

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
vs.	)	Docket 01-0707
	)	
The Peoples Gas Light and Coke Company	)	
	)	
Reconciliation of revenues collected	)	
under gas adjustment charges with	)	
actual costs prudently included.	)	

**CITIZENS UTILITY BOARD’S MOTION TO COMPEL**

Pursuant to Section 200.190 of the Rules of Practice of the Illinois Commerce Commission (“the Commission”), the Citizens Utility Board submits its Motion to Compel certain responses from The Peoples Gas Light and Coke Company (“Peoples”) in the above-captioned proceeding. This Motion to Compel is based on new information that shows Peoples failed to respond completely and accurately to prior data requests.

**BACKGROUND**

On July 30, 2002, the Commission Staff (“Staff”) filed a Motion to Compel asking that the Commission order Peoples to provide a response to Staff Data Request ENG 2.082. Staff Data Request 2.082 sought information about transactions between affiliates of Peoples and companies that entered into off-system transactions with Peoples as listed in the utility’s response to Staff Data Request 2.067. Peoples filed its response to Staff’s motion on August 7, 2002 (“Peoples Response”). Before the Administrative Law Judge (“ALJ”) ruled on the motion, the parties attempted to resolve informally the issues raised by the Motion to Compel. Aug. 28, 2002 Tr. at 7-8. At a subsequent status hearing, the ALJ directed Peoples to file supplemental

direct testimony to address off-system transactions with affiliates (Staff's Motion to Compel was held in abeyance until the filing of Peoples' supplemental direct testimony). *Id.* at 13.

After Peoples filed its additional direct testimony, the parties continued discovery of the off-system affiliate transactions. Nov. 19, 2002 Tr. at 4. This discovery continued throughout the winter months. On February 27, 2003, the ALJ set a discovery deadline of March 17, 2003 for the issues central to Staff's Motion to Compel. Feb. 27, 2003 Tr. at 73. During a status hearing on March 20, 2003, Staff orally withdrew its Motion to Compel. Mar. 20, 2003 Tr. at 92.

CUB submitted a data request to Peoples on July 12, 2002, requesting a copy of all discovery responses produced by Peoples in this proceeding in order to refrain from duplicative and burdensome discovery. Thus, while CUB did not originally propound the questions at issue in this Motion, it has an equal interest in receiving those responses. CUB submits this Motion to Compel based on the insufficient data responses submitted by Peoples to Staff Data Requests ENG 2.081 and ENG 2.082, and requests that the Commission allow further discovery on the issue of Peoples' affiliate transactions. Further, as required by Section 220.350 of the Commission's Rules of Practice, CUB and Staff repeatedly stated their desire for more complete responses from Peoples during the almost nine months these data requests remained the subject of Staff's unresolved Motion to Compel in an effort to achieve more complete responses without success. *See e.g.*, Aug. 28, 2002 Tr. at 10-11; Jan. 23, 2003 Tr. at 54.

## ARGUMENT

### **I. Peoples' Responses to Staff's Data Requests Are Insufficient**

The Commission's adjudicatory process depends on the full and accurate submission of information by utilities. Peoples Gas is a regulated public utility that has a responsibility to act in the public interest, and part of that responsibility includes providing complete and accurate responses to data requests. This obligation is particularly important when utilities transact business with affiliates, because of the incentive and opportunity to direct profits towards the unregulated affiliate where they benefit shareholders. The evidence set forth below indicates that Peoples has not been forthcoming to date, and the Commission must take appropriate action to ensure that it has the information it needs to determine whether Peoples acted prudently in its procurement of gas.

In Data Request ENG 2.081, Staff asked Peoples to "Provide detailed information on any business relationships between the affiliates of Peoples and enovate." Staff Data Request ENG 2.081 (Attachment 1). enovate was a joint venture between Peoples Energy Resources Corporation, an affiliate of Peoples, and Enron Midwest, a subsidiary of Enron North America. Peoples Ex. E at 7 (De Lara Direct Testimony). Peoples responded by saying,

Respondent had no business relationships with enovate during the reconciliation period. The business relationships, if any, between Respondent's affiliates and enovate are beyond the scope of this proceeding, which is the reconciliation of Respondent's gas costs and revenues subject to its Rider 2. Accordingly, Respondent objects to this data request.

