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

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
vs.	:	
	:	
United States Steel Corporation,	:	
Respondent	:	Docket No. 10-0635
	:	
Determination under Section 5 of the Illinois Gas	:	
Pipeline Safety Act of the plan USS is to have in	:	
place for the inspection and maintenance of its	:	
pipeline facilities in and near its Granite City	:	
Works.	:	

**REPLY BRIEF OF UNITED STATES STEEL CORPORATION**

United States Steel Corporation (“U. S. Steel,” “USS” or “Respondent”) hereby files with the Illinois Commerce Commission (“Commission”) this Reply Brief in accordance with the procedural schedule established by the Administrative Law Judge.

**I. INTRODUCTION**

The provisions of the Illinois Gas Pipeline Safety Act, 220 ILCS 20/1 *et seq.* (“IGPSA”) and/or the federal Natural Gas Pipeline Safety Act, 49 U.S.C. §60101 *et seq.* (“NGPSA”) are not applicable to the natural gas and coke oven gas (“COG”) fuel lines at U.S. Steel’s Granite City Works (“GCW”) facility. Accordingly, the Commission should reject the Commission Staff’s (“Staff”) claims to the contrary and determine that there is no basis to assert jurisdiction over GCW’s customer-owned, operated and self-contained fuel lines.

This is a case of first impression for the Commission. If the Commission determines that it has jurisdiction over the natural gas and COG fuel lines owned by U.S. Steel, and used only for the operation of GCW, it would reverse more than 40 years of Commission practice. Hrg. Tr. at

69:13-19. Staff seeks to have the Commission adopt a novel and untested interpretation of the IGPSA and NGPSA in its attempt to assert jurisdiction over the GCW natural gas and COG fuel lines. However, Staff misinterprets the applicable law. The “transportation” of gas -- the legal trigger for jurisdiction under the IGPSA and NGPSA -- is defined by statute and regulation to include three specific categories of pipeline: gathering lines, transmission lines, and distribution lines.<sup>1</sup> For reasons discussed in U.S. Steel’s Initial Brief, none of these pipeline categories applies to GCW natural gas or COG fuel lines. USS IB at 15-18.<sup>2</sup> There is no basis under the law for the Commission to assert jurisdiction over these lines because the gas in these lines is not in “transportation,” but rather is gas that has reached and is in the control of an end user.<sup>3</sup> Importantly, Staff does not, and cannot, claim that these fuel lines are used to transport gas to third-parties. The unrebutted evidence indicates otherwise, and also shows that there is no specific, identifiable safety risk or concern for the GCW fuel lines.

Staff has failed completely in meeting its burden of proof that Commission jurisdiction exists. *Bindell v. City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1<sup>st</sup> Dist. 1991)(“The burden of proving jurisdiction rests upon the party asserting it”). Indeed, even now Staff is

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<sup>1</sup> The IGPSA uses the phrase “transportation of gas;” the NGPSA uses the slightly different term “transporting gas.” 220 ILCS 20/2.03; 49 U.S.C. §60101(a) (21).

<sup>2</sup> Inexplicably, Staff’s Brief states that U.S. Steel “appears to suggest” that coke oven gas is not a “gas” under the IGPSA and NGPSA. Staff IB at 12. U.S. Steel does not, and has never made, this claim.

<sup>3</sup> As noted by Staff, the definition of the “transportation” of gas refers specifically to its transportation “in or affecting interstate or foreign commerce.” Staff IB at 13. Staff asserts that USS “participates in interstate and foreign commerce” because the steel produced at GCW is sold and used outside the state of Illinois. *Id.* at 14. The only testimony elicited by Staff regarding this jurisdictional element is from Darin Burk, who states that it is his “understanding that USS participates in interstate or foreign commerce, and therefore the gas affects interstate or foreign commerce.” Staff Ex. 2.0, 9:190-192. **But Staff has failed to produce or elicit any facts to support this allegation, and therefore the record does not contain the necessary factual foundation for it.** Moreover, the “commerce” requirement does not apply to the GCW facility, but rather the gas in GCW natural gas and COG fuel lines, which is not in commerce, interstate or otherwise. In notice and comment rulemaking, PHMSA has stated that : “[t]ransportation of natural gas ends with the sale coupled with the delivery of the gas to the ultimate consumer so that, after the sale, the gas becomes a consumer item and is no longer in commerce.” 38 Fed. Reg. 9083, 9084 (April 10, 1973).

