

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

BlueStar Energy Services, Inc.,)
Verified Complaint Requesting ICC to Order)
Peoples Energy Services Corporation to) Docket No. 04-0734
Disclose Its Compliance with the "Principal)
Source of Electricity" Requirement of 220)
ILCS 5/16-115(d).)

BRIEF IN REPLY TO EXCEPTIONS OF
PEOPLES ENERGY SERVICES CORPORATION

1 Pursuant to Section 200.830(a) of the Illinois Commerce Commission's
2 Rules of Practice (83 Ill. Admin. Code Sec. 200.830(a)), Peoples Energy
3 Services Corporation ("PE Services") files its Brief in Reply to Exceptions.

4 On May 3, 2005, the Administrative Law Judge served his Proposed Order
5 ("ALJPO") in the above-captioned proceeding. The ALJPO correctly concluded
6 that BlueStar Energy Services, Inc.'s ("Complainant") Complaint should be
7 dismissed for failure to comply with Section 10-108 of the Public Utilities Act (the
8 "Act"). Complainant filed a Brief on Exceptions ("BoE"). Complainant's Brief on
9 Exceptions fails to rehabilitate its Complaint, and the Complaint should be
10 dismissed for the reasons set forth in the ALJPO.

11 **I. The ALJPO Correctly Found that Complainant Failed to Meet**
12 **the Requirements of Section 10-108 of the Act.**

13 The ALJPO found that the Complaint was deficient on its face, as it did not
14 allege a violation of the Act, a Commission order or a Commission rule, as
15 required by Section 10-108 of the Act. ALJPO at p. 2. Complainant contends
16 that it alleged a violation of Section 451.730 of the Commission's rules. BoE at

17 p. 2. The Complaint did not identify a violation of Section 451.730, nor could it
18 because PE Services has fully complied with that and all other applicable
19 provisions of the Commission’s rules and the Act.¹ Instead, Complainant has
20 invented a showing that it claims is required by Section 451.730 and then tried to
21 argue that PE Services has failed to make the required showing. Complainant’s
22 argument is belied by the text of Section 451.730. Section 451.730 provides:

23 **Section 451.730 Certification of Compliance with Section 16-**
24 **115(d)(5) of the Act**

25 The ARES shall annually certify that it complies with the
26 requirements of Section 16-115(d)(5) of the Act during January
27 of each year after its certification. The applicant shall provide the
28 following along with its certification:

- 29 a) The ARES’ name and street address;
- 30 b) The ARES’ Federal Employer Identification Number (FEIN);
- 31 and
- 32 c) Names and addresses of all of the ARES’ affiliated companies
- 33 involved in electric retail sales or purchases in North America.

34 83 Ill. Admin. Code §451.730.

35 Complainant alleged that PE Services has violated this provision by
36 “failing to identify its principal source of electricity in annual certification
37 statements.” BoE at p. 3. The plain language of the rule imposes no such
38 requirement. Each year since its certification, PE Services has filed, consistent
39 with Section 451.710, an annual certification statement that included all
40 information and certifications required by the Commission’s rules, including
41 Section 451.730. See, e.g., Complaint, Exs. B, C. In May 2004, the Commission
42 Staff asked PE Services for additional information about its compliance with

¹ Subpart H of Part 451 of the Commission’s rules, entitled “Procedures for Reporting Continuing Compliance with Certification Requirements,” includes all the continuing requirements with which a certificated ARES must comply. 83 Ill. Admin Code Part 451. Subpart H includes Section 451.730.

43 Section 16-115(d)(5) of the Act, and PE Services provided a detailed response to
44 that request. See Complaint, Ex. D. PE Services has complied with all
45 Commission requirements, including responding to requests for information.

46 The basis for Complainant's interpretation of Section 451.730 is,
47 apparently Docket No. 04-0458. BoE at p. 2, citing Complaint at Par. 14.
48 Notably, Docket 04-0458 was not a proceeding conducted pursuant to Subpart
49 H, which includes the rule cited by Complainant. Instead, Docket 04-0458 was
50 Complainant's application pursuant to Subpart C of Part 451 in which it was
51 requesting to become certificated as an alternative retail electric supplier
52 ("ARES"). By contrast, Subpart H applies to companies that are already certified
53 as ARES.

54 **II. Oral Argument Is Not Required**

55 Complainant requested oral argument. BoE at p. 5. There is no need for
56 oral argument in this matter. It is a straightforward case of a Complainant who
57 failed to state a cause of action. Contrary to Complainant's assertion (BoE at p.
58 5), there are no vital policy issues at stake.

59 WHEREFORE, for the foregoing reasons, Peoples Energy Services
60 Corporation respectfully requests that the Commission dismiss Complainant's
61 Complaint for the reasons set forth in the Administrative Law Judge's Proposed
62 Order.

Respectfully submitted,

Peoples Energy Services Corporation

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Attorneys for
Peoples Energy Services Corporation

Dated at Chicago, Illinois
this 25th day of May, 2005

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

Please take notice that on this 25th day of May, 2005, I have filed with the Chief Clerk of the Illinois Commerce Commission the Brief in Reply to Exceptions of Peoples Energy Services Corporation.

I hereby certify that I have this day served the Brief in Reply to Exceptions by placing a copy thereof in the United States mail with first class postage affixed or electronic mail addressed to each of the parties of record in Ill.C.C. Docket No. 04-0734.

Dated at Chicago, Illinois this 25th day of May, 2005.

By: /S/ MARY KLYASHEFF
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An Attorney for
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