

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)
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.)

Docket No. 14-0496

**PETITION OF THE CITY OF CHICAGO, THE PEOPLE OF THE STATE OF
ILLINOIS, AND THE CITIZENS UTILITY BOARD
FOR INTERLOCUTORY REVIEW OF THE ALJ’S DECISION LIMITING USE OF
THE LIBERTY INTERIM REPORT**

The City of Chicago (“the City”), by its counsel, the People of the State of Illinois (“the People” or “the AG”), by Lisa Madigan, Attorney General of the State of Illinois, and the Citizens Utility Board (“CUB”), by its counsel (collectively “the Governmental and Consumer Intervenors” or “GCI”), pursuant to section 200.520 of the Rules of Practice¹ of the Illinois Commerce Commission (“the Commission” or the “ICC”), seek review of the January 14, 2015, Notice of Administrative Law Judge’s Ruling (“ALJ Ruling” or “Ruling”) limiting evidentiary use of a Commission-ordered audit of a major utility infrastructure program.

GCI make three arguments regarding the Ruling. First, GCI argue that the improper limits the Ruling places on the use of the Interim Report are unlawful and should be removed. Second, the Ruling limits the Commission’s ability to condition merger approval on the Joint

¹ 83 Ill. Admin. Code § 200.520.

Applicants' commitment to sustain remediation efforts the Interim Report recommends PGL begin immediately. Third, GCI assert that the Commission should extend the schedule in this proceeding, pursuant to Section 7-204(e) of the Act, as needed to allow the parties to develop a full record on both (1) the Interim Report -- which has become necessary because of the Ruling's limits on its use, (2) the Final Report, which, according to Staff witness Lounsberry is expected to be issued by April 29, 2015 at the latest.

The Commission should consider the arguments regarding the use of the Interim Report and the schedule separately. Although GCI believes both requests should be granted, the Commission could grant relief by lifting the restrictions on the use of Interim Report in this proceeding, while denying the request to extend the schedule.

I. SUMMARY

The Administrative Law Judge's ("ALJ") Ruling accepted the proposal of the Commission Staff ("Staff") that the Commission limit use of The Liberty Consulting Group's ("Liberty") January 2015 Interim Audit Report evaluating The Peoples Gas Light and Coke Company's² ("Peoples Gas" or "PGL") troubled Accelerated Main Replacement Program ("AMRP").³ The Interim Report is an attachment to the pre-filed testimony of Staff witness Harold Stoller. Staff Exhibit 8.0, Attachment A (for brevity, the "Interim Report"). The Interim Report makes clear that [REDACTED]

² Peoples Gas, along with Wisconsin Energy Corporation ("WEC"), Integrys Energy Group, Inc. ("Integrys"), Peoples Energy, LLC, North Shore Gas Company, 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 "JA".

³ The ALJ's Ruling was in response to the January 2, 2015 Motion to Extend the Schedule filed by the People and the City of Chicago, but it also adopted restrictions proposed in pre-filed testimony by Staff. The motion requested that the Commission revise the schedule to require Joint Applicants to address findings and recommendations in the (then unreleased) Interim Report and to allow responsive testimony.

protect utility and ratepayer interests, if the reorganization is approved. 220 ILCS 5/7-204(b)(1), (b)(7), (f).

As shown below, the Commission's own Rules of Procedure (83 Ill. Admin. Code Part 200), the Illinois Rules of Evidence, and case law requiring a meaningful opportunity to challenge record evidence all require admission of the Interim Report. Equally compelling is the importance of current and future AMRP implementation to PGL's ability to provide safe, reliable, and least-cost service to its ratepayers. These factors require full consideration of the most current, unbiased evaluation of AMRP's present and future implementation. The Ruling should be reversed, to permit substantive use of the Interim Report in evidentiary hearings, discovery, and briefs. In addition, and separate and apart from the above requested relief, the Commission should reconsider the ALJ's rejection of the requested extension of this docket pursuant to Section 7-204(e) of the Act.

II. BACKGROUND

Since 2009, when the Commission approved PGL's request to implement its AMRP, the program has been beset with problems. Every expert review of the utility's AMRP management -- in this case and in earlier cases -- has found that PGL's management of the program has been poor. The AMRP has been besieged by delays and cost overruns and has been identified by PGL as a primary factor in each of the utility's requests for rate increases since the program was approved.

