Attachment A

**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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| North Shore Gas Company | ) | |
| | ) | Docket No. 09-0166 |
| Proposed General Increase in Natural Gas Rates | ) | |
| (tariffs filed February 25, 2009) | ) | |
| | | Consol. |
| The Peoples Gas Light and Coke Company | ) | |
| | ) | Docket No. 09-0167 |
| Proposed General Increase in Natural Gas Rates | ) | |
| (tariffs filed February 25, 2009) | ) | |

**REPLACEMENT LANGUAGE FOR THE**
**ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER[1]**

[1] As to not burden the record with additional paper, and consistent with the Commission's Rules of Practice, Constellation NewEnergy-Gas Division, LLC, is providing replacement language for only those portions of the Administrative Law Judges' Proposed Order for which exceptions have been taken in the instant Brief on Exceptions. The suggested replacement language is being provided in red-lined fashion.

**Exception 1-** **The Proposed Order should encourage participation of Transportation Customers and suppliers in the storage unbundling collaborative process.**

The following replacement language should appear at page 238 of the ALJ's Proposed Order:

### 8. Rider SST Unbundled Allowable Bank

#### a) The Record

Staff witness Sackett proposed that the Utilities unbundle their Rider SST Allowable Bank from the standby service. Staff Ex. 12.0R at 25-42; Staff Ex. 26.0 at 7-43. The Utilities did not accept Staff's proposal to unbundle the Rider SST Allowable Bank from standby service, citing operational, administrative and rate concerns. NS-PGL Exs. RD-1.0 Rev. at 2-17; RD-2.0 at 2-13; VG-2.0 Rev. at 57-58; VG-3.0 at 30-36. In response to a data request, the Utilities agreed to work collaboratively with Staff, prior to filing their next rate cases, to develop proposals for unbundling standby and storage services that are provided to S.C. Nos. 2 (North Shore and Peoples Gas), 3 (North Shore), and 4 (Peoples Gas) customers under Riders FST and SST. The Utilities would file proposed tariff changes to implement any resulting mutually acceptable proposals, and, if and to the extent such proposals are not developed, to address such unbundling in their next rate case filings. Staff Cross Grace Exs. 5 and 6.

#### b) Commission Analysis and Conclusion

The Commission agrees that it is reasonable for the Utilities to work with Staff to develop reasonable proposals for unbundling storage service. The Commission further encourages the Utilities and Staff to solicit comments on any proposals from interested stakeholders. The Commission finds that the Utilities should file any agreed upon proposals in their next rate cases. To the extent Staff and the Utilities do not reach agreement, the Utilities should address this matter in those rate cases.

**<u>Exception 2-</u>** **The Proposed Order should require Super Pooling on Critical Days but permit Peoples to implement Super Pooling though the Critical Day Reallocation process.**

<u>The following replacement language should appear beginning at page 238 of the ALJ's Proposed Order:</u>

### C. Large Volume Transportation Program

#### 1. Super Pooling on Critical Days

##### a) Utilities

The large volume program refers to customers taking service under Rider FST (Full Standby Transportation Service) or SST (Selected Standby Transportation Service). Many of these customers take service from alternative suppliers who "pool" customers under Rider P (Pooling Service). NS-PGL Ex. JM-1.0 at 6. For the large volume programs, Ms. Grace explained that the Utilities implemented new operational provisions following their 2007 rate cases. The Utilities believed it would be more beneficial to gain experience under the revised program than to propose modifications in these cases. The Utilities proposed only updating certain charges based on new cost studies; eliminating transitional riders that were in place as a bridge from the former program to the revised program that the Utilities implemented on August 1, 2008; making editorial changes; updating the number of "base rate" Allowable Bank days; and, for Peoples Gas, eliminating a rider under which customers do not take service. NS Ex. VG-1.0 Rev. at 29-30; PGL Ex. VG-1.0 Rev. at 32-33.

CNE-Gas witness Rozumialski recommended that the Commission require the Utilities to implement super pooling for measuring critical and supply surplus day thresholds. The Commission rejected such "super pooling" as proposed in the Utilities' 2007 rate cases, except for a specific inventory requirement that is determined on one day each year. *Peoples 2007* at 282-283. The Utilities argue that the administrative burden and attendant concerns that the Utilities expressed in the last rate cases have not changed or been alleviated. NS-PGL Ex. JM-1.0 at 13.

