

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

NORTH SHORE GAS COMPANY	:	
	:	No. 09-0436
THE PEOPLES GAS LIGHT AND COKE COMPANY	:	and
	:	No. 09-0437
Petition Pursuant to Rider EEP of Schedule of Rates for	:	(Cons.)
Gas Service to Initiate a Proceeding to Determine the	:	
Accuracy of the Rider EEP Reconciliation Statement.	:	

**REPLY BRIEF OF NORTH SHORE GAS COMPANY**  
**AND THE PEOPLES GAS LIGHT AND COKE COMPANY**

John P. Ratnaswamy  
Jacqueline M. Vidmar  
Carla Scarsella  
ROONEY RIPPKE & RATNASWAMY LLP  
350 West Hubbard Street, Suite 430  
Chicago, Illinois 60654  
(312) 447-2800  
john.ratnaswamy@r3law.com  
jacqueline.vidmar@r3law.com  
carla.scarsella@r3law.com

Mary Klyasheff  
INTEGRYS ENERGY GROUP, INC.  
130 East Randolph Street  
Chicago, Illinois 60601  
(312) 240-4470  
mpklyasheff@integrysgroup.com

Dated: November 10, 2010

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
DISCUSSION	2
I. UNCONTESTED ISSUES	3
II. CONTESTED ISSUES	4
A. The Independent Governance Board’s Program Decisions Should Not Be Subject to Prudence Review and Should Not Be a Basis for Denying the Utilities Recovery of Their Costs of Complying With Those Decisions	4
B. Prudence Should Be Assessed Only at the Portfolio Level	7
C. The Portfolio Was Prudent	9
D. Disallowances Based Solely on “TRCs” Are Inappropriate	9
E. Staff’s Specific Proposed Disallowances Are Inappropriate	13
1. Tankless Water Heaters	13
2. High Efficiency Clothes Washers	15
3. Wall Insulation	16
F. Staff’s Specific Proposed Disallowances Are Excessive and Punitive	19
CONCLUSION	20

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

NORTH SHORE GAS COMPANY	:	
	:	No. 09-0436
THE PEOPLES GAS LIGHT AND COKE COMPANY	:	and
	:	No. 09-0437
Petition Pursuant to Rider EEP of Schedule of Rates for	:	(Cons.)
Gas Service to Initiate a Proceeding to Determine the	:	
Accuracy of the Rider EEP Reconciliation Statement.	:	

**REPLY BRIEF OF NORTH SHORE GAS COMPANY**  
**AND THE PEOPLES GAS LIGHT AND COKE COMPANY**

North Shore Gas Company (“North Shore”) and The Peoples Gas Light and Coke Company (“Peoples Gas”) (together, “the Utilities”), by their counsel, submit this Reply Brief.

**INTRODUCTION**

In these reconciliation Dockets, the Utilities’ compliance with their respective energy efficiency program cost recovery riders, “Rider EEP”, including the correctness of their accounting for costs and revenues under the rider, is both proven and uncontested.

The only contested subject is whether, based on Staff’s theory of “imprudence”, the Utilities should be denied recovery of certain costs they spent complying with decisions of the independent Governance Board of the Chicagoland Natural Gas Savings Program.

There is no legitimate question of imprudence. The Illinois Attorney General’s Office’s Initial Brief agrees with the Utilities that there has been no imprudence. Staff’s Initial Brief, while claiming imprudence, does not set forth the prudence standard that governs Illinois Commerce Commission decisions, much less apply that standard to the facts. No imprudence finding is possible under the law and the facts. For those and several other reasons, Staff’s proposed adjustments should be rejected. Adoption of the adjustments would constitute reversible error.

## DISCUSSION

The prudence standard that governs Illinois Commerce Commission (the “Commission” or “ICC”) decisions was discussed in the Utilities’ Initial Brief and is undisputed. Under the standard:

- Prudence is the standard of care that a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made.
- Hindsight review is impermissible.
- Imprudence cannot be sustained by substituting one’s judgment for that of another.
- Reasonable persons can have honest differences of opinion without one or the other necessarily being imprudent.

Initial Brief of the Utilities (“NS-PGL Init. Br.”), pp. 2-3 (with citations). *See also* Initial Brief of the People of the State of Illinois (“AG Init. Br.”), p. 4 (with citation).

