

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

South Austin Coalition Community Counsel	)	
and Community Action for Fair Utility Practice	)	
	)	No. 06-0202
Petition to Initiate Rulemaking with Notice	)	
and Comment for Approval of Certain	)	
Amendments to Illinois Administrative Code	)	
Part 280	)	
	)	Consol.
Citizens Utility Board and	)	
The People of the State of Illinois	)	
	)	
Petition to Initiate Rulemaking with Notice	)	No. 06-0379
and Comment for Approval of Certain	)	
Amendments to Illinois Administrative Code	)	
Part 280	)	

**REPLY IN SUPPORT OF THE JOINT UTILITIES’  
MOTION TO FILE SUPPLEMENTAL DIRECT TESTIMONY INSTANTER**

Now comes Commonwealth Edison Company (“ComEd”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor”), The Peoples Gas Light and Coke Company (“Peoples Gas”) and North Shore Gas Company (“North Shore”) (collectively, the “Joint Utilities”) by its attorneys, and pursuant to § 200.190 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice (83 Ill. Adm. Code § 200.190), and hereby submits this Reply In Support Of The Joint Utilities’ Motion to File Supplemental Direct Testimony Instanter (“Motion”).

**I.  
Introduction**

The Joint Utilities filed the subject Motion and attached Supplemental Direct Testimony only sixteen days after Direct Testimony was filed.<sup>1</sup> As the Motion explained, the Joint Utilities

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<sup>1</sup> Contrary to the claim of the AG, the Motion and Supplemental Direct Testimony was not filed three weeks after Direct Testimony was due. AG Response, p. 1.

could not compile the cost estimates to implement the proposed sweeping changes to Part 280 in time to meet the July 19, 2006 date for filing Direct Testimony. Motion, p. 2. Moreover, the Joint Utilities did not wish to impact the scheduled evidentiary hearings, as the Citizens Utility Board (“CUB”) and the People of the State of Illinois (“AG”) sought to conduct this proceeding in a timely manner.<sup>2</sup> Accordingly, at the time of filing CUB/AG each still had four weeks to respond to the Supplemental Direct Testimony (which was the current interval between the Joint Utilities’ Direct Testimony and the due date for CUB/AG Rebuttal Testimony), and maintain the current hearing dates.

Granting the Motion is not prejudicial to any party. Notably, Staff has no objection to the Motion. In fact, the Joint Utilities propose that CUB/AG each have the same amount of time to respond to the Supplemental Direct Testimony as they would have if this testimony was filed on July 19, 2006. As discussed herein, it is not credible for CUB/AG to claim that this proposal is prejudicial. If CUB/AG require more time to respond, the Joint Utilities have no objection.

Importantly, the Supplemental Direct Testimony also will provide the Commission with a complete record in order to determine whether the CUB/AG proposed amendments to Part 280 are reasonable and appropriate. In order to determine whether any of these sweeping changes should be adopted, the Commission should have available to it evidence of the costs to implement and maintain such changes: particularly where such costs ultimately will be borne by ratepayers.

In sum, granting the Joint Utilities’ Motion does not prejudice any party, as it maintains the same time frames for responding to testimony while keeping the current dates for evidentiary

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<sup>2</sup> The City of Chicago (“City”) joins in CUB’s Response objecting to the Motion. Notably, however, the City is not one of the Petitioners in this proceeding and did not file/sponsor Direct Testimony. Accordingly, the City has no right to file Rebuttal Testimony. Moreover, this raises an issue as to whether the City can properly object to the Motion.

hearings. In addition, the Supplemental Direct Testimony the Joint Utilities seek to file will provide the Commission with relevant and useful information upon which to base its decision in this proceeding. For these reasons, the Motion should be granted.