They allege that the current proposal does not remove the administrative burden from the Utilities. If a supplier requests a waiver from what CNE-Gas called "penalty charges" based on super pooling, the Utilities will need to ascertain if the request meets the criteria for pooling the accounts or contracts and waiving the charges. Other than being triggered by a request rather than being triggered by a critical day, it is the same burden as rejected in the 2007 rate cases. *Peoples 2007* at 282-283; NS-PGL Ex. JM-1.0 at 13; NS-PGL Ex. JM-2.0 at 4-5.

Also, the Utilities note that the Nicor practice, cited by both Staff and CNE-Gas, was apparently the product of a settlement. In other words, this was an uncontested issue resulting from a settlement.

Staff's conclusion that the Utilities would not be entangled in the supplier/customer relationship is not, the Utilities contend, necessarily true. One element of administering super pooling is to ensure that only the correct pools and stand alone customers are correctly accounted for in the super pool. NS-PGL Ex. JM-1.0 at 14. For example, a customer (likely a stand alone customer not in a pool) may purchase gas from more than one supplier. *See, e.g., Peoples 2007* at 282. If two suppliers seek a waiver based on including the same customer in the "super pool," that could entangle the Utilities in the supplier/customer relationship.

Further, the Utilities argue that the proponents of this proposal have the burden of proof. *Central Illinois Public Service Company v. Illinois Commerce Commission*, 5 Ill. 2d. 195, 211 (1955). According to the Utilities, it is not their burden, as posited by Staff, to show that "they are unable to implement" the proposal. An intervenor proposed changes concerning the small volume program ("Choices For You[sm]" or "CFY"), and the Utilities showed that the intervenor did not meet its burden of supporting changes to the CFY program.

The Utilities argue that it is also not their burden to show "how they differ from Nicor Gas." *Id*. The Commission's task is to set just and reasonable rates for the Utilities based on the record in this proceeding. There is no evidence that the proposal to which Nicor agreed applies to the Utilities' programs. For example, Staff concludes that it is "unnecessary to modify the billing system," (*Id*. at 191) but there is no evidence about whether Nicor modified its billing system or whether the Utilities would need to do so to efficiently implement the proposal.

If the Commission approves "super pooling," the Utilities assert that it must be clear what this entails. Staff likens it to a "billing discrepancy," which may suggest canceling and re-issuing the bill(s) in question and revising all quantities and charges on the bill. CNE-Gas appears to suggest it is requesting only a "credit of penalty charges." A cancel and re-bill that affects only waiving penalties is a very different exercise from a cancel and re-bill that adjusts all quantities and charges.

The Utilities urge the Commission to reject CNE-Gas' super pooling proposal. If it approves the proposal, the Commission should clarify that it is only requiring waiver of penalty charges and it should clarify if stand alone customers (customers not in a pool) may be included in super pools.

#### b) CNE-Gas

CNE-Gas proposes that Peoples Gas permit Super Pooling on Critical Days, which allows all third party groups, or pools, that are under common management to be balanced in aggregate prior to the application of Unauthorized Usage Charges. Super Pooling is reasonable and equitable because, in aggregate, the supplier has delivered adequate volumes of gas to serve the needs of all of its pools that are under common management – it is only when individual groups are isolated that a certain subset may be under nominated and the penalty charges would apply. CNE-Gas argues that Super Pooling remedies this inequitable situation where a group incurs penalties even though Peoples Gas has not incurred any harm and thus, should not be imposing penalties. If Peoples Gas did not limit group size for pooling purposes, there would be no need for Super Pooling, but Peoples Gas limits Rider P pool size to 300 accounts. Peoples Gas itself is not required to split its usage into subgroups in order to determine if Unauthorized

Use occurred. Peoples Gas already applies Super Pooling to winter injection requirements. CNE-Gas Ex. 1.0.

