

**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. )

**VERIFIED REQUEST FOR SUBPOENA OF  
THE PEOPLE OF THE STATE OF ILLINOIS’,  
THE CITY OF CHICAGO, AND THE CITIZENS UTILITY BOARD**

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 200.380 of the Rules of Practice of the Illinois Commerce Commission (“the Commission” or the “ICC”), 83 Ill. Admin. Code Section 200.380, submit this request to the Commission to issue a subpoena. The requested subpoena is sought to compel the attendance and testimony on February 20, 2015 at 9:30 a.m.<sup>1</sup> at the Commission’s Main Hearing Room of Mr. Philip Teumim, an auditor with the Liberty Consulting Group, the entity engaged by the Illinois Commerce Commission (“the Commission”) to audit the state and

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<sup>1</sup> GCI are amenable to the selection of a later date and time given the existing schedule of the case, which permits such accommodation.

operation of the Accelerated Main Replacement Program (“AMRP”) of The Peoples Gas Light & Coke Company (“PGL” or “Peoples Gas”). Such testimony is necessary for the limited purposes of (1) evaluating how if at all the proposed merger could impact efficient implementation of PGL’s AMRP and achievement of the recommendations included in the Liberty Interim Audit Report<sup>2</sup> (“the Report” or “Liberty Interim Report”); and (2) providing critical information regarding whether the auditors deemed their Interim Report findings either (a) preliminary such that its conclusions and recommendations should be excluded from Commission consideration or (b) confidential<sup>3</sup> and shielded from the public’s view. To the extent that such testimony is ruled outside the permitted scope of testimony, GCI will make offers of proof on the excluded topics at the hearings in the instant docket scheduled for February 18-20, 2015. In support of this Request, GCI state as follows:

1. On August 6, 2014, Wisconsin Energy Corporation (“WEC”), Integrys Energy Group, Inc., Peoples Energy, LLC, Peoples Gas, North Shore Gas Company, ATC Management Inc. and American Transmission Company LLC (collectively “Joint Applicants” or “JA”) filed an application for authority to engage in a reorganization and to enter into agreements with affiliated interests, pursuant to Sections 7-204 and 7-101 of the Act, respectively.

2. Under Section 7-204(b) of the Act, “the Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act.” 220 ILCS 5/7-204(b).

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<sup>2</sup> The Interim Audit Report was issued by Liberty on January 14, 2015 and attached to Commission Staff witness Harold Stoller’s pre-filed Rebuttal testimony (Staff Ex. 8.0, Attachment A) on January 15, 2015.

<sup>3</sup> GCI filed a Motion to Remove the Confidential Designation applied to the Interim Report by Staff, which was denied by the ALJ on February 11, 2015. GCI will be filing a Petition for Interlocutory Review of that Ruling in the days ahead. GCI also filed a Petition for Interlocutory review of the ALJ’s decision limiting the scope of evidence that will be received concerning the Interim Report. A decision from the Commission on the Petition is pending.

The threshold criteria for reorganization approval include specific findings that “the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service” and that “the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.” 220 ILCS 5/7-204(b)(1), (b)(7).

3. In addition to the findings required by Section 7-204(b), the Commission must determine what (if any) conditions on its merger approval are necessary to protect ratepayer interests. 220 ILCS 5/7-204(f). If the Commission finds that conditions are necessary, it must define the conditions to be imposed.

4. In its Final Order in ICC Docket No. 09-0166/09-0167, the Commission approved Peoples Gas’s request to initiate its AMRP for its cast-iron and ductile-iron gas mains and service pipes, to upgrade its distribution system from a low pressure system to a medium pressure system, and to relocate gas meters from inside customer facilities to outside, by the year 2030. ICC Docket No. 09-0166/09-0167 (cons.), *North Shore Gas Company/Peoples Gas Light & Coke Company – Proposed Increase in Gas Delivery Service Rates*, Order of January 21, 2010 at 196. The AMRP implicates each of the Section 7-204 subsections noted above. In the four years since the issuance of that Order and the start of the AMRP, Peoples Gas has filed three base rate cases and received approval for increases in rates of \$57.8 million<sup>4</sup>, \$59.8 million<sup>5</sup> and \$74.7 million.<sup>6</sup> By far, the largest driver of these rate increases has been the capital investment and expenses tied to PGL’s AMRP.<sup>7</sup> Accordingly, how well or how poorly the AMRP is

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<sup>4</sup> ICC Docket No. 11-0280/0281, Order of January 10, 2012 at 237.

<sup>5</sup> ICC Docket No. 12-0511/12-0512, Order on Rehearing of December 18, 2013 at 21.

