

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

WISCONSIN ENERGY CORPORATION,)	
INTEGRYS ENERGY GROUP, INC.)	
PEOPLES ENERGY, LLC, THE PEOPLES)	
GAS LIGHT AND COKE COMPANY,)	
NORTH SHORE GAS COMPANY, ATC)	
MANAGEMENT INC. and AMERICAN)	
TRANSMISSION COMPANY LLC)	
)	
Application pursuant to Section 7-204 of)	Docket No. 14-0496
the Public Utilities Act for authority to)	
engage in a Reorganization, to enter into)	
agreements with affiliated interests)	
pursuant to Section 7-101, and under the)	
Public Utilities Act to effectuate the)	
Reorganization.)	

**THE PEOPLE OF THE STATE OF ILLINOIS, THE CITY OF CHICAGO, AND THE
CITIZENS UTILITY BOARD’S MOTION TO REMOVE THE CONFIDENTIAL
DESIGNATION FROM THE LIBERTY INTERIM AUDIT REPORT**

The People of the State of Illinois (“the People” or “the AG”), by Lisa Madigan, Attorney General of the State of Illinois, the City of Chicago (“the City”), by its counsel, and the Citizens Utility Board (“CUB”), by its counsel (collectively “the Governmental and Consumer Intervenors” or “GCI”), pursuant to section 200.190 of the Rules of Practice of the Illinois Commerce Commission (“the Commission” or the “ICC”), 83 Ill. Admin. Code Section 200.190, hereby move that the Staff’s confidential designation of ICC Staff Exhibit 8.0, Attachment A be removed. Staff Exhibit 8.0, Attachment A is the Interim Audit Report prepared by The Liberty Consulting Group (“Liberty”) evaluating The Peoples Gas Light and Coke Company’s¹ (“Peoples Gas” or “PGL”) Accelerated Main Replacement Program (“AMRP”). (Staff Exhibit

¹ Peoples Gas, along with Wisconsin Energy Corporation (“WEC”), Integrys Energy Group, Inc., Peoples Energy, LLC, North Shore Gas Company (“North Shore”), ATC Management Inc., and American Transmission Company LLC submitted the application that is the subject of this proceeding. These entities are referred to collectively as “Joint Applicants” or “JAs”. North Shore and Peoples Gas are referred to together as the “Utilities”.

8.0, Attachment A is referred to hereinafter as “the Liberty Interim Report” or “the Interim Report.”²

I. INTRODUCTION

It is no secret that Peoples Gas’s implementation and management of the AMRP has a troubled history. As documented in Commission decisions and testimony in this case (and earlier cases), the program has been beset with poor management and dramatic cost overruns. Indeed, AG witness Sebastian Coppola testified that in the five years since the Commission approved the program in its Order in Dockets 09-0166/09-0167 (“the 2009 Rate Case”), the projected cost of the project has more than doubled, going from \$2.2 billion in 2009 to \$4.6 billion in this case. AG Ex. 2.0 at 6:135-139.

All experts who presented their reviews of Peoples Gas’s conduct and management of the AMRP have come to the same conclusion – the utility’s performance has been seriously deficient. In fact, the Liberty Interim Report has its genesis in Commission Staff (“Staff”) witness Philliph Roy Buxton’s testimony in North Shore’s and Peoples Gas’s last rate cases, Dockets 12-0511/12-0512. In that testimony, Mr. Buxton assessed Peoples Gas’s AMRP performance and found that, since the Commission’s approval of the project in the utility’s 2009 rate case,

Peoples [Gas’s] AMRP has not performed well. It started construction behind schedule and has fallen farther behind schedule since that time, while consuming its budget on what little work it does complete. Now, four years after Peoples [Gas] proposed it, the AMRP has accomplished little. There is no reason for the Commission to believe that Peoples can complete its

² Counsel for the People contacted counsel for the Staff Witnesses regarding the Liberty Interim Report. Staff counsel stated Staff’s belief that the confidential designation is appropriate and added that the procedures for challenging the confidentiality designation of particular documents in this case (set forth in paragraph 14 of the Protective Order approved by the Administrative Law Judge on September 4, 2014 (tr. at 7)) did not apply to documents designated confidential by Staff.

AMRP in 20 years as it convinced the Commission it should back in 2009 and no way for the Commission to know what the completed AMRP will cost. Peoples [Gas's]' AMRP is encountering problems with scheduling, materials delivery, government permits, and underground utility locating. The AMRP is behind schedule and will fall farther behind in 2013. There is no evidence in this case that Peoples Gas can or will solve its AMRP problems.

