIRG Cross Ex. 1.0.) While the abbreviated schedule of rehearing has not allowed for a fuller investigation of the reliability of UMRI, it is notable that the Company believes such work constitutes an emergency when its plan for dealing with these projects on a long-term basis is to simply keep monitoring them. That does not appear to be an emergency.

For the reasons provided herein, the Commission should continue to pause PGL’s SI work that is not driven by the Company’s UMRI risk ranking methodology until the end of the SMP investigation so that the Commission can determine whether the SI program is the optimal method to pursue pipe replacement. Through this process, the Commission should shift cost recovery for the UMRI-driven projects to the Company’s next rate case. In the alternative, if the Commission does not continue its pause, it should nevertheless still defer cost recovery for all SI projects to a future rate proceeding, at which time it will have a greater understanding of the SI program by way of the SMP investigation.

D. PI Work Not Strictly Required by Third-Party Activity Should Be Paused.

Much like with SI, the Company includes in its ESR program PI projects which are not emergency projects. PGL describes PI work as situations where “the City or other underground users are performing work under the streets” and where the City of Chicago “in some cases . . . requires [PGL] to relocate its facilities.” (NS-PGL Ex. 50.0, at 18:340-346.) As part of this program, PGL replaces cast and ductile iron pipe and replaces it with pipe to facilitate a medium pressure upgrade. (NS-PGL Ex. 50.0 at 20:379-383.) The PI program is in part based on long-standing law: an Illinois municipality has the “right to require the relocation of utility facilities in order to promote public safety, welfare, comfort, or convenience[, and] . . . require the utility to bear the expense.” Village of Oak Lawn v. Commonwealth Edison Co., 516 N.E.2d 753, 754 (1st
PI work directed by the City of Chicago.

However, this is not all that PGL includes under the umbrella of PI: “even where relocation [of facilities] is not strictly required, the Company takes advantage of these situations to efficiently replace leak-prone pipe in the same area in a coordinated manner with the City and other underground users.” (NS-PGL, Ex. 50.0 at 18:340-346.) Some “16% of public improvement projects that resulted in pipe relocation were the result of discretionary public improvement work where relocation was not strictly required, but the Company took advantage of these situations to efficiently replace leak-prone pipe in the same area in a coordinated manner with the City of Chicago and other underground users.” (COC 13.119, COC Cross Ex. 21.)

The Commission should pause non-City-directed PI projects pending completion of the SMP investigation, and the Commission should defer cost recovery for all PI projects to the Company’s next rate case. In 2024, four of PGL’s PI projects are not strictly required, but are the result of the “Company taking advantage of [a] situation where the City or other underground users are performing work under the streets.” (PIRG 10.09 and Attach 01, PIRG Cross Ex. 1.0, at 41.) PGL claims at times that this creates efficiencies, however, these projects are demonstrably more expensive than PGL’s Neighborhood projects and appear to be one driver of cost overruns in SMP. (PIRG 9.07; AG Ex. 10.11.) This is precisely the type of matter that the Commission intends to investigate as a part of its overall review of the SMP and its determination of the “optimal method” to achieve the SMP’s pipe replacement goals. Final Order at 29. The Commission stated a desire to understand whether the SMP properly prioritizes projects and if “grouping critical safety measures with modernization measures is the most practical, cost-effective and expedient method to retire all CI/DI pipe.” Id. at 27, 30. Here, PGL does not
engage in any risk ranking for its PI projects, Moreover, the Company has grouped legally obligatory, City- and safety-motivated PI work with prospective efforts to perform SMP work, as well as grouped in non-obligatory work when it wants to “take advantage” of a third-party’s excavation work. (NS-PGL, Ex. 50.0 at 18:340-346.) Thus, the Commission should pause these non-City-directed projects until after the SMP investigation concludes and it can determine whether this strategy is the most effective way to replace vulnerable pipe.

Likewise, the Commission should defer cost recovery on all of these PI projects until a future rate case, even where City-directed. For simplicity of review, the Commission should consider the costs from these City-directed PI projects alongside the other projects proposed in this rehearing in PGL’s subsequent rate case.

VII. REVENUE REQUIREMENT ON REHEARING

VIII. CONCLUSION

For the reasons stated herein, PIRG respectfully requests that the Commission enter an Order that:

- Pauses all non-UMRI-driven SI work until at least the completion of ICC Docket No. 24-0081;

- Pauses all PI work not driven by a request from the City of Chicago;

- Declines to allow PGL’s recovery of costs for work-in-progress projects begun after or shortly before November 16, 2023, as identified herein; and

- Defers PGL’s recovery of all other costs until PGL’s next rate case, or in the alternative, defers recovery except for allowing a partial recovery of costs for emergency work consistent with the proposal of the Attorney General.

Respectfully submitted,

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