The Commission is conscious of these problems, and, as a concerned regulator, it ordered an investigation of AMRP management and implementation in PGL's 2012 rate case. In the final order in that case, the Commission explained its reasons for the audit:

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.

Docket No. 12-0511/12-0512 (cons.), Order, Jun 18, 2013, at 61 ("2012 Rate Case Order").

Despite the well-documented history of AMRP problems, in testimony in this proceeding, the Joint Applicants have denied the existence or severity of problems affecting AMRP construction management and implementation.⁴ JA Ex. 10.0 at 2-3:41-44. The testimony of Intervenors' experts, however, uniformly confirms the persistence of AMRP planning and construction difficulties. Every non-utility expert examining PGL's AMRP performance has concluded that PGL's AMRP problems are serious and PGL's ultimate owners (either its current or acquiring owners) will have the responsibility to correct acute problems with PGL's AMRP and continue the main replacement program in an efficient manner.

If the Commission approves the proposed reorganization, the majority of AMRP construction will be planned, managed, and implemented under new ownership and direction. Despite this undisputed reality, the Joint Applicants have consistently insisted that post-reorganization correction of existing problems with the AMRP -- PGL's decades-long, multi-billion dollar capital project -- is not relevant to the Commission's consideration of

⁴ As noted earlier, the Joint Applicants have gone further, claiming that identifying and assuring post-reorganization correction of the recurrent and significant problems with AMRP -- PGL's decades-long, most-costly-ever-capital project -- is not relevant to the Commission's consideration of reorganization approval. See, *e.g.*, JA Ex. 10.0 at 3:44-47.

reorganization approval. *See, e.g.*, JA Ex. 10.0 at 3:44-47 (“I understand that [City-CUB witness Cheaks’ and AG witness Coppola’s] opinions [regarding the AMRP] are outside the scope of this proceeding because they concern past actions or current operations by Peoples Gas that are unrelated to the proposed Reorganization at issue in this proceeding.”)

Throughout this proceeding, the Joint Applicants have denied the existence of, or minimized the severity of, problems affecting PGL’s AMRP construction management and implementation. The testimony of Staff’s and intervenors’ experts, however, is clear, consistent, and to the contrary. Every non-utility expert examining PGL’s AMRP performance has reached the identical conclusion. PGL’s AMRP problems are real, they are serious, and PGL’s ultimate owners (existing or new) will have the responsibility to improve the management and implementation of the AMRP in a way that is consistent with the Liberty auditors’ recommendations. The manifest weight of substantive pre-filed testimony establishes that the ongoing and future implementation of PGL’s AMRP, including correction of current planning and implementation problems identified in the Interim Report, is essential to the utility’s provision of safe, reliable, and least-cost service to its customers.

The Interim Report provides findings, conclusions, and recommendations that directly address the disputed AMRP issues in this case -- *viz.*, the current state of the program and the prospects for its efficient completion in a post-reorganization setting. However, the Ruling inappropriately restricts use of that report. It calls instead for bald opinions or statements of intent from the Joint Applicants alone, while denying use of the Interim Report to parties seeking to verify or to rebut claims that the Joint Applicants are “ready, willing, and able” to implement

the AMRP -- even where the claims are inconsistent with the unbiased findings of the Commission's auditors.⁵

In responding to the substantive content of the Interim Report -- content other parties are barred from addressing -- the Joint Applicants have reversed their positions on critical questions. Rather than deny the reality or relevance of PGL's AMRP problems, the Joint Applicants now declare that they understand the AMRP's problems and state their intention to address them post-reorganization. The Interim Report provides grounds for questioning the value of those declarations, but parties are barred from using the Interim Report to challenge or to clarify the claimed substantive foundations of the Joint Applicants' testimony.

But for the Ruling's improper restrictions, the Interim Report would add the findings of the Commission's unbiased experts to the evidentiary contentions of interested stakeholders -- findings that represent the most recent assessment of the AMRP. *See* 83 Ill. Admin. Code §200.610 (special admissibility for reports commonly relied upon by experts). The Ruling bars meaningful consideration of that evidence. Only a reversal of the Ruling will permit development of a full record that examines the proposed reorganization's AMRP impacts.