The independent Governance Board of the Chicagoland Natural Gas Savings Program (the “Chicagoland Program” or “Program”), after receiving extensive advice from independent experts, voted unanimously to assess the prudence of the Program’s energy efficiency measures at the portfolio level and to adopt a prudent portfolio of measures for the reconciliation period. The Utilities between them have only one of the five votes on the Board. When the Board decided to assess prudence at the portfolio level, the representative of Staff in attendance, a non-voting member, did not object. The two independent experts on energy efficiency who testified for the Utilities, the AG in its Initial Brief, and Staff’s witness all agree that the portfolio as a whole was prudent, even under the narrow Total Resource Cost (“TRC”) test.

Staff nonetheless claims that the Board's decision as to three of the measures in the portfolio was "imprudent", on the grounds that those three measures in isolation were not cost-effective under the TRC test. Staff also claims that, therefore, 100% of the incremental costs incurred by the Utilities on those three measures should be disallowed.

Under the prudence standard, to approve Staff's adjustments would require the Commission to find both (1) that the Board made imprudent decisions no reasonable person would make *and* (2) that the Utilities should be held responsible for those decisions in the form of disallowances of the associated costs. The law and the facts permit no such findings. The two independent experts who testified for the Utilities, and the AG in its Initial Brief, agree that the Utilities acted prudently and that no disallowances are proper. As Staff's Initial Brief shows, Staff's "imprudence" claims are based on a Staff witness' policy disagreements with the Board. That does not show imprudence by the Board under the prudence standard. Staff's witness' improper rejection of the Board's decision that portfolio level prudence is what matters, Staff's witness' continued disregard for the uncontested fact that the portfolio as a whole is prudent and passes even the narrow TRC test, and Staff's witness' improper rejection of the Board's decision that the TRC test should not be used to the exclusion of all else in deciding which individual measures to include in the portfolio, are erroneous and legally insufficient.

Staff's positions also are contrary to the public interest. Staff's proposed adjustments also are excessive and punitive. They should be rejected.

## **I. UNCONTESTED ISSUES**

The Utilities' Initial Brief showed that the evidence establishes, and that it is uncontested, that the Utilities complied fully with Rider EEP, including as to the Statement of Activity, the Statement of Reconciliation Adjustments, and the correctness of their accounting for costs and

revenues under Rider EEP. NS-PGL Init. Br., pp. 4-7. The Initial Briefs of Staff and the AG do not dispute any of those facts.

## II. CONTESTED ISSUES

### A. **The Independent Governance Board's Program Decisions Should Not Be Subject to Prudence Review and Should Not Be a Basis for Denying the Utilities Recovery of Their Costs of Complying With Those Decisions**

In their Initial Brief, the Utilities contended that the Board's *Program decisions* -- decisions about what measures to include in the *portfolio* and other *policy* decisions -- should not be a basis for imprudence findings against the Utilities nor for disallowances of the Utilities' cost recovery, for two different reasons. NS-PGL Init. Br., pp. 7-17. First, the Commission should defer to the Board's Program decisions, absent misappropriation of funds. That position was supported not only by Utilities witness James Schott but also by the independent Contract Administrator, Annette Beitel. *Id.*, p. 17. Second, because Staff's disagreements with Board Program decisions are the sole basis of Staff's imprudence claims, but the question in these Dockets is whether to disallow costs incurred by the Utilities, any prudence review here should be limited to two points: (1) Did the Utilities act prudently in proposing that the Board make the Program decisions? and (2) Did the Utilities act prudently in paying costs of measures in compliance with the Board's Program decisions?

Staff's Initial Brief primarily addresses only the first of those two reasons. Staff's arguments on this subject are weak and incomplete. Moreover, even if Staff were correct that the Commission should not give *complete* deference to the independent Governance Board's *Program decisions* absent misappropriation of funds, Staff has presented no sound reason for the Commission not to at least afford *substantial* deference to the Board's *Program decisions*.

As discussed in detail in the Utilities' Initial Brief, in their 2007 rate cases, the Commission established both the Program and the Program's governance structure, each over Staff's objections, and the Commission made numerous findings that supported both of those rulings. *North Shore Gas Co., et al.*, ICC Docket Nos. 07-0241, 07-0242 (Cons.), pp. 183-184 (Order Feb. 5, 2008) ("*2007 RC Order*").