“reluctant to attempt to pinpoint the exact beginning and ending points of the jurisdictional facilities” without conducting an inspection.<sup>4</sup> Staff IB at 16. This is Staff’s “usual” cart-before-the-horse practice; it admits that it asserts jurisdiction over **all** pipeline facilities it encounters, and after meeting with the operator and conducting “sufficient reviews of the facilities and documentation regarding the design, construction and maintenance of the facilities” it “**occasionally** more narrowly defines the jurisdictional pipeline facilities.” Staff IB at 7 (emphasis added). Accordingly, in this case, Staff asks the Commission to find jurisdiction over GCW natural gas and COG fuel without limits or boundaries. Contrary to the assumption in Staff’s argument, there is no presumption of jurisdiction for courts of limited jurisdiction or administrative agencies. *Klaren v. Board of Fire and Police Com'rs of Village of Westmont*, 99 Ill.App.2d 356, 360, 240 N.E.2d 535, 537 (2<sup>nd</sup> Dist. 1968) (“There is no presumption in favor of the jurisdiction of courts of limited and inferior jurisdiction. 14 I.L.P., Courts § 22. By analogy, the same rationale would apply to the finding and order of an administrative agency”). The Commission should deny Staff’s request, and find that the GCW natural gas and COG fuel lines are not jurisdictional. In the alternative, if the Commission determines it can exercise jurisdiction over such lines, it should adopt PHMSA’s approach and decline to apply jurisdiction in the absence of a public safety risk, or first adopt appropriate fuel gas regulations under the Illinois Administrative Procedures Act, 5 ILCS 100/1 *et seq.*

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<sup>4</sup> But Staff has already conducted an inspection of the GCW facility. Baker Reb., USS Ex. 3.0, 3:61-4:74. Mr. Baker’s testimony describes the GCW natural gas and COG fuel lines in detail. *Id.*, 6:114-33:672. Staff propounded no data requests to U.S. Steel in this proceeding, despite having ample time and opportunity to do so. Hrg. Tr. at 34:17-36:2.

## II. ARGUMENT

### A. GCW's Natural Gas And COG Fuel Lines Are Not Used For The "Transportation" Of Gas

Staff's entire case hinges on the incorrect belief that the GCW natural gas and COG fuel lines are used for the "transportation" of gas. In making this claim, they rely on two arguments, neither of which is persuasive. First, Staff asserts that Commission jurisdiction should be found based upon the location of portions of GCW fuel lines in the public rights of way, and public safety concerns.<sup>5</sup> Staff IB at 12. Second, Staff argues that the word "transmission" in the statutory definition of "transportation" may be read broadly enough to apply to GCW fuel lines. *Id.* at 13. Both of Staff's arguments fail because they are contrary to the law and the evidence, and violate well-established rules of statutory construction.

#### 1. Neither The Law Nor The Evidence Support Jurisdiction Over GCW Fuel Lines Based On Their Location In Public Rights Of Way Or Public Safety Concerns

Staff's claim of jurisdiction based upon the location of portions of the GCW natural gas and COG fuel lines in public rights of way has no legal or factual basis. Specifically, Staff asserts that it is of "primary importance" that GCW lines "run across or along public rights of way," from a "jurisdictional and, more importantly, from a public safety perspective." Staff IB at 12-13. Staff further asserts that sending flammable gas through pipelines "beneath a public street" "especially where...USS does not own the public ways in question" constitutes the "transmission" of gas. *Id.* at 14. These assertions are ill-founded, lack any basis in language of the statutes and regulations, and should be rejected by the Commission.

