STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| 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. | ) ) | |

**INITIAL BRIEF OF ENVIRONMENTAL LAW AND POLICY CENTER**

**VII. NEW RIDERS**

**D. Rider EEP (Merits of Energy Efficiency Programs and Rate Treatment)**

## 1. INTRODUCTION AND OVERVIEW OF ENERGY EFFICIENCY PROGRAMS

Providing consumers with a natural gas energy efficiency program is an important issue that has needed to be addressed for quite some time as the Commission has acknowledged. *Northern Illinois Gas Company*, Ill. C. C. Dkt. No. 04-0779, Order at 193 (September 20, 2005). In the present case, the Peoples Gas Light & Coke Company and North Shore Gas Company ("the Companies") are tackling the issue of an energy efficiency program for customers head on with an energy efficiency proposal and this proposal is being supported in virtually every respect by the City, the State, and consumer and environmental groups. While Staff has concerns with the proposal, all of Staff's concerns are addressed by the structure of the program and the evidence supporting the program as submitted into the record.

The Companies have proposed Rider EEP to support energy efficiency programs for residential heating customers, low income customers and small commercial customers. (Peoples

Ex. LTB 1.0, lines 475-79). The Companies are proposing to spend $7.5 million on these programs to be recovered through Rider EEP. (Peoples Ex. LTB 1.0, lines 490-92).

The Companies are proposing the EEP because "the Company generally supports energy efficiency measures in its service territory" and because "at this point in time it is important to become more structured in our approach to energy efficiency." (Peoples Ex. LTB 1.0, lines 483-87). As discussed below, the Companies agree that energy efficiency programs benefit customers.

The Companies agreed to the proposed elements of the EEP as part of the merger proceeding, ICC Docket No. 06-0540. The resulting conditions in that docket related to energy efficiency and the Companies' proposal are supported by the stakeholders listed in Condition 28 including Environmental Law & Policy Center, the Illinois Attorney General, the Citizens Utility Board, and the City of Chicago. (Peoples Ex. IR-1.0, lines 97-105. D). The only point of departure between the Companies and the stakeholders is whether the funding for the EEP should be recovered in a rider or base rates.

ELPC respectfully requests the Commission adopt in its final Order the framework and funding level for the energy efficiency program proposed by the Companies, with the exception that recovery be through base rates instead of a rider. Energy efficiency provides customers benefits and savings in the same manner as other services provided by the Companies. The EEP should not be singled out through a special rider, as though it constitutes an additional charge.

## 2. <u>FACTUAL BACKGROUND</u>

### a. The Proposed Energy Efficiency Program Is a Cost-Effective Means To Mitigate Increasing Natural Gas Costs for Consumers

#### i. Customers are Facing Significantly Increasing Natural Gas Bills

The Companies are proposing a significant base rate increase. For instance, Peoples is proposing rate increases that would total $106.24 for the average small residential heating customer. (Peoples Ex. VG 1.7). At the same time, consumers are being hard hit by rising gas supply costs. Gas supply costs comprise over two-thirds of a residential consumer's bill and natural gas prices are rising and extremely volatile. "The average wholesale price of natural gas in Illinois has been over $8.00 per thousand cubic feet since 2005, up from an average of $3.00 in 1999."(ELPC Ex. 1.0, Kubert Direct Testimony, Lines 40-41) Companies' witnesses agree that rising gas supply costs are burdensome for customers. "Natural gas prices have increased sharply, which place . . . a financial burden on residential and business customers." (Peoples Gas Ex. IR-1.0, Lines 90-91). In sum, customers are being hard hit by rising natural gas supply costs, and the Companies' proposed rate increase compounds the impact that customers are feeling from their gas bills. Energy efficiency programs are a solution to mitigate this impact.

