

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On its Own Motion :
 :
 : Docket No. 14-0490
 :
Revision of 83 Ill. Adm. Code 500 :
 :

**REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

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Table of Contents

- I. Background 1
- II. Reply to Request for Oral Argument 2
- III. Reply to Exceptions..... 3
 - 1. Inspection Interval Timing: NS/PGL, Ameren, Nicor 3
 - 2. Heating Value: Ameren..... 7
 - 3. Billing Requirements. 9
 - 4. Time of Day Complaint. 12
 - 5. AGS Applicability Language. 13
- IV. Conclusion 13

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through their undersigned counsel, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Adm. Code 200.830) and the schedule set by the Administrative Law Judge (“ALJ”), respectfully submit their Reply Brief on Exceptions to the Proposed Second Notice Order (“PO” or “Proposed Order”) issued by the ALJ on February 23, 2015.

I. Background

On July 30, 2014, the Commission initiated the instant rulemaking proceeding and submitted to the Illinois Secretary Illinois Secretary of State a Notice of Proposed Repealer of the current version of Part 500 and of a Notice of Proposed Rules for new rules for Part 500. See *I.C.C. On Its Own Motion*, ICC Order Docket No. 14-0490, 1-2 (July 30, 2014). The Notice of Proposed Repealer and the new Part 500 were published in the Illinois Register on August 29, 2014. 38 Ill. Reg. 17941, 17970 (Aug. 29, 2014). No rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the

rulemaking commenced. 5 ILCS 100/5-40. This one year deadline is why there is an August 15, 2015 recommended deadline for Commission action in this case.

The following parties submitted Initial Verified Comments in this proceeding: Ameren Illinois Company (“Ameren”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor”), North Shore Gas Company/Peoples Gas Light and Coke Company (“NSPGL”), and Prairie Point Energy d/b/a Nicor Advanced Energy (“NAE”). In addition to Staff, the following parties submitted Verified Reply Comments in this proceeding: NSPGL, the Retail Energy Supply Association (“RESA”), Ameren, Nicor, and NAE. The ALJ issued a PO on February 23, 2015. On March 2, 2015, Staff, Ameren, NSPGL, Nicor and NAE filed Briefs on Exceptions (“BOE”). Pursuant to the schedule set by the ALJ, this RBOE follows.

II. Reply to Request for Oral Argument

Staff sees no benefit in an oral argument. Contrary to NAE’s assertions, these issues have been thoroughly vetted throughout the workshop and comment hearing phases. NAE offers no new facts or circumstances necessitating additional argument. Moreover, the outstanding issues in this rulemaking proceeding are highly complex and do not lend themselves to limited discussion. It would be a painstaking exercise to debate the particulars of proposed rule strike-out language, when it can be assessed from what is already in the record. An oral argument would not add new insights nor could it possibly cover all the potential circumstances that NAE asks the Commission to contemplate in its overreaching assessment of the proposed language. As a result, additional argument here would be administratively inefficient. Further, this rulemaking docket has a limited and condensed statutory timeframe in which the Commission must

act. Given the approaching time deadline for Commission action, there is nothing to be gained by further delay. Finally, Staff no longer objects to the NAE language on the weighted average billing information, one of its main concerns, so oral argument should be far less of an imperative now for NAE. As such, Staff recommends that the request for oral argument in this matter be denied.

III. Reply to Exceptions

The PO reviews the issues presented in this proceeding in a clear and concise manner, is well written, and accurately reflects the positions taken by Staff and the intervening parties. Staff supports the PO's conclusions and offers only the following responses to exceptions taken by other parties in this proceedings.

1. Inspection Interval Timing: NS/PGL, Ameren, Nicor

Multiple parties (Ameren, Peoples Gas/North Shore, and Nicor) provided exceptions on the topic of the inspection interval used within Part 500. Staff disputes the parties' arguments and supports the conclusion reached in the Proposed Order.

Both Ameren and Nicor criticize the Proposed Order reliance on Staff's comment that Ameren's suggestion to modify Staff's proposed language from "At least every three months each calendar year" to "At least four times each calendar year" provided the opportunity to test the device in question four times during the same week of the year and still comply with the testing interval requirements. (Ameren BOE, 1, Nicor BOE, 5) Both claim Staff's comment is speculative because Staff did not claim the utilities would engage in abusive conduct in carrying out the required inspections or inhibit system reliability. Id. Notwithstanding, Staff's hope that the utilities will not take advantage of a loophole in the utilities' proposed language, the Proposed Order

correctly relied upon Staff's analysis. (PO, 8) The ALJ correctly acknowledges that the monthly annual timing interval presented by Staff is clear and concise, while the suggested change proposed by the utilities may yield too much autonomy for the utilities. *Id.* No one knows what actions a utility may or may not take in the future based on the proposed language, but the goal is to alleviate the opportunity of utilities to perform multiple tests in a very short time span in order to comply with the rules rather than working within the spirit of the law. This rulemaking proceeding is intended to make the law more clear in order to avoid any misapplication or misunderstandings of the rules.