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<sup>5</sup> USS Ex. 1.1P (Public) and USS Ex. 1.1C (Confidential) are drawings depicting the approximate location of natural gas piping at GCW. USS Ex. 1.2P (Public) and USS Ex. 1.2C (Confidential) are drawings depicting the approximate location of COG piping at GCW. The public versions of these exhibits depict piping in public rights of way, and the confidential versions depict piping on GCW property and public rights of way. Baker Dir., USS Ex. 1.0, 5:92-102.

**a. The “Transportation” Of Gas Is Not Defined By Law As Pipes That “Run Across Or Along Public Rights Of Way”**

Neither the IGPSA nor the NGPSA define the “transportation” of gas in terms of pipes that “run across or along public rights of way.” Indeed, there is not -- and Staff has not cited -- *any* section or provision of the IGPSA, the NGPSA or the pipeline safety regulations which defines regulated pipes and facilities on the basis that the pipe or equipment is located in a public way. Rather, the “transportation” of gas is defined principally with respect to a gas pipe’s function: transmission, distribution or gathering. 220 ILCS 20/2.03; 49 U.S.C. §60101(a)(21). Pipes performing these functions, especially transmission and distribution, are usually located in areas that are accessible to the public, but the law clearly does not provide that public accessibility is determinative of jurisdiction. *Id.*

**b. There Is No Evidence To Support A Public Safety Concern Over GCW Fuel Lines**

Staff’s attempt to justify its jurisdictional overreach in the name of public safety (Staff IB at 12-13) cannot withstand scrutiny. The evidence demonstrates that the GCW fuel lines pose an extremely low risk to public safety. Naeve Dir., USS Ex. 2.0, 3:57-58, 17:360-362. *See also* USS IB at 24-29. Staff has not refuted this fact. Moreover, Staff has failed to demonstrate *even one* public safety risk associated with GCW natural gas and COG fuel lines. USS IB at 27-8. For the most part, Staff cites potential public safety risks that apply generically to all underground pipes containing gas: the potential for corrosion and pipeline failure. Burk Sur., Staff Ex. 3.0, 8:154-9:186. All of the potential risks cited by Staff as applied to GCW fuel lines are clearly disproven by the record evidence. Naeve Dir., USS Ex. 2.0, 13:276-15:314, 16:323-17:346. Staff relies on only one site-specific fact to support its position: the two benzene releases from GCW COG fuel lines reported in 2008. Burk Sur., Staff Ex. 3.0, 9:175-184. But Staff’s reliance falls flat in

the face of the record evidence, and is belied by its demonstrated lack of knowledge and apparent disinterest regarding the details of these releases. These releases involved very small amounts of benzene; the reporting threshold for benzene under the environmental laws is ten pounds. Baker Dir., USS Ex. 1.0, 36:721. The two releases were from low pressure COG lines only and did not involve GCW natural gas lines. *Id.* at 38:763-84. Only one of the releases involved a portion of the COG line off GCW property, and it originated from a hole too small to be visually located. *Id.* Contrary to its claim of a public safety concern regarding these releases, Staff testified that it has “no idea how much gas was released” and “might have seen,” but does not recall, the information contained in the record regarding the details of the releases. Hrg. Tr. at 78:1-15. Staff did recall that the releases involved very small diameter holes, but did not know any of the details. *Id.*

Further undercutting Staff’s public safety claim is the position of PHMSA, whose mission is to ensure national pipeline safety. PHMSA does not apply the pipeline safety regulations to situations like those posed by GCW natural gas and COG fuel lines, where the lines are “associated with the plant” (operated by plant personnel, run between plant buildings, and are less than one mile in length). *See* Staff Ex. 1.1, App. B at 2. PHMSA’s position is rational; gas lines associated with plants have on-site operators constantly monitoring the lines and exerting active control, which is not the case for typical gas distribution and transmission lines. Naeve Dir., USS Ex. 2.0, 15:305-307. Moreover, PHMSA’s focus on lines less than one mile in length addresses the “transportation” requirement. That is, a line less than one mile in length may be properly viewed as involving end user actions at the end user’s premises, whereas lines longer than one mile can no longer be presumed to involve end user actions at the end user’s premises.