Peoples Gas Light & Coke Response to Staff Data Request ENG 2.081. Peoples supplemented its initial response by saying,

Without waiving the foregoing objection, Respondent supplements its response as follows. Peoples MW, LLC, one of Respondent's affiliates, as that term is defined in Section 7-101 of the Public Utilities Act, was a member of Midwest Energy Hub, L.L.C. (MEH) that later changed its name to enovate L.L.C. MEH/enovate is an affiliated interest of Respondent. Also, enovate purchased services from Respondent pursuant to Respondent's Operating Statement on file with and approved by the Federal Energy Regulatory Commission. The costs and revenues associated with such services are not subject to Rider 2 of Respondent's Illinois Schedule of Rates for Gas Service. Respondent is not aware of any other business relationships between enovate and any of Respondent's other affiliates.

Peoples Gas Light & Coke Supplemental Response to Staff Data Request ENG 2.081.

Staff Data Request ENG 2.082 asked Peoples to "Provide a list of all daily natural gas-related transactions between affiliates of Peoples and entities that entered into off-system transactions as detailed in ENG 2.67." Staff Data Request ENG 2.082 (Attachment 2).

Peoples responded by saying,

Respondent, in response to Staff data request ENG 2.67, provided detailed information about transactions during the reconciliation period pursuant to which it sold gas to third parties. Such third parties have no obligation to advise Respondent of their intended disposition of the gas that Respondent sold to them. Moreover, such transactions by those third parties are beyond the scope of this proceeding, which is the reconciliation of Respondent's gas costs and revenues subject to its Rider 2. Accordingly, Respondent objects to this data request.

Peoples Gas Light & Coke Response to Staff Data Request ENG 2.082. Peoples' response ignores the fact that information regarding transactions with third parties is relevant to determining Peoples' prudence.

The Commission must be able to review business relationships between affiliates of Peoples and enovate and transactions between affiliates of Peoples and third parties, that entered

into off-system and non-tariff services transactions with Peoples. This information is highly relevant to determining the prudence of those transactions and their impact on costs to ratepayers. Such information may reveal whether Peoples entered into off-system or non-tariff services transactions with Enron North America, or its subsidiaries (collectively “Enron”), or enovate in a manner that benefited either Peoples’ parent corporation or its affiliate at the expense of Peoples’ regulated customers in violation of Section 525.40(d). Section 525.40(d) forbids gas utilities from entering into transactions that have the effect of raising gas charges. 83  
III. Admin. Code § 525.40(d).

The previous judge in this case never addressed the issue of whether these data requests went beyond the scope of this proceeding, because Staff ultimately withdrew its Motion to Compel. Mar. 20, 2003 Tr. at 92. However, certain information has recently come to CUB’s attention that demonstrates Peoples’ prior responses were incomplete at best, and, at worst inaccurate. This new information also illustrates the direct relevancy of and critical need for Peoples’ complete and accurate responses to Staff’s discovery requests. CUB submits that Peoples should be compelled to answer these data requests fully.

## **II. New Information Shows the Commission Should Compel Peoples To Respond to Staff’s Data Requests**

CUB has discovered a number of publicly available e-mail communications between officials of Enron and Peoples. These Enron e-mails are publicly available via a fully searchable database found at the Federal Energy Regulatory Commission’s (“FERC”) Internet Web site.<sup>1</sup>

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<sup>1</sup> See <<http://www.ferc.gov/industries/electric/indus-act/wem/pa02-2/info-release.asp#>> or <<http://fercic.aspensys.com/members/manager.asp>> for direct access to the Enron e-mail and documents database.

The FERC released this information to the public as part of its investigation into allegations of price manipulation in Western United States energy markets, by Enron.<sup>2</sup>

The e-mails described below represent a small sample of the material available on-line. These e-mails shed light on the close relationship between Peoples and its affiliates that: 1) suggest a significant business relationship between enovate and Peoples; 2) show the existence of a storage agreement; and 3) reveal the existence of a profit sharing agreement between Enron and Peoples Energy Resources relating to hub services conducted using Peoples' assets, all of which Peoples should have disclosed in response to Staff Data Requests ENG 2.081 and ENG 2.082. These e-mails show that what Staff requested in Data Requests ENG 2.081 and 2.082 was directly relevant to the question of whether off-system and non-tariff services transactions conducted by Peoples and its affiliates raised gas costs for ratepayers.