In taking issue with the Proposed Order assessment that if timing intervals are altered, it will provide too much autonomy to the utilities (Ameren BOE, 2-3), Ameren claimed that the "danger" of the autonomy had yet to be demonstrated. (Ameren BOE, 2) However, as noted above, providing loopholes within rule language provides the potential for abuse. No one can prove what may or may not happen in the future. Staff merely points out that such loopholes exist and that these loopholes could allow a utility to interpret the rule in such a fashion that it could have negative consequences to utility customers. The proposed rule language tightens those loopholes in order to mitigate the risk to consumers.

Ameren noted that both it and Staff cited to Part 410 (83 Illinois Administrative Rule 410) to support their claims that their preferred timing interval was consistent with other Staff rules with both selecting those particular sections that supported their individual arguments. (Ameren BOE, 2) Ameren then noted that the lack of uniformity for testing intervals in Part 410 was exactly its point and that the proposed language

presented by Ameren was intended to avoid a “mish-mash of timing requirements”, and this is the opportunity to make Part 500 uniform. Id. Ameren’s argument suggests that the testing intervals within Part 500 are not uniform. Staff disagrees. Staff agrees with Ameren that there are different timing intervals within Part 410, but Ameren cannot make the same claim for Part 500. Staff has consistently used the phrasing within Part 500 that specifies the exact number of months a utility has to comply with each timing interval. Ameren’s real dispute appears to be that the inspection interval methodology (specific months) is not Ameren’s preferred method. (Ameren BOE, 1-2) Therefore, Ameren’s concern about uniformity of timing intervals with Part 500 is not a valid argument.

Ameren claims that Staff’s proposed timing intervals under Sections 500.150 (Fixed Factor Delivery), 500.180 (Diaphragm Meters), and 500.190 (Rotary Meters) would be detrimental to Company’s customers because it will create situations where meter testing is necessary and because of the time of the year and customer gas use, field technicians may need to vent gas into the atmosphere to create enough flow to complete the necessary test. (Ameren BOE, 3) Further venting such gas can be hazardous by creating gaseous environments, because an ignition of this gaseous environments would be most severe and affect customer and employee safety. (Id.) Ameren also identified an alternative event whereby the utility would need to exchange the meter, but this is more time intensive and can cause coordination and gas service satisfaction issues with customers due to the utility turning off the gas supply during the exchange.

Staff notes that Ameren has not raised any of these safety concerns previously in this proceeding. Aside from the late nature of these new arguments, Ameren has provided no details to support their consideration. Further, Staff is aware that many of the circumstances that Ameren identifies are issues it currently faces under the current Part 500. What is lacking from Ameren is any context as to what effect, if any, the new Part 500 requirements are versus the current Part 500 in these areas. Staff would expect the utilities are capable of operating their systems without negatively affecting customer or employee safety. Ameren has not provided any credible support for the notion that a more structured inspection system would be more dangerous than the status quo.

Further, Staff is not aware of any party ever providing these specific concerns prior to Ameren's BOE. Ameren has had multiple opportunities to raise any safety matters prior to the BOE stage in this proceeding, even prior to this docketed proceeding. Staff first requested comments from interested parties, including Ameren, on its initial draft of the rewrite of Part 500 on January 31, 2012. (Staff Report, 2) Staff requested comments on the rewritten Part 500 another five times over the next two plus years and held three informal workshops (November 27 and 28, 2012, March 26, 2013, and August 22, 2013), (Staff Report, 2-3). Staff is not aware of any party ever raising "safety" concerns during the period on these specific Sections of the rule. Further, no other party to the case has raised these same concerns, and there is nothing in the record on which to base them.

Staff also notes that Ameren is incorrect with regard to the rigidity of Section 500.190 (Rotary Meters). As part of the extensive informal process between Staff and

interested parties, Staff made provisions for certain of the concerns that Ameren has raised. (Staff Report, 1-2.) Specifically, Section 500.190(d) states that:

If a utility documents conditions at the meter that prevent the utility from obtaining a differential reading from the meter, then the utility may delay verification until those conditions cease to exist or for four months, whichever is shorter. If a utility delays verification, it shall maintain for three years documentation of the conditions that prevented verification within the required 60 months and provide the documentation to an authorized representative of the Commission when requested.