#### ii. The Proposed Energy Efficiency Program Will Save Consumers Money by Reducing Their Gas Usage

The consumers who directly participate in well-designed energy efficiency programs benefit from reduced gas usage and lower bills. Customers receive the opportunity to participate in well-designed energy efficiency programs that can help significantly reduce their natural gas bills by improving energy efficiency in their homes and businesses. "Energy efficiency programs can . . . assist all customers in better managing their energy use and lowering energy bills." (Peoples Gas Ex. IR-1.0, Lines 93-95). Energy efficiency measures can cost half per Mcf saved compared to the cost of natural gas. "ACEEE's review of leading utility natural gas energy efficiency program results indicates that such programs typically have more than a 2 to 1 'benefit to cost ratio,' and save natural gas at a cost of around $2.50 per Mcf. That is less than half the forecasted wholesale cost of natural gas over the next 10 years." (ELPC Ex. 1.0, lines 86-89).

These savings are documented in the many programs being run in other states. Natural gas energy efficiency programs have been implemented by utilities in over 20 states, including Iowa and Wisconsin. (ELPC Ex. 1.0, lines 43-45).

> In 2005, the average residential natural gas consumption in Iowa was 791 therms, in Wisconsin 823 therms, in Minnesota 942 therms. In contrast, the average Peoples Energy residential customer used 1,231 therms and North Shore Gas customer used 1,392 therms. This comparative energy consumption data is attached as Exhibit 1.2. While there are a number of factors driving these differences, including the size and age of the housing stock, it suggests that long-established energy efficiency programs in these neighboring (and colder) states have played a role in reducing gas use. It also suggests that there is significant untapped energy efficiency potential in Illinois.

(ELPC Ex. 1.0, lines 45-52)

For example, if a residential customer made an investment that has an average cost of $100 per year over the life of the energy efficiency improvement (normally 15-20 years), assuming a conservative $2 payoff on $1 investment,[1] on a yearly basis, they could recoup that $100 plus the approximately $100 average rate increase that Peoples small residential heating customers would pay under the Companies' proposed rate increase. This does not even consider that it is the norm within such programs to provide participants with energy efficiency improvements at discounted rates so the payoff to the customer on their investment would likely be even higher.

[1] *See, e.g.,* ELPC Ex. 1.3, p. 55, participant benefit-to-cost ratio in NW Natural's High Efficiency Furnace Program is 2.4.

A goal of in excess of $100 in annual savings per residential participant is extremely reasonable. In Massachusetts, a program providing rebates on high-efficiency furnaces is seeing savings of 185 therms annually per customer. (ELPC Ex. 1.3, p. 50). In Vermont, a residential retrofit program that offers energy audits and across the board recommendations of energy efficiency measures is providing individual customers with savings of 510 therms annually. (ELPC Ex. 1.3, p. 72). Finally, a similar residential retrofit program in New York is providing individual customers with annual savings of 347.9 therms. (ELPC Ex. 1.3, p. 64). Consequently, in Illinois it would be reasonable to expect savings comparable to the median program in New York. At a conservative estimate, reducing gas usage by 347.9 therms annually would provide customers with $141.25 in annual savings. Such savings would more than cover residential participants' investment in the program and improvements and even offset part of the Companies' proposed rate increases.

### iii. The Proposed Energy Efficiency Program Will Keep Consumers' Energy Dollars In-State and Benefit Illinois' Economy

The proposed energy efficiency program would benefit Illinois' overall economy. Essentially no natural gas is produced in Illinois and the state is entirely dependent on natural gas imported from other states and countries. (Peoples Gas Ex. IR 1.0, lines 89-90). Every dollar that consumers spend on the commodity portion of their natural gas bill is a dollar transferred out of Illinois' economy. "Natural gas prices have increased sharply, which . . . affect the ability of the State of Illinois to grow its economy and be competitive." (Peoples Gas Ex. IR 1.0, lines 90-92). The total drain on Illinois' economy resulting from buying out-of-state natural gas is over $7 billion per year. (ELPC Ex. 1.0, lines 67-69).

Energy efficiency programs stem the energy dollar outflow and keep more of consumers' money in the Illinois' economy. "Energy efficiency programs can reduce expenditures for importing natural gas supplies . . . ." (Peoples Gas Ex. IR 1.0, lines 93-94). Energy efficiency reduces the amount of natural gas that must be imported from out-of-state because it reduces the amount of natural gas consumed by customers.