Docket Nos, 12-0511/12-0511, Staff Ex. 20.0 at 8-9:156-166. To address these severe and pervasive problems, Mr. Buxton recommended that the Commission order an investigation of the AMRP. *Id.* at 3:44-55.

In its Order, the Commission agreed with Mr. Buxton that the AMRP was being poorly managed, stating

Part of the problem with the AMRP is the lack of detail. Staff examined Peoples' submissions to Staff DR ENG 2.12, which asked for a detailed explanation of its five-year plan for the AMRP, including all costs. They found: "There is no discussion of costs in the White Paper. There is no discussion of resource requirements or project management. The response to Staff DR ENG 2.12 states that the AMRP budget for 2013 is \$220.75 million, but does not explain how Peoples arrived at that number and Attachment 01, the White Paper, does not address the issue either." *Id.* at 19. Additionally, Peoples also stated that they "have not determined the funding level past the year 2013". *Id.* Attachment 20.02.

ICC Docket Nos. 12-0511/0512 (cons.), *North Shore Gas Co., Peoples Gas Light & Coke Co., -- Proposed Increase in Rates*, June 18, 2013 Order at 61 ("2012 Rate Case Order"). The Commission adopted Mr. Buxton's recommendation that "a two-phase investigation of the AMRP [be conducted] under Section 8-102 of the [Public Utilities] Act [(the "Act" or the "PUA")] (220 ILCS 5/8-102) ending in a *public document report*." *Id.* (emphasis added.) Liberty's AMRP audit is the result of the Commission's 2012 Rate Case Order.

Liberty's Interim Report confirms the persistence of the problems Staff identified in PGL's 2009-2012 AMRP performance. Without going into allegedly confidential detail, it suffices to say that, according to Staff witness Harold Stoller (who attaches the Liberty Interim Report to his Rebuttal Testimony), "[a]t this point, my reading of the attached Liberty Interim Audit Report indicates that there are, in Liberty's opinion, several problems with the way Peoples Gas has conducted AMRP." Staff Ex. 8.0 at 9:171-174.

It should be noted that Staff has provided no formal explanation for its decision to designate the Interim Report as "Confidential." Staff cannot, and does not, assert that the report is proprietary or that it is a trade secret. Nor does Staff assert that the content of the Interim Report is confidential. GCI assume that Staff's rationale is Mr. Stoller's testimony that the report is confidential because Liberty is still conducting its investigation and its proposed solutions may be modified. *Id.* at 10:176-178.

If GCI's assumption is correct, Staff's position cannot be supported. First, Staff's designation of the Interim Report as confidential contravenes the Commission's stated determination that the audit report it ordered in the 2012 Rate Case be made public. Second, Staff's position is inconsistent with the Act's requirements that ICC proceedings be open and transparent and the General Assembly's unequivocal policy that the public have access to the affairs of government. Finally, Staff's position would be bad public policy in that it would deny the public access to the most recent review of a troubled multi-billion program that, only 18 months ago, the Commission found lacked details about costs, resource needs, and project management requirements. Each of these issues will be addressed in turn.

II. ARGUMENT

A. In Its Order in the 2012 Rate Case, the Commission Ordered that the Liberty Audit Be Public.

As noted above, the Commission ordered that a two-phase audit of the AMRP be conducted “ending in a *public document report*.” 2012 Rate Case Order at 61. Staff provides no explanation why the Commission would treat the Interim Report differently from the “public” final report that will be issued at the culmination of Liberty’s Phase 1 investigation. Although Mr. Stoller suggests that Liberty’s recommendations “might change significantly” (Staff Ex. 8.0 at 10:176-178), it is also possible that Liberty’s recommendations could change between the first and second phases of its work, yet both of those reports are to be labelled public according to the Commission’s 2012 Rate Case Order.

Staff witness Eric Lounsberry testifies that the ICC’s contract with Liberty consists of two phases. Staff Ex. 2.0 at 12:272-273. Liberty is scheduled to issue a Final Report at the end of its Phase One investigation on or before April 29, 2015. *Id.* at 12:273-274. In Phase 2, in the two years following the end of Phase 1, Liberty is required to verify that Peoples Gas is implementing its recommendations. *Id.* at 12-13:274-276. It is certainly reasonable that during the two-year implementation phase, Liberty, working with Peoples Gas and/or ICC Staff could conclude that one or more of the recommendations included in its Phase 1 Final Report require modification. Despite this distinct possibility, the ICC did not conclude that the Final Report should remain confidential until no further changes could be made. The Commission stated unequivocally that the Final Report should be public.