In contrast, Staff's apparent position is that there is risk associated with any pipe containing gas (even if "extremely low") and therefore it must be regulated; i.e., whatever furthers pipeline safety must be the law. See Burk Sur., Staff Ex. 3.0, 8:155-6. But this is not the law, and Staff offers no authority to support enlarging the scope of existing law. Indeed, courts have rejected similar attempts by administrative agencies to expand the scope of existing laws, even where alleged safety claims purport to underlie the agency's action. In *Contract Courier Services, Inc. V. Research and Special Programs Administration, United States Department of Transportation*, 924 F.2d 112 (7<sup>th</sup> Cir. 1991), the Seventh Circuit held that the Department of Transportation ("DOT") misinterpreted a provision contained in a hazardous materials transportation statute by giving overbroad and undue weight to its underlying safety goal. As the Seventh Circuit court stated:

Against this the Department contends that the law is a remedial statute, to be construed liberally. This is a useless maxim--useless not only because it invites the equal and opposite riposte that penal statutes are to be strictly construed but also because it does not answer the question "how far?". **Statutes do more than point in a direction, such as "more safety". They achieve a particular amount of that objective, at a particular cost in other interests. An agency cannot treat a statute as authorizing an indefinite march in a single direction. "[N]o legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice--and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law.** *Rodriguez v. United States*, 480 U.S. 522, 525-26, 107 S.Ct. 1391, 1393, 94 L.Ed.2d 533 (1987); *Pension Benefit Guaranty Corp. v. LTV Corp.*, --- U.S. ----, 110 S.Ct. 2668, 2676, 110 L.Ed.2d 579 (1990). See also *Board of Governors v. Dimension Financial Corp.*, 474 U.S. 361, 374, 106 S.Ct. 681, 689, 88 L.Ed.2d 691 (1986); *Amanda Acquisition Corp. v. Universal Foods Corp.*, 877 F.2d 496, 503 (7th Cir.1989); *Mercado v. Calumet Federal Savings & Loan Ass'n*, 763 F.2d 269 (7th Cir.1985); *Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 310-11 (7th Cir.1986); *In re Erickson*, 815 F.2d 1090, 1094 (7th Cir.1987).

*Id.* at 115 (emphasis added). The principle that "no legislation pursues its purposes at all costs" is embodied in the statutory requirements of the IGPSA and the NGPSA. The IGPSA requires the Commission to adopt standards that are "practicable and designed to meet the need for

pipeline safety,” and to consider “the extent to which such standards will contribute to public safety.” 220 ILCS 20/3(c). The NGPSA requires DOT to formally assess the reasonably identifiable or estimated costs and benefits before prescribing pipeline safety standards. 49 U.S.C. §60102(b).

The Commission should not be concerned that GCW natural gas and COG fuel lines will operate unregulated if the Commission determines that it does not have jurisdiction. U. S. Steel presented substantial and unrefuted evidence that GCW and the gas in its fuel lines face stringent regulation by federal and state regulators, including the United States Environmental Protection Agency, the Illinois Environmental Protection Agency, the Occupational Safety and Health Administration and the Illinois State Fire Marshall. Naeve Dir., USS Ex. 2.0, 7:146-8:162. Even PHMSA has recognized that safety regulation of nonjurisdictional pipes is addressed by other laws: in addressing the concern that certain customer-owned service lines should be regulated, PHMSA stated that “every part of the gas distribution system down to the point where the gas is burned should be subjected to some form of safety regulation. Most but not all customer-owned service lines are installed under a local code...[and] both OPS and State agencies anticipate that local codes will cover the remaining portion of the service, i.e., to the burner tip.” 38 Fed. Reg. 9083, 9084 (April 10, 1973).<sup>6</sup>

In sum, Staff’s claim of jurisdiction over GCW natural gas and COG fuel lines on the basis that portions of the lines are located in public rights of way or due to safety concerns is not supported by law or the record in this case, and should be denied.

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<sup>6</sup> See also Staff Ex. 1.1, App. B at 2 (Local building codes or other regulations regulate plant piping).