<sup>6</sup> ICC Docket No. 14-0224/0225, Order of January 21, 2015 at 209.

<sup>7</sup> ICC Docket No. 11-0281, PGL Ex. 1.0 at 10-11; ICC Docket No. 12-0281, PGL Ex. 1.0 at 3. (“The 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.”); ICC

conducted by Peoples Gas under current or new corporate ownership significantly impacts the safety and reliability of the Company's gas delivery service and the rates Peoples Gas customers will pay. *See* 220 ILCS 5/7-204(b)(7).

5. Some three years after approving the AMRP, the Commission found in Peoples Gas's 2012 rate case, ICC Docket No. 12-0511/0512, that the AMRP still lacked any detailed work plan, or budget or cost controls. The Commission ordered that an audit of the AMRP be conducted pursuant to Section 8-102 of the Act.<sup>8</sup> The Liberty auditors delivered an unanticipated Interim Audit Report on January 14, 2015 that presented findings, conclusions and recommendations that Liberty urged [REDACTED]. A significant element of the Commission's duties under Section 7-204 of the Act requires assessing whether the Joint Applicants' plans and abilities will ensure timely and efficient performance of PGL's AMRP, including implementation remediation consistent with the auditors' recommendations. *See* 220 ILCS 5/7-204(b)(1), (b)(7). Both the Commission and PGL's ratepayers have a clear interest in the implementation of needed and appropriate changes to the AMRP by Peoples Gas, as well as the continuation of corrective measures if reorganization is approved. *See* 220 ILCS 5/7-204(f).

6. Staff witness Harold Stoller attached the Interim Report to his Rebuttal testimony, filed on January 15, 2015. While their investigation is ongoing, the auditors issued the unscheduled Interim Report because

[REDACTED]

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Docket No. 14-0225, PGL Ex. 1.0 at 5. ("The costs that Peoples Gas incurs in order to serve its customers have increased significantly in recent years, due primarily to main replacement and other increased plant investment costs, and increased operating expenses, such as increased costs of pipeline safety and other compliance work.")

<sup>8</sup> ICC Docket No. 12-0511/0512, *North Shore Gas Co., Peoples Gas Light & Coke Co. – Proposed General Increase in Rates*, Order of June 18, 2013 at 61.

[REDACTED]

Interim Report at S-1 (emphasis added). Liberty goes on to say that [REDACTED], [REDACTED], namely

- [REDACTED]

*Id.* Liberty could not have been more definitive in the conclusiveness of its findings to date and its recommendations respecting [REDACTED] and continued whether or not a reorganization is approved. Liberty also could not be clearer that the proposed acquisition “[REDACTED] thus directly implicating the proposed reorganization. *Id.*

7. At issue in this proceeding is how Peoples Gas (under the proposed, new corporate ownership) will ensure the continuity, funding, and effectiveness of needed changes in the operation and management of the AMRP, as the Interim Audit Report recommends. Testimony from a Liberty auditor would add to the record substantive information bearing on whether the proposed merger should be approved and what (if any) approval conditions are needed to protect the interests of PGL and its customers. The evidentiary record is incomplete without that information.

8. The testimony of an auditor may also be required for GCI to make their required offer of proof if current limitations on substantive consideration of the Interim Report and public access to the report are not significantly modified. *See* 83 Ill. Admin. Code § 200.690. In their Motion to Extend the Schedule, filed on January 2, 2015, the OAG and the City of Chicago

urged the Commission to examine the Interim Report on the record, and described its relevance to assessing the JAs' ability to address findings and recommendations detailed in the document.

In response to that Motion, the Commission Staff asserted that the Interim Report's only purposes in this docket should be "to make clear to the JAs and the Commission the possible scope and scale of the obligations JAs will be undertaking in the event the merger is approved, and to afford the JAs the opportunity to assure themselves as well as the Commission that they are ready, willing and able to step into the shoes of Integrys and Peoples Gas and continue to implement the AMRP consistent with the directives in the Commission's Orders in Docket Nos. 09-0166/09-0167 (Cons.) and Docket Nos. 12-0511/0512 (Cons.), in light of these obligations."

Staff Ex. 8.0 at 10; Staff Response to AG/City Motion to Extend Schedule of January 12, 2015 at

4. Staff's position is rooted in Staff witness Harold Stoller's statement that he does "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 10 (emphasis added).