III. ARGUMENT

No party to this proceeding has challenged the relevance of the Interim Report. The Joint Applicants, however, have questioned the relevance of other evidence respecting PGL's troubled AMRP performance and future remediation plans, with or without a reorganization. *See, e.g.*, JA Ex. 10.0 at 3:44-50. The Joint Applicants' bare claims that the future conduct of PGL's AMRP is not relevant to the Commission's decision regarding the proposed reorganization have now been displaced by the Interim Report's unbiased, expert findings: [REDACTED]

⁵ The Ruling imposes the same restrictions on parties' discovery and cross-examination.

[REDACTED]

[REDACTED]

[REDACTED] Interim Report at 2-4. [REDACTED]

[REDACTED]

[REDACTED] Given the pivotal importance of the AMRP to PGL's future customer service and to customers' future rates, the Commission cannot make informed determinations on the statutory reorganization requirements without fully considering how AMRP implementation will fare under the proposed reorganization. The Commission must allow substantive examination and consideration of the Interim Report in this proceeding.⁶

A. Staff's Claimed Factual Bases for the Restrictions Adopted by the Ruling Are [REDACTED]

While the ALJ Ruling did not provide explicit reasoning for limiting evidentiary use of the Interim Report, it did adopt Staff's suggestion to limit use of the report. The ALJ Ruling erred in adopting Staff's proposal, as Staff offered only undocumented factual assertions in proposing its restrictions on use of the Interim Report. The factual premises for Staff's restrictions do not withstand even cursory scrutiny.

The AG and the City filed a Motion to Extend the Schedule⁷ of this proceeding, so that the Commission could receive and consider the Liberty' audit reports. In its filed Response⁸ to the Motion to Extend, Staff opposed any extension, and asked instead that the ALJ order that the

⁶ Staff's willingness to wait for an unscheduled future Commission proceeding to assess post-reorganization AMRP corrective actions is problematic. The auditors submitted this report (which was not required by Liberty's contract with the ICC) [REDACTED].

⁷ The People of the State of Illinois' and the City of Chicago's Motion to Extend the Schedule ("Motion to Extend"), filed January 2, 2015.

⁸ ICC Staff Response to the People of the State of Illinois and the City of Chicago Motion To Extend The Schedule ("Staff Response").

Interim Report be addressed in supplemental filings made within the current deadline. Staff Response, ¶ 12. Staff also proposed that the Interim Report, though admitted into the record, be addressed only in a very limited fashion. Staff proposed that the ALJ

issue a ruling limiting the scope of the Liberty Interim Audit Report at any time during this docket, including discovery, testimony and examination of witnesses during evidentiary hearing to: (1) whether the Joint Applicants are aware of the scope and scale of the potential obligations under AMRP; and (2) whether Joint Applicants are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit.

Staff Response, ¶ 11. To support its proposal to limit use of the Interim Report, Staff argued: “The Interim Audit Report is exactly that, an Interim Report; . . . [T]he report is not final. In a typical management audit, the Auditor can make modifications, and the audited party can improve and affect the ultimate conclusions of the audit.” Staff Motion Response, ¶ 9. In rebuttal testimony, Staff witness Stoller echoed these factual assertions.

Liberty has made some preliminary findings about AMRP and has some preliminary recommendations about how those problems can and/or should be resolved. However, Liberty has significant investigative and analytical work yet to do and its final positions about problems and solutions may change significantly. I do not believe the Commission should try to resolve in this proceeding any AMRP problems that Liberty has only preliminarily identified and about which it has formulated preliminary recommendations.

Staff Ex. 8.0 at 9-10:174-180.