> When ratepayer dollars are spent on energy efficiency programs, those dollars go to pay for local vendors and workers who sell and install the energy efficiency equipment, rather than flowing out of state to purchase more gas. In addition, long-term customer savings from lower utility bills are redirected elsewhere into the state's economy. As a result, energy efficiency programs produce net economic benefits in terms of total employment and payroll within the state.

(ELPC Ex. 1.0, lines 65-77, ELPC Ex. 1.3) Energy efficiency programs in Illinois have the potential to produce a net gain of nearly 6,500 jobs and $220 million in additional net annual employee compensation in Illinois by 2010, and 13,000 net new jobs and $440 million in net additional annual employee compensation by 2020. (ELPC Ex. 1.0, lines 80-85). In sum, energy efficiency brings an enormous benefit to Illinois' economy over buying out-of-state natural gas.

#### iv. Energy Efficiency Programs Would Benefit All Consumers by Reducing The Average Price Of Gas Supply That Is Passed Through

Broad scale energy efficiency program also provide the benefit to all consumers of reduced natural gas prices. Energy efficiency programs help to reduce total demand for natural gas, which puts downward pressure on natural gas market prices.

> Natural gas supplies continue to be tight, driving up natural gas prices on the margin. Another recent study by ACEEE examined the relationship between current natural gas supply and demand, gas prices and energy efficiency. The study, "*Impacts of Energy Efficiency and Renewable Energy on Natural Gas Markets: An Updated Analysis*," is attached to this testimony as ELPC Exhibit 1.4. The study concluded policies and programs that could reduce natural gas demand nationally by just over 1% per year could result in wholesale natural gas prices that are 10-20% below a baseline "business as usual" scenario. This would collectively save consumers billions of dollars per year. While the proposed energy efficiency programs for Peoples Gas and North Shore Gas are not sufficient by themselves to have this effect, the combined actions of utilities,

> legislatures, public utility commissions and natural gas customers everywhere can ease these supply constraints.

(ELPC Ex. 1.0, lines 94-106). While ELPC acknowledges that the companies' proposed energy efficiency program alone might not affect wholesale natural gas prices, it is a step towards reductions in natural gas prices.

**b. The Proposed Energy Efficiency Program Is a Prudent Expenditure**

There are many aspects of the program which assures that dedicating funding to the EEP is a prudent expenditure. First, there is the accountability built into the structure of the program. As described in great detail in Company witness Ilze Rukis' testimony, the Companies have proposed a structure for the EEP that holds those responsible for the program accountable but also maintains the program's independence from the Companies. The Governance Board, whose members would be accountable to and representative of all interested parties, is at the top of the hierarchy of the program. It is made up of five voting members, one each from ELPC, the Gas Companies, a consumer advocacy group, the City of Chicago, and a governmental or consumer organization representing North Shore's service territory. (Peoples Ex. IR-1.0, lines 128-135). In addition, there would be one non-voting member from the ICC or ICC Staff. (*Id.* at lines 136-138) The Contract Administrator, Program Administrator and Program Evaluator would be selected by the Governance Board and report to the Governance Board. (*Id.* at lines 161-295. )

Second, the proposal assures accountability through the numerous audits and evaluations. The Program Evaluator would perform periodic audits of the program and prepare annual reports (*Id.* at lines 188-190.) He or she would also provide other periodic evaluations or reports as required by the Governance Board. (*Id.* at 190-193.) The Companies also recommend a periodic review by an independent third party to assess how well the overall structure and process of the programs are performing and whether any changes should be made. (*Id.* at lines 211-232.)

Ultimately, there would be accountability before the Commission. The Companies testified that because the Commission maintains authority over Peoples and North Shore and authority over the level of rates charged, the Commission maintains the ability to review how the program is running. (R. at 104:2-9.) Specifically, all reports, audits, and evaluations could be filed with the Commission and exhibits within the next rate case. (R. at 104:13-105:3.)