Staff notes, correctly, that the *2007 RC Order* did not state that the decisions of the independent Governance Board would be deemed prudent, and that the Order, in adopting Staff's proposal for an annual reconciliation, states in part: "The annual reconciliation will ensure that ratepayers are only charged for the actual costs of the energy efficiency program prudently incurred." Staff Init. Br., pp. 4-5 (citing *2007 RC Order*, p. 184).

However, the *2007 RC Order* also states, earlier on the same page, as Staff admits, that: "Further, knowing that the energy efficiency program will be administered by an independent board lessens our concern over the costs of administrating Rider EEP. In other words, and given the composition of this body, we expect that that any reconciliation proceedings would likely not be litigious because most, if not all interested parties, would have had a say in the efficiency program spending process." *2007 RC Order*, p. 184; Staff Init. Br., p. 6. The Commission's expectation of a non-litigious reconciliation proceeding has been defeated only by Staff's attempt to elevate its witness' opinions to proof that no reasonable person could hold any differing opinions.

Staff characterizes the extent of prudence review that is contemplated by the Utilities as "perfunctory" (Staff Init. Br., p. 5), but that is not correct. The Utilities' position is limited to Board *Program decisions* as defined above. Moreover, even as to Board Program decisions, the Utilities acknowledge that prudence review would remain for the misappropriation of funds.

NS-PGL Init. Br., pp. 14, 17. Further, the Utilities agree that, unlike as to Board *Program decisions*, prudence review is proper as to whether the Utilities acted imprudently in the mechanics of program implementation, such as contract administration and paying out rebates. *Id.*, p. 17.

Even supposing that Staff had shown that *complete* deference to Board Program decisions absent misappropriation of funds is not warranted, Staff has shown no basis for denying *substantial* deference. The governance structure was approved by the Commission and the Board received extensive independent expert advice before making its decisions, as discussed in the Utilities' Initial Brief. There is no legitimate basis to second-guess Board Program decisions under the prudence standard and the facts.

Moreover, even if Staff had shown that deference to the Board by the Commission were not warranted, Staff does not and cannot contend that the Utilities acted imprudently in proposing the independent Governance Board or that the Utilities should have refused to follow the Board's Program's decisions once made. Thus, there is no valid basis for ascribing to the Utilities any alleged imprudence of the Board as a basis for denying the Utilities' recovery of the costs they incurred in complying with the Board's Program decisions.

Staff's only other effort in the direction of justifying holding the Utilities responsible for imprudent Board decisions appears to be Staff's new "moral hazard" argument, which is improper because it is supported by no evidence. *See* Staff Init. Br., p. 6. Staff's witness made no "moral hazard" argument. He simply contended, on this front, that it was better for the Utilities to bear the risk of imprudent expenditures. Brightwell Rebuttal ("Reb."), Staff Exhibit ("Ex.") 3.0, 2:31-41. Moreover, he admitted that his position has nothing to do with how the Utilities voted. Brightwell, Transcript ("Tr.") at pp. 220-222.

Staff's position does not withstand scrutiny because it is illogical and has it backwards, in any event. If there is any significant moral hazard, it is the other four voting members of the Board that face that hazard. Four of the five votes on the Board are held by entities that are intended to represent customer and environmental interests. *E.g.*, NS-PGL Init. Br., p. 5. Program administration costs are capped at 5% to ensure that funding is overwhelmingly used to pay amounts to participants. *E.g.*, *id.*, p. 11.

The AG's Initial Brief also argues against the Commission affording *complete* deference to Board Program decisions, relying in part on the same *2007 RC Order* language that Staff cites and that is discussed above, but the AG also states that:

We do, however, concur with Mr. Schott that the Commission, as it assesses the Program expenditures, should give weight to the fact that a Governance Board, made up of the Companies, and ratepayer and environmental advocates, unanimously agreed that the measures at issue were reasonable and prudent additions to a Residential Rebate Program. The Governance Board structure was created to minimize any likelihood that the utility would spend ratepayer energy efficiency dollars unreasonably and imprudently. The People believe that goal was achieved within the reconciliation period at issue.

AG Init. Br., p. 18.

Under all of the circumstances, the Board's Program decisions should be given complete or, alternatively, substantial deference. Plus, it is not reasonable or just that the Utilities bear the risk of allegedly imprudent Board Program decisions, absent a misappropriation of funds that no one claims or could claim occurred.