First, an Enron e-mail that was sent to senior Peoples executives, including CEO Thomas Patrick and Executive Vice President William Morrow, dated October 17, 2001, (Attachment 3) includes a "DPR," or daily position report, for enovate. Thus, Peoples executives were privy to the gas trading activities of enovate. The fact that senior Peoples executives received these reports shows the lack of separation between enovate and Peoples. Peoples should have disclosed this relationship in its response to Staff Data Request ENG 2.081.

A second Enron e-mail, dated December 13, 2000, (Attachment 4) states "For 2000, approximately 80% of business to PGL/NS are being transacted with either ENA, EMW or enovate." This e-mail suggests that Peoples did have a significant business relationship with

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<sup>2</sup> See <<http://www.ferc.gov/industries/electric/indus-act/wem/pa02-2.asp>> for a description of the investigation.

enovate. Peoples has not completely disclosed the nature of that relationship in response to Staff Data Request ENG 2.081.

A third Enron e-mail, dated December 26, 2001, (Attachment 5) refers to an “enovate/PGL Hub” storage agreement. enovate was, of course, the joint venture between Peoples Energy Resources and Enron, while the counterparty in the agreement, PGL Hub, is part of Peoples Energy Resources as well.<sup>3</sup> The e-mail also refers to enovate holding 1.08 Bcf of inventory in the PGL Hub. If this agreement, or others similar to it, was in force during the reconciliation period, Peoples should have disclosed this relationship in its response to Staff Data Requests ENG 2.081 and ENG 2.082.

A fourth Enron e-mail, dated September 12, 2000, (Attachment 6) refers to a profit sharing agreement between Peoples and Enron for “(a) transactions entered into by MEH or the PGL Hub which are subject to Peoples’ HUB FERC operating statement, and (b) all physical transactions which require the use of the Manlove or Mohammed [sic] fields.” The Manlove and Mahomet storage fields are ratepayer assets. The existence of a profit sharing agreement between Peoples and Enron is clearly relevant to the question of whether Peoples operated those storage fields to the benefit or the detriment of ratepayers. Such an arrangement between Peoples and Enron could provide Peoples with an economic incentive to engage in transactions that raise the gas charge to ratepayers while allowing Peoples’ affiliate and Enron to retain the profits. Peoples should have disclosed this arrangement in response to Staff Data Requests ENG 2.081 and ENG 2.082.

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<sup>3</sup> PGL Hub provides storage and transportation services. *See* About Midstream Services, <[http://www.peoplesenergy.com/about/about\\_sectiondetail.asp?PAGE=about\\_midstream\\_services](http://www.peoplesenergy.com/about/about_sectiondetail.asp?PAGE=about_midstream_services)>.

A fifth Enron e-mail, dated March 9, 2001, (Attachment 7) includes profit and loss statements for Enron Midwest, an affiliate of Enron, and enovate. The profit and loss statements show Enron Midwest and enovate sharing profits and losses with Peoples. Peoples should have disclosed this arrangement in response to Staff Data Request ENG 2.081.

All of these e-mails demonstrate that Peoples did not completely and accurately respond to Staff Data Requests ENG 2.081 and ENG 2.082 and justify a Commission order compelling Peoples to respond to Staff's data requests.

### **III. Peoples Violated Commission Rules by Failing To Respond to Staff's Data Requests**

The Commission's policy on discovery is "to obtain full disclosure of all relevant and material facts to a proceeding." 83 Ill. Admin. Code §200.340. However, the above e-mails demonstrate that Peoples failed in its responsibility to provide highly relevant and material facts in this proceeding. The fact that senior Peoples executives received at least some of the e-mails described above demonstrates that the Company should have within its control and possession e-mails and other documentation that are responsive to Staff's data requests. If the e-mails and other documents are not within Peoples' possession, Peoples clearly has the ability to obtain them.