Thus, Staff’s principal stated bases for restricting use of the report are (a) that Liberty’s findings and recommendations are “not final,” and (b) that Liberty’s final positions may change as it completes its audit. Mr. Stoller’s speculative justifications⁹ are contradicted by Liberty’s

⁹ Mr. Stoller also remarked “I believe that, rather than permit additional speculation and controversy about the Liberty investigation, I should place in the record of this proceeding a copy of an interim report Commission Staff received from Liberty on January 14, 2015.” *Id.* at 9:165. If Mr. Stoller’s testimony accurately states Staff’s purposes, the Ruling’s restrictions preclude having the Interim Report included “in the record of this proceeding” in

description of the genesis, purpose, and objective of the unscheduled report, and by clear statements in the Interim Report, which show that Staff's factual assertions are wrong.

First, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] the
Joint Applicants' assertions that AMRP will not be affected by the reorganization are demonstrably false. *See* Interim Report at 2-5.¹⁰

Second, the Interim Report [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Third, it is simply unrealistic to expect (as Staff posits) that the auditor's findings and conclusions based on a nearly year-long effort, with the active participation of the utility at every step, will be reversed or significantly altered, re-written, and re-presented as a final report by the scheduled (April 29, 2015 or earlier) deadline. Staff Ex. 2.0 at 12:273-274. It is simply not

any meaningful sense. Moreover, presentation of the Interim Report and simultaneous denial of meaningful use of the report will only increase any attendant controversy.

¹⁰ [REDACTED] the implications of a change in PGL's ultimate ownership (documented in intervenor testimony, *e.g.* AG Ex. 5.0 at 4:70-5:86), which will affect AMRP oversight and project management, AMRP funding, and executive acceptance of Commission priorities, establish the relevance of the interplay between the project and the reorganization.

credible to suggest that the auditors would have rushed the preparation and submission of findings and recommendations in an unsolicited, Interim Report, if they believed that their conclusions and recommendations [REDACTED] would be reversed or significantly altered before submission of their more comprehensive final report.

But more important than the absence of legitimate bases for limiting consideration of the Interim Report is the emphatic urgency of Liberty's audit results. Though the document was not in Liberty's contracted scope of work, the Interim Report was submitted at this point in time

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Unlike Staff, the auditors regard [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Governing Law and Evidentiary Rules Require the Admission and Unrestricted Consideration of the Interim Report

In proposing the limitations adopted in the Ruling, Staff identified no legal basis for restricted admission of the Interim Report, and Staff offered no legal justification for the proposed restrictions on parties' use of Interim Report content. This absence of legal bases is reflected in the Ruling's lack of any explanation of the decision. As demonstrated below, the

Ruling's restrictions raise significant legal questions and stand in clear violation of applicable rules of evidence and procedure.

1. *The Ruling Does Not Identify Adequate Authority to Impose the Testimony and Cross-Examination Restrictions*

The Ruling cites section 200.370 of the Commission's Rules of Practice (83 Ill. Admin. Code § 200.370) as the ALJ's authority to impose restrictions limiting permitted evidentiary uses of the Interim Report. However, section 200.370 concerns an ALJ's supervisory authority respecting discovery alone. That limited authority is far exceeded by the restrictions the Ruling imposes regarding testimony, cross-examination, and briefs. The ruling recites no other authority.

In addition, any purported exercise of discretion by the ALJ to approve unsupported restrictions on the use of relevant evidence violates (as shown below) the directive in the Commission's Rules of Practice to seek a more complete record. 83 Ill. Admin. Code §200.25. Also, the Ruling's discovery restrictions are wholly unexplained (except in reference to the unlawful testimony restrictions), arbitrary, and unsustainable. The ALJ's lack of authority to impose the Ruling's testimonial and cross-examination restrictions is an adequate basis for the Commission's rejection of the Ruling, without further inquiry.

The Commission should reverse the Ruling and grant all other requested corrective relief.

2. *The Commission's Rules Require That the Commission Exercise Any Discretion in Favor of a Full Record*

The Commission's Rules of Procedure provide:

Section 200.25 Standards for Discretion

All Commission discretion under this Part shall be exercised so as to accomplish the goals set forth in the remainder of this Section.

- a) Integrity of the fact-finding process – The *principal goal* of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision.

83 Ill. Admin. Code § 200.25 (emphasis added). Where, as here, the Commission purports to exercise discretionary authority to consider (but restrict use of) evidence that has been challenged as irrelevant or otherwise improper, the Commission has -- by rule -- required that any discretionary decisions further the development of a complete factual record. Improperly excluded evidence, which includes testimony not adduced because of restrictions on the use of evidence admitted for limited purposes, compromises the integrity of the Commission proceeding and of the Commission's resulting decisions.