Moreover, Staff’s assertion that Liberty’s recommendation could change ignores the content of the Interim Report. In its Interim Report, Liberty makes clear that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³ Indeed, the Interim Report includes [REDACTED]

[REDACTED] that it presented an interim report that was not included in its contracted scope of work. More important, [REDACTED]

[REDACTED]

On the first page of the Interim Report, Liberty explains why it found it necessary to submit an interim report before completion of its comprehensive final report.

[REDACTED]

Staff Ex. 8.0, Attachment A at S-1 (emphasis added). [REDACTED]

[REDACTED]

[REDACTED]

³ Although GCI do not believe that the Interim Report is confidential, we treat information taken from the Liberty report as confidential.. The “Public” version of the motion will designate the allegedly confidential material as redacted.

[REDACTED]

Id.

As the Interim Report makes clear, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* These are not draft ideas that Liberty is deliberating. Rather, the report identifies [REDACTED]

[REDACTED]

[REDACTED]

Moreover, the Liberty audit is being conducted pursuant to section 8-102 of the PUA. That section provides that the costs of Commission-ordered audits “shall be borne initially by the utility, but shall be recovered as an expense through normal ratemaking procedures.” 220 5/8-102. In other words, Staff’s position would withhold from Peoples Gas’s customers an audit for which they must eventually pay. Staff’s position is not supportable.

Finally, GCI note that the document is not the subject of a pending Commission action; the Commission’s adoption or approval of the report is not at issue here. Rather, the issue is the public availability of evidence from a report that [REDACTED] [REDACTED] to the AMRP, a program that is of critical importance to Peoples Gas’s customers.

B. The Act Requires that Commission Proceedings Be Open and Transparent.

The General Assembly has made clear in multiple provisions of the Act that documents, reports, matters, and hearings related to the regulation of public utilities shall be open and transparent. Moreover, effective public participation in the regulatory process, which necessitates access to materials and proceedings, is a central tenet of the Act's framework. For example:

- Section 5-109 provides that “[a]ll reports made to the Commission by any public utility and the contents thereof shall be open to public inspection, unless otherwise ordered by the Commission.” 220 ILCS 5/5-109;
- Section 10-101 requires that “[a]ll hearings conducted by the Commission shall be open to the public.” 220 ILCS 5/10-101;
- Section 9-102 provides that “[e]very public utility shall file with the Commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it.” 220 ILCS 5/9-102;
- Section 10-109 provides that “[a]ll claims against any public utility for loss of, or damage to property, or for any other loss or damage, in connection with a public utility service ... may be investigated by the Commission, in its discretion, and the results of such investigation shall be embodied in a special report which shall be open to public inspection.” 220 ILCS 5/10-109; and
- Section 2-107 provides that “[a]t each regular and special meeting that is open to the public, members of the public shall be afforded time, subject to reasonable constraints, to make comments to or to ask questions of the Commission.” 220 ILCS 5/2-107.

These multiple provisions of the PUA requiring open and transparent proceedings are consistent with the General Assembly's findings in the Illinois Freedom of Information Act (“FOIA”) that:

... it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and

provide public records as expediently and efficiently as possible in compliance with this Act.

5 ILCS 140/1.

Further, Illinois courts have held that documents that are subject to public access (such as the records of ICC proceedings) may not be withheld absent “a compelling reason, accompanied by specific factual findings, [that] justifi[es] keeping them from public view.” *In Re the Marriage of Johnson*, 232 Ill. App. 3d 1068, 1075 (4th Dist.1992); *see also*, *Skolnick v. Altheimer and Gray*, 191 Ill. 2d 214, 231 (2000) (holding that to overcome the presumption that the public has a right to inspect and copy public records and documents, “the party opposing public access bears the burden of establishing ... a compelling interest that favors a closed file...”)

Staff’s claim that the report is confidential is inconsistent with the General Assembly’s mandates that ICC proceedings be open and transparent and that public records be open to the public. Staff has not established any interest that justifies denying the public’s access to the Liberty Interim Report. The confidential designation should be removed.