9. The Administrative Law Judge denied the AG/City Motion, and in his January 14, 2015 ruling, limited the use of the audit as follows:

Pursuant to Section 200.370 of the Commission's Rules of Practice, the scope of testimony, discovery and examination regarding the Liberty Interim Audit Report will be limited 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. Also as proposed by Staff all parties will be allowed to respond specifically, and exclusively, to Liberty's Interim Audit Report in testimony by January 22, 2015. All parties may file testimony in rebuttal to such responsive testimony by January 29, 2015.

ALJ Ruling of January 14, 2015. GCI filed a Petition for Interlocutory Review of that ruling on February 4, 2015. A Commission decision on that Petition is pending.

10. In the meantime, the JAs have claimed in Supplemental Testimony that they are aware of the scope and scale of the potential obligations under AMRP; and that they are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit. *See* JA Ex. 12.0 at 2. The parties' and the Commission's ability to probe those assertions through discovery and cross-examination, however, is limited by the above-cited ALJ ruling. For example, under the ALJ's ruling, the Commission cannot consider evidence from the Interim Report or the Liberty auditors bearing on whether the Joint Applicants claims are credible in light of Liberty's investigation findings. In addition, the Commission is also denied receipt of substantive, investigative evidence regarding the extent to which the pending reorganization has affected and may continue to affect progress on recommendations for long-term corrections that were identified by the auditors as ones [REDACTED] Interim Report at S-1.

11. The ALJ's ruling purports to limit the parties' ability to use the Report to define conditions related to the AMRP that are necessary to protect the public interest. That ruling already has prevented parties from testing, through discovery, the JAs claim that they are "ready, willing and able" to implement the initial recommendations contained in the Liberty Interim Report. Granting the requested subpoena would permit the Commission to hear from a Liberty auditing representative unbiased evidence bearing on whether the JAs, which include Peoples Gas, can in fact accomplish what they claim if the proposed reorganization is approved. Unless the subpoena application is granted, the Commission's ability to probe and assess claims by the Joint Applicants' that they can and will implement AMRP efficiently (including remediation per

the audit recommendations) will be compromised. Likewise, GCI's ability to present their case fully will be significantly harmed.

12. Staff also claims that the Liberty Interim Report is "preliminary"<sup>9</sup> and that the document should therefore be shielded from public view and treated as confidential. GCI filed a Motion to Remove the Confidential Designation of the Liberty Interim Report on January 22, 2015, arguing that Staff had not provided evidence to support that designation, as required by Illinois law and the Commission's Rules.

13. On February 11, 2015, the ALJ issued a ruling denying GCI's Motion to Remove the Confidential Designation of the Interim Report. The ruling stated:

Notice is hereby given by the Administrative Law Judge that this case was filed under Section 5/7-204 of the Public Utilities Act concerning Mergers and Reorganizations of a Public Utility. The Commission is required to determine among other things whether this reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility services. The purpose of this docket is to determine whether Wisconsin Energy Corporation is ready willing and able to take over Integrys Energy Group which includes Peoples Gas Light and Coke Company and North Shore Gas Company.

On January 22, 2015, the Illinois Attorney General, the City of Chicago and the Citizens Utility Board filed a motion to Remove the Confidential Designation from the Liberty Interim Audit Report. This audit was ordered by the Commission as a result of the Commission Staff's recommendation from the 2012 rate case of Peoples Gas and North Shore Gas concerning Peoples Gas' Accelerated Main Replacement Program (AMRP). (Dockets 12-0511 & 12-0512). The Interim Report was released by Liberty Consulting Group on January 15, 2015 and was attached as an exhibit to the testimony filed by Staff. This Interim Report addresses problems, planning and early execution of changes indicated by the audit. The overall conclusions and recommendations of Liberty Consulting will be addressed in the final report. While the Commission is concerned with the information contained in this report, this is not the proper

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<sup>9</sup> Staff Ex. 8.0 at 9-10.

docket to launch this investigation. When the Final Audit Report is released by Liberty Consulting Group, the Commission will take the appropriate action to address the results of this audit. Since the information in this audit report is not final, releasing it at this point would be more punitive than probative to the Joint Applicant.

Therefore, the Attorney General, the City of Chicago and the Citizens Utility Board's Motion to Remove the Confidential Designation from the Liberty Interim Audit Report is denied.

GCI will be filing a Petition for Interlocutory Review of the Ruling with the Commission.

14. Because Liberty is not a party or witness in this proceeding, the parties are currently unable (under the ALJ's restrictions) to verify through discovery from the auditors themselves whether the Interim Report was intended to be viewed as "draft" and confidential in nature. While GCI believe the Interim Report speaks for itself on these issues, testimony from a Liberty auditor would settle the issue.