3. *The Illinois Rules of Evidence Impel Admission of Relevant Evidence, Like the Interim Report*

Illinois' Rules of Evidence ("IRE"), which are not discretionary, are more compelling in their presumption of admissibility of relevant evidence to develop a full record. *See* Ill. Admin. Code §200.610 (applying "the rules of evidence and privilege applied in civil cases in the circuit courts"); IRE 402. Under the IRE, all evidence tending to make a material fact more or less probable (relevant evidence) is admissible, except as otherwise provided by law. IRE 401, 402.

Under the IRE, evidence may be excluded entirely for specified reasons of judicial (or administrative) efficiency, in the tribunal's discretion. IRE 403. However, Staff does not ask that the Interim Report be excluded. Indeed, Staff offered the report as part of its evidence, testifying that it should be a part of the record. Staff Ex. 8.0 at 9:165-168.

Admission of evidence with limitations on its use, however, is expressly authorized under the IRE only as to admitted "evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose." IRE 105. That is not the case here,

where the report is legally admissible as to all parties and for all purposes, but with usage limitations (lacking in legal or factual basis) imposed only by the Ruling. Indeed, no party has suggested any basis in evidence law for the Ruling's restrictions on use of the Interim Report.

The Ruling's unusual restrictions create distinctive circumstances that expose the lack of rationale in the Ruling's restrictions. As restricted, the Interim Report can only be used:

(a) to inform the Joint Applicants ("to make clear to the JAs and the Commission the possible scope and scale of the obligations JAs will be undertaking") (Staff Ex. 8.0 at 10:181-188); and

(b) to serve as a platform for the Joint Applicants to make a subjective statement of (presumably) good intentions -- intentions undermined by the Joint Applicants' continuing refusal to make commitments or accept conditions that are consistent with their stated intentions. *See, e.g.*, JA Ex. 12.0 at 4:72-77; *id.* at 6:120-124.

Certainly as to the first permitted use, the document (as restricted by the Ruling) would not have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."¹¹ IRE 401. The value of a simple declaration of intentions under the second permitted usage, especially without any requirement for supporting evidence or resource commitments, would be dubious. The Interim Report [REDACTED]

[REDACTED]

¹¹ Since Staff's distribution of the Interim Report gave the Joint Applicants knowledge of the Interim Report's content, admission for the limited purpose of informing them seems pointless.

[REDACTED]

[REDACTED]

The Ruling’s restrictions emphasize the Joint Applicants’ subjective testimony, and permit little evidence that can be adduced using the Interim Report. The Ruling artificially diminishes the evidentiary value of the Interim Report and delays the practical usefulness Liberty sought to provide with its early submission. In addition, the Ruling’s restricted admission of the report is unfairly prejudicial. IRE 401, 403.

4. *The Ruling’s Restrictions Unfairly Deny a Meaningful Opportunity to Challenge the Permitted Testimony*

If the Commission upholds the Ruling’s restrictions, intervening parties would not be “treated fairly.” 83 Ill. Admin. Code § 200.25(b). If the Joint Applicants’ subjective statements of intention are made a part of the record -- but objective audit findings that challenge those statements are excluded -- other parties would be prejudiced. Using the Joint Applicants’ responses to the Interim Report, while barring use of the auditors’ findings prompting the responses, would preclude development of a complete record. Under the Ruling’s restrictions, parties (and the Commission) would be denied use of the Interim Report’s factual information (and any related discovery¹²) in challenging the value of the Joint Applicants’ non-specific, unenforceable promises. The Commission’s Rules of Practice prohibit the exercise of Commission discretion to create such an uneven playing field. In fact, the Commission’s Rules of Practice require that the Commission act affirmatively to remove or modify the Ruling’s