## **II.** **Argument**

### **A. CUB/AG's "Prejudice" Claims Are Not Credible, And Are Clearly Inconsistent With The Facts**

The Joint Utilities' Motion and Supplemental Direct Testimony were filed just 16 days after Direct Testimony was due. Under the existing procedural schedule, CUB/AG had four weeks after the Joint Utilities' filed Direct Testimony to file their Rebuttal Testimony (June 19, 2006 to August 16, 2006). The Motion clearly stated that the Joint Utilities had no objection to modifying the schedule in order to allow CUB/AG that same four week period to properly consider the Supplemental Direct Testimony and file Rebuttal Testimony. Motion, p. 2. Indeed, there is ample time available before the scheduled evidentiary hearings for CUB/AG to have a full four weeks to evaluate the Supplemental Direct Testimony, file their Rebuttal Testimony, and meet the current evidentiary hearing dates. In the end, CUB/AG would have had, and still can have, the exact same four week period to file Rebuttal Testimony, as if the Supplemental Direct Testimony was filed on July 19, 2006. CUB/AG cannot credibly claim prejudice given these facts.

In its Response, the AG claims that the Joint Utilities "attempt to unduly delay this case" and that the Motion "departs from "well-established Commission practice." AG Response, pp. 2-3. Nothing could be further from the truth. In reality, the Joint Utilities sought to provide the AG with the same four week period contemplated under the current schedule for filing their

Rebuttal Testimony and maintain the existing evidentiary hearing dates. Clearly, the Joint Utilities were not, and do not, seek any delay to this case, let alone impose “undue” delay.

In this light, the AG’s claims concerning Section 200.660 of the Commission’s Rules are wrong. 83 Ill. Adm. Code § 200.660. Nothing within the Commission’s Rules of Practice preclude the Joint Utilities from seeking to file Supplemental Direct Testimony. Here, the Joint Utilities’ Motion explains that the relevant cost data could not be compiled in time to meet the July 19, 2006 filing date. Motion, p. 2. Moreover, and most importantly, the Joint Utilities Motion does not cause any “undue delay and prejudice.” The Joint Utilities filed the Motion and Supplemental Direct Testimony just 16 days after Direct Testimony was due. In addition, the Motion did not seek to disturb the evidentiary hearing dates, as there was ample time to allow the AG four weeks to consider such testimony and respond accordingly prior to hearings. In sum, the AG’s claim regarding Section 200.660 is neither credible nor correct.

Meanwhile, CUB/City spend a great deal of time discussing the substance of the Supplemental Direct Testimony, and fail to present any compelling arguments regarding prejudice. CUB/City Resp., pp. 2-3. What CUB/City fail to acknowledge is that the Joint Utilities proposal would provide them with the exact same period of time to respond in Rebuttal Testimony, as if the Supplemental Direct Testimony would have been filed just 16 days earlier, on July 19, 2006. That being the case, there is no prejudice to CUB/AG.

**B. The Joint Utilities Have Explained Why The Supplemental Direct Testimony Was Filed Just 16 Days After Direct Testimony**

The Joint Utilities explained in the Motion that they could not compile the relevant cost data, implementation information, and accompanying testimony in time to meet the Direct Testimony filing date of July 19, 2006. Motion, p. 2. The Motion further identified the fact the Joint Utilities were required to file Direct Testimony two months from the date the Petition

initiating this proceeding was filed. *Id.* Also, all parties to the proceeding recognize that CUB/AG effectively seek a complete rewrite of Part 280. In addition, the Joint Utilities filed this Supplemental Direct Testimony just 16 days after Direct testimony was due, not months after the fact. Given these facts, the Joint Utilities did explain the brief delay in filing the Supplemental Direct Testimony.

Nonetheless, CUB/AG erroneously claim that the Joint Utilities did not explain the basis for the delay. As discussed above, the Joint Utilities explained why there was a brief, 16 day delay in filing the Supplemental Direct Testimony.<sup>3</sup>

CUB/AG also argue that the Motion should be denied because the Joint Utilities have had “virtually” the same CUB/AG testimony since June 2005. CUB/City Resp., p. 2; AG Resp., p. 4. This argument is a red-herring and should be rejected out of hand. What CUB/AG filed in ICC Docket No. 05-0237 was never made part of that proceeding. In fact, the Joint Utilities were part of a larger utility group that quickly sought to strike much of that testimony in a Motion to Define Scope of Proceeding, filed July 15, 2005. The Motion to Define Scope ultimately was granted in a Commission Interim Order, entered February 8, 2006. Thus, given the pending Motion to Define Scope, the Joint Utilities did not waste resources conducting detailed evaluation of testimony that might not become part of the proceeding. Indeed, the Joint Utilities did not serve any discovery on that testimony in ICC Docket No. 05-0237.