15. Part 200.380 of the Commission's Rules of Practice provide that "[t]he Hearing Examiner, a Commissioner, or the Commission shall have the power to order the issuance of subpoenas, compel the attendance and testimony of witnesses and the production of papers, books, accounts and documents." 83 Ill. Admin. Code § 200.380. That rule also provides that an application for a subpoena "shall incorporate a showing that such subpoena is reasonably required to obtain information that cannot reasonably be obtained through requests for information or other discovery... ." *Id.* As noted above, probing the views of the auditors through discovery is not an option, because Liberty is not a party or witness in the proceeding. Unless and until the Commission issues a subpoena for the appearance of a Liberty auditor, the Commission will lack information needed to assess both the JAs' claims regarding their readiness, willingness and ability to implement the Liberty audit recommendations, as well as the nature (preliminary or confidential) of the Interim Report findings and recommendations.

16. Upon information and belief, GCI state that Liberty auditor Philip Teumim has played a critical role in assessing Peoples Gas's performance on the AMRP through, at a minimum, interviews with the City of Chicago's Department of Transportation. GCI request that the Commission issue a subpoena in the above-captioned proceeding that requires Mr. Teumim to appear before the Commission on February 20, 2015, at 9:30 a.m. in the Commission's Main Hearing Room, and provide sworn testimony related to the findings and recommendations of the Liberty Interim Report, as described in paragraph 1 of this Motion above. His business address and telephone number are as follows:

Mr. Phillip S. Teumim  
279 North Zinns Mill Road, Suite H  
Lebanon, PA 17042-9576  
Tel: 717-270-4500

WHEREFORE, for the reasons stated above, Governmental and Consumer Intervenors respectfully request that the Commission issue a subpoena to compel the appearance and testimony of Mr. Phillip S. Teumim, an auditor for the Liberty Consulting Group, testimony is necessary for the limited purposes of (1) evaluating how if at all the proposed merger could impact efficient implementation of PGL's AMRP and achievement of the recommendations included in the Interim Report; and (2) providing critical information regarding whether the auditors deemed their Interim Report findings either (a) preliminary such that its conclusions and recommendations should be excluded from Commission consideration or (b) confidential and shielded from the public's view.

Respectfully submitted,

**PEOPLE OF THE STATE OF ILLINOIS**

By Lisa Madigan, Attorney General

  
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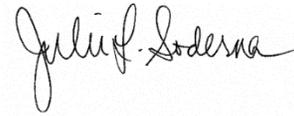
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Dated: February 11, 2015

**VERIFICATION**

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

Karen L. Lusson states that she is the Assistant Bureau Chief of the Public Utilities Bureau in the Illinois Attorney General's Office, that she has read the foregoing *Government and Consumer Intervenors' Verified Request for Subpoena* in ICC Docket No. 14-0496, that she knows the contents thereof, and that to the best of her knowledge, information and belief, based upon reasonable inquiry, the contents are true and correct.

  
\_\_\_\_\_  
Karen L. Lusson

Signed and sworn to before me  
This 11<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Notary Public



STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

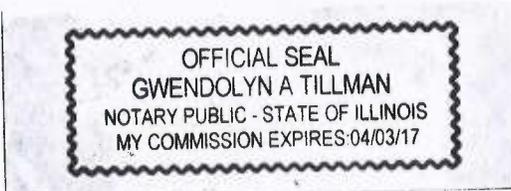
**VERIFICATION**

I, Orijit K. Ghoshal, being duly sworn, state that I have read the Verified Request for Subpoena of the People of the State of Illinois, the City of Chicago, and the Citizens Utility Board in Illinois Commerce Commission Docket 14-0496, and that the contents therein are true and accurate to the best of my belief and knowledge.

  
\_\_\_\_\_  
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SUBSCRIBED AND SWORN to before me, a Notary Public, on this 11<sup>th</sup> day of February, 2015.

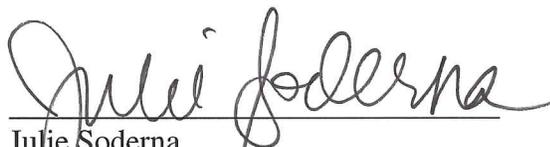
  
\_\_\_\_\_  
Notary Public



VERIFICATION

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

Julie Soderna states that she is the Director of Litigation of the Citizens Utility Board, that she has read the foregoing ***GCI Request for Subpoena*** in ICC Docket No. 14-0496, that she knows the contents thereof, and that to the best of her knowledge, information and belief, based upon reasonable inquiry, the contents are true and correct.

  
\_\_\_\_\_  
Julie Soderna  
Director of Litigation  
Citizens Utility Board

Signed and sworn to before me  
This 11<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Notary Public