CNE-Gas explains that during a Supply Shortage Day, if under-delivered, a Transportation Customer faces two financial penalties under Peoples Gas' current tariff: (1) a $60 per dekatherm penalty; and (2) Peoples Gas requires the customer to purchase replacement gas from the utility at the Rider 2 Unauthorized Use rate, even if the supplier in the aggregate has provided ample supply of gas for all of its customers served in its various pools. CNE-Gas Ex. 1.0; CNE-Gas Ex. 2.0.

In Dockets 07-0241/07-0242 (Consol.), the Commission rejected Super Pooling because it "would present the billing system complexity the Utilities reasonably want to avoid" and "would likely and excessively entangle the utilities in the relationship between suppliers and individual customers with respect to allocation of daily gas deliveries." In this proceeding Peoples Gas continues to object to CNE-Gas' proposed Super Pooling on Critical Days due to the administrative burden and difficulty in automating the process even though in this proceeding CNE-Gas submitted a materially different proposal, one designed to address the deficiencies for which the Commission rejected Super Pooling in the prior dockets. Peoples Gas' objection is unfounded because CNE-Gas' alternative process eliminates the need to make significant billing changes. Staff witness Sackett noted that Peoples Gas ignored CNE-Gas' current proposal and instead focuses on CNE-Gas' proposal made in the past rate case. Staff Ex. 26.0.

CNE-Gas asserts that its proposal is consistent with the Commission's decision in Nicor's last rate case. This method permits a third party supplier to "apply for a waiver of the penalty portion of the Unauthorized Use Charge on a Critical Day" for its groups, when the third party supplier is able to substantiate that their other "groups have excess deliveries of sufficient quantity to alleviate all, or a portion of, the unauthorized gas condition." This method alleviates the $60 per dekatherm penalty only when the third party supplier has delivered quantities of gas to meet the needs of its customers. CNE-Gas Ex. 1.0.

Under CNE-Gas' proposal, third party suppliers apply for a credit of penalty charges when, in aggregate, their other pools have excess deliveries of sufficient quantity to alleviate all, or a portion of, any incremental charges and penalties incurred. Neither PGL nor NS would be responsible for determining or applying Super Pooling on Critical and Supply Surplus Days; the responsibility for Super Pooling determination on Critical and Supply Surplus Days would rest with the third party supplier, as proposed by CNE-Gas. According to CNE-Gas, there would be no need to automate any process, as the Company would not be responsible for programmatically determining and applying Super Pooling to supplier pools. Thus, CNE-Gas asserts that major modifications to the Company billing system are unnecessary and this objection is resolved. CNE-Gas Ex. 2.0.

Peoples Gas' sole argument against Super Pooling rests in the burden the process places on the utility. In a footnote, Peoples suggested it is unclear as to when Super Pooling applies. As the heading for this issue indicates, "Super Pooling on Critical Days" is the intent of the proposal. According to CNE-Gas, the application of Super Pooling is associated with the financial penalties incurred on a Critical Day, including costs such as Unauthorized Use of Gas

penalties and the purchase of unneeded replacement gas, whether occurring on a Supply Surplus or a Supply Shortage day.

CNE-Gas urges the Commission to adopt its Super Pooling on Critical Day proposal as a matter of fairness. If, in aggregate a supplier has delivered total volumes required for its customers, then no harm accrues to the utility if Super Pooling is permitted.

#### c) Staff

CNE witness Rozumialski recommended that the Companies allow for incorporation of super-pooling in the calculation of Critical Day penalties as an after-the-fact accounting correction as approved by the Commission in Nicor Gas' last rate case, Docket 08-0383. Super pooling would allow transporters to net over and under deliveries of their customers in order to determine Critical Day charges. In this case, CNE provides CNE Exhibit 2.1 which is a tariff sheet from Nicor Gas Rider 13 Supplier Transportation Service which states:

> In the event a Rider 13 group incurs Unauthorized Use Charges on a Critical Day, the Group Manager may have the right to submit a written request for waiver of the $6 per therm non-purchased gas portion of the Unauthorized Use Charges within fifteen (15) days of the issuance date of the bill. The Group Manager shall provide the Company with written documentation which demonstrates that its other commonly-managed Rider 13 Groups' Critical Day deliveries would have eliminated the Unauthorized Use condition in whole or in part.

CNE proposes here to incorporate that Commission-approved method from Nicor Gas' tariff.

