

**ICC Docket No. 12-0512**  
**The Peoples Gas Light and Coke Company's Response to**  
**Attorney General Data Requests AG 15.01-15.20**  
**Dated: December 20, 2012**

ICC DOCKET: 12-0511/12  
AG Cross Exhibit: 22

**REQUEST NO. AG 15.11:**

Referring to NS-PGL Ex. 30, Page 18, lines 437-439, please identify each issue that arose during 2012 as electric T&D companies attempted to apply the safe harbor method and describe how each of these issues left "a great deal of uncertainty as to whether the safe harbor guidance should be applied to certain projects allowing for a repair deduction." The response should also state when the referenced issues arose and when the Utilities became aware of the issues.

**RESPONSE:**

June 2012 – Remand order in Docket Nos. 09-0166/09-0167 (cons.) that eliminated Peoples Gas' Rider ICR method in response to an Illinois Appellate Court decision; instead the Utilities would need to forecast gas main replacements, and seek recovery based on that estimate in future rates. Since that date, the record has evolved in the form of testimony. Further, data request responses have been served. This record and other related documents have provided the Internal Revenue Service ("IRS") with a road map for developing an argument that the Utilities requested Accelerated Main Replacement Program ("AMRP") spend prior to and during the forecasted test year has been approved under what the IRS would likely define as a "plan of rehabilitation, modernization, or improvement" (current law), and/or "a regulatory commission decision that authorizes the replacements as part of an identified program aimed at a specific purpose". This is as opposed to much more general and less specific manner that Utilities generally see or would have expected AMRP projects to be presented, discussed, or approved in a rate case using a forecasted test year.

June 2012 – The Edison Electric Institute ("EEI") tax committee meetings were attended by John Wilde, Vice President - Tax of Integrys Business Support ("IBS"). EEI updated members as to the progress of getting the requested Treasury Department/IRS guidance for a safe harbor method applicable to tax repairs of generation property, in addition to updating members on implementation of the Revenue Procedure 2011-43 ("2011-43")<sup>1</sup> tax repair safe harbor for electric transmission and distribution ("T&D") property, and Industry Director's Directive #5 tax overhead safe harbor for electric utilities. A few EEI members indicated that IRS field examiners doing Closing Agreement Program ("CAP") audits were interpreting the Per Se and aggregation rules contained in 2011-43 much differently than they had expected. However, the

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<sup>1</sup> Please note that Mr. Stabile inadvertently referred to Revenue Ruling 2011-43. The correct reference is Revenue Procedure 2011-43. An errata to Mr. Stabile's rebuttal testimony will be issued.

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consensus was that those were isolated issues that would be clarified through forthcoming guidance from Treasury and/or the IRS.

Example: Taxpayer was retiring 40 poles on a 1,000 pole circuit, but replacing those retired poles with 41 poles to decrease the wire span at one point in the circuit. The 40 poles retired and the 41 poles added are less than 10% of the thousand poles, so the safe harbor should allow this project to be treated as a repair. However, IRS field personnel performing that taxpayer's CAP audits stated this project was instead capital in nature because the safe harbor does not apply due to number (4) of the Per Se rules.

June 2012 – American Gas Association (“AGA”) tax committee meetings were attended by Utilities witness John Stabile. AGA updated members as to the progress of getting the requested Treasury/IRS guidance for a safe harbor method applicable to tax repairs for gas T&D property and IRS guidance for a safe harbor method applicable to tax overheads for gas T&D property. AGA members were told to expect guidance to be released for both tax repairs and tax overheads before the 2011 tax return was due or at the latest by the end of the third quarter of 2012. Problems being experienced by electric T&D companies implementing 2011-43 were discussed, but AGA counsel felt that those problems had already been worked through by the industry and the IRS in guidance being drafted for gas T&D companies.

August 2012 – IBS Tax contracted with Crowe, a consultant, to implement 2011-43 for its two regulated electric utilities with T&D property. In early August 2012, Crowe made IBS Tax aware of questions it and other CPA firms were having implementing 2011-43, specifically related to interpreting the Per Se exception and the aggregation rule.

Examples:

- [(4) of Per Se exception 2011-43] Same 41 poles added versus 40 poles retired discussion above. [(2) and (3) of Per Se Exception 2011-43] The line being replaced carries same voltage, but increases amperages to one or more customers; is this an increase in capacity under the Per Se rules. Because the line work is being done, another customer is able to hook up and takes electric service, even though that was not a planned event or a reason for the project.
- Relating the two above examples to AMRP, because cast iron is being replaced with newer materials, and because the pressure will change from low to medium or in some cases high, and based on other things IBS Tax has learned through testimony in the instant case, the Utilities cannot

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assume, absent specific guidance to the contrary, that this would not be scoped out of the safe-harbor as a Per Se capital expenditure.

August 2012 – Crowe issued a Form 3115 to the Utilities' electric T&D affiliates reflecting the implementation of safe harbor method outlined in 2011-43, as interpreted by affiliates of the Utilities and Crowe collectively.

September 2012 – Revenue Procedure 2012-39 was issued allowing electric utilities the ability to delay the implementation of 2011-43 by one year. This revenue procedure reflects IRS growing understanding that 2011-43 was insufficiently clear and additional guidance and clarity is needed by taxpayers.

September 2012 – Integrys filed its 2011 tax return implementing 2011-43, per the Form 3115 provided by Crowe. The delay issued by the IRS came too late and did not give Integrys enough time to eliminate what had been done to implement 2011-43.

September 2012 – The IRS field team auditing Integrys' 2009-2010 return notified the Utilities that they would hold off on examinations of tax repair deductions per 2009 method changes until safe harbor methods were adopted in future cases, but would continue to examine tax overhead deductions per 2009 method changes.

October 2012 – IBS Tax reviewed the Utilities' testimony related to estimates of capital expenditures related to gas main replacements. Subsequent to that review, multiple data requests by Staff and intervenors were made seeking specifics related to the Utilities' estimated AMRP expenditures. Based on this analysis, IBS Tax started looking at how AMRP would be viewed.

November 2012 – A joint EEI/AGA tax committee meeting was held. IRS Industry Director (NRC) Kathy Robbins indicated that guidance for Gas T&D utilities would be delayed until the first quarter of 2013 at the earliest. Members of both industries outlined their issues and concerns regarding tax repair positions.

November 2012 – Testimony was received in the instant case from Staff and intervenors addressing the Utilities' plans for main replacements, and seeking additional specific information from the Utilities, further outlining parameters for main replacements to which Peoples Gas should be subject.

December 2012 – IBS Tax received the first version of Crowe's draft analysis and report supporting the Form 3115 relevant to the Utilities' electric T&D affiliates.

December 2012 – The Utilities submit rebuttal testimony providing greater specifics about what is included in Peoples Gas' AMRP balances and in its 2013 AMRP spend request, attempting to address concerns and questions raised by ICC Staff and Intervenors.