C. Public Policy Dictates the Confidential Designation Be Removed From the Liberty Interim Report.

Maintaining the Interim Report as confidential cannot be squared with good public policy. For Peoples Gas’s customers, it would be difficult to overstate the importance of the AMRP. The AMRP has had – and will continue to have – major customer bill impacts. And as Mr. Stoller testifies, the AMRP also has significant public safety implications. The Interim Report includes important information about the current state of the program and makes [REDACTED] [REDACTED]’ Staff Ex. 8.0, Attachment A at S-1 (emphasis added). The public should not be denied this information.

The rate implications of the AMRP are substantial. As stated above, AG witness Coppola testifies that the projected cost of the AMRP has doubled in the five-years since the

Commission approved the program in the 2009 Rate Case. In 2009, Peoples Gas estimated that the cost of the 20-year program would be \$2.2 billion. The utility now estimates that the AMRP will cost \$4.6 billion. AG Ex. 2.0 at 6:135-139. Mr. Coppola adds that “base rates for a typical residential heating customer will double in 10 years from \$555 annually to more than \$1,100 per year by 2024.” *Id.* at 7:159-161.

Indeed, in Peoples Gas’s two most recent rate cases, the utility has identified its AMRP capital investments as the primary driver for filing its rate increase requests. In the 2012 Rate Case, Peoples Gas witness James F. Schott stated “[t]he largest cause of the increase is Peoples Gas’ capital investments to improve the reliability of its gas distribution system and the quality of its services. The largest capital investments currently being made by Peoples Gas are for main replacement, in particular the replacement of cast iron and ductile iron gas main in the City of Chicago.” 2012 Rate Case, PGL Ex. 1.0 at 3:45-49. In its Supplemental Statement submitted as part of its current rate case, Peoples Gas said that the primary reason for filing the case was that “System Investment, which represents the return on and of capital invested since the 2012 Rate Case, has increased due to Peoples Gas’ ongoing significant investments in its distribution system, including the costs to retire and replace cast and ductile iron main in the City of Chicago, among which are costs of the accelerated main replacement program in 2014.” Docket Nos. 14-0224/14-0225 (cons.), Peoples Gas Supplemental Statement, February 26, 2014.

The AMRP also has important safety implications regarding Peoples Gas’s distribution system in Chicago. Staff witness Stoller goes into significant detail about the safety issues surrounding the AMRP, including his observation that a catastrophic failure of the system in an urban area such as Chicago could result in the loss of life and property. Staff Ex. 8.0 at 3-9:49-156. GCI do not take Mr. Stoller’s testimony lightly. Yet, despite Mr. Stoller’s description of

these serious safety matters and his admission that the Interim Report identifies ongoing problems with Peoples Gas's management of the program, the claim that the utility's customers should be denied access to the most current assessment of what has been, and apparently continues to be, a troubled program that directly affects their safety and service is not tenable.

The AMRP has critical safety, reliability, and rate ramifications for Peoples Gas's customers. Public access to the Liberty Interim Report should not be denied. Staff's confidential designation of the Interim Report should be removed.

Given that the Liberty Interim Report represents the most current assessment of the AMRP, a program that has far reaching impacts for Peoples Gas's customers, GCI ask that the following briefing schedule for this motion be established. A more accelerated schedule for responses and replies to the motion is warranted given the importance of the issues addressed in the audit report and the Commission's interest in keeping access to Commission proceedings open and transparent.

January 22, 2015 – Motion Filed

January 29, 2015 – Responses to Motion Due

February 2, 2015 – Replies to Responses to Motion Due

III. CONCLUSION

For the reasons stated above, the People, the City, and CUB respectfully request that the Commission Remove the Confidential Designation of the Liberty Interim Report.

Dated: January 22, 2015

Respectfully submitted,

People of the State of Illinois
By Lisa Madigan, Attorney General

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PEOPLE OF THE STATE OF ILLINOIS
By Lisa Madigan, Attorney General



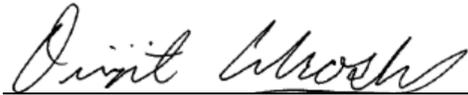
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THE CITY OF CHICAGO

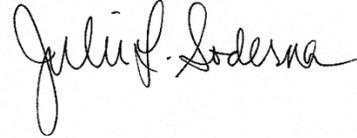


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A handwritten signature in black ink that reads "Julie Soderna". The signature is written in a cursive style with a large, looped initial "J".

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