

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.	:	

RESPONSE OF UNITED STATES STEEL CORPORATION
TO COMMISSION STAFF’S REPLY BRIEF

United States Steel Corporation (“U. S. Steel,” “USS” or “Respondent”) hereby files with the Illinois Commerce Commission (“Commission”) this response to Commission Staff’s Reply Brief filed on August 24, 2012 (the “Reply”).¹

INTRODUCTION

The initial phase of this case² addresses whether, and to what extent, the Commission has jurisdiction over natural gas and coke oven gas (“COG”) fuel lines located at U.S. Steel’s

¹ This Response responds to only one argument in Staff’s Reply: that U.S. Steel made certain concessions regarding the applicability of the pipeline safety laws and regulations before the commencement of this case.

² In the ALJ’s Order Regarding Case Management, the Administrative Law Judge adopted Staff’s and U.S. Steel’s agreement that the initial phase of this case would be limited solely to determination of jurisdictional issues and that compliance issues will be addressed after the initial phase. Administrative Should approach Illinois EPA first regarding the transfer, and ideally obtain its agreement not to object. Law Judge’s Order Regarding Case Management Plan and Schedule (January 21, 2011); First Revised Administrative Law Judge’s Order Regarding Case Management Plan and Schedule (June 17, 2011) (“Case Management Order”).

Granite City Works (GCW) facility, pursuant to 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”).

Staff’s Reply asserts, for the first time, that U.S. Steel has conceded that the NGPSA and IGPSA are applicable to GCW’s natural gas and COG fuel lines. Staff Reply at 3-4, 6-7. This assertion is premised upon its interpretation of correspondence between Staff and U.S. Steel representatives which was written before the commencement of this case.³ The Commission should reject Staff’s interpretation as it is contradicted by prior Staff statements, flatly refuted by the record evidence, and contrary to law.

Staff alleges that (1) “USS asserted all the natural gas lines are indeed distribution lines” and thus “USS has admitted all its natural gas pipelines meet the definition of a pipeline used in the “transportation of gas”; and (2) USS’s consultants, M.K. Technologies, conceded that “GCW natural gas pipelines do in fact contain several mains and service lines, and as such, are distribution lines.” Staff Reply at 3-4. Further, Staff alleges that (1) USS agreed that the position that a large customer tap off of a transmission line is itself a transmission line, irrespective of ownership of that gas being transported, and that this is the “logical equivalent to USS conceding that the GCW COG pipeline is a transmission line” (*Id.* at 6-7); and (2) that USS has asserted that the GCW COG pipelines are distribution lines (*Id.* at 7). For the reasons discussed below, Staff’s argument that these “concessions” are dispositive is entirely without merit and must be rejected by the Commission.

³ Staff relies upon two documents, designated as Staff Ex. 1.01, Attachments 5 and 9. Staff Ex. 1.01, Attachment 5 is a letter from Anthony Bridge, Vice President, Operations, U.S. Steel, to Darin Burk of the Commission. Staff Ex. 1.01, Attachment 9 is a letter from Kathryn Scotti, Attorney—Commercial for U.S. Steel, to Patrick Foster and Richard Favoriti of the Commission.

Every single U.S. Steel “concession” alleged by Staff relates to the specific question of whether GCW is engaged in the “transportation” of gas, the legal trigger for jurisdiction under the IGPSA and NGPSA. The “transportation” of gas is defined by statute and regulation to include three specific categories of pipeline: “gathering lines,” “transmission lines,” and “distribution lines.” 220 ILCS 20/2.03; 49 C.F.R. §192.3. Staff’s asserts that U.S. Steel has conceded these legal definitions, specifically “transmission lines” and “distribution lines,” apply to the GCW natural gas and COG fuel lines.