However, the record does not support Ameren's late coming concerns and therefore, the Commission should reject those arguments.

Ameren, Peoples Gas/North Shore, and Nicor (Ameren BOE, 2, Peoples BOE, 2, and Nicor BOE, 2) all argue the various proposed revisions to the timing intervals provide them with more flexibility in creating and implementing inspection plans. Staff does not dispute this, but as noted above, the rule does contain flexibility that the parties chose to ignore. Further, as noted above, the parties' alternative language also contains significant loopholes that could provide the future means to circumvent the intent of certain portions of this rule. Therefore, the Commission should reject the parties' comments and retain the inspection interval timing as written within the Proposed Order.

2. Heating Value: Ameren

Ameren opposes the Proposed Order's conclusion regarding Section 500.530, arguing that it does not have the ability to avoid these fluctuations, at least in the manner the rule would require. (Ameren BOE, 5) Ameren also claimed that in order to comply with these requirements, it would need to know what Btu values are at each of its gate stations. *Id.* Ameren then claimed that it would need to install a chromatograph

at each of its gate stations and install telemetry at each one that does not current have one installed. *Id.* Ameren then claimed that it would costs between \$8.3 and \$12.45 million to install the chromatographs and another \$5.978 to \$8.357 million to install the telemetry. *Id.* In other words, Ameren claimed it would cost it between \$14 million and \$21 million to know the Btu levels at each of its gate stations, but it would not be able to control the heating value of the gas into the system. *Id.*

Ameren's interpretation of the rule is incorrect. Staff has no reason to dispute Ameren's calculations of the costs to install this equipment, however, Ameren does not need to install this equipment to comply with the rule. The interstate natural gas pipelines provide the vast majority of the gas to Illinois local distribution companies. These interstate pipelines provide heating value information about that gas on its system at points upstream of the Illinois utilities take points. (18 C.F.R. §284.12) Staff's intent is for the utilities to utilize that data to ensure they take reasonable steps to limit heating value fluctuations as much as possible.

For example, a company who provides gas for delivery from an interstate pipeline could incur a mechanical failure in its equipment that strips the higher heating value gases from the natural gas stream. When those events occur, that particular interstate pipeline may have a full or partial day where its gas' heating value on its system is significantly higher than normal. Under that circumstance, gas utilities that receive service from multiple pipelines can reduce the amount of gas they bring into their systems from that particular pipeline and increase the volumes from another or multiple pipelines in order to limit or mitigate hearing value fluctuations. (Staff Reply Comments, 15-16) However, those utilities whose only gas source is the effected

pipeline, must still take the gas with the higher heating value since most small systems are only served by one pipeline.

Another example that relates to Part 500 could occur if the hydraulic fracking of natural gas becomes significant within Illinois. A hydraulic fracking company could approach a utility and offer to sell it natural gas from wells within Illinois. This utility per the Part 500 rule, would need to ensure it included provisions within any agreement it would reach with the company to address fluctuations in the heating value of the gas it would purchase.

3. Billing Requirements: Nicor, NAE

Nicor and NAE took exception to the PO on Billing Requirements. (Nicor BOE, 6; NAE BOE, 3, Exception No. 1.) NAE asserts that the PO misconstrues the facts and the law. NAE BOE, 3. In particular, NAE asserts that neither Staff nor the PO argue or contend that the proposed rule is implementing the billing requirements established in the PUA for AGS. *Id.*, at 4. NAE states that it does not argue that it should be exempt from the billing requirements in Section 500.410, but it argues that the billing requirements applicable to AGSs must be based on the billing requirements established by the legislature. NAE BOE, 4. This is incorrect. The ALJ correctly pointed out that the exemptions for AGSs from Section 500j.410 as proposed by NAE essentially eliminate the responsibility the AGSs have to comply with the billing requirements under this section. (PO, 28.) The ALJ is correct in her assessment that NAE's attempts to shift the compliance duties to the underlying utility are unreasonable and are not in the best interest of providing adequate service and full disclosure to the customers. *Id.* The Commission should adopt the ALJ's PO on this issue.

As Staff pointed out in its Summary of Positions, filed January 12, 2015, NAE entirely ignores Sections 19-110(e)(3) and 19-115(b)(2) of the Act. Section 19-110(e)(3) provides that the Commission may not certify an AGS unless it finds that an AGSs “will comply with such informational or reporting requirements as the Commission may by rule establish.” 220 ILCS 5/19-110(e)(3) (emphasis added). Section 19-115, Obligations of AGSs, in turn reemphasizes that AGSs must “continue to comply with the requirements for certification stated in Section 19-110.” 220 ILCS 5/19-115(b)(2).