What is before the Commission in this proceeding is the testimony that CUB/AG filed on May 19, 2006. The Joint Utilities used their best efforts to compile the cost data, implementation information and accompanying testimony in a timely fashion.<sup>4</sup> In the end, the Joint Utilities filed

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<sup>3</sup> See Argument D herein for further reasons why this CUB/AG claim should be rejected.

<sup>4</sup> To reinforce the information provided in the Motion, the Joint Utilities provide Affidavits attesting to the fact the Companies used their best efforts to obtain this data. The Affidavits are attached hereto as Appendix A.

the Supplemental Direct Testimony just 16 days after the date Direct Testimony was due. These facts, and the Joint Utilities actions, explain the reasons for the brief delay. Accordingly, CUB/AG's argument on this point should be rejected.

**C. CUB/AG's Objections Actually Are Prejudicial To The Commission: They Seek To Deny The Commission Use Of Relevant Information, And A Complete Record Upon Which To Assess Their Sweeping Changes To Part 280**

Neither CUB/City nor the AG dispute, nor can they, the fact that the Supplemental Direct Testimony contains relevant information pertaining to the proceeding. Rather, they claim that a 16 day delay in filing this testimony is somehow prejudicial and, thus, the testimony should not be allowed to be filed in this proceeding. Such claims are remarkable given the fact that the Joint Utilities proposed no delay to schedule, while giving these parties the full four weeks to consider the Supplemental Direct Testimony and prepare Rebuttal Testimony.

While CUB/City acknowledge that the Commission should have a complete record (CUB/City Resp., p. 4), that does not stop them from seeking to have the Supplemental Direct Testimony excluded from the proceeding. CUB/City/AG's position begs the question—why? The answer is clear. The Supplemental Direct Testimony demonstrates that the CUB/AG proposed rewrite of Part 280 will impose millions of dollars of costs on utilities, which will ultimately be borne by ratepayers. These parties do not want to have the Commission conduct a proper cost/benefit analysis to determine whether these sweeping changes are appropriate or reasonable. Obviously, keeping such information out of the evidentiary record will improperly preclude the Commission from considering these facts.

The Joint Utilities agree that parties are entitled to procedural fairness. The Commission also is entitled to make a fully informed decision in this proceeding. Here, there is no procedural prejudice to any party in granting the Motion. However, accepting the CUB/AG claims will

prejudice the Commission's ability to make a fully informed decision regarding a proposed rewrite of Part 280.

**D. CUB/AG's Claims About Delay And Prejudice Are Disingenuous Given The History Of Their Proposal**

The Commission should not consider the CUB/AG claims about delay and prejudice in a vacuum. On February 8, 2006, the Commission entered an Interim Order in Docket No. 05-0237 which, in part, rejected CUB/AG's efforts to expand the scope of that proceeding. At that time, CUB/AG had in hand a substantially similar proposal to the one before the Commission in this proceeding. While CUB/AG now complain about "undue delay" and prejudice surrounding the 16 day in filing Supplemental Direct Testimony, CUB/AG fail to reconcile their current position with their own actions earlier this year.

On February 8, 2006, the Commission set the scope of Docket No. 05-0237 in a fashion that did not consider the CUB/AG proposal. Despite their current claims about delay, did these parties immediately file their own petition in February 2006 to consider their proposal? No. In fact, these parties waited more than three months to file the petition initiate this proceeding. (Petition filed May 10, 2006). Did CUB/AG provide any explanation for that delay? No. Did they file their Direct Testimony with their Petition? No. Instead, their Direct Testimony was filed on May 19, 2006. Yet, despite having no explanation for their own three month delay—a delay of their own making, they now complain loudly about a 16 day delay in filing Supplemental Direct Testimony, even though the Joint Utilities' Motion did not, and does not, intend to delay the procedural schedule. These facts demonstrate clearly that such complaints are disingenuous and should be rejected.