The record is clear that U.S. Steel has consistently contested Commission jurisdiction over GCW natural gas and COG fuel lines. Staff’s own October 2010 Report to the Commission specifically states that U.S. Steel “acknowledges the Commission’s pipeline safety jurisdiction only over the South Plant line...and not over any portion of the USS GCW Natural Gas System or the Coke Oven Gas System.” Staff Ex. 1.01 at 7-8. One of the letters cited by Staff to support its “concession” claim contains an express reservation of rights by U.S. Steel to contest the jurisdiction of the Commission. Staff Ex. 1.01, App. A, Att. 5 at 1, footnote 1. Further, U.S. Steel filed a special and limited appearance in this proceeding, explicitly contesting and objecting to the assertion of jurisdiction by the Commission. At no point in the evidentiary process, nor in its Initial Brief, did Staff claim that U.S. Steel had previously made concessions which subject GCW to the jurisdiction of the Commission.

Staff's claim amounts to an argument that U.S. Steel has agreed to, or waived its argument against, the subject matter jurisdiction of the Commission in this case. *Aero Services International v. The Human Rights Commission*, 291 Ill. App.3d 740, 684 N.E.2d 446 (4th Dist. 1997). In *Aero Services*, the court found that the Human Rights Commission's failure to establish affirmative evidence establishing that the respondent employer came within the statutory definition of an "employer" under the Illinois Human Rights Act was a failure to establish subject matter jurisdiction:

A failure to [establish evidence establishing that the employer came within the statutory definition of "employer"] will result in the complaint being subject to a motion to dismiss for failure to establish the Commission's jurisdiction. If the employer does not have the requisite number of employees in Illinois, it is simply not subject to the Act and no failure on the employer's part to plead or prove that it is *not* subject to the Act can be used to grant jurisdiction where it does not lie. Subject-matter jurisdiction includes both the power to hear and decide a class of cases and the power to grant the particular relief requested. *People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track Corp.*, 122 Ill.App.3d 517, 521, 77 Ill.Dec. 882, 885, 461 N.E.2d 505, 508 (1984). Where, as here, a tribunal's power to act is dependent upon statutory authority, its jurisdiction is limited by that statute. See *Arlington*, 122 Ill.App.3d at 521, 77 Ill.Dec. at 885, 461 N.E.2d at 508; *People ex rel. Brzica v. Village of Lake Barrington*, 268 Ill.App.3d 420, 423, 205 Ill.Dec. 850, 853, 644 N.E.2d 66, 69 (1994); *In re Chiara C.*, 279 Ill.App.3d 761, 765, 216 Ill.Dec. 344, 346, 665 N.E.2d 404, 406 (1996).

684 N.E.2d at 454. See also *Business & Professional People for the Public Interest v. Illinois Commerce Commission*, 136 Ill. 2d 192, 243, 555 N.E.2d 693 (1989). (When an administrative agency acts outside its specific statutory authority, it acts without jurisdiction). Staff's argument that U.S. Steel has conceded to the Commission's jurisdiction is fatally flawed. It is well-established that subject matter jurisdiction cannot be conferred by agreement of the parties or by

acquiescence. *People v. Arlington Park Race Track Corp*, 122 Ill.App.3d 517, 461 N.E.2d 505, 508 (1st Dist. 1984) ("Defects in subject-matter jurisdiction cannot be waived nor can such jurisdiction be conferred on the court by the acquiescence or the stipulation of the parties"); *Klopfner v. Court of Claims*, 286 Ill.App.3d 499, 676 N.E.2d 679 (1st Dist. 1987); *Klaren v. Board of Fire and Police Commissioners of the Village of Westmont*, 99 Ill.App.2d 356,360, 240 N.E.2d 535 (2nd Dist. 1968)("[I]t has long been the law that when a court has no jurisdiction of the subject matter, it cannot be conferred by consent; and that whether the question was raised in the lower court is immaterial because there can be no waiver of jurisdiction of the subject matter where the trial court lacked jurisdiction to enter the order appealed from"). Moreover, Staff's argument lacks merit because the alleged "concessions" by U.S. Steel are conclusions of law, not statements of fact; the facts regarding the layout and operation of the GCW natural gas and COG fuel lines are undisputed. The Commission alone can decide conclusions of law, including whether the legal definitions of the IGPSA and/or the NGPSA apply to GCW fuel lines. *Bammerlin v. Navistar International Transportation Corp.*, 30 F.3d 898,900 (7th Cir. 1994)("The meaning of federal regulations is not a question of fact, to be resolved by the jury after a battle of experts. It is a question of law, to be resolved by the court").