¹² The ALJ’s Ruling of January 14, 2015 has already constrained the development of an evidentiary record. Recent discovery to the JAs concerning (i) the status of recommendations and initiatives identified in the Interim Report, and (ii) PGL’s and WEC’s related implementation plans, yielded only repeated objections that “the information sought is beyond the scope of the permitted discovery defined in the January 14, 2015 Notice of Administrative Law Judge’s Ruling.” See, e.g., DRR AG 14.01, 14.03, 14.05, January 30, 2015.

restrictions “in such a manner as to negate any disadvantage or prejudice experienced by other parties.” *Id.*

The Ruling’s baseless restrictions on evidentiary use of the Interim Report also would be arbitrary and unlawful. The Commission cannot reasonably reject consideration of its own auditor’s objective findings respecting the same safety-critical and service-critical problems identified by City-CUB and the AG, but at the same time allow Joint Applicants’ statements contesting those findings. The Commission cannot reasonably bar inquiry of the same expert findings and recommendations that prompted the Joint Applicants’ unexplained reversals of position regarding the AMRP, in their supplemental testimony submitted on January 22, 2015.¹³

As the Commission determines whether to approve, or how to condition approval of, the proposed reorganization, assessing the effect of reorganization on the future management and implementation of AMRP is central to the Commission’s statutory duties. The Ruling permits testimony regarding the Interim Report’s content from the Joint Applicants, but not from other parties. These are unsustainable, arbitrary limitations on the admission and consideration of clearly relevant evidence on critical aspects of the reorganization inquiry.

C. Given the Importance of the AMRP to Peoples Gas and Its Customers and the Auditors’ Interim Recommendations, Full, Substantive Use of the Most Current Evaluation of the Troubled Main Replacement Program Is Essential.

The Joint Applicants’ commitments and plans for managing a post-reorganization AMRP are key to the Commission’s determination of (1) whether the proposed transaction would “diminish [Peoples Gas’s] ability to provide adequate, efficient, safe, and least-cost public utility service”, (2) whether the “proposed organization [will] result in any adverse rate impacts on

¹³ Inconsistently with their prior filings, the Joint Applicants’ testimony did not allege that the current state of the AMRP and their future management and implementation of the AMRP are not relevant to the Commissions’ section 7-204 decisions.

retail customers”, and (3) what “terms, conditions, or requirements as, in its judgment, are necessary to protect the interest of [Peoples Gas] and its customers.” 220 ILCS 5/7-204(b)(1), (b)(7), (f). The Ruling hampers the Commission in making informed determinations in completing its statutory duties.

The parties and the Commission now have the Interim Report, which contains [REDACTED] [REDACTED] directly addressing disputed AMRP issues in this case -- specifically, the current state of the program, the impact of [REDACTED] on customer rates, and the requirements for its correction and efficient completion, especially in post-reorganization circumstances. But, as already detailed, the Ruling restricts use of the Interim Report to a point of near-uselessness, limiting testimony regarding the Interim Report to declarations that the Joint Applicants are aware of the Interim Report’s substantive assessment of AMRP’s problems and, with that knowledge, are ready and able to implement the AMRP consistent with Liberty’s recommendations. Other parties, however, are denied any use of the Interim Report’s findings to testing the Joint Applicants’ declarations.

The Interim Report also makes clear that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. According to the auditors,
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Interim Report at S-1. Among Liberty’s observations were instances where [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Interim Report also makes additional findings that have important, forward-going implications, specifically:

[REDACTED] *The importance of* [REDACTED]
[REDACTED]

[REDACTED]

- [REDACTED]
- *The importance of* [REDACTED]
 - [REDACTED]
 - *The* [REDACTED] *(similar to recommendations proposed by the City and CUB and the AG):*
 - [REDACTED]

PGL’s AMRP is a decades-long, multi-billion dollar infrastructure modernization program that has been the driver of each of the utility’s rate increase requests over the past five years. Regarding the customer safety and the rate impacts of PGL’s AMRP, the testimony submitted in this case defines the challenges facing the proposed new owners and managers of PGL’s AMRP.