**E. The Joint Utilities Have No Objection To Providing CUB/AG With Additional Time To Prepare Rebuttal Testimony**

In its Response, CUB/City request that the procedural schedule be revised if the Motion is granted. The Joint Utilities have no objection, subject to the fact that the City is not entitled to file Rebuttal Testimony, as they are not a Petition in this proceeding. As noted at the outset, the Joint Utilities Motion sought to provide CUB/AG with four weeks to respond to the Supplemental Direct Testimony, while maintaining the schedule for evidentiary hearings. The Joint Utilities have no objection to providing CUB/AG with additional time, beyond four weeks, to prepare and file Rebuttal Testimony.

**III.**  
**Conclusion**

Wherefore, the Joint Utilities respectfully request that the Administrative Law Judge grant their Motion to File Supplemental Direct Testimony Instantly.

Dated: August 16, 2006

Respectfully submitted,

COMMONWEALTH EDISON COMPANY;  
NORTHERN ILLINOIS GAS COMPANY  
D/BA/ NICOR GAS COMPANY; PEOPLES GAS  
LIGHT & COKE COMPANY; AND NORTH SHORE  
GAS COMPANY

By: \_\_\_\_\_  
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**AFFIDAVIT**

I, Daniel W. Rourke, under oath, hereby swear to the following:

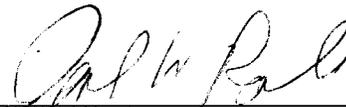
1. I am a Manager of Special Projects for Northern Illinois Gas Company, d/b/a Nicor Gas Company (“Nicor Gas”).
2. My Supplemental Direct Testimony was attached to a Motion to File Supplemental Direct Testimony *Instante* (“Motion”) in this proceeding, which was filed on August 4, 2006.
3. This Affidavit is being provided in support of that Motion and my Supplemental Direct Testimony.
4. In the proposed amendments set forth in the Petition and Direct Testimony of the Citizens Utility Board (“CUB”) and the People of the State of Illinois (“AG”) (collectively the Government and Consumer Parties (“GCP”)) there are numerous proposals which, if implemented, will impose substantial, additional costs to Nicor Gas.

5. Since the beginning of this proceeding, Nicor Gas has worked diligently to analyze the GCP proposals and subsequently prepare accurate cost information, or obtain estimated costs related to the GCP's proposed amendments.

6. In order to prepare my Supplemental Direct Testimony and obtain appropriate information, I was required to consult with employees in several departments within Nicor Gas that may be impacted by the GCP proposal. In addition, I had to review and verify information provided by these departments. This information, and my testimony surrounding this information, could not be completed by July 19, 2006.

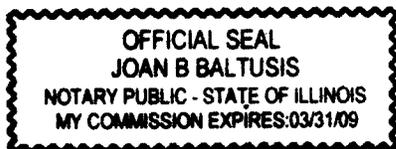
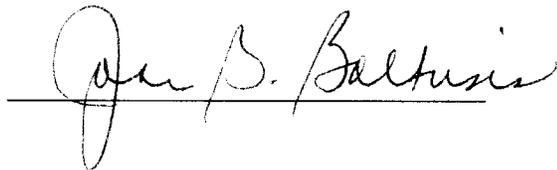
7. The information, cost estimates and testimony were completed on August 4, 2006 and filed expeditiously on that same date.

The undersigned certifies that the statements set forth herein are true and correct based upon the Affiant's personal knowledge.



\_\_\_\_\_  
Daniel W. Rourke

Subscribed and sworn to before me  
this 16th day of August, 2006.





8. The information and costs were completed on August 4, 2006 and filed expeditiously on that same date.

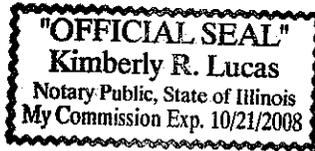
The undersigned certifies that the statements set forth in this instrument are true and correct, and based upon the Affiant's personal knowledge.



Richard M. Taglienti

SUBSCRIBED and SWORN to before me this 15<sup>th</sup> day of August, 2006.

  
Notary Public



**CERTIFICATE OF SERVICE**

I, John E. Rooney, hereby certify that I caused a copy of the Reply in Support of the Joint Utilities' Motion to File Supplemental Direct Testimony Instantly in consolidated Docket Nos. 06-0202 / 06-0379 to be served upon the service list on August 16, 2006.

\_\_\_\_\_  
John E. Rooney

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