

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NORTH SHORE GAS COMPANY	:	
	:	
Proposed General Increase In Rates For Gas Service.	:	No. 07-0241
	:	and
THE PEOPLES GAS LIGHT AND COKE COMPANY	:	No. 07-0242
	:	(Consol.)
	:	
Proposed General Increase In Rates For Gas Service.	:	

**THE PEOPLES GAS LIGHT AND COKE COMPANY’S
AND NORTH SHORE GAS COMPANY’S REPLY IN SUPPORT OF ITS MOTION
TO STRIKE PORTIONS OF GCI WITNESS WILLIAM L. GLAHN’S
DIRECT AND REBUTTAL TESTIMONY**

The Peoples Gas Light and Coke Company (“Peoples Gas”) and North Shore Gas Company (“North Shore”), respectfully submit this reply memorandum in support of their motion to strike portions of the direct and rebuttal testimony (“Motion”) of “GCI”¹ witness William L. Glahn, and state as follows:

INTRODUCTION

GCI’s response to the Motion confirms that Mr. Glahn is not an expert in climate science. While Mr. Glahn’s affidavit shows: 1) he was a fine economics and MBA student at the University of Virginia, 2) he has applied his “business forecasting expertise” to projects he has worked on in the past as a consultant, and 3) he has testified on weather in one other rate case in Nebraska, Mr. Glahn claims no expertise in climate science. Mr. Glahn does claim sufficient expertise to offer rebuttal to Peoples Gas’s and North Shore’s witness Mr. Marozas. Had he

¹ The Illinois Attorney General’s Office (the “AG”), the Citizens Utility Board (“CUB”), and the City of Chicago (the “City”) (collectively “GCI”) jointly submitted the testimony of three witnesses, including Mr. Glahn.

confined his testimony to areas of economics, finance, and statistics, there would have been no Motion. The Motion seeks to strike precisely identified excerpts of testimony in which Mr. Glahn testifies about global warming, weather trends, and interpretations of the federal government's experts on climate—subjects in which he has does not claim (and GCI has failed to meet its burden to prove) that he has knowledge beyond that of a layperson.

MR. GLAHN IS NOT QUALIFIED TO TESTIFY AS A CLIMATE EXPERT

The burden is on GCI to prove that Mr. Glahn is qualified to testify as an expert. *Gill v. Foster*, 232 Ill. App. 3d 768, 780 (4th Dist. 1992). GCI appears to agree with the standard for expert testimony that Peoples Gas and North Shore cited in their Motion: The purported expert must have knowledge and experience beyond that of an average citizen or layperson. *See, e.g., People v. Miller*, 173 Ill. 2d 167, 186 (1996) (cited by GCI); *People v. Randall*, 363 Ill. App. 3d 1124, 1131 (4th Dist. 2006) (cited by Peoples Gas and North Shore). However, GCI has not met this burden with respect to Mr. Glahn's testimony on climate trends. Specifically, GCI has not shown that Mr. Glahn is any more educated than an average person with respect to issues of climate science. Therefore, he is not qualified to testify regarding what weather data should be considered "normal."

Mr. Glahn is clearly highly educated and has significant experience in energy rate regulation. Peoples Gas and North Shore do not dispute that he is qualified to testify as an expert in the other major areas of his testimony, i.e. Rate Design and Cost of Service Principles, Embedded Cost of Service Study, and the Companies' Proposed Rate Design. *See*, Glahn Dir., GCI Ex. 3.0, 3:13-22. However, neither his *curriculum vitae* (GCI Ex. 3.1, Sched. 1), nor his affidavit in connection with this Motion, demonstrate that he has any specific expertise related to climate. This is highlighted by his testimony itself, which relies not on his own experience or analysis, but on NOAA web pages and what he speaks of as "common knowledge."

BECAUSE MR. GLAHN IS NOT QUALIFIED TO TESTIFY REGARDING CLIMATE SCIENCE, CERTAIN PORTIONS OF HIS TESTIMONY SHOULD BE STRICKEN

The Motion identifies several instances in Mr. Glahn’s direct testimony where he testifies, *inter alia*, about NOAA’s definition of normal weather data, his opinion on why NOAA’s use of a 30-year term for determining weather data is appropriate, his opinions in general on NOAA, and his opinions on global warming, and he quotes at length from the NOAA website. Mr. Glahn’s rebuttal testimony contains more quotes from the NOAA website, speculates about issues that are not present in the case, and improperly cites factual findings from another public service commission. As noted above, these are areas that should be stricken because Mr. Glahn has not met the threshold requirement of establishing that he is an expert in climate science.