In addition, the program is prudent use of funds because it assures energy efficiency projects with high paybacks. Despite the fact that energy efficiency can save utility customers money, there is still underinvestment in energy efficiency in Illinois. "You can take a look at the level of investment that is occurring specifically in Illinois in energy efficiency and compare it to the level of investments that are occurring in other states and in similar climate zones, and conclude that the level of investments relative to the opportunities are much lower here than they are in other states." (R. at 1420:18-1421:3.) By way of example, one can look at the market penetration of high-efficiency furnaces. In Illinois the market penetration is 30%, while in Wisconsin, where there has been an energy efficiency program for many years, the market penetration of high-efficiency furnaces is 70%. (R. at 1421:13-1422:3.) There are many reasons for the underinvestment in energy efficiency:

> lack of information regarding potential energy efficient improvements and their benefits; a focus on first-cost versus life-cycle costs when constructing buildings and buying appliances; uncertainty over length of time in homes which discourages longer payback investments; unreasonably short payback requirements by businesses; a tendency by builders to comply with minimal code requirements; and split incentives between landlords and tenants.

(ELPC Ex. 2.0, lines 77-82). Because energy efficiency costs less per MCF saved than natural gas, energy efficiency programs and policies are necessary to increase the investment in energy efficiency to a level at which individuals and society will reap the most benefit. (ELPC Ex.1.3, 1.4). .

In addition, built into the program are measures which assure energy efficiency projects with the highest paybacks. "One of the first things that the governance board should accomplish is a market potential study which will further ensure the best and wisest use of available resources by identifying the opportunities to use the funds." (R. at 97:14-18.) There will also be a "bidding process that will ensure that we get the lowest-cost programs." (R. at 98:1-3.) Consequently, the EEP is a prudent expenditure and necessary to accomplishing broad adoption of energy efficiency measures.

Staff's criticisms suggesting the contrary are not well-supported. While a large basis for Staff's criticism of the EEP is that it is inefficient (or unnecessary) because high gas prices alone are a sufficient incentive to invest in energy efficiency, Staff witness Dr. Rearden admitted that this was based on the assumptions that "the household perceives [energy efficiency] projects correctly . . . and has the ability to invest in all of them." (R. at 713:18-714:1.) Obviously these assumptions don't perfectly fit with reality, as Dr. Rearden later went on to admit. Dr. Rearden agreed that there are many factors which discourage individuals from undertaking what would otherwise be economically beneficial energy efficiency investments including lack of information or education, an inability to make large, up-front investments in energy efficiency projects, and uncertainty over length of time at a residence or place of business. (R. at 733:5-734:12.) Dr. Rearden went on to agree that, as a result of these factors, not all energy efficiency projects where the economic benefits outweigh the costs of the project would be undertaken. (R. at 735:22-736:7.) These concessions by Dr. Rearden obviously undercut Staff's argument that the "perfect" market is sufficient to encourage energy efficiency. In fact, Dr. Rearden admitted that he is unaware of what the current level of investment in energy efficiency is. (R. at 737:3-19.) Consequently, the Commission should give greater weight to the testimony and exhibits submitted by ELPC because it provided in-depth evidence as to current investment levels in energy efficiency and the specific cost savings that can be provided by energy efficiency measures.

Staff criticized the unfairness of the benefit of the EEP accruing to only a subset of the ratepayers who pay for program. First, as detailed above and as recognized by the Commission and the General Assembly, there are broader benefits to energy efficiency than just the dollar benefits to those who participate in the program. *See supra* Section 3. Moreover, Staff acknowledged that there are other examples of recovery of expenditures from a broad set of ratepayers even when more of the benefit accrued to just a few. Such examples include uncollectibles and infrastructure improvements. (R. at 731:1-14; *see also* ELPC Ex. 2.0, lines 51-55). In fact, the EEP is even more equitable than these other examples because all ratepayers who contribute to the program would have access to it. (R. at 732:1-9; ELPC Ex. 2.0, lines 54-55). Consequently, this aspect of the structure of the program underscores its prudency.

