

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	:	
	:	Docket No. 12-0511
Proposed general increase in rates for gas service.	:	
	:	(Cons.)
	:	
Peoples Gas Light and Coke Company	:	
	:	Docket No. 12-0512
Proposed general increase in rates for gas service.	:	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S
RESPONSE TO NORTH SHORE GAS COMPANY'S AND THE
PEOPLES GAS LIGHT AND COKE COMPANY'S MOTION TO STRIKE
IN PART STAFF'S REPLY BRIEF ON EXCEPTIONS**

The Staff of Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, in accordance with 83 Illinois Administrative Code 200.190 and the schedule established by the Administrative Law Judges ("ALJs"), hereby submits this Response to North Shore Gas Company's ("North Shore", individually "Company") and The Peoples Gas Light & Coke Company's ("Peoples Gas" individually "Company") (collectively "Companies") motion to strike in part the reply brief on exceptions of Staff and responds as follows:

1. On April 26, 2013, the ALJs issued their proposed order in this matter. Consistent with the Commission's Rules of Practice (83 Ill. Admin. Code Section 200.830), the ALJs set May 9th and May 16th for the filing of briefs on exceptions ("BOE") and reply briefs on exceptions ("RBOE"), respectively, by the parties and Staff. (ALJPO, p. 283).

2. The ALJs' schedule allowed parties and Staff only seven calendar days (five business days) for the preparation of RBOEs.

3. The Companies, along with the People of The State of Illinois, the Citizens Utility Board and the City Of Chicago, Interstate Gas Supply of Illinois, and Staff all filed BOEs on May 9th, the date set by the ALJs for their filing.

4. The Companies, on May 14th at approximately 3 p.m. – only 50 hours from the time by which RBOEs were due to be filed – filed and served on the ALJs, parties, and Staff a Corrected BOE accompanied by a letter which the Companies' identified as an "errata" to their BOE. (NS-PGL Notice of Filing, May 14, 2013)

5. The Companies' "errata" to their BOE was not a mere correction of typographical errors or minor corrections like those filed by the AG and Cub-City, who had managed to file erratas to their BOEs earlier, but rather, made substantive changes in the Companies' arguments presented in their BOE. Contrary to the Companies' implication, the results presented in their BOE were not simply accidental miscalculations. Indeed, those results accurately reflect the calculations specified in their argument; the problem is their argument was wholly, and unmistakably, inappropriate, as it relied on manipulated calculations that ignored the recommendations of their own cost of common equity witness. (Staff RBOE, pp. 38-41) While the Companies may regret having presented that argument, its removal does not amount to a minor correction of an innocent mistake or scrivener's error.

6. The Companies' "errata" deleted an entire section from their BOE, Section VI.E.3.a, which erroneously argued that both Staff's and the Utilities' financial models were consistent in showing that the Utilities' cost of common equity has increased since

the Utilities' last rate case, a claim their cost of common equity witness never made. (NS-PGL BOE, p. 63) The Companies did not seek leave to file the substantially amended BOE that they filed with their errata, nor was such leave granted.

7. On May 16th, pursuant to the ALJs' schedule, Staff appropriately responded to the Companies' May 9th BOE, which was filed by the Companies on the due date set by the ALJs. Staff correctly pointed out in its RBOE that the Companies had manipulated the data to make the false claim that their cost of common equity results have risen since their last proceeding. (Staff RBOE, p. 40) Now the Companies, having seen their argument entirely discredited by Staff's RBOE, seek to strike in part Staff's RBOE pointing out the falseness of their claim. It is Staff's understanding that the Companies seek to strike the following paragraph from Staff's RBOE:

Undeterred by those facts, the Companies claim that the results actually rose from 10.61% to 11.09%. However, the only way the Companies can claim that their cost of common equity results have risen since their last proceeding is to blatantly manipulate the data. The Companies distorted the results in two distinct ways. First, despite revising their analyses in *both* proceedings, they now propose to compare the *revised* result in the 2011 docket to the *initial* result in this proceeding. That is, since their revisions decreased the results in both proceedings, they chose to compare the lowest 2011 results to the highest 2012 results – hardly a forthright comparison. But, as the tables above show, even that apples-to-oranges comparison was not sufficient, as the initial result in this proceeding is still 23 basis points lower than the revised result in the 2011 docket (10.61% - 10.38% = 0.23%). Thus, needing to adjust farther, they also included the DCF model result in their 2011 recommendation while excluding the DCF result from their 2012 recommendation – this, despite recommending the exact *opposite* in each case.¹ Both their inconsistent comparison of initial and revised results and their inconsistent use of DCF results serve to give the appearance of a lower 2011 result and a higher 2012 result, without which they could not claim an increasing ROE. Representing such an “analysis” as legitimate is an insult to the Commission.

¹ They explicitly recommended “that the DCF results be discounted or excluded” in the 2011 proceeding and explicitly “included the DCF model” in the current proceeding. (Order 11-0280/0281 (Cons.), January 10, 2012, p. 112; NS Ex. 3.0; p. 47; PGL Ex. 3.0; p. 47)

8. The Companies' motion should be denied as there is nothing improper with Staff responding to the only BOE that was filed by the due date set forth by the ALJs. Since the Companies never sought and were never granted leave to file a second, substantively altered, BOE on May 14th, it was appropriate for Staff to preserve its rights and respond to the Companies' only BOE authorized by the ALJs' procedural ruling in this matter.

9. In addition, due to the lateness in the filing of the "errata" by the Companies (only 50 hours from the time by which RBOEs were due to be filed), Staff had already expended considerable time and effort responding to Section VI.E.3.a, of the Companies' BOE, leaving less time to respond to the remaining arguments that the Companies found worth retaining. With only five business days allotted for the preparation of RBOES, the loss of that precious time is not insignificant. If the Commission were to allow the Companies at the last minute to withdraw a BOE which advances a palpably defective argument and replace it with a substantively different BOE, and then allow a utility to strike a brief responsive to the defective argument, it would be prejudicial to Staff and would encourage similar actions in the future that may be prejudicial to Staff, utilities, or other parties.

WHEREFORE, for all the reasons stated above, the Companies' motion to strike in part the reply brief on exceptions of Staff should be denied.

Respectfully submitted,

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