Peoples, in its prior Response to Staff's Motion to Compel, argued that it could not be compelled to produce documents not within its control and possession. Peoples Resp. to Mot. to Compel at 2. However, the fact that senior Peoples executives received some of these e-mails indicates that Peoples should have actual and physical possession of these and other responsive e-mails and documents within its computer systems and physical files. Furthermore, Section 7-101(2)(i) of the Public Utilities Act ("PUA") states that,

Except as provided in subparagraph (ii) of this subsection (2), the Commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with public utilities under the jurisdiction of the Commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports with respect to such transactions to be submitted by such affiliated interests, as the Commission may prescribe.

220 ILCS5/7-101(2)(i). Section 7-101(2)(i) provides the authority the Commission needs in order to have access to the accounts and records of any affiliate of Peoples with whom it engaged in off-system and non-tariff transactions.

Under Illinois law, a right to inspect records is sufficient control to require production of them, even if they are in the physical possession of a third party during discovery. *See Hawkins v. Wiggins*, 92 Ill. App. 3d 278 (1<sup>st</sup> Dist. 1980). Peoples Energy Resources, as a member of enovate, L.L.C, certainly had the right to inspect the accounts and records of enovate. The court in *Franzen v. Dunbar* held that the “law recognizes no distinction between constructive possession, with control, and physical possession.” 132 Ill. App. 2d 701 (1<sup>st</sup> Dist. 1971) at 709 (citing *Schwimmer v. United States*, 232 F.2d 855 (8<sup>th</sup> Cir. 1956), *cert. denied*, 352 U.S. 833). Further, a federal court in Northern Illinois has held that documents in the possession of a non-party sister corporation are discoverable based on such factors as sharing common directors and shareholders with the party corporation. *See Advance Labor Service, Inc. v. Hartford Acc. & Indem. Co.*, 60 F.R.D. 632 (N.D. Ill. 1973). Here, Peoples and its affiliates are sister corporations who share common directors and shareholders. Thus, whether or not responsive

e-mails and other documents are actually within Peoples' physical possession, the law clearly states that those materials are discoverable.

In its prior response to Staff's Motion To Compel, Peoples also argued that Staff already had sufficient information to conduct its investigation. Peoples Response at 5-7. However, it is not Peoples' prerogative to decide whether a party has enough information to conduct an adequate investigation. If the requested information is relevant or can lead to admissible evidence, which is clearly the case here, Peoples cannot refuse to produce the information because, in its opinion, it has produced sufficient information.

#### CONCLUSION

The Commission's policy on discovery is "to obtain full disclosure of all relevant and material facts to a proceeding." 83 Ill. Admin. Code §200.340. However, Peoples' failure to respond completely and accurately raises questions as to how forthcoming it has been during the entire discovery process for this proceeding. If not for CUB's fortuitous discovery of the Enron e-mail and documents database, Peoples would likely still not have disclosed its affiliate's transactions with enovate or its affiliate's profit sharing arrangement with Enron.

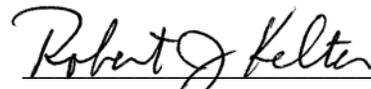
Taken together, Peoples' prior incomplete responses to Staff's data requests and the e-mails from the Enron database raise significant and disturbing questions about Peoples' dealings with Enron and their potential impact on ratepayers. When analyzing the prudence of Peoples' actions, the Commission must ask if Peoples' dealings with Enron negatively affected ratepayers. Did Peoples and Enron, in effect, collude against Peoples' regulated customers by engaging in off-system and non-tariff transactions timed to raise gas charges and then split the profits through the existence of a shared affiliate, enovate? The Commission cannot answer this

question without compelling Peoples to answer completely and accurately Staff's data requests and allowing further discovery on the issue of Peoples' affiliate transactions.

The information sought by Staff's Data Requests is relevant and likely to lead to admissible evidence. The Commission should grant this Motion and allow further discovery so that Peoples cures its failure to respond completely and accurately to Staff's data requests.

WHEREFORE, CUB respectfully requests that the Commission grant its Motion to  
Compel.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert J. Keller". The signature is written in a cursive style and is positioned above a horizontal line.

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