

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company	)	
	)	
The Peoples Gas Light	)	
and Coke Company	)	
Petition to Review Affiliate Interactions with	)	Docket Nos. 12-0273
Peoples Energy Home Services, Pursuant	)	and 13-0612 (cons.)
to January 10, 2012 Rate Order	)	
	)	
Illinois Commerce Commission	)	
On Its Own Motion	)	
-vs-	)	
North Shore Gas Company	)	
The Peoples Gas Light and Coke Company	)	
Investigation into interactions with affiliates.	)	

**REPLY BRIEF OF NORTH SHORE GAS COMPANY  
AND THE PEOPLES GAS LIGHT AND COKE COMPANY**

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Pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission") Rules of Practice (83 Illinois Administrative ("Ill. Admin.") Code § 200.800) and the schedule established by the Administrative Law Judge (Notice of Administrative Law Judge's Ruling and Notice of Schedule, dated March 26, 2015), North Shore Gas Company ("North Shore") and The Peoples Gas Light and Coke Company ("Peoples Gas") (together, the "Gas Companies") file their Reply Brief in this consolidated proceeding.

## **I. INTRODUCTION**

Other than the Gas Companies, only Commission Staff filed an initial brief ("Staff IB"). This Reply Brief is limited to a few specific assertions in Staff's Initial Brief. As described in Section II, *infra*, of Staff's three recommendations, the initial briefs showed only one contested point, and the Gas Companies believe that point has been resolved. Given the agreement about the recommendations, the Gas Companies will not burden the record with lengthy responses to all allegations.

## **II. OVERVIEW**

The Staff's initial brief includes three recommendations. First, Staff recommends that the Commission modify the affiliated interest agreement that it approved in Docket No. 10-0408 (the "Master AIA" or the "Non-IBS AIA") to include a rider. Staff IB at 7. North Shore and Peoples Gas discussed this proposal in their Initial Brief ("NS-PGL IB"), and, with one exception, did not oppose the recommendation.<sup>1</sup> NS-PGL IB at 21-24. Based on communications with the Staff subsequent to filing their Initial Brief, the

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<sup>1</sup> The Gas Companies, on May 4, 2015, filed a revised Attachment A to their Initial Brief. It is this corrected rider that the Gas Companies believe includes only one difference from Staff's proposal.

Gas Companies believe they and Staff now agree on the rider. Attachment A of this Reply Brief is a proposed rider that is revision marked against the revised Attachment A that the Gas Companies included with their Initial Brief.

Second, Staff recommends prohibiting the Gas Companies' affiliates and agents from using information (including customer lists) to solicit, market to or provide services to the utilities' customers and from providing such information to any third party. Staff also stated that the information use is allowed when required or allowed by law or the Commission rules. Staff IB at 7. North Shore and Peoples Gas mentioned this proposal in their Initial Brief and do not oppose it. NS-PGL IB at 20-21.

Third, Staff recommended expanded audit requirements. As Staff states, these recommendations are part of the proposed rider. Staff IB at 7. North Shore and Peoples Gas do not oppose the proposed requirements. NS-PGL IB at 21-24. Attachment A of this Reply Brief includes a revision to the audit requirements that results from a change to the definition of Incidental Services.

### **III. ARGUMENT**

#### **A. Gas Companies' Interactions with Affiliates**

##### **1. Pinnacle / Integrys Transportation Fuels**

**Pinnacle:** The transaction with Pinnacle CNG Systems, LLC ("Pinnacle") that is a focus of this case was construction of a compressed natural gas ("CNG") station for Peoples Gas. As Staff states, Peoples Gas entered into a contract for this project prior to Integrys Energy Group, Inc.'s ("Integrys") acquisition of Pinnacle (the "Construction Agreement"). Staff IB at 12. That is, Pinnacle was not an affiliated interest of Peoples Gas when they signed the Construction Agreement. Staff is correct that work under this

contract and payment for services occurred after Peoples Gas and Pinnacle were affiliates. *Id.* at 13. However, Staff's conclusion that this violates the Public Utilities Act (the "Act") is incorrect. Moreover, Staff's invented concept of a "pending affiliate" (see, e.g., Staff IB at 16) has no legal meaning or significance.

The Gas Companies described the timing of events that led to the Construction Agreement and will not repeat that history. NS-PGL IB at 13-14. The Gas Companies simply note that the events were set in motion by a Department of Energy project and associated deadlines and the availability of grant money to offset some costs, which pre-dated any discussions with Pinnacle.

The Gas Companies agree that the Commission has stated that the purpose of the Section 7-101 affiliated interest requirements is to balance the interests of customers and shareholders. Staff IB at 13. The Gas Companies agree that, for the most part, agreements between a utility and an affiliated interest require prior Commission approval.<sup>2</sup> *Id.* at 12.

Peoples Gas and Pinnacle negotiated and signed the Construction Agreement prior to being affiliated interests. Section 7-101 did not apply to that agreement, and the Commission had no jurisdiction over the terms and conditions of the agreement. Had Peoples Gas and Pinnacle not subsequently become affiliates, the terms and conditions or validity of the agreement would not have been at issue before the Commission.<sup>3</sup> However, under Staff's theory, that same contract, lawfully entered into between two unaffiliated companies, is no longer valid at the point when the companies become

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<sup>2</sup> The Commission's rules provide certain exceptions to the prior approval requirement. 83 Ill. Admin. Code Part 310.

<sup>3</sup> To the extent Peoples Gas sought cost recovery under such an agreement, the justness and reasonableness of those costs could be an issue. However, the Commission would not be asserting jurisdiction over the contract or ordering changes to the contract. The same is true for the Construction Agreement.

affiliates, until the companies get Commission approval of the contract. It is difficult to make sense of how to implement Staff's theory.