GCI argues that, pursuant to Federal Rule of Evidence 703, as adopted by the Illinois courts, the NOAA materials are reliable and therefore Mr. Glahn should be allowed to base his opinion on them. Additionally, GCI contends that Rule 705 mandates that the burden is on Peoples Gas and North Shore to challenge the underlying facts on which Mr. Glahn testifies during cross examination. These rules of what bona fide experts can rely upon are irrelevant to the Motion here. These Rules presume that the witness has *already been tendered as an expert* in the subject area at issue, and what facts the expert can rely upon. The point of Peoples Gas’ and North Shore’s Motion is that Mr. Glahn is not *qualified* as an expert in climate science. Therefore, evidentiary rules regarding experts do not apply to him, and GCI is incorrect in arguing that they do.

Additionally, whether witness Brian Marozas “opened the door” regarding “normal” weather is irrelevant to whether Mr. Glahn is qualified to testify regarding climate science. Mr. Marozas, like Mr. Glahn, is an expert in statistics and forecasting, but not climate.

Note that, unlike Mr. Glahn, Mr. Marozas does not offer opinions on matters of climate science. He offers a statistical analysis and does the appropriate mathematical tests. With the full understanding that Mr. Marozas is not qualified to testify about climate science, Peoples Gas and North Shore submitted the testimony of an undeniably qualified climate scientist, Professor Eugene Takle. Presumably, Mr. Glahn would have the necessary expertise to question Mr. Marozas' statistical methodology, and question the mathematical validity of the tests performed (that is, other than suggest additional tests which Mr. Marozas actually had already performed). That is not the thrust of Mr. Glahn's testimony, however. Rather, portions of his testimony are intended to rebut the statements about climate trends discussed by Professor Takle. Mr. Glahn's testimony about NOAA policies and methodologies (using only NOAA's website, and not his own expertise, as a foundation) and long-term global warming trends based on what he said was "common knowledge." These portions of Mr. Glahn's direct and rebuttal are not proper expert testimony, and those portions should be stricken.

Finally, Mr. Glahn cited portions of a Missouri Public Service Commission order approving use of a 30-year average. In general, Peoples Gas and North Shore do not object to citing orders from other Commissions, as long as it is done in the proper context. For example, had Mr. Glahn surveyed the states to find which ones still used the 30-year average, that might be proper evidence. But Mr. Glahn is using the quoted material to attempt to show a particular commission's rationale and apply it here. The problem with having witnesses quote a snippet from a Commission order as evidence is that the factual record and context of the commission's statement is not present. That factual record could prove important to the interpretation of the statement. Mr. Glahn's quotation from the Missouri Commission decision illustrates this point. The factual context in that case was that the utility had an "SFV," or straight-fixed-variable rate

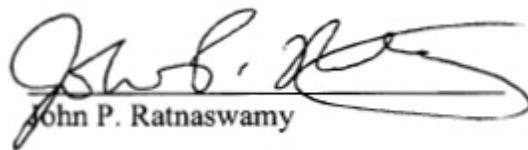
design. This type of rate design (as discussed in the direct testimony of Valerie Grace, North Shore Ex. VG 1.0, at pages 13-15 and Peoples Gas Ex. VG 1.0 at pages 16-18) recovers all fixed costs through the customer charge, and only recovers variable costs—that is, costs directly related to sendout—through the volumetric portion of the rate. With such a rate design, weather normalization is largely irrelevant, as there is little reason to make assumptions and predictions about future weather. This appears to be the reason that the Missouri Commission stated that weather normalization “will not be an issue for 90 percent of company's customers,” meaning that their decision on the averaging period for weather normalization was a trivial one. Without the proper context, this portion of Mr. Glahn’s testimony is not proper evidence, and arguments as to the applicability of particular decisions can be left to the briefs.

CONCLUSION

THEREFORE, in advance of Mr. Glahn’s swearing to his direct and rebuttal testimony, the offer of that testimony into evidence, and his being tendered for cross-examination, Peoples Gas and North Shore respectfully request that the Administrative Law Judges grant their motion to strike the specific pages and lines of Mr. Glahn’s direct and rebuttal testimony cited in its Motion, in order to ensure that an appropriate evidentiary record is presented to the Commission for decision in these proceedings.

Dated: September 4, 2007

By



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