**2. Proper Application Of The Principles of Statutory Construction Demonstrate That Staff's Proposed Interpretation Of The "Transportation" Of Gas Is Not Consistent With The Law**

Staff's proposed interpretation of the "transportation" of gas to find jurisdiction over GCW fuel lines is not supported by law, and violates well-established statutory construction principles. Staff's argument is as follows: (1) the "transportation" of gas is defined as the "gathering, transmission or distribution of gas by pipeline... in or affecting interstate or foreign commerce;" (2) the word "transmission" is undefined by the IGPSA, the NGPSA and the federal regulations; (3) in the absence of a statutory definition, the words in a statute must be given their ordinarily and popularly understood meaning; (4) the dictionary definition of "transmission" is "something that is transmitted;" and (5) the dictionary definition of "transmitted" is to "admit the passage of" or "to send or transfer from one... place to another;" and (6) therefore, because GCW fuel lines send "flammable gas through pipelines beneath a public street," this constitutes the "transmission" of gas. Staff IB at 13-14. This analysis is fatally flawed for several reasons.

First, Staff's proposed statutory interpretation violates the well-established statutory construction principle which provides that statutes should be construed "so as to avoid rendering superfluous" any statutory language. *Astoria Federal Savings and Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991); *See also A.P. Properties, Inc. v. Goshinsky*, 186 Ill. 2d 524, 532-33, 714 N.E.2d 519 (1999) (rejecting construction of statute that rendered statutory phrase meaningless or superfluous); *Kaszubowski v. Chicago Board of Education*, 248 Ill. App. 3d 451, 457-8, 618 N.E.2d 608, 613 (1<sup>st</sup> Dist. 1993)("[E]ach word, clause or sentence of a statute must not be rendered superfluous but must if possible, be given some reasonable meaning"). Staff's proposed interpretation of the word "transmission" is broad enough to cover any movement of gas within pipes, and consequently render the words "gathering" and "distribution" in the statutory definition of "transportation" mere surplusage. Because Staff's proposed interpretation

would include every pipe up to every burner tip, it is clearly an unreasonable reading that is contrary to the statute and must be rejected.

Second, Staff's assertion that the word "transmission" is undefined in the pipeline statutes and regulations (Staff IB at 13) is perhaps artful, but must be rejected.<sup>7</sup> The pipeline safety regulations contain a specific definition for "transmission line," in addition to "gathering line" and "distribution line."<sup>8</sup> 49 CFR §192.3. These terms perfectly mirror the statutory definition and PHMSA has used these definitions with specific reference to jurisdictional issues.<sup>9</sup> 61 Fed. Reg. 28770 at 28771-2 (June 6, 1996)(Treatment by PHMSA of the definition of "transmission line" to be synonymous with "transmission"). The regulatory definitions should be viewed as having the force of law to the extent that Congress formally delegated to DOT the authority to elucidate certain statutory provisions of the NGPSA, and accorded high deference. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). (The most deferential review standard applies to agency interpretations contained within properly promulgated regulations). Thus, Staff's jurisdictional argument which fails to acknowledge or account for the regulatory definition of "transmission line" must be viewed as misguided and without support.

Finally, Staff's urged construction does not account for the jurisdictional exception for in-plant piping, which Staff and PHMSA agree exists under the pipeline safety laws and regulations. Hrg. Tr., 46:12-15; Staff Ex. 1.1, App. B at 2. A proper interpretation of a

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<sup>7</sup> Staff has already agreed that a pipeline used in the "transportation" of gas must by definition be a gathering line, distribution line or transmission line. Hrg. Tr. at 24:20-25:2.

<sup>8</sup> PHMSA specifically adopted the definition of "transmission line" because it was "being used in a different sense than the commonly understood meaning." 35 Fed. Reg. 13248, 13250 (August 19, 1970).