Companies witness McKendry rejected this proposal by raising the same objections that the Companies raised in their 2007 rate cases; principally, that this proposal would require significant revision of the billing systems. NS-PGL Ex. JM-1.0 at 12-14. In surrebuttal, Mr. McKendry continues to reject this proposal based on the responsibilities that the Company would have to review the appeal of each marketer.

In rebuttal testimony, Staff witness Sackett supported CNE's super-pooling proposal. Mr. Sackett noted that "CNE specifically altered its proposal from that made in the last [Peoples Gas rate] case to be consistent with the Commission's decision in Nicor Gas' last rate case. (Order, Docket 08-0363, March 25, 2009, p. 126)." Staff Ex. 26.0R at 47. The Commission rejected CNE's super-pooling proposal in Peoples Gas' last rate case due to concerns with billing system complexity and excessive utility involvement with suppliers and their customers.

In light of the fundamental differences between the proposals that CNE made in the last rate case and the instant case, which is identical to the process approved by the Commission in Nicor Gas' last case, Staff maintains that the Commission should approve CNE's recommendation here. Staff believes that the burden of the review is not onerous given the fact that this review process would occur after the bill is received, which is after the Critical Day is past (CNE Ex. 1.0 at 25-26 and CNE Ex. 2.1) and that, in this respect, it would be similar to any other billing discrepancy which a supplier could raise. Additionally, Staff asserts that this should make it unnecessary to modify the billing system. Furthermore, the Nicor Gas method allows the utility to work on the billing discrepancy directly with suppliers, who pay the Critical Day

penalties (through the Imbalance Account Charge) under Rider P (ILL. C. C. NO. 28, Second Revised Sheet No. 95 and ILL. C. C. NO. 17, Second Revised Sheet No. 89 Peoples Gas Ex. VG-1.1, p. 70; North Shore Ex. VG-1.1, p 60) instead of with customers and therefore would not entangle the Companies in the supplier/customer relationship.

Staff asserts that its review of the evidence shows that the Companies have not provided evidence that they are unable to implement CNE's proposal, nor have they shown how they differ from Nicor Gas.

### d) Compromise Methodology

Prior to the issuance of the Proposed Order, CNE-Gas and the Utilities entered into further discussions on this issue in an attempt to resolve their differences. Peoples developed a proposal that effectively accomplishes Super Pooling with an alternative method that also addresses the Company's administrative concerns. After a Critical Day occurs, Super Pooling would be accomplished through a reallocation process, based upon reconciled consumption, which is implemented prior to monthly billing. Both CNE-Gas and Peoples urge the Commission to adopt Super Pooling using a Critical Day Reallocation process.

### e) Commission Analysis and Conclusion

CNE-Gas proposed that Peoples Gas permit Super Pooling on Critical Days, which allows all third party groups, or pools, that are under common management to be balanced in aggregate for the application of Unauthorized Usage Charges. A Critical Day is either a "Supply Surplus Day" or a "Supply Shortage Day." We agree with CNE-Gas that this is a reasonable proposal. A supplier should be able to have its penalties changed when it can show that its other commonly-managed Rider P Groups' Critical Day deliveries would have eliminated the Unauthorized Use condition in whole or in part

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The Commission agrees with CNE-Gas that because the Utilities suffer no harm on critical days when a supplier's usage overall complies with Utilities' rules, then no penalties should be assessed. Accordingly, we find CNE-Gas to have reasonably addressed the concerns raised in the last rate case. No overhaul of the Utilities' billing system should be necessary. We also rely on Staff testimony that the Utilities would not be entangled in the supplier/customer relationship with this new proposal. The proposed method allows the utility to work on the billing discrepancy directly with suppliers, who pay the Critical Day penalties, instead of with customers, and therefore would not entangle the Companies in the supplier/customer relationship. The Commission is only requiring a waiver of penalty charges, if after the Critical Day, a supplier is able to show that, in aggregate, its pools have excess deliveries of sufficient quantity to alleviate all, or a portion of, any incremental charges and penalties incurred.

As both CNE-Gas and the Utilities have agreed upon an acceptable methodology for implementing Super Pooling on Critical Days, the Commission has no objections to its use.