**c. Recovery for an Energy Efficiency Program is Appropriate Through Base Rates**

Recovery for the Energy Efficiency Program should be through base rates, not a rider. The Companies have offered no justification for singling out the Energy Efficiency Program in a rider. The mere fact that the Energy Efficiency Program is a new program and new expense area for the Companies does not justify a rider. "Typically, the only expenses that justify riders are those which are outside the utility's control or are volatile and unpredictable. The energy efficiency program is not outside the utility's control—indeed, the utilities in this case are proposing the expenditure—and is neither volatile nor unpredictable." (ELPC Ex. 1.0, lines 143-146.) In fact it is just the opposite, stable and predictable, because it is fixed at the same amount every year. The witness for the People of the State of Illinois, City of Chicago, and Citizens

Utility Board agreed that the size and anticipated volatility of conservation funding expense do not justify a special tariff rider. (GCI Ex. MLB-1.0, at 72, lines 1-4.) "The Companies conservation funding obligation that would be addressed by proposed Rider EEP is a fixed $7.5 million annual amount across both utilities, an amount that is not expected to change in the foreseeable future. Such a fixed expense can and should be included in the basic revenue requirement in these consolidated dockets to 'ensure that the defined level of funding is made available on an ongoing basis' as suggested by Mr. Feingold." (GCI Ex. MLB-1.0, at 72, lines 4-9.) Thus it should be considered no different from the thousands of other fixed costs of the utilities that are recovered through base rates and not riders.

## 3. <u>LEGAL ARGUMENT</u>

### a. The Commission Has the Authority To Approve a Ratepayer-funded Energy Efficiency Program.

The Commission has the authority to direct the adopting of energy efficiency programs in this rate case Order under its broad statutory authority. 220 Ill. Comp. Stat. 5/9-250.[2]

The General Assembly has specifically directed the Commission to consider energy efficiency and environmental impacts. The Public Utilities Act states that it is the policy of the State of Illinois that "environmentally safe" power is provided to consumers, and the goals and objectives of regulation by the Commission include ensuring "environmental quality". 220 Ill. Comp. Stat. 5/1-102 (b). Energy efficiency is "environmentally safe" and helps to "ensure[] environmental quality."

[2] "The Commission shall have the power, upon a hearing, upon its own motion or upon complaint, to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedule of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof." 220 Ill. Comp. Stat. 5/9-250.

In another statutory provision: "The General Assembly finds and declares that encouraging energy efficiency will improve the environmental quality and public health in the State of Illinois." 20 Ill. Comp. Stat. 687/6-2. The Commission itself has recognized the importance of energy efficiency. "The Commission understands the importance and critical necessity of using energy efficiency plans as strategic tools to protect Illinois consumers and reduce their energy cots." *Northern Illinois Gas Company*, Ill. C. C. Dkt. No. 04-0779, Order at 193 (September 20, 2005).

In addition, the Energy Policy and Planning Act specifically charges the Commission with conserving energy and utilizing energy resources from within the state:

> It is declared to be the policy of the State of Illinois: (1) To become energy self-reliant to the greatest extent possible, primarily by the utilization of the energy resources available within the borders of this State, and by the increased conservation of energy; and (2) To emphasize an approach to energy problems and solutions on a local or regional basis, and to emphasize the use of renewable energy sources wherever possible and practical to do so.

20 Ill. Comp. Stat. 1120/2 (b) (1) & (2). Again, energy efficiency meets the requirements of this provision. As ELPC and company witnesses point out, energy efficiency uses in-state products and labor to replace the need for out-of-state natural gas. (ELPC Ex. 1.0, lines 55-85; Peoples Gas Ex. IR 1.0, lines 93-94.) The Commission's adoption of energy conservation/efficiency programs for the Companies would meet the terms of the Energy Policy and Planning Act.

