STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Consumers Gas Company	:	
	:	08-0139
Petition pursuant to Section 7-101 of the	:	
Public Utilities Act Seeking Authority to	:	
Enter a Gas Storage Contract and a	:	
Gas Sales Agreement in which an	:	On Reopening
Affiliated Interest Exists.	:	

REPLY BRIEF ON REOPENING OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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NOW come the Staff witnesses of the Illinois Commerce Commission ("Staff"), by and through their undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submit their Reply Brief on Reopening in the instant proceeding.

I. INTRODUCTION

On reopening, Staff continues to support its recommendations regarding Consumers Gas Company's ("Consumers" or "Company") request for Commission authority to enter into a Gas Storage Contract ("Storage Contract") and a Gas Sales Agreement ("GSA") with its affiliated interest. In particular, Staff recommended that the conclusion reached in the Proposed Order regarding the Storage Contract remain unchanged. (Staff Ex. 2.0R, pp. 1-2) Consumers' discussion (Consumers IB, p. 2) regarding the Storage Contract is consistent with Staff's views.

Staff also recommended that the Commission not approve the GSA. (Staff Ex. 2.0R, p. 4) The basis for Staff's conclusions is already contained within its Initial Brief and does not need to be repeated here. Instead, Staff wishes to clarify or dispute certain claims or statements Consumers made in support of its request for the approval of the GSA.

II. ARGUMENT

A. Conflict of Interest

Consumers states that Staff failed to demonstrate that a conflict of interest exists between Consumers and Egyptian. (Consumers IB, p. 3) Consumers then states that a conflict detrimental to the Company via its activities with its affiliate has never occurred. (*Id.*, p. 10) Staff disputes these claims. Staff previously addressed the conflict of interest issue in its Initial Brief (Staff IB, pp. 5-6) and those arguments need not be repeated. The Commission itself found that a conflict detrimental to the Company does exist. In Consumers' 2005 PGA proceeding, Docket No. 05-0741, the Commission found that a clear conflict of interest existed and resulted in an imprudent transaction between Egyptian and Consumers that benefited Egyptian at the expense of Consumers' customers. Specifically, the Commission stated that:

> Mr. Robinson stated his role as President of Consumers Gas was to provide low-costs gas service to its ratepayers. At the same time, he also said his role as President of Egyptian is to maximize profits. The Commission believes Mr. Robinson's and his sincerity for balancing these competing interests was strained in his negotiations on behalf of both companies. **The Commission believes a stark and direct conflict of interest exists between Consumers Gas and Egyptian as evidenced by the record**. Further, Mr. Robinson testified there were safeguards in place to prevent each company from taking advantage of the other. (Robinson Surrebuttal, Lines 227 – 231.) Yet, the record does not show where Mr. Robinson instituted any safeguards in the Egyptian –

> Consumers Gas transaction. **Further, Mr. Robinson alleges there has never been a conflict of interest or imprudent purchase by Consumers Gas since 1989. (Id.) But the fact that Consumers Gas paid a higher price for its storage gas and incurred unnecessary storage fees at Mr. Robinson's direction demonstrates the opposite.** The **Commission finds that the timing of the Egyptian – Consumers Gas transaction was primarily intended to benefit the Egyptian, producing negative affects on Consumers Gas and its customers.** It was incumbent upon Mr. Robinson, as President of both companies, to make every effort to act prudently and avoid conflicts of interest whenever possible. The fact Mr. Robinson seemed to deliberately act outside of these constraints, is evidence of his lack of credibility. The Commission finds that since there was an actual conflict between the interests of Egyptian versus Consumers Gas, it would have been prudent for Mr. Robinson to "tip the scales" in favor of Consumers Gas and its ratepayers instead of the affiliate. The record clearly shows Consumers Gas failed to act prudently when purchasing gas from Egyptian in violation of Section 9 – 220 of the Public Utilities Act. As such, the Commission agrees with Staff's recommendations regarding the 2005 gas reconciliation of revenues as set forth in Appendix A of this Order. (Order, Docket No. 05-0741, February 3, 2009, pp. 10-11) (Emphasis added)

Consumers' claim that there is no conflict of interest or that there has never been any conflict detrimental to Consumers in its dealings with Egyptian as well as Consumers' implication that this relationship will not result in detrimental results to Consumers' ratepayers in the future is false.

B. Motion to Reopen

Consumers' Initial Brief provides various references to Staff's Motion to Reopen and a description of Staff's position in the case. (Consumers IB, p. 4) While Staff does not dispute the accuracy of the references, Staff would note these references do not provide the complete story. Staff's Motion to Reopen provided basic information, as well as Staff's concerns regarding additional affiliate transactions that had recently came to its attention. Staff conducted additional discovery to further flesh out the concerns it raised in the Motion to Reopen. (TR 18-21, April 20, 2009) After this

discovery ended, Staff filed additional testimony in this proceeding. Staff set forth its position in this case in its Initial Brief, with references to Staff's sworn testimony, not the Motion to Reopen.

C. GSA Protects Consumers' Customers

Consumers also claimed that the GSA prohibits Egyptian from overcharging Consumers. (Consumers IB, p. 11) However, the GSA is merely the pricing mechanism by which Consumers and Egyptian are to purchase gas. As noted in Staff's Initial Brief (Staff IB, pp. 18-19), Mr. Robinson's tortuous interpretations of the various gas supply agreements determine when or even if the GSA will apply. It is Mr. Robinson's control of the circumstances regarding when and how Consumers purchases its gas, which Staff demonstrated provided significant benefits to Egyptian that caused the most significant concern regarding the approval of the GSA.