It is well-established that the cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. MD Electrical Contractors, Inc. v. Abrams, 228 Ill.2d 281, 287, 888 N.E.2d 54 (2008). In determining legislative intent, the first step is to look at the plain meaning of the words of the statute and to construe them in their context. In re: Application for Tax Deed, 311 Ill.App.3d 440, 443, 723 N.E.2d 1186, 1189 (5th Dist. 2000). In interpreting a statute, undefined terms are given their ordinary meaning. Comprehensive Community Solutions, Inc. v. Rockford School Dist. No. 205, 216 Ill.2d 455, 473, 837 N.E.2d 1 (2005). The term “informational” is not defined by the statute. The American Heritage College Dictionary defines “information” as: 1. Knowledge derived from study, experience, or instruction. 2. Knowledge of a specific event or situation; intelligence. 3. A collection of facts or data; statistical information. 4. The act of informing or the condition of being informed; communication of knowledge: for the information of our passengers. The American Heritage College Dictionary, 3rd Ed., 1997. Importantly, the statute does not condition or limit the use of the term “informational” by, e.g., limiting the possible recipients of any informational requirement.

The provisions of Section 500.410 of the Proposed Rule, as its description “Information to Customers” indicates, clearly represent informational requirements under the ordinary meaning of that term, i.e., facts, data or knowledge communicated to customers, such as customer energy usage or period covered by the bill, description of services, bill amount, due date, definitions, contact information, etc. Therefore, except where the Act provides for specific exceptions to the Commission’s authority in this regard, the informational requirements under Section 500.410 of the Proposed Rule fall well within the Commission’s authority to impose on AGSs.

Accordingly, NAE’s proposed modifications to Section 500.410(a), (b) and (i) of the Proposed Rule should be rejected.

Moreover, while Staff disagrees with NAE regarding the Commission’s authority as described above, Staff does not dispute NAE’s observation that under subsections (g)(3)(A) and (g)(3)(C) of Section 19-115 of the Act, certain AGSs billing statement requirements do not apply to small commercial customers. 220 ILCS 5/19-115(g)(3)(A) & (C); (NAE Initial Comments, 6.) Further, Staff recognizes that the language of the Proposed Rule could be interpreted as applying those AGS’s billing statement requirements to small commercial customers contrary to the Act. (NAE Initial Comments, 6.) Staff agrees that to address this issue, the statutory billing statement requirements for AGSs along with the statutory exception of small commercial customers could be included in subsection (h) of Section 500.410 of the Proposed Rule. Id., at 7.

4. Time of Day Complaint: NAE

NAE took exception to the PO on the issue of Time of Day complaint. (NAE BOE, 13) NEA expresses concern that the draft changes to Code Part 500, “does not identify the purpose or reason for requiring an AGS to maintain records identifying the time of day a complaint is received.” (NAE BOE, 13; NAE Initial Comments, 4) NAE would prefer that only complaints received electronically or by telephone be time stamped, stating that those methods of contact are easier to track and would therefore be less costly and difficult for an AGS to achieve compliance. Id. NAE states that “there is no evidence of any real problems to *standards of service for customers* by keeping the process as it is today. (NAE BOE, 13.) The purpose of this rulemaking is to take account of newer technologies that have come into existence in recent years, as well as to recognize the new role of alternative gas suppliers in the market. (ICC on its own Motion, Initiating Order, July 30, 2014, 1) While it can be appreciated that in person complaints and complaints received by postal delivery would require accurate data entry by a human complaint recipient, and, therefore, might arguably be more difficult to track than those received electronically, nevertheless complainants who choose to use those other methods should not be subject to less accurate record keeping simply because a machine has not automatically captured the time of their contact. (Staff Reply Brief, 18) Consistency across suppliers on this basic point of tracking complaints, whether in person via pen and paper, keeping a complaint log on the computer, or other electronic methods, does not appear to add significant cost to the process.

5. AGS Applicability Language: NAE

In its BOE, Exception No. 2, NAE took exception to the PO on the issue of AGS applicability language, addressing Section 500.410(a)(3)(D). (NAE BOE, 2.)
Staff does not oppose NAE's position on this limited issue.

IV. Conclusion

WHEREFORE, for all of the reasons set forth in Staff's filings in this docket, Staff respectfully requests that the Commission's Order in this proceeding reflect all of Staff's recommendations.

Respectfully submitted,

/s/

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