<sup>9</sup> The GCW natural gas and COG fuel lines are neither "transmission lines" nor "distribution lines." USS IB at 15-18. When adopting the definitions, PHMSA described "distribution line" as divided into two categories: mains and service lines. GCW fuel lines are neither mains nor service lines.

provision must be grounded on the “nature, objects and the consequences that would result from construing it one way or another.” *Mulligan v. Joliet Regional Port Dist.*, 123 Ill.2d 303, 527 N.E.2d 1264 (1988)(citing *Carrigan v. Illinois Liquor Control Commission*, 19 Ill.2d 230, 233 (1960)). *See also County of Cook v. Illinois Labor Relations Board Local Panel, et al*, 347 Ill.App.3d 538, 547 (2004)( “If the language of the statute permits two constructions, one of which would render the provision absurd and illogical and the other of which would render the provision reasonable and sensible, the former construction must be avoided”). Staff’s interpretation would extend Commission jurisdiction over all pipes that “transmit,” i.e., “send,” gas in Illinois. The correct interpretation -- the construction urged by U.S. Steel -- recognizes that the NGPSA was enacted to regulate the transportation of gas “from well-head to consumer” and not thereafter. U.S. Steel IB at 14. The regulatory definitions of “transmission line” and “distribution line” mark the end of these functions at the customer, providing the basis for the in-plant piping exception. 49 CFR §192.3. *See* U.S. Steel IB at 16-17.

In sum, Staff’s proposed interpretation of “transportation” to find jurisdiction over GCW natural gas and COG fuel lines should not be adopted by the Commission on the basis that it is unsupported by law.

**B. The Commission Should Not View The PHMSA Letter As “Definitive” On The Issue Of Jurisdiction**

Staff argues that PHMSA Letter -- which opines that the GCW natural gas and COG fuel lines on public property are “subject to the pipeline safety laws” -- “should be viewed as definitive” and suggests that the Commission accord the Letter “substantial deference.” Staff IB at 15. Staff’s position is meritless and must be denied. PHMSA’s opinion is not entitled to deference at all. “An administrative agency’s determination about the scope of its own jurisdiction, ‘a matter within the peculiar expertise of the courts,’ does not receive Chevron

deference but is reviewed de novo.” *United Transportation Union-Illinois Legislative Board v. Surface Transportation Board and United States of America*, 169 F.3d 474, 477 (7<sup>th</sup> Cir., 1998), citing *Midland Coal Co. v. Director, Office of Workers' Comp. Programs*, 149 F.3d 558, 561 (7<sup>th</sup> Cir.1998) (internal citation omitted) (“Chevron” deference does not extend to questions of an agency's jurisdiction). Moreover, deference of the kind sought by Staff applies only if the agency interpretation is the product of a formal agency process, such as adjudication or notice and comment rulemaking, through which Congress has authorized the agency “to speak with the force of law.”<sup>10</sup> *United States v. Mead Corp.*, 533 U.S. 218 at 229 (2001), citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984). In this case, PHMSA’s Letter is not the product of an adjudication or notice and comment rulemaking, and therefore should not be viewed by the Commission as determinative of the jurisdictional issue. Agency interpretations made without a formal and public process may be considered and accorded weight, but only if it is determined to be persuasive. “The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and letter pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The record evidence clearly weighs against finding the PHMSA Letter persuasive on the issue of jurisdiction over GCW natural gas and COG fuel lines.<sup>11</sup>

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<sup>10</sup> Deference to agency interpretations is not warranted where a regulation is unambiguous. *Christensen v. Harris*, 529 U.S. 576 at 588, 120 S. Ct. at 1663 (2000) (Court rejected Department of Labor’s Opinion Letter where the regulation’s meaning was clear; “to defer to the agency's position would be to permit the agency, under the guise of interpreting a regulation, to create *de facto* a new regulation”).

<sup>11</sup> As discussed in USS’s Initial Brief, Staff has misinterpreted the PHMSA letter. USS IB at 21-23.