**B. Prudence Should Be Assessed Only at the Portfolio Level**

Staff continues to argue that the prudence review of the Chicagoland Program should be performed at the measure-level, rather than at the portfolio-level. Staff's Initial Brief contends that "Commission orders and good public policy to maximize the benefits of energy efficiency require that the measure level cost effectiveness be used [,] not the portfolio level cost

effectiveness”. Staff Init. Br., p. 8. The Utilities addressed that issue at length in their Initial Brief, showing that Staff’s position lacks merit. NS-PGL Init. Br., pp. 17-19. The AG’s Initial Brief (at pp. 15-17) also shows that Staff’s position lacks merit.

It is clear that neither Commission orders nor “good public policy” supports Staff’s position. Staff, the AG, and the Utilities all acknowledge that previous Commission Orders established a portfolio-level assessment of prudence in electric utility energy efficiency programs. NS-PGL Init. Br., p. 18; Staff Init. Br., p. 8; AG Init. Br., p. 16. Moreover, Section 8-103(f)(5) of the Public Utilities Act (the “Act”), 220 ILCS 5/8-103(f)(5), specifically directs electric utilities to “[d]emonstrate that **its overall portfolio** of energy efficiency measures ... are cost effective ....” (emphasis added).<sup>1</sup>

With respect to public policy, the Utilities have provided ample testimony from independent energy efficiency experts Ms. Beitel and Mr. Plunkett that portfolio-level assessment of cost-effectiveness is essential to ensure the development and penetration of a robust energy efficiency program, and greater cost-effective energy savings. Beitel Reb., NS-PGL Ex. 4.0, at 26:595 – 27:502, 13:291-295; Plunkett Reb., NS-PGL Ex. 5.0, 14:311-314. The AG concurs that a portfolio-level measurement is good public policy. AG Init. Br., p. 16. The AG further notes that

Staff’s strict approach to measuring cost-effectiveness, if adopted by the Commission, could detrimentally alter other Illinois utilities’ views on what should be included in energy efficiency portfolios. For example, the likelihood of utilities investing energy efficiency dollars on programs that generate long-term interest in efficiency by both buyers and sellers of energy efficiency products – programs that may be deemed non cost-effective in the short term—may be scuttled if utilities fear such measures are subject to automatic disallowance.

---

<sup>1</sup> The same language appears in Section 8-104 of the Act, which was effective in July 2009, and which applies to mandated energy efficiency programs for gas utilities. 220 ILCS 5/8-104.

*Id.*, pp. 16-17.

Staff's arguments to support its position are not consistent or logical. It questions the Chicagoland Program's use of the portfolio-level standard without the wholesale adoption of the cost-effectiveness test under the electric utility energy efficiency programs, while rejecting the portfolio-level standard measurement as "approved in **earlier electric EE dockets**". Staff Init. Br., p. 12 (emphasis in original). Staff suggests that the 2008 Ameren gas energy efficiency cases Order (*Central Illinois Light Co., et al.*, ICC Docket No. 08-0104 (Order Oct. 15, 2008) ("*Ameren*")) is controlling, and cites that Order for the proposition that the Commission supports a measure-level cost-effectiveness review for gas utilities. Staff Init. Br., p. 10. Specifically, Staff asserts that there was "no reference to a Portfolio-Level standard for the only gas EE plan the Commission approved prior to the development of the Chicagoland program". *Id.* Staff's reliance on the Ameren decision is entirely misplaced. The language cited by Staff is simply a recitation of the cost-effectiveness analysis undertaken by Ameren that the Commission found "reasonable". *Ameren*, p. 22. Nothing in the *Ameren* Order suggests that Ameren's program design was the only reasonable approach, or that a portfolio-level cost-effectiveness analysis would not be "reasonable" as well.

The law and the evidentiary record in the instant cases do not permit a finding that the decision to adopt a portfolio-level measurement was imprudent. This decision was made in good faith by the Governance Board, aided by an experienced design team who employed their experience and best judgment, conducted measure analysis, cost-effectiveness analysis, and developed benchmarks of other residential gas programs throughout the Midwest. Beitel Reb., NS-PGL Ex. 4.0, 9:189-194; *see also* Plunkett Sur., NS-PGL Ex. 7.0, 9:190-197. Staff simply seeks to substitute the judgment of Staff witness Dr. Brightwell for the reasoned, professional

judgment made by independent experts with whom he disagrees. That cannot serve as the basis for an imprudence finding.

