STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	**)**	
	)	
Proposed General Increase In Rates	**)**	**Docket No. 07-0241**
For Gas Service	**)**	
	)	**Docket No. 07-0242**
The Peoples Gas Light and Coke	**)**	
Company	**)**	**(cons.)**
	)	
Proposed General Increase In Rates	**)**	
For Gas Service	**)**	

BRIEF ON EXCEPTIONS OF CONSTELLATION NEWENERGY-GAS DIVISION, LLC

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BRIEF ON EXCEPTIONS OF
CONSTELLATION NEWENERGY-GAS DIVISION, LLC

Constellation NewEnergy – Gas Division, LLC ("CNE-Gas"), by its attorney, pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.820), hereby submits to the Illinois Commerce Commission ("Commission") its Brief on Exceptions to the Administrative Law Judges' Proposed Order ("Proposed Order") issues in the above-referenced proceeding regarding the proposed general rate increases submitted by Peoples Gas Light and Coke Company ("PGL") and North Shore Gas Company ("NS"), jointly referred to as Peoples.[1]

I.
THE COMMISSION SHOULD ADOPT THE TRANSPORTATION COMPONENTS OF THE PROPOSED ORDER SUBJECT TO THE POST-HEARING AGREEMENT OF CNE-GAS, VANGUARD ENERGY AND PEOPLES

Following the release of the Proposed Order, CNE-Gas, Vanguard Energy Services LLC ("Vanguard") and Peoples entered into discussions seeking a mutually-agreeable resolution of the large transportation issues in these proceedings. Discussions focused on the Transportation Issues contained at Section X of the Proposed Order, primarily within Sub-Section C. Large Volume Transportation Program of the Proposed Order.

Based on the outcome of these discussions, CNE-Gas specifically agreed that it would not raise exceptions to the Proposed Order on the following issues:

[1] In accordance with Section 200.830 of the Commission's Rules of Practice, substitute language for the exceptions taken herein is being provided in Attachment A to the instant Brief of Exceptions. In addition, Attachment A also include notation of several typographical corrections to improve the accuracy of the document.

(1) Any of the Uncontested Issues described within B. Uncontested Issues;

(2) Retention of Rider FST with certain modifications (X. C. 1.);

(3) Approval of revised Rider SST including certain modifications (X. C. 2.);

(4) Rejection of March 31 storage withdrawal requirements (X. C. 4.);

(5) Daily injection limit from November through March based upon Maximum Daily Quantities ("MDQ") (X. C. 4.);

(6) Rejection of an Unbundled Storage Bank (X. C. 5.);

(7) Increasing the maximum pool size to 300 accounts under Rider P (X. C. 6. a));

(8) Allowing the creation of super pools for seasonal cycling targets, including any stand-alone accounts when a single supplier provides gas during a month (X. C. 6. b));

(9) Permitting customers with different Selected Standby Percentages ("SSP") to be in the same pool (X. C. 6. c));

(10) Acceptance of intraday allocations (X. C. 7. a));

(11) Rejection of intraday nominations (X. C. 7. b.);

(12) Creation of a tariff provision to accept case-by-case adjustments during a delivery restriction (X. C. 7. b)); and

(13) Any of the issues under "8. Other Large Volume Transportation Issues" including approval of the utility provision of service classification, rider, allowable bank, maximum daily quantity, and selected standby percentage information to a supplier upon customer consent (X. C. 8. d)).

As a result of our mutual understanding, Peoples, Vanguard and CNE-Gas all agreed to raise no exceptions to the Proposed Order on any of the aforementioned issues. As such these issues will not be addressed herein but CNE-Gas reserves the right to respond to any arguments from other parities on these or other topics during the Reply Brief on Exceptions phase of these proceedings.

