

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 for)
such other approvals as may be required under the)
Public Utilities Act to effectuate the Reorganization.)

Docket No. 14-0496

**JOINT APPLICANTS’ RESPONSE IN OPPOSITION TO GCI’S REQUESTS
FOR SUBPOENAS ON LIBERTY CONSULTING GROUP AUDITORS**

Wisconsin Energy Corporation (“Wisconsin Energy”), Integrys Energy Group, Inc. (“Integrys”), Peoples Energy, LLC (“Peoples Energy”), The Peoples Gas Light and Coke Company (“Peoples Gas”), and North Shore Gas Company (“North Shore”), together, the “Joint Applicants,”¹ pursuant 83 Ill. Admin. Code § 200.380(d) and the Administrative Law Judge’s (“ALJ”) February 13, 2015 ruling, hereby respond in opposition to “GCI’s”² Requests for Subpoena filed on February 11, 2015 and February 13, 2015³ as follows:

1. The Requests for Subpoena are part of GCI’s ongoing effort to expand this Section 7-204 proceeding beyond its appropriate scope by turning it into a substantive review of

¹ The Petition does not raise issues concerning ATC Management Inc. and American Transmission Company LLC. Accordingly, these parties have not participated in this Response.

² The Illinois Attorney General’s Office (the “AG”), the City of Chicago (the “City”), and the Citizens Utility Board (“CUB”), together “the Governmental and Consumer Intervenors” or “GCI.”

³ GCI first filed a Request for Subpoena on February 11, 2015 seeking the appearance of Mr. Phillip S. Teumim from the Liberty Consulting Group (“Liberty”) at the hearing of this matter. On February 13, 2015, GCI filed a second request for subpoena seeking the appearance of Mr. John Antonuk from Liberty at the hearing. In the second request for subpoena, GCI indicated that it sought Mr. Antonuk’s appearance because he is more familiar with the entirety of Liberty’s Interim Report than Mr. Teumim, but did not indicate whether GCI was withdrawing its request for a subpoena on Mr. Tuemim, or wanted him to appear still, as well. (See GCI’s Feb. 13, 2015 Request for Subpoena at p. 2) Given this ambiguity in GCI’s filings, the Joint Applicants make this Response in opposition to both of GCI’s requests for subpoena, as the stated reasons in support of both requests are substantively the same.

Liberty's ongoing, incomplete Phase I audit investigation ordered in the 2012 rate cases of Peoples Gas and North Shore⁴ of Peoples Gas' Accelerated Main Replacement Program ("AMRP"). Since January 12, 2015, the Joint Applicants have submitted no less than four briefs explaining how GCI's efforts are improper under Section 7-204 of the Public Utilities Act (the "Act") and contrary to prior Commission rulings:

- Response of Joint Applicants to Illinois Attorney General's and City of Chicago's Motion to Extend Schedule, filed on January 12, 2015;
- Reply of Joint Applicants to Responses Concerning Illinois Attorney General's and City of Chicago's Motion to Extend Schedule, filed on January 13, 2015;
- Joint Applicants' Response to GCI's Motion To Remove The Confidential Designation From The Liberty Interim Audit Report, filed on February 3, 2015; and
- Joint Applicants' Response to the Petition of GCI for Interlocutory Review of the ALJ's Decision Limiting Use of the Liberty Interim Report, filed on February 11, 2015 ("Response to GCI's Petition for Interlocutory Review").

Staff has filed a similar number of briefs addressing the appropriate scope for which the Liberty Interim Report should be allowed into this proceeding, and the ALJ has issued two rulings, one on January 14, 2015 and another on February 11, 2015, consistent with the positions expressed by Staff and the Joint Applicants on this issue. Rather than restate their arguments in full again, the Joint Applicants hereby incorporate by reference each of its briefs listed above into this Response for the purpose of establishing that this proceeding is not the proper time or place for the Commission to investigate the ongoing Liberty audit, the preliminary findings and recommendations made by Liberty in its Interim Report, or substantive questions regarding past or present AMRP concerns and how to improve the AMRP.

2. As the Joint Applicants have stated time and again, they agree that improving the

⁴ *North Shore Gas Co., et al.*, ICC Docket Nos. 12-0511, 12-0512 Cons. (Order June 18, 2013) ("*Peoples Gas 2012 Order*"), at 61.

implementation and management of the AMRP is important, but this docket is not the right time or place for the Commission to address this issue. The Commission already has provided an orderly and comprehensive process for examining the overall conclusions and recommendations for the AMRP that Liberty will make in its final report, and a process to ensure that Liberty's recommendations are implemented appropriately. *See Peoples Gas 2012 Order*, at 61. If the Commission determines that a more immediate or expansive review of Liberty's investigation, findings, and/or recommendations is necessary, the Commission can initiate a separate, dedicated docket in which to conduct that review, in which the Commission can make findings and orders that will be binding on, and enforceable against, Peoples Gas regardless of its ultimate corporate owner. *See 220 ILCS 5/7-204(b)(5); JA Ex. 1.0 at 16.* As concluded in the ALJ's February 11, 2015 ruling to maintain the confidentiality of Liberty's Interim Report:

While the Commission is concerned with the information contained in this [Interim] report, this is not the proper 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.

Therefore, attempting to shoe-horn this process into the present docket would be untimely and unnecessary.