For example, Consumers noted it interprets its supply agreements such that it cannot purchase from any alternative source at meter # 75661. (Consumers IB, pp. 9-10) However, Consumers makes an exception for its affiliate Egyptian. Staff disputed Consumers' interpretation of these supply agreements in its Initial Brief. (Staff IB, pp, 18-19

Further, Consumers' Initial Brief admits that Consumers and Egyptian do not always follow the pricing mechanism of the GSA in their transactions. Specifically, Consumers noted for its May and June 2006 gas purchases that: "The cost of the 31,000 DTH of purchased gas was to be sold to Consumers at Egyptian's cost" (Consumers IB, p. 8) and that: "Also Egyptian deducted $.05/DTH on the June gas sales it should not have." (*Id.*, p. 9) However, the GSA itself is supposed to govern the

pricing of gas between Consumers and Egyptian, not the cost of the gas to Egyptian. Further, Staff demonstrated the May and June transactions resulted in increased gas costs to Consumers' ratepayers. (Staff Ex. 3.0R, p. 12; Staff IB, p. 24)

Next, Consumers claimed that the May and June transactions did not suffer increased gas costs as a result of these transactions. (Consumers IB, p. 5) Staff disagrees. As fully explained in Staff's Initial Brief, Consumers' decision to enter into the May and June 2006 transactions with its affiliate Egyptian resulted in increased gas costs to Consumers' ratepayers. (Staff IB, p. 24)

Finally, Consumers also claimed that a hedge transaction only defines the price of future transactions and that the GSA provided that Egyptian had the right to sell hedged gas to Consumers. (Consumers IB, p. 5) However, the proper pricing mechanism for any transactions between Consumers and Egyptian is the GSA itself. However, Staff determined that the hedging transaction did not follow any GSA pricing provisions. (Staff Ex. 3.0R, p. 6)

Mr. Robinson's interpretations of Consumers' various gas purchasing agreements, including the GSA, provide him too much leeway to provide substantial benefits to Egyptian to the detriment of Consumers' ratepayers. Consumers' claim that the GSA prohibits Egyptian from overcharging Consumers is specious at best.

D. Hedging

Consumers stated it disputed Staff's claim that Consumers had 51.4% of its winter gas supply hedged for 2006-2009 because Consumers does not consider gas withdrawn from storage as hedged gas. (Consumers IB, pp. 7-8) Staff has two comments regarding Consumers' claim. First, Staff's statement indicated that if storage

withdrawals were included, then Consumers would have had about 51.4% of its 2006/2007 gas supply hedged. (Staff Ex. 4.0R, p. 8) Staff is assuming Consumers' reference to the period 2006-2009 is a typographical error. Second, Staff disagrees with Consumers' claim that storage gas is not considered hedged gas. Staff noted that gas withdrawn from storage is also considered hedged gas supply, since that gas was purchased several months prior to delivery. (*Id.*)

E. Third Party Costs

Consumers indicated that the Commission should not require the use of a third party administrator to operate the GSA (Staff's alternative proposal), because it would add an unknown cost to the contract. (Consumers IB, p. 12) However, Staff would note that Consumers had the opportunity to provide the cost of having a third party administrator operate the contract, but failed to do so. Further, the cost of a third party administrator was specifically discussed by the ALJ as part of the reopening proceeding. The ALJ noted that it would be worthwhile to determine, if possible, what the costs would be to have a third party administer the contract. At that time Staff indicated concern that Staff would have no way to determine what the cost would be. In response, the ALJ noted that Staff was not the party that would begin this inquiry. . (See TR., p. 12, April 8, 2009) Staff had earlier observed that the costs associated with a third party administrator would not necessarily increase the gas costs to Consumers' ratepayers, since it is possible this is a cost that Egyptian could incur instead. (TR., pp. 81-82, October 15, 2008)

F. Future Availability of Local Gas

Finally, Consumers claimed that the future availability of local gas and the savings produced through Egyptian's ability to clean and dewater that local gas will become more costly to Consumers because it will either have to purchase the facilities to proceed with those events or to pay another entity for those costs. (Consumers IB, p. 12) Staff disagrees. Consumers appear to believe it could only obtain local gas through Egyptian's system because of its existing facilities. However, this is an incorrect assumption. 83 Illinois Administrative Code Part 530 ("Part 530"), Safety and Quality Standards for Gas Transportation for a Private Energy Entity by Gas Utilities, requires any local gas provided to Consumers to be interchangeable with the utility's gas system. Further, Part 530, Section 530.10, lists the standards that any local gas producer who provides gas to Consumers must meet. Therefore, the cost to provide clean and dewatered local gas to a utility falls on the gas producer, not the utility. As such, Consumers' concern is misplaced.

III. CONCLUSION

WHEREFORE, for the reasons set forth above and as articulated in Staff's Initial Brief, Staff respectfully requests that the Commission's Order in the instant proceeding reflect Staff's recommendations regarding the Company's request for Section 7-101 Authority to Enter a Gas Storage Contract and a Gas Sales Agreement in which an affiliate interest relationship exists. The Commission should:

A. Condition the approval of the Storage Contact by directing Consumers to require Egyptian to alter the pricing associated with the Storage Contract to either reduce the injection and withdrawal charges from 10 cents to 5 cents or to use the same pricing that Egyptian offered to the City of Grayville;

B. Deny approval of the Gas Services Agreement; and

C. Grant such other and further relief as it deems equitable.

May 4, 2010

Respectfully submitted,

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