

**Docket Nos:** 01-0707, 01-0706,  
02-0726, 02-0727, 03-0704,  
03-0705 04-0682, 04-0683,  
**Bench Date:** 3/22/06  
**Deadline:** N/A

## MEMORANDUM

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**TO:** The Commission

**FROM:** Terrance Hilliard and Claudia E. Sainsot  
Administrative Law Judges

**DATE:** March 17, 2006

**SUBJECT:** Illinois Commerce Commission, On Its Own Motion, v. The Peoples Gas Light and Coke Company, (01-0707, 02-0727, 03-0705 and 04-0683)

Illinois Commerce Commission, On Its Own Motion v. North Shore Gas Company (01-0707, 02-0726, 03-0704 and 04-0682)

Reconciliations of revenues collected under gas adjustment charges with actual costs prudently incurred.

Proposed Form of Orders Accepting the Settlement

**Recommendation:** Enter the Proposed Orders as Amended.

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### Procedural Background

This matter comes before the Commission on settlement of eight gas adjustment charge reconciliations of Peoples Gas Light and Coke Company, ("PGL") and North Shore Gas Company, ("North Shore") a PGL affiliate. Four of these dockets were assigned to Judge Hilliard. The other four Dockets were assigned to Judge Sainsot. On March 7, 2006, Judges Hilliard and Sainsot issued rulings requiring the settling parties to submit draft orders to this Commission accepting the settlement proposed by them. The settling parties also filed an addendum to the settlement contract reflecting certain revisions discussed by the settling parties in documents previously filed with this Commission, as well as the settlement contract.

Staff filed a response to the draft orders submitted with exceptions. Staff's exceptions are in the form of a proposed order. However, most of Staff's changes are

procedural rather than substantive. Unless otherwise noted, the attached orders reflect Staff's changes to the form of orders filed by the settling parties.

### **Dockets 01-0707 and 01-0706**

Dockets 01-0707 and 01-0706 were tried in April of 2005 and the ALJPO issued in September of 2005. The settlement at issue arose from those two cases, but, it encompasses the reconciliation dockets from the subsequent three years for both PGL and North Shore.

### **Issues Common to All Eight Dockets**

#### **The Attachments to the Orders**

All of the orders have an Appendix, which is a table of the balances of the pertinent reconciliation accounts. Exhibit 1 to all of the orders is the ALJPO in 01-0707. Exhibit 2 is the Settlement Contract and Exhibit 3 is the Addendum to that Contract.

#### **Distribution of the Proceeds from the Settlement**

The parties suggested in the proposed orders that distribution should be made on a *per capita* basis. However, they also made it clear that the settlement agreement provided that distribution could be made by any method this Commission orders. Therefore, the Commission could order distribution based on usage, which is how distribution is generally made. (See, e.g., 83 Ill. Adm. Code 525.30 and 60).

Staff made no recommendation on this issue, but, it did point out that the refunds could be provided through the PGA clause, as prescribed in 83 Ill. Adm. Code 525, and, as is customarily done. (*Id.*). Staff notes that if the Commission decides to refund the settlement through the PGA, it will need to add the following sentence to all of the orders in question to its Analysis and Conclusions,:

The refund described above in 'IV.A – Distribution of the \$100 Million Refund,' shall be made pursuant to 83 Ill. Adm. Code 525.

If this Commission were to order distribution on a *per capita* basis, Staff has proposed adding language allowing distribution pursuant to Section 9-253 of the Public Utilities Act, which allows for a portion of the refunds to be set aside for customers who are no longer customers of the utility. (220 ILCS 5/9-253). In Staff's Briefs on Exceptions, Staff opined that, if this Commission were to order distribution on a *per capita* basis, Section 9-253 could apply.

If this Commission were to order distribution on a *per capita* basis, the concern expressed by Staff is reasonable. Obviously, many persons and entities have moved from the PGL and North Shore territories since the billing periods in question. Because

these persons and entities overpaid PGL and North Shore, they should be refunded. However, we find that distribution per capita is inequitable and burdensome to administer.

On balance, we recommend (and the draft orders provide) that the refund be distributed through the PGA on a usage basis because it is more equitable in that it provides a refund proportionate to the amount each customer paid. A refund based on usage also eliminates the administrative burdens inherent in other forms of distribution. These burdens include the cost of oversight, mailing and verification of payments. For instance, under Section 9-253 of the Act, money must be set aside for administration of the refund and for advertising as well as other issues.

### **Citations to the Settlement Contract and the Addendum to that Contract**

Staff further clarified which references in the Proposed Order were to the settlement agreement and which were in the addendum to that agreement. Staff's additions to the settling parties' proposed form of order make it clear where a cited provision may be found.

### **Accounting**

Included in the attached orders and further explained in Appendices "A" thereto are the necessary balances, accounts and other adjustments. Staff, the only participant in these proceedings that would have knowledge as to the accuracy of these figures, has not objected to the numbers presented by the settling parties.

The settling parties have also incorporated language from the ALJPO in 01-0707 requiring PGL and North Shore to adhere to Commission accounting procedures in the future, Findings 7, 8, 9, 11 and 12 from that ALJPO. They further have incorporated language from the 01-0707 ALJPO, which was placed there to ensure that, in the future, all accounting on the part of PGL and North Shore is accurate and in full compliance with accounting laws. (Findings 14 and 15). Further, Staff specifically incorporated by reference into the Order, the ALJPO and the Settlement and Addendum to the Settlement. We added findings and ordering paragraphs making it clear that PGL is required to abide by the referenced findings from the ALJPO and that North Shore is required, when applicable, to do the same.

The settling parties have attached the ALJPO from 01-0707. Staff clarified the need for attachment of that Order, evidence of egregious behavior on the part of PGL and North Shore during the time period relevant to that ALJPO. (See, Commission Analysis and Conclusions, at p. 7 of those orders).

### **Dockets 02-0726, 02-0727, 03-0704, 03-0705, 04-0682 and 04-0683**

Leave to intervene was granted to the Citizen's Utility Board ("CUB") and the Attorney General in all dockets. The City of Chicago filed an appearance in 02-0727,

03-0705, and 04-0683 the PGL reconciliations. The Attorney General has been a party of record in both 02-0726 and 02-0727.

These dockets were not tried, there is no evidentiary record supporting the Proposed Orders. However, all of the parties to these dockets have agreed to the settlement. As stated in the proposed orders, Staff disagrees with the terms of the settlement, but Staff is not a party. The proposed orders succinctly and correctly state that Staff's approval of the settlement is not necessary.

As was the case with dockets 01-0707 and 01-0706, the settling parties have incorporated Findings 7, 8, 9, 11, 12, 14 and 15 from the ALJPO in 01-0707. They also have included the necessary balances, accounts and other adjustments. Staff, the only participant in these proceedings that would have knowledge as to the accuracy of these figures, has not objected to the numbers presented by the settling parties.

### **Conclusion**

We recommend that the Commission approve the attached amended proposed orders, which incorporate Staff's recommended procedural and language changes to the orders presented by the settling parties.

CES/TH:jt