**C. The Portfolio Was Prudent**

Staff does not argue that the measures determined by the independent Governance Board were imprudent as a portfolio, even under the TRC test. In Staff's Initial Brief, Staff can only continue to rely on the hypothetical calculation presented by Dr. Brightwell that arbitrarily mixed forecast data with actual results data to arrive at a hypothetical scenario that, at worst, reduced the TRC test result for the portfolio as a whole to 0.99 (as corrected in his post-hearing "Attachment F"). Staff Init. Br., p. 4. As noted in the Utilities' Initial Brief (at p. 20), even under that scenario, every dollar spent had 99 cents of benefits, without counting the benefits that are excluded from the TRC test. That only underscores that the portfolio was prudent.

**D. Disallowances Based Solely on "TRCs" Are Inappropriate**

Staff witness Dr. Brightwell's view (and hence Staff's view) is that all that matters in these Dockets is the TRC test results of the individual measures. Staff's Initial Brief recites the "practical advantages" of measure-level TRC cost effectiveness, and highlights Dr. Brightwell's opinion that including measures with a TRC lower than 1.0 serves to increase the risk and uncertainty of the entire portfolio. Staff's Initial Br., p. 12. Even if it were persuasive, however, that view cannot somehow be the only reasonable view, and thus the basis of an imprudence finding, given the other evidence in the record. NS-PGL Init. Br., pp. 22-25; AG Init. Br., pp. 15-17.

The Utilities' Initial Brief provides ample reasons the Governance Board's approach, which rejected the inflexible view that an individual measure should not be included in the portfolio unless it had a TRC test score of 1.0 or higher, without regard to any other

considerations, was prudent, notwithstanding Staff's view to the contrary. NS-PGL Init. Br., pp. 22-25. It is a very common practice for some individual measures to be included in an energy efficiency portfolio because they offer significant benefits not covered by the TRC (such as contributing to consumer awareness and increasing customer comfort in hot and cold weather, among many other examples) or will likely at some point become cost-effective. *Id.*, p. 25. The TRC test does not capture everything of value to customers or society, including non-monetary benefits or non-resource benefits; consequently, it is not the sole or dispositive criterion used by energy efficiency program designers and administrators. *Id.*, p. 24. Indeed, using the TRC test alone is unduly restrictive and inconsistent with "best practices" in energy efficiency design and implementation. *Id.*, p. 23. Even Dr. Brightwell concedes that there may be reasons to consider measures with individual TRCs less than 1, but argues that in this case, "sufficient justification" was not provided. Brightwell Dir., Staff Ex. 2.0, 9:174-13:248. In the face of the ample evidence presented by the Utilities to support the measures to which Dr. Brightwell objects, it is clear that Dr. Brightwell sets an impossibly and inappropriately high bar.

The reasonableness of the Chicagoland Program approach was affirmed by the Illinois General Assembly in Public Act 96-33, which became effective in July 2009. In relevant part, P.A. 96-33 contained new Section 8-104 of the Act, 220 ILCS 5/8-104, the energy efficiency program for gas utilities, and amended the definition of the TRC test applicable to electric utilities in the Act. The TRC test was amended for electric utilities as follows (indicated by underlining):

A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to

quantify the net savings obtained by substituting demand-side program for supply resources.

P.A. 96-33, amending 20 ILCS 3855/1-10. Similarly, Section 8-104 states that:

The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources.

220 ILCS 5/8-104(b).

Dr. Brightwell has admitted that his disregard for the benefits excluded from the TRC is based upon his interpretation of Section 8-103. Brightwell, Tr. at pp. 215-218. That renders his opinion a legal one, and not an expert opinion.

What is clear is that Dr. Brightwell's opinion is at odds with the long-term success of energy efficiency plans in Illinois. The TRC test does not consider the dynamic effect that programs are designed to have on the future costs of high-efficiency measures with current low market penetration. NS-PGL Init. Br., p. 24. Sustained national, regional and even state level efforts have increased demand for expensive high-efficiency products by offering financial incentives to customers and/or suppliers, and eventually led to lower costs and greater market penetration. *Id.* If the Commission approves Staff's recommended individual measure TRC cost-effectiveness standard, it would discourage the Board and other Illinois energy efficiency plan administrators from taking aggressive steps to maximize long-term benefits from their investments, leading to lower levels of cost effective gas savings to customers over the long term. *Id.*, pp. 24-25. The AG agrees that Dr. Brightwell's approach is contrary to the public interest. AG Init. Br., pp. 15-17

The law and the evidentiary record simply do not permit a finding of imprudence based solely on the measure-level TRC tests. Dr. Brightwell's difference of opinion with the Board and its independent expert advisors does not establish imprudence.