- The estimated cost of the program has more than doubled since the Commission approved Peoples Gas’s AMRP request in the 2009 rate case. AG witness Coppola testifies that in 2009, the utility estimated that the program would cost \$2.2 billion. In this case (only five years after the Commission’s Order in the 2009 Rate Case), the estimated cost has ballooned to \$4.6 billion. AG Ex. 2.0 at 6:135-139.
- Mr. Coppola also testifies regarding the rate impacts on customers of the dramatic increase in estimated AMRP costs, stating that base rates for typical residential customers “will double in 10 years from \$555 annually to more than \$1,100 per year by 2024.” *Id.* at 7:159-161.
- Perhaps more important than Mr. Coppola’s testimony regarding customer bill impacts is Staff witness Stoller’s testimony concerning the AMRP’s potential impact on public safety. Mr. 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.

The Interim Report provides valuable expert findings relevant [REDACTED]
[REDACTED] adverse rate impacts and to
protect ratepayer interests.

The auditors could not be clearer on [REDACTED]. In terms
of cost impacts, service reliability, and potential public safety impacts, AMRP is unquestionably
Peoples Gas's most important and most expensive ever program. The Interim Report is an
unequaled resource for assessing GCI experts' recommendations regarding the AMRP and for
identifying specific corrective actions that need to be taken by AMRP management, now and in
the immediate and longer-term future. [REDACTED]
for defining the conditions that must accompany any merger approval to protect utility and
ratepayer interests and to ensure that the corrective actions take place immediately, not years
from now. The Interim Report can and should serve as an evidentiary resource in evaluating the
proposed reorganization and its impact on management of PGL's AMRP.

The Interim Report cannot serve those functions under the ALJ's Ruling. The Ruling
bars meaningful consideration of the most current expert assessment of the management of the
AMRP and [REDACTED]
[REDACTED]. The Ruling's restrictions permit the Joint Applicants to respond to the
Interim Report's content and comment on their intentions regarding the AMRP, but prohibit any
use of the report (for example, during cross-examination) (a) to test upper management's
commitment to fix the AMRP, willingness to commit the necessary resources, and ability to plan
and manage the AMRP, or (b) to craft the conditions needed to protect ratepayers' interests.

Only a reversal or dramatic modification of the Ruling will permit development of a full
record that examines this important evidence, permitting the Commission to more adequately

address the section 7-204 criteria for reviewing reorganization proposals. Only a full record, containing the best available evidence, can test the Joint Applicants' assertions that they "are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit." ALJ Ruling of January 14, 2015; JA Ex. 12.0 at 2:28-29. Only a complete record can enable to Commission to perform its statutory duties fully.

D. The Commission Should Consider Adjusting the Schedule to Permit Deliberate Review of the Audit Findings and to Ensure A Complete Record.

Separate and apart from the request to modify the ALJ's ruling limiting the permitted evidentiary value of the Interim Report, GCI believe the current schedule does not permit the Commission and the parties ample time to assess the Interim Report, and indeed the final report due in late April (Staff Ex. 2.0 at 12:274), as an evidentiary resource in evaluating the proposed reorganization and its impact on management of PGL's AMRP. Accordingly, in addition to the above requested relief, GCI request that the Commission reverse the portion of the ALJ's ruling that rejected the request for a schedule extension under Section 7-204(e) of the Act. While it is technically possible to fully admit the Interim Report without extending the schedule, a review of the Interim Report should convince the Commission that the Liberty auditors' final report, due in late April, could provide additional insight into the requirements for post-reorganization correction and implementation of the AMRP. Other than procedural inertia, no party has provided a reason why the Commission should curtail its examination of especially relevant new investigative evidence that the Commission itself ordered. While the Joint Applicants (and their shareholders) may prefer a routine closing of their proposed acquisition, there is much at risk for PGL and its ratepayers -- and the Commission has an opportunity in this docket to ensure that the Joint Applicants' claimed commitments to fix the troubled program are enforceable.

The schedule of the case should be adjusted pursuant to Section 7-204(e) of the Act, which permits an extension of up to three months' time, so that both the Liberty auditors' Interim Report and the scheduled final report are part of this record. In addition, Peoples Gas and the other Joint Applicants should be required to file testimony responding to auditors' findings and recommendations that have a post-reorganization element, identifying changes to the proposed reorganization responsive to the auditors' reports. Those responses should detail: specific action plans to address the auditors' findings; any contemplated management changes that affect the operation of the AMRP; and how the Joint Applicants as a group intend to ensure a seamless transition from Integrys' oversight of the program to Wisconsin Energy Corporation's responsibility for the program. In addition, the record of this docket should include a copy of the auditor's final Phase I report, expected to be issued at the end of April 2015, according to Staff. Under that scenario, the Joint Applicants should be required to respond to any Final Audit Report issued during the pendency of this proceeding, detailing whether and how they will address final audit findings and recommendations in testimony.