First, the foundation for PHMSA’s Letter -- Staff’s request -- is faulty; it contained incorrect factual assertions, omissions, and mischaracterizations which materially distorted actual operating conditions at GCW, including the layout of the natural gas and COG fuel lines. USS IB at 19-21. PHMSA’s factual basis for its conclusion that the GCW fuel lines “are not located on the geographically contiguous grounds of a facility” are clearly stated in its Letter. PHMSA understood that (1) the GCW natural gas lines “depart GCW facilities and cross roads and highways accessed by the public;” and (2) coke oven gas “is transported several thousand linear feet before it is burned” and “is produced in one facility and is transported to another GCW facility under public right of way and public sidewalk.” Staff Ex. 1.1, App. B at 1-2. In other words, it appears that PHMSA may not have known that the portions of GCW natural gas and COG fuel lines located in public right of ways each cross a single thoroughfare (and do not cross the property of others) and reenter GCW property. These facts would be material to determining whether these lines would be considered in-plant piping or “geographically contiguous property.”<sup>12</sup> See USS IB at 22-23.

Further, PHMSA’s Letter itself contains no legal analysis, citations or developed reasoning. PHMSA’s jurisdictional statement is far from clear and convincing: PHMSA does not actually apply the pipeline safety regulations in cases like GCW’s. Staff Ex. 1.1, App. B at 2. PHMSA advised Staff that it would not object to State regulation of portions of such lines that are not on plant property if the State determined there was a need.” *Id.* PHMSA suggests that if

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<sup>12</sup> The PHMSA Letter does not define “geographically contiguous property.” Staff Ex. 1.1, App. B at 1. PHMSA’s language suggests that it is something different than “entirely upon GCW property,” which it could have easily stated. For example, the environmental hazardous waste regulations provide that “on-site” means “the same or **geographically contiguous property** which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way.” 40 CFR §260.10 (emphasis added). See also USS IB at 18 (Discussing that customer has a single “premises” even if that property is divided by a highway, street, alley or railroad right-of-way) and USS IB at 23 (Discussing 49 CFR Part 195 in-plant piping exception, which is not nullified by a thoroughfare crossing).

the Commission “decided to begin regulating such lines,” the Commission should publish a policy. *Id.*

Moreover, evidence in the record suggests that the opinions expressed in the PHMSA Letter may not have been objective. During the time in which the Request was pending at PHMSA, Staff and the Central Region Director for PHMSA had discussions regarding Staff’s attempt to assert jurisdiction. Hrg. Tr. at 64:13-65:20. U.S. Steel was not a party to those discussions since Staff had rejected U.S. Steel’s request for participation in Staff’s Request to PHMSA. USS Ex. 1.5, p. 2-3. PHMSA’s impartiality is uncertain given an email to Staff which solicits Staff’s preference on the answer to its Request:

We seem to have a mix of comments on distribution and transmission on the plant owned pipe.

I kind of favored distribution on everything but the line from the off plant MRTCC connection to the property line. I’d go with transmission on that, primarily because it looks more like a direct sales line to me. The rest of them I’d go with distribution, but not all agree on this....

Do you have any preference on classification?

Not sure what everything is being linked to in legal definitions, but the tide seems to be favoring everything off-plant property being regulated piping, but the on-plant piping being non-regulated, plant piping.

That is my view of things on the task, but don’t take it to the bank. I doubt that discussions are over. I won’t be here when this one finishes.

USS Ex. 1.4 at 31.

Finally, Staff undermines its argument for deference by its own disregard of the full scope and intent of the PHMSA Letter. Staff has not demonstrated a particular need to regulate GCW natural gas or COG fuel lines, nor has Staff proposed to pursue or adopt a rule before regulating such lines.<sup>13</sup> Further, Staff continues to maintain that the Commission has jurisdiction

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<sup>13</sup>Even if Staff identified a “need” to regulate GCW natural gas and COG lines, the regulations it has adopted are not applicable. *See* USS IB at 29-30. Staff should put newly regulated operators on notice, and provide an opportunity for public comment, and publish a final determination. The appropriate method would be for the Commission to adopt rules in accordance with the Illinois Administrative Procedures Act, 5 ILCS 100/1 *et seq.*, and the IGPSA.

over pipeline facilities “in and near” the GCW plant (Staff IB at 11; Burk Dir., Staff Ex. 1.0, 14:303-17; Hrg. Tr. at 44:17-45:3) notwithstanding PHMSA’s clear and unqualified statement that there is no jurisdiction on GCW plant property. Staff Ex. 1.1, App. B, at 2. Staff has offered no legal justification or evidence to support its contrary position.