3. Doing so would also be improper. As the plain language of Section 7-204 makes clear, the purpose of this proceeding is not to evaluate and determine how to improve the ongoing operations of the utility at issue in a proposed reorganization. *See 220 ILCS 5/7-204(b)(1), (4), (6), and (7).* Thus, the Commission consistently has found that whether a reorganization will improve or enhance a utility's ongoing operations or service quality is immaterial to the Commission's consideration of whether or not to approve a reorganization

under Section 7-204.⁵ Consequently, GCI's request to have one of Liberty's auditors appear to answer questions regarding Liberty's preliminary findings to date on the present state of the AMRP and its preliminary recommendations on how to improve the AMRP is inappropriate, as this testimony would not relate to facts that are of consequence to the determinations to be made by the Commission in this docket. *See* 83 Ill. Admin. Code § 200.610(a); Illinois Rules of Evidence ("IRE") 401, 402.

4. For the reasons fully explained in the Joint Applicants' Response to GCI's Petition for Interlocutory Review, the ALJ in his January 14, 2015 Ruling properly limited the purposes for which the Liberty Interim Report can be used in this proceeding 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 recommendations as may be made by Liberty as a result of its investigation. The Liberty auditor for which GCI seeks a subpoena would not be in a position to provide testimony regarding whether the company acquiring Integrys – Joint Applicant Wisconsin Energy – is aware of the scope and scale of the AMRP or ready, willing and able to implement the AMRP with the type of recommendations Liberty ultimately might make as a result of its investigation. The Commission, therefore, should deny GCI's Requests for Subpoena as seeking irrelevant and immaterial evidence that would cause undue delay and waste time. *See* 83 Ill. Admin. Code § 200.610(a); IRE 401, 402, 403.

⁵ *See AGL Resources Inc., Nicor Inc., et al.*, ICC Docket No. 11-0046 (Dec. 7, 2011) Order at 13 ("The intention of the statute is to sustain the utility's service quality status quo, not to achieve quality improvements."); *In re GTE Corp. and Bell Atlantic Corp.*, ICC Docket No. 98-0866, 1999 Ill. PUC Lexis 825 at *28 (Oct. 29, 1999) ("At the outset, it must be noted that the standard contained in the statute requires the Commission to evaluate whether the impact of the proposed reorganization will be to diminish service quality, not whether the proposed merger will enhance service quality.) (emphasis added); *In re SBC Communications, Inc., et al.*, ICC Docket No. 98-0555, 1999 Ill. PUC LEXIS 738 (Sept. 23, 1999) at *43 (stating that Section 7-204(b)(1) "focuses on whether the impact of the reorganization will "diminish" Ameritech Illinois' ability to provide certain aspects of service, not on whether the merger will improve or enhance those aspects) (emphasis added).

5. GCI continues to refer to statements from the Interim Report regarding a [REDACTED] [REDACTED]” in an attempt to make the substance of the Liberty Interim Report relevant to the Commission’s consideration of the proposed Reorganization. (See 2/13/2015 Request for Subpoena, at ¶ 6) This issue is a red herring, however, as GCI pulls these statements out of context and fails to acknowledge the Interim Report’s own conclusions explaining that [REDACTED] [REDACTED]. What the Interim Report discussed was not that approval of the proposed Reorganization itself would have an impact on Peoples Gas’ service quality or rates, but rather, a [REDACTED] [REDACTED]. The Interim Report concluded that [REDACTED] [REDACTED]. (See Interim Report at pp. 2-3, 10-11) For these reasons, GCI’s subpoena request is unfounded.

6. Likewise, GCI’s purported need to question the Liberty auditors regarding the preliminary nature of the Interim Report is baseless, as such questioning would lead only to undue delay, waste of time, and needless presentation of cumulative evidence. See 83 Ill. Admin. Code § 200.610(a); IRE 403. Staff witness Mr. Harold Stoller, to whom Liberty reports on the progress of its investigation, already has testified that the Liberty Interim Report contains findings and recommendations that are, in fact, preliminary and could change significantly. (ICC Staff Ex. 8.0, at 10:176-180) Moreover, Liberty’s own words support Mr. Stoller’s testimony, as Liberty prefaces its Interim Report with the following language:

[REDACTED]

[REDACTED]

(Liberty Interim Report, p. S-1 (emphases added)) In light of this conclusive statement by the Interim Report's own authors as to [REDACTED]

[REDACTED]

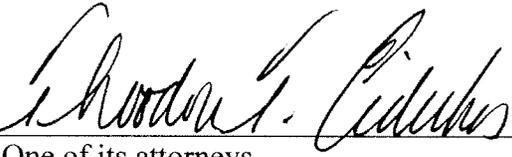
it would be unreasonable and unnecessary to require the appearance of the Liberty auditors at the hearing to provide additional information regarding the preliminary nature of an "interim" report.

7. For the foregoing reasons, the Commission should deny GCI's Requests for Subpoena as being contrary to Section 7-204 and prior Commission orders, as well as because the Requests are inconsistent with the ALJ's January 14, 2015 and February 11, 2015 rulings regarding the Liberty Interim Report. However, in the event that the Commission does grant GCI's Requests for Subpoena, the testimony to be provided by the Liberty auditor(s) should be limited in scope to the purposes for which the Interim Report was allowed into this proceeding established by the ALJ's January 14, 2015 ruling, with any content of the Interim Report discussed by the auditor(s) kept Confidential pursuant to the ALJ's February 11, 2015 ruling.

WHEREFORE, for the foregoing reasons, the Commission should deny GCI's Requests for Subpoena requiring the appearance at hearing of auditors from the Liberty Consulting Group.

Dated: February 17, 2015

WISCONSIN ENERGY CORPORATION

By: 
One of its attorneys

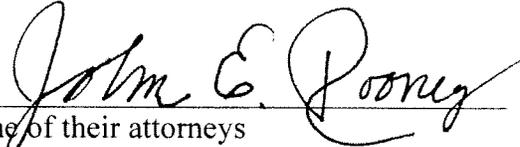
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Respectfully Submitted,

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