An inclusive record is necessary for meaningful hearings and briefing that can assist the Commission. Such testimony, however, cannot be provided hurriedly. For these reasons, the Commission should reverse the Ruling's rejection of any extension and act "to assemble a complete factual record to serve as basis for a correct and legally sustainable decision." 83 Ill. Admin. Code § 200.25(a).

III. CONCLUSION

For the reasons stated above, and because time is of the essence given the existing schedule, the City, the People, and CUB respectfully request that the Commission expeditiously reverse the Ruling's decision limiting substantive consideration of the Interim Report. The

Commission's decision regarding this Petition could have a dramatic impact on the scope of evidence submitted and adduced during the hearings, something the Petitioners considered carefully in drafting this Petition. In that regard, it was critical for GCI to review the Joint Applicants' Supplemental Rebuttal and Supplemental Reply Testimony, filed on January 22 and January 29, 2015, respectively, to assess the Joint Applicants' response to the ALJ's ruling before submitting this Petition. Those filings make clear that the Commission does not have the evidence it needs to fulfill its obligations under Section 7-204 of the Act in order to assess the merger application and protect the public interest.

The impending evidentiary hearing dates of February 18 – 20, 2015 as well as the Commission's scheduled Open Meeting dates for the month of February (February 11 and February 25) will not allow the Commission to issue a ruling on this Petition prior to the hearing dates if the default filing timeline in the Commission Rules of Practice are followed (83 Ill.Admin.Code § 200.520). Therefore, GCI respectfully request that other parties be required to file any responses to the Petition by February 9, 2015, with a reply (if any) by noon, February 10, 2015, so that the Commission can take action on this Petition at its February 11, 2015 Open Meeting. This proposed response date is just two days short of the permitted seven-day Response filing time.

In addition, the Commission should state clearly that inquiry through discovery, through cross-examination, and in briefs will be permitted without artificial and unlawful limitations. Finally, Intervenors also request that the Commission consider adjusting the proceeding schedule, as section 7-204 permits, to receive and consider the Liberty auditors' interim and final reports, and to examine, under the circumstances disclosed by the findings of the Interim Report and the soon-to-be-released final report, the impact of the proposed reorganization on AMRP-

influenced infrastructure safety and service, customer rates, and utility or customer interests that require Commission-imposed protective conditions.

Respectfully submitted,

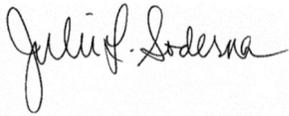
THE CITY OF CHICAGO



Orijit K. Ghoshal,
Assistant Corporation Counsel
City of Chicago, Department of Law
30 North LaSalle Street
Suite 1400
Chicago, IL 60602
(312) 744-6936
orijit.ghoshal@cityofchicago.org

Conrad R. Reddick,
Special Assistant Corporation Counsel
1015 Crest Street
Wheaton, Illinois 60189
conradreddick@aol.com

CITIZENS UTILITY BOARD



Julie Soderna, Director of Litigation
CITIZENS UTILITY BOARD
309 W. Washington, Suite 800
Chicago, IL 60606
(312) 263-4282
jsoderna@citizensutilityboard.org

PEOPLE OF THE STATE OF ILLINOIS

By Lisa Madigan, Attorney General



Karen L. Lusson,
Assistant Bureau Chief
Sameer H. Doshi,
Assistant Attorney General
Ronald D. Jolly,
Assistant Attorney General
Public Utilities Bureau
Illinois Attorney General's Office
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

Telephone: (312) 814-1136 (Lusson)
(312) 814-8496 (Doshi)
(312) 814-7203 (Jolly)

Email: klusson@atg.state.il.us
sdoshi@atg.state.il.us
rjolly@atg.state.il.us

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