Further, Peoples, Vanguard and CNE-Gas agreed to seek modification of the Proposed Order on the following two (2) items only:

- For seasonal cycling requirements only (pages 264-265), PGL customers would still be required to have injected at least 70% of the customer's Allowable Bank by November 30 as found in the Proposed Order. The seasonal cycling requirement for NS, however, would be modified to require NS customers to have injected at least 75% of the customer's Allowable Bank by November 30. (*See* CNE-Gas Initial Brief at 23-26)

- For daily injection limits (pages 265-266), adjust the Proposed Order's year-round MDQ injection limits for Riders FST and SST with a Maximum Daily Nomination (MDN) limit during April through October. The MDN would be defined as the maximum amount of gas that a customer may deliver on any day. The MDN would be the customer's average daily use in the comparable month in the prior year plus 0.67% (20% of AB divided by 30) of the customer's AB. However, if a customer's usage profile materially changes as compared to the prior year, the Utilities would accept customer requests to revise MDN and in good faith entertain agreement to a revised MDN based upon demonstrable evidence of the occurrence or the reasonably expected occurrence of a material change in that customer's usage profile. (*See* CNE-Gas Initial Brief at 10-15; Vanguard Energy Services Initial Brief at 2-7)

Finally, Peoples, Vanguard, and CNE-Gas agreed to permit each party to be free to raise exceptions concerning the topic of Super Pooling for the purposes of applying unauthorized use penalties on critical days and imbalance account charges on supply surplus days. The parties agree no other exceptions would be raised concerning Super Pooling.

Overall, CNE-Gas believes that if the two modifications agreed to above, plus Super Pooling on critical and supply surplus days is required, and all other elements of the Proposed Order for Large Volume Transportation Programs remain unchanged, the final Order will strike a delicate balance on transportation issues as they relate to the needs of the utilities, customers and suppliers that serve large transportation customers. To accomplish this requires that the Commission modify the Proposed Order in three distinct areas:

1. Require NS customers to have injected at least 75% (not 85%) of the customer's Allowable Bank by November 30;
2. Replaces MDQ limits during April through October with a MDN-based injection limit; and

3. Requires Super Pooling the purposes of applying unauthorized use penalties on critical days and imbalance account charges on supply surplus days.

All remaining elements of Section X. C. Large Volume Transportation Programs would remain unchanged from the Proposed Order. Specifically, CNE-Gas submits that the Commission should modify the Proposed Order in accord with the Agreement reached between Peoples, Vanguard and CNE-Gas with the lone exception that the Proposed Order should also be modified to require Super Pooling on critical day and supply surplus days as explained more fully herein.

II.
THE COMMISSION SHOULD AMEND THE PROPOSED ORDER TO AUTHORIZE CRITICAL AND SUPPLY SURPLUS DAY SUPER POOLING

The Proposed Order approves Super Pooling of pools and stand-alone customers, who purchase supply from a single supplier during the month, that are under common management in order to determine compliance with the November 30 injection targets. Essentially, Super Pooling is merely a netting or aggregation of critical day or supply surplus day imbalances among the multiple pools[2] operated by a single marketer or supplier. The Proposed Order rejects Super Pooling for the purpose of applying unauthorized use penalties on critical days or imbalance account charges on supply surplus days. (Proposed Order at 269)

The Proposed Order states:

> Given the Utilities' assertion that the underlying intention of their cycling regime is to achieve *system-wide* objectives (and not to impose penalties on individual accounts), fragmentation of a marketer's stand-alone accounts is, at the least, unnecessary. (Proposed Order at 269)

[2] The Proposed Order established a limit of 300 customers per pool . CNE-Gas, and other marketers or suppliers, will continue to operate multiple pools.

To alleviate the billing system concerns of Peoples by inclusion of marketer's stand-alone accounts in Super Pools, the Proposed Order adopts CNE-Gas's recommendation that a marketer or supplier can only include in its Super Pool any stand-alone customer as long as that stand-alone customer ONLY has purchased gas supply from that marketer or supplier during any month of compliance.

