

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 11-0671
Adoption of 83 Ill. Adm. Code 596)	

**REPLY COMMENTS OF THE
CITIZENS UTILITY BOARD**

CITIZENS UTILITY BOARD
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March 29, 2012

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NOW COMES the Citizens Utility Board (“CUB”), pursuant to Section 5-40 of the Illinois Administrative Procedure Act, 5 ILCS 100/5-40, and the Administrative Law Judge’s Ruling of March 29, 2012, to submit its Reply Comments regarding the rules proposed by Staff (“Staff”) of the Illinois Commerce Commission (“ICC” or “Commission”) in the above-captioned proceeding.

Staff, Ameren Illinois Company (“AIC”), and CUB filed initial comments on March 13, 2012. Staff, AIC, and North Shore Gas Company and The Peoples Gas Light and Coke Company (“NS-PGL”) filed reply comments on March 20, 2012. CUB moved for leave to file reply comments on March 26, 2012. Citizens Utility Bd.’s Mot. for Leave to File Reply Comments (Mar. 26, 2012) (“Motion”). The Administrative Law Judge (“ALJ”) granted CUB’s Motion. Notice of Admin. L. Judge’s Ruling (Mar. 29, 2012). These Reply Comments address the reply comments of NS-PGL which directly respond to CUB’s Initial Comments.

CUB Initial Comments

CUB proposed three changes to the language of Staff’s proposed rule. First, CUB proposed adding inspection plans and reports required of jurisdictional persons under the Illinois Gas Pipeline Safety Act (“IGPSA”) to Staff’s proposed definition of “Inspection information.” Init. Comments of the Citizens Utility Bd. at 4 (Mar. 13, 2012). Second, CUB proposed adding

information regarding gas pipeline leaks, lost gas, and unaccounted for gas to Staff's proposed definition of "Inspection information." *Id.* at 4-5. Third, CUB proposed adding language to make clear what the "proceeding" at issue is for purposes of reference to the Commission's existing rules and to establish the rights of intervening parties to challenge confidentiality designations. *Id.* at 5.

NS-PGL Reply Comments

NS-PGL did not specifically oppose CUB's first proposed change to add inspection plans and reports to Staff's proposed definition of "Inspection information." Regarding CUB's second proposed change, NS-PGL claimed that information regarding gas pipeline leaks, lost gas, and unaccounted for gas "is already publicly available" and "potentially the subject of annual review proceedings." Reply Comments of North Shore Gas Co. and The Peoples Gas Light and Coke Co. at 5 (Mar. 20, 2012). Regarding CUB's third proposed change, NS-PGL supported adoption of AIC's proposed procedural language over CUB's. *Id.* If the Commission adopts CUB's language, NS-PGL commented that the party seeking protection of information "would have a right to reply to any intervenor's response." *Id.*

CUB Reply Comments

Public Availability of Information Regarding Gas Pipeline Leaks, Lost Gas, and Unaccounted for Gas

CUB proposed adding information regarding gas pipeline leaks, lost gas, and unaccounted for gas to Staff's proposed definition of "Inspection information." NS-PGL claimed that this information was already publicly available through annual reports submitted by utilities to the Commission via Form 21. *Id.* To clarify CUB's Initial Comments in response to NS-PGL's claim, it is CUB's position that the information submitted on a Form 21 annual report

is not publicly available in the way envisioned by Staff's proposed rule or by the United States Department of Transportation's ("Department") gas pipeline safety initiative.

Form 21 reports are submitted annually by utilities to the Commission pursuant to the Public Utilities Act. It is true that Illinois law makes the contents of these Form 21 reports "open to public inspection." 220 ILCS 5/5-109. However, in attempting to obtain copies of these Form 21 reports from the Commission, CUB was informed that (1) it would have to obtain a copy physically from the Commission's offices in either Springfield or Chicago; and (2) it would have to pay a 25 cent-per-page copying fee for any pages requested. For a document that is potentially hundreds of pages long, this method of public inspection is contrary to the language of Staff's proposed rule and is inconsistent with the Department's initiative.

Staff's proposed rule makes "Inspection information" "available to the public" and allows for the information to "be posted on the Commission's website." *See* Initiating Order, Appendix at Section 596.120 (Oct. 5, 2011). Requiring physical pick-up in only two offices across the entire state and requiring approximately \$180 in payment for a full report cannot reasonably be considered making the Form 21 reports "available to the public." Although the Commission's website does contain copies of the blank forms used to populate a Form 21 annual report¹, CUB was unable to locate any report submitted by any utility using Form 21 on the Commission's website. The Department's initiative stresses that the pipeline safety initiative addresses safety concerns by making information about pipelines easily accessible to the public. Staff Report to the Comm'n at 1 (Aug. 23, 2011). In the Department's opinion, ensuring that the public has access to information about local pipelines helps keep people safe and reduces the potential for serious accidents. *Init. Comments of the Citizens Utility Bd.* at 3.

¹ <http://www.icc.illinois.gov/forms/results.aspx?st=1&t=6>

The relative public unavailability of Form 21 reports notwithstanding, NS-PGL claimed that “given the effect of lost and unaccounted for gas on gas costs that utilities recover from customers, that information is potentially the subject of annual review proceedings.” Reply Comments of North Shore Gas Co. and The Peoples Gas Light and Coke Co. at 5 (Mar. 20, 2012). NS-PGL refers to Section 9-220(a) of the Public Utilities Act, which allows for an annual purchased gas reconciliation proceeding. 220 ILCS 5/9-220(a). NS-PGL itself refers to information about lost, leaking, or unaccounted for gas as being only “potentially” available from these proceedings. “Potential” availability is inconsistent with both the Staff’s proposed rule and the Department’s initiative.

Even if the information at issue were to become available in such an annual proceeding, the disclosure of that information to the public would be subject the Commission’s Rules of Practice, any applicable Rules of Evidence, and any rulings of the Commission or ALJs in that particular proceeding. Moreover, it is unclear on whom the burden of making the information available to the public would fall. CUB’s proposal to make information regarding leaks, lost gas, and unaccounted for gas available on the Commission’s website by expanding Staff’s proposed definition of “Inspection information” should be adopted. The desirability of public access to such information is uncontested by NS-PGL and further explained in CUB’s Initial Comments. *See Init. Comments of the Citizens Utility Bd. at 4-5 (Mar. 13, 2012).*

Procedural Language

CUB initially proposed clarifying what “proceeding” the Commission’s Protective Order rule would apply to in Staff’s proposed rule and adding the right for intervening parties to support or oppose a jurisdictional person’s request for confidential treatment. *Id.* at 5. NS-PGL commented that CUB’s language should be modified to allow that “the party seeking protection

of its information, as the moving or petitioning party, would have a right to reply to any intervenor's response to its request [for confidential treatment]." Reply Comments of North Shore Gas Co. and The Peoples Gas Light and Coke Co. at 5 (Mar. 20, 2012). CUB has no objection to NS-PGL's proposed modification to allow the requesting party to reply to any intervenor's response.

WHEREFORE, CUB respectfully requests that the Commission adopt the changes as requested in its Initial Comments, with modifications as specified in these Reply Comments.

DATED: March 29, 2012

Respectfully Submitted,
CITIZENS UTILITY BOARD



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