**E. Staff's Specific Proposed Disallowances Are Inappropriate**

Staff asserts that tankless water heaters, high efficiency clothes washers and wall insulation were not cost-effective measures, and that "reasonable persons should conclude that they were not cost effective." Staff Init. Br., p. 6. Staff's proposed disallowances for these measures should be rejected. All of the rebate measures were cost effective under the Program Administrator Cost ("PAC") test and provided substantial value either to the Chicagoland Program or customers that is not captured by the TRC. Beitel Reb., NS-PGL Ex. 4.0 at 4. Moreover, Staff's criticisms of the three individual measures at issue do not show imprudence. *See also* AG Init. Br., pp. 4-15 (refuting Staff as to the three measures).

**1. Tankless Water Heaters**

Staff asserts that tankless water heater rebates were not cost effective. Staff Init. Br., pp. 14-15. Staff proposes to disallow expenditures attributable to tankless water heaters based upon the possibility that the measure did not exceed the TRC test threshold of 1.0, and its belief that the Board should have, and did not, consider that tankless water heaters need a minimum delivered gas pressure, and that portions of the Peoples Gas system in Chicago were at low pressure. *Id.*

Staff's position has no merit. The Utilities' Initial Brief sets forth the myriad of reasons why it was prudent to include this measure in the Chicagoland Program: leverage of the ENERGY STAR brand to drive awareness and demand in the water heater tank category; the tremendous potential for energy savings; and consumer benefits, including very rapid hot water

and water savings. NS-PGL Init. Br., p. 26. Further, it was expected that the cost of tankless water heaters would decrease over time with increased volume through market transformation (market transformation occurring through several programs, including ENERGY STAR and the Chicagoland Program). *Id.*

Moreover, the TRC for tankless water heaters was calculated as 1.01 when the Board made its decision to include tankless water heater rebates in the Program in the applicable period. Brightwell Dir., Staff Ex. 2.0, 17:316-318. This number was updated from a TRC of 0.78. *Id.* at 17, fn. 3. Thus, even under the TRC test, standing alone, there is no basis for an imprudence finding.

Staff's second reason for recommending disallowance for tankless water heater expenditures is ill-conceived. At the time the decision to include tankless water heaters was made, the Board did not know that portions of the Peoples Gas system in Chicago were at low pressure. NS-PGL Init. Br., p. 27. Staff argues that because the measure is not suitable for 42.5% of customers, the Commission should disallow all expenditures for tankless water heater rebates. Staff Init. Br., p. 16. However, even Dr. Brightwell admitted that half the Peoples Gas service territory is still an ample market for the offering of an efficiency measure. Brightwell, Tr. at p. 247. That is particularly true in light of the fact that the Utilities' requested expenditures for tankless water heaters in this proceeding represents only 61 rebates (\$24,400 divided by \$400). *See* PGL Ex. 2.1, p. 7; NS Ex. 2.1, p. 7; Brightwell Dir., Staff Ex. 2.0, 18:362-363.

Staff has provided no evidence that tankless water heaters were any less cost-effective than the Program's estimates. Beitel Sur., NS-PGL Ex. 6.0, 13:271-276. The AG also supports the rejection of Staff's disallowances for expenditures attributable to tankless water heater rebates for many of reasons discussed in the Utilities' Initial Brief, including the "high efficiency

gains the appliance provides and the prevalence of this measure in other Midwestern efficiency programs”. AG Init. Br., p. 15. There is simply no basis to support an imprudence finding.

## **2. High Efficiency Clothes Washers**

Staff is incorrect in its assertion that “[t]here is no dispute that clothes washers were not cost effective.” Staff In. Br., p. 19. That only further illustrates Staff’s excessive focus on the TRC test. All of the rebate measures, including high efficiency clothes washers, were cost effective under the PAC test and “ provide substantial value either to the Chicagoland Program or customers that is not captured by the TRC.” Beitel Reb., NS-PGL Ex. 4.0, 3:65 – 4:70. Staff’s proposed disallowance of the Program’s expenditures on rebates for high efficiency clothes washers should not be adopted.