In sum, the PHMSA Letter is neither controlling nor dispositive of the issue of Commission jurisdiction over GCW natural gas and COG fuel lines. The GCW fuel gas lines over which Staff seeks jurisdiction are in-plant piping which the Commission should find non-jurisdictional.

### **C. Staff’s Initial Brief Contains Misstatements Of Fact**

The “Statement of Facts” contained in Staff’s Initial Brief contains a number of misstatements,<sup>14</sup> which are corrected below:<sup>15</sup>

- Staff’s Brief states that the South Plant Line “carries natural gas to a facility in the South Plant portion of GCW.” Staff IB at 3. There is no “South Plant portion” of GCW. The “South Plant Line” (described in Mr. Baker’s testimony as “NG Pipe H”) is a GCW owned line from MRT-4, a delivery point for natural gas that is used only if the gas normally received at MRT-1 is disrupted. Baker Dir., USS Ex. 1.0, 14:283-291, 20:405-21:428.

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<sup>14</sup> Staff’s Brief states that “the pipeline system is odorized by MRT/Centerpoint at .25 pounds/MMFCF, which is lower than the .50 to .75 pounds/MMCF at which most gas on distribution systems in Illinois is odorized.” Staff IB at 4. Staff includes this purported fact without an explanation of relevance to this jurisdictional phase of the proceeding. It appears to be related to compliance under Part 192 of the pipeline safety regulations, and therefore properly part of any subsequent phase of this case, once the threshold jurisdictional question is resolved. U.S. Steel will respond to this assertion at the appropriate time.

<sup>15</sup> This list is not intended to be exhaustive. U.S. Steel reserves the right to contest any statements of fact that are not supported by the record.

- Staff’s Brief states that the NG Pipe “C” “leaves GCW property to cross 20<sup>th</sup> and 21<sup>st</sup> Streets.” Staff IB at 3. NG Pipe “C” does not cross two streets consecutively; it leaves GCW Property to cross 20<sup>th</sup> Street, reenters GCW property, and subsequently leaves GCW property to cross 21<sup>st</sup> Street. Baker Dir., USS Ex. 1.0, 17:338-45.
- Staff’s Brief states that NG Pipe “D” “leaves GCW property to cross 20<sup>th</sup> and 21<sup>st</sup> Streets.” Staff IB at 3. NG Pipe “D” does not cross two streets consecutively, it leaves GCW Property to cross 21<sup>st</sup> Street, reenters GCW property, and subsequently leaves GCW property to cross 20<sup>th</sup> Street. *Id.* at 17:350-18:357.<sup>16</sup>
- Staff’s Brief states that “[t]he pipeline system operates at a pressure of 150 psig.” Staff IB at 4. But not all GCW natural gas fuel lines operate at 150 psig: NG Pipe “H,” operates at 50 psig (Baker Dir., USS Ex. 1.0, 21:422); Branch Pipe “D” operates at 50 psig (*Id.* at 18:356); pressure is delivered to MRT 2 at 180 psig (*Id.* at 18:366); pressure is delivered to MRT 3 at 180 psig (*Id.* at 19:392-3).
- Staff’s Brief states facts regarding the location and operation of the GCW COG fuel lines (Staff IB at 4-5) that fails to take into account the comprehensive factual record established in this case.<sup>17</sup> The Commission should refer to the undisputed testimony of Gregory Baker for an accurate and complete description. Baker Dir., USS Ex. 1.0, 25:502-32:669. Also, USS Ex. 1.2P (Public) and USS Ex. 1.2C (Confidential) are drawings depicting the approximate location of COG piping at GCW. Staff has conceded that “Mr. Baker’s detailed explanation [of the natural gas and COG lines] provided a more clear and concise description of the natural gas and COG [lines]...” Staff IB at 16.

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<sup>16</sup> This correction and the point following are important to establish the in-plant piping exception.

<sup>17</sup> Staff’s “factual” description also asserts legal conclusions by describing certain functions as transportation, gathering or transmission.