The Proposed Order then rejects Super Pooling for critical or supply surplus days because these events "are not regular, ongoing circumstances," arguing that "critical and supply surplus days are temporally and quantitatively erratic." (Proposed Order at 269) The Proposed Order states that:

> To apply super-pooling to such unpredictable events, when the appropriate treatment of stand-alone accounts will have to be determined each time, would present the billing system complexity the Utilities want to avoid. (Proposed Order at 260)

The distinction between allowing Super Pooling for seasonal cycling targets, but not for critical or supply surplus days, is thus based upon one event occurring on a set date whereas the others take place on dates which are not know in the future. However, this distinction is irrelevant for Super Pooling. The key is that none of these events are commonplace, but all are special days, whether they occur on specific dates or not, they are all events that seldom occur and do not represent normal daily operations.

Further, the basis of this decision should not be whether or not Super Pooling occurs only when a date in known in advance, but rather this is a decision of fairness and equity. An Order should, as the Proposed Order acknowledges, allow utilities to "achieve system-wide objectives," yet avoid imposing "penalties on individual accounts" when the system-wide objective is met. If in aggregate a marketer meets the utilities' system-wide objectives on a critical day or on a storage surplus day, the marketer and its customers should not be penalized on an individual basis if one or more of their stand-alone customers and/or pools failed to individually meet the system-wide objective, as long as the marketer's remaining stand-alone customers and pools exceed the objective in an amount sufficient to offset those that do not. Clearly when the negative imbalances of a marketer's stand-alone customers and pools are sufficiently offset by other stand-alone customers and pools of that same marketer, the utility has met its objectives, thus that marketer or its customers should not suffer negative consequences.

The same ad hoc process employed for seasonal cycling target Super Pooling is likewise applicable for critical and supply surplus day Super Pooling. The mechanics of the Super Pooling calculation are identical for each of the three applications. Such a process is feasible because stand-alone accounts are *only* included in any of these three circumstances when a stand-alone customer purchase supply from the same supplier in any given month. Thus, there would be no confusing entanglement between suppliers and individual customers with respect to allocation of daily gas deliveries. Nor does the source of supply for a stand-alone account even need to be determined, except during those periods when an actual critical day or supply surplus day is declared.

This ad hoc analysis (that the utility has already agreed to perform) for Super Pooling of the November 30th seasonal cycling requirement is similar to that required for a critical day or a storage surplus day. History has shown that both critical days and supply surplus days are rare events; thus it isn't a significant imposition to require Peoples to do a simple ad hoc analysis, virtually identical to that which they agreed to do for storage cycling, on critical and supply surplus days.

Since critical days and supply surplus days are both rare, but the penalties for noncompliance are very large, Super Pooling only is required when a marketer incurs a penalty or imbalance charge. The ad hoc analysis only becomes necessary to see if such charges could be mitigated by looking at the marketer's accounts as a whole. It is doubtful that if such an ad hoc analysis is employed, significant billing system changes would be required; the utility simply sums all of the detailed calculations, which the billing system has already done, to then net them across accounts and pools of a single marketer. No major billing system changes are needed.

The Commission should amend the Proposed Order to permit Super Pooling for not only November 30 injection target compliance, but also for the application of penalties and charges on critical and supply surplus days. The same ad hoc process may be employed for all three iterations of Super Pooling.

III.
CONCLUSION

Although the Proposed Order has somewhat mitigated the adverse impacts on transportation customers contained in Peoples' original proposals, there remain additional steps that should be taken by the Commission to strike the appropriate balance on these very important issues for Illinois consumers.

WHEREFORE, in accordance with arguments herein and in its Initial and Reply Briefs, CNE–Gas respectfully requests that the Commission modify the Proposed Order and enter an Order that:

1. Requires NS customers to have injected at least 75% (not 85%) of the customer's Allowable Bank by November 30;
2. Replaces MDQ limits during April through October with a MDN-based injection limit;
3. Requires Super Pooling for the purposes of applying unauthorized use penalties on critical days and imbalance account charges on supply surplus days; and
4. Retains all of the remaining decisions of the Proposed Order within section C. Large Volume Transportation Programs.

Respectively submitted,

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