The Utilities’ Initial Brief lists numerous reasons high efficiency clothes washers were included in the Chicagoland Program: the TRC was very close to 1.0, they provided high visibility to consumers and led to a retail-based awareness of gas efficiency measures, and leveraged the extensive retailer-based outreach and awareness of energy efficiency measures that was already underway in the market through the ComEd energy efficiency program. NS-PGL Init. Br., p. 28. There was a significant advertising benefit with very little direct expenditure on marketing. *Id.*, p. 29. Moreover, clothes washers incentives appear regionally and nationally, and are the cornerstone of many energy efficiency programs. *Id.* p. 28. Clothes washers were the only significantly visible product in the Chicagoland Program portfolio, and the opportunity to generate consumer excitement about efficiency was a critical factor in the decision to include clothes washers in the Program. *Id.* p. 29. High efficiency clothes washers have non-energy benefits that are highly valued by customers -- water and detergent savings and less wear and tear on clothes. *Id.*

For the most part, Staff dismisses all of these benefits in its Initial Brief. Staff argues that energy efficiency awareness was already considered in the net-to-gross ratio calculation, and that the TRC ratio indicated that the measure was not cost effective. Staff Init. Br., p. 20. Staff fails to address the substantial value that is not captured by the TRC measurement, and instead relies on Dr. Brightwell's opinion that the TRC test result of below 1.0 means that the Board should not have included high efficiency clothes washers in the Chicagoland Program portfolio. There is extensive evidence that his opinion is erroneous and, at most, presents a reasonable difference of opinion. The AG concurs that the decision to include clothes washers was "a reasonable one" based on the program development team's considerable experience, what was known at the inception of the Program, as well as the Board's desire to jump-start efficiency in the Peoples Gas/North Shore territory. AG Init. Br., p. 10. Dr. Brightwell's opinion cannot support an imprudence finding.

### **3. Wall Insulation**

Staff continues to argue for the disallowance of costs incurred by the Utilities for rebates for wall insulation on the grounds that even if the calculated TRC for this measure 2.5, the assumed cost per square foot of \$0.35 used in the TRC was not reasonable. Staff Init. Br., p. 16. Staff's proposed disallowance must be rejected because it is not supported by, and is contrary to, the evidence in this case.

Staff's Initial Brief alleges that the \$0.35 assumption was not reasonable for a number of reasons. First, Staff claims that while the Program designers assumed the wall insulation would be self-installed, the program was marketed to a "trade ally network." Staff Init. Br., p. 17. Second, Staff disagrees with the Utilities' assertion that the program could have changed its marketing approach to increase the percentage of rebates attributable to customer installed

insulation, and thereby increase cost-effectiveness. *Id.* Finally, Staff alleges that the Utilities should have known that the modeled cost of wall insulation was too low. *Id.* at 18.

Staff mischaracterizes the marketing of the wall insulation measure by the Program; the evidence clearly shows that the wall insulation was promoted through *all* readily available channels, not just to the trade. NS-PGL Init. Br., p. 32. There were extensive retailer promotion efforts, and promotion through additional channels, including contractor training and outreach. *Id.* It just turned out that the contractors' channel was more successful. *Id.* Even if a contractor-installed component had been factored into original cost estimates, given the bad economic conditions, the program design team would not have expected that the contractor-installed share would be greater than 1/3; using this figure in a TRC analysis would have resulted in a TRC of 1.16. *Id.*

Staff disagrees that the cost-effectiveness of the wall insulation measure could have been optimized for three reasons. First, Staff alleges that the cost-effective analysis did not consider the value of the homeowners' time in installing the measure. Staff Init. Br., p. 17. Second, Dr. Brightwell decided that retrofitting wall insulation was, in his opinion, too hard, and not something he would do. *Id.* Finally, Staff alleges that the program design team "knew of the marketing inconsistency" and did nothing to address it. *Id.* These reasons are not compelling -- or are irrelevant -- and fail to address the contractor-installed wall insulation component of the Program. Independent energy efficiency experts Ms. Beitel and Mr. Plunkett testified that the cost of contractor installed wall insulation can decrease over time with high-volume, because contractors can develop efficiencies in marketing, scheduling and installation practices, which reduces their cost. Beitel Sur., NS-PGL Ex. 6.0, 16:349-351; Plunkett Sur., NS-PGL Ex. 7.0, 11:237-239.