### b. Energy Efficiency Programs Meet the Requirement That Utilities Provide Service at the Least Cost.

Energy efficiency programs should also be adopted in this proceeding to help fulfill the least-cost principles. 220 Ill. Comp. Stat. 5/1-102; 220 Ill. Comp. Stat. 5/8-401.[3] The least-cost

3 The General Assembly finds that the health, welfare and prosperity of all Illinois citizens require the provision of adequate, efficient, reliable, environmentally safe and least-cost public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens. . . . [T]he goals and objectives of . . . regulation shall be to ensure

provisions impose meaningful requirements on utilities. *Commonwealth Edison Co. v. City of Warrenville*, 680 N.E.2d 465, 469 (Ill. App. Ct. 1997); *Consumers Illinois Water Company*, Ill. C. C. Dkt. 02-0155, 224 P.U.R.4th 309, 68-70 (March 12, 2003). In meeting its responsibilities under the least-cost provision, the Commission has conditioned its approval of gas utilities' rate proposals on their consistency with the least-cost requirement of Section 1-102. *See, e.g., Illinois Power Company*, Ill. C. C. Dkt. 93-0183, 151 P.U.R.4th 281**,** 23 (April 6, 1994).

The Commission itself has recognized that energy efficiency reduces energy costs for consumers. "We believe that smart energy efficiency programs will have two effects. First, they will lower the cost of heating for the home or business participating in the program. Second, targeted correctly, they will reduce the amount of high cost natural gas that Illinois has to buy, thus reducing everyone's costs, as well." *Northern Illinois Gas Company*, Ill. C. C. Dkt. No. 04-0779, Order at 193 (September 20, 2005).

There is no doubt that gas costs are increasing; the Companies acknowledged this in testimony. Considering that energy efficiency costs half of what natural gas costs per Mcf, well-designed energy efficiency programs meet the least-cost requirement and, as a result, should be adopted. (ELPC Ex. 1.0, lines 86-91). For consumer participants in a program, energy efficiency provides energy service to them at the least cost. Furthermore, the least cost requirement is met in a second respect because broader energy efficiency programs can reduce the overall average cost of gas charged to all consumers. (ELPC Ex. 1.0, lines 94-106).

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(a) Efficiency: the provision of reliable energy services at the least possible cost to the citizens of the State; in such manner that: . . .
(ii) all supply and demand options are considered and evaluated using comparable terms and methods in order to determine how utilities shall meet their customers' demands for public utility services at the least cost. 220 Ill. Comp. Stat. 5/1-102.
The least cost provision is not merely prefatory language but is also repeated later in the Act. "Every public utility subject to this Act shall provide service and facilities which are in all respects adequate, efficient, reliable and environmentally safe and which, consistent with these obligations, constitute the least-cost means of meeting the utility's service obligations." 220 Ill. Comp. Stat. 5/8-401.

### c. This General Ratemaking Proceeding Provides the Right Venue for the Companies To Recover Expenses of an Energy Efficiency Program.

Over and over in this proceeding, the Companies have emphasized cost recovery. There is a concern that if the Commission adopted a utility-funded energy efficiency program subsequent to this proceeding, the utility would not be able to obtain cost recovery until the next rate case, whenever that may be. Since all parties are currently before the Commission in a rate case, it is appropriate to adopt the EEP in this case.

## 4. CONCLUSION

ELPC respectfully requests the Commission adopt in its final Order the framework and funding level for the energy efficiency program proposed by the Companies, with the exception that recovery be through base rates instead of a rider. Doing so will allow an energy efficiency program that will provide both utility bill savings to Peoples and North Shore customers and benefits for Illinois' economy and environment.

Respectfully Submitted,

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| North Shore Gas Company | ) | |
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| In natural gas rates | ) | |
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## <u>NOTICE OF FILING</u>

PLEASE TAKE NOTICE that on this date, October 12, 2007, the Environmental Law & Policy Center caused to be filed with the Chief Clerk of the Illinois Commerce Commission the attached INITIAL BRIEF OF ENVIRONMENTAL LAW & POLICY CENTER via e-Docket.

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## CERTIFICATE OF SERVICE

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