Staff's argument that the Utilities should have known that the modeled cost of wall insulation was too low is similarly baseless. There is ample evidence that the Program design team was diligent in reviewing cost-effectiveness assumptions, including that for wall-insulation. Beitel Reb., NS-PGL Ex. 4.0, 23:531 – 24:534. When Program assumptions were reviewed in May 2009, it was discovered that, contrary to the Program prediction, about two-thirds of wall insulation was being installed by contractors. *Id.* The cost-effectiveness was recalculated with the actual Program experience of \$1.22 per square foot, with a resulting TRC of 0.70. NS-PGL Init. Br., p. 31. Even when the TRC was revised to 0.70, the Governance Board voted to maintain wall insulation in the Program because it presents significant energy savings and comfort improvements (wall insulation reduces heat loss), and reduces lost opportunities. *Id.* Moreover, the measure was seen as critically necessary in Chicago because many homes in Chicago have no wall insulation. Homes built in Chicago before 1970 have little to no insulation, and seventy-seven percent of homes in Chicago were built before 1970. *Id.*

Staff's reliance on the Green Bungalow Initiative report is entirely misplaced. Staff cites the report for the proposition that the Utilities should have known that it had underestimated the modeled cost of wall insulation. Staff Init. Br., p. 18. Specifically, Staff's brief states that "[t]hese work papers show that there is sufficient reason to suspect that the cost of \$0.35 per square foot was unreasonably low." *Id.* On close examination, it is clear that the wall insulation installed for the Green Bungalow Initiative was done by contractors, not homeowners.<sup>2</sup> Therefore, the costs cited in that report would have been irrelevant to the Chicagoland Program, which assumed wall insulation would be installed mostly by homeowners.

---

<sup>2</sup> The reports states that four "abandoned" bungalows were acquired for the project (p. 3). The Bungalow Vendor List at page 15 list several wall insulation contractors among those who "worked directly on the Chicago Green Bungalow Initiative".

It is true that the original assumption by the Governance Board about how wall insulation would be installed was, in hindsight, incorrect. However, it was not imprudent given the severe economic conditions at the time the portfolio was designed. NS-PGL Init. Br., p. 31.

As with the other two measures of which Staff complains, there is extensive evidence that Staff's position is incorrect and, at best, presents a reasonable difference of opinion. The AG also urges the Commission to reject Staff's proposed disallowance of the Program's expenditures related to wall insulation, noting that "given its relative affordability, as compared to building structure appliances, wall insulation provides an affordable way to decrease radiant heat loss." AG Init. Br., p. 12. Staff's position cannot support an imprudence finding.

**F. Staff's Specific Proposed Disallowances Are Excessive and Punitive**

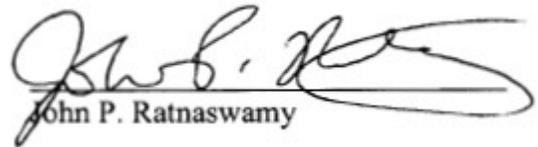
The Utilities' Initial Brief also showed that Staff's proposed adjustments are excessive and punitive. NS-PGL Init. Br., pp. 33-34. Staff's Initial Brief did not address those points.

## CONCLUSION

As the Utilities stated in their Initial Brief, the Commission can have been presented with few prior Dockets, if any, in which it was so clear that imprudence disallowances were being proposed based on nothing more than a difference of opinion. Staff's opinions seem consistently to be erroneous, but even if they were to fall within the zone of reasonable opinions, they certainly do not negate the reasonable conclusions reached by the Board with advice from independent experts and the subsequent testimony of such experts. The Commission should approve the Statements of Reconciliation Adjustments and reject Staff's proposed adjustments. Staff's proposed adjustments would constitute reversible error.

Dated: November 10, 2010

By:

  
John P. Ratnaswamy

John P. Ratnaswamy  
Jacqueline M. Vidmar  
Carla Scarsella  
ROONEY RIPPKE & RATNASWAMY LLP  
350 West Hubbard Street, Suite 430  
Chicago, Illinois 60654  
(312) 447-2800  
john.ratnaswamy@r3law.com  
jacqueline.vidmar@r3law.com  
carla.scarsella@r3law.com

Mary Klyasheff  
INTEGRYS ENERGY GROUP, INC.  
130 East Randolph Street  
Chicago, Illinois 60601  
(312) 240-4470  
mpklyasheff@integrysgroup.com