For example, Staff would make an exception for payment for services performed prior to the companies becoming affiliated (Staff IB at 13). It is unclear why Staff considers that aspect of performance under the contract (payment) lawful but not other aspects of performance under the contract. More generally, and not limiting the application of Staff's theory to the Construction Agreement, it is not apparent what performance would be lawful and what performance would require prior approval at the point when a party to an agreement negotiated and executed by it and a non-affiliated utility becomes affiliated with that utility. Under Staff's theory of Section 7-101, the Construction Agreement, upon the affiliation of Peoples Gas and Pinnacle, would have been void *ab initio* because it was an affiliate agreement for which Peoples Gas had not received approval.<sup>4</sup> Yet, Staff opines payment for services rendered prior to the affiliation could be paid for under the terms of the agreement, which, under Staff's theory, is now void. The Gas Companies surmise that, upon affiliation, the contracting parties, at a minimum, would need to suspend performance because they no longer have a lawful agreement. Staff provides no guidance what happens if the companies suspend performance, the utility seeks approval, and the Commission denies the requested approval or imposes conditions that would affect performance that already occurred or pricing under the agreement.

The "pending affiliate" argument is similarly curious. Neither the Act nor any Commission order or rule appears to address this concept. It is not apparent what

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<sup>4</sup> See, e.g., *Illinois Commerce Commission vs. [The] Peoples Gas Light and Coke Company*, ICC Docket No. 01-0707 (Order, Mar. 8, 2006) at 27, 108, 123.

circumstances would make a company a “pending affiliate” and what implications flow from that designation. Staff has not claimed, and there is no record support for such a claim, that Pinnacle exercised substantial influence over Peoples Gas’ policies and actions, which could bring an otherwise non-affiliated company within the ambit of Section 7-101. 220 ILCS 5/7-101(2)(ii)(g) and (h). There is no support to find a violation of Section 7-101 resting on a concept apparently created in this proceeding.

Staff’s conclusions that the Gas Companies misrepresented the facts (see, e.g., Staff IB at 19) is based, in part, on a selective reading of data responses. For example, Staff’s assertion that Integrys’ Internal Audit’s “sole basis” for finding no preferential treatment in the Pinnacle / Peoples Gas transaction was employee interviews (Staff IB at 18) is belied by the document cited by Staff. The audit document describes testing performed, includes a non-exclusive list of various interviews, and concludes by stating “[w]e also reviewed the relevant documentation maintained within the workpapers and performed other tests, as considered necessary (See WPs in D.4.3).” Sackett Direct Testimony (“Dir. Test.”), ICC Staff Ex. 1.0 Rev., Attach. R, page 4 of 6. As a second example, Staff states that Mr. Calvin approved the bid list for the CNG station construction and had knowledge of Integrys’ acquisition of Pinnacle. Staff IB at 18-19. The data response on which Staff relies states that Mr. Calvin was aware of the acquisition discussions in their early phases. It also states that he was involved in scoping the CNG station RFP. Sackett Dir. Test., ICC Staff Ex. 1.0 Rev. Attach. T. That exhibit does not state that Mr. Calvin was involved in the negotiation of the Construction Agreement or the nature of his role (beyond awareness of it) in the

acquisition. Staff's comments about Mr. Calvin's role do not support its conclusion that Peoples Gas misrepresented facts.

**Integrus Transportation Fuels ("ITF"):** ITF is the parent company of Pinnacle and other entities in the CNG business. Integrus formed ITF as a company when it acquired Pinnacle and the other CNG entities. Peoples Gas currently takes from ITF operation and maintenance services for the CNG station that Pinnacle constructed.

First, Staff stated that Peoples Gas violated the Services and Transfers Agreement ("STA") when it failed to notify the Commission of the addition of ITF to that agreement.<sup>5</sup> Staff IB at 21. Peoples Gas agrees that it did not timely notify the Commission of the addition of ITF to the STA, but this had no effect on the Gas Companies or their customers. Specifically, the late notice had no effect on how the companies performed services and allocated costs under that agreement. The ongoing station operation and maintenance charges were charged at cost. Nothing changed, or needed to change, when the formal notice adding the ITF companies occurred. Renier Supplemental Direct Testimony ("Supp. Dir. Test."), NS-PGL Ex. 2.0 at 8.

Second, Staff contends that ITF's services, beginning in January 2014 under the Master AIA<sup>6</sup>, were not "incidental." Staff IB at 22. In their Initial Brief, the Gas Companies address the concept of "incidental." NS-PGL IB at 22-24. Suffice it to say, the less than \$36,000 of services that ITF provided to Peoples Gas in 2014 (Staff IB at 22) is a dollar amount that is significant to neither Peoples Gas nor ITF in terms of their

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<sup>5</sup> The Commission approved the STA in Docket No. 06-0540. NS-PGL IB at 1, 6.

<sup>6</sup> The Commission approved the Master AIA in Docket No. 10-0408. NS-PGL IB at 1, 4.

operations and maintenance expense or revenues.<sup>7</sup> The Gas Companies urge the Commission to adopt a definition of “incidental” services that avoids the incongruous result of a *de minimis* level of services being improper under the agreement. NS-PGL IB at 22-24. The definition included in Attachment A to this Reply Brief would be appropriate.

## **2. PNGV Corp.**

The Gas Companies addressed Staff’s allegations concerning PNGV (Staff IB at 22-25) in their Initial Brief and have little to add. NS-PGL IB at 17-19. Some of the events at issue occurred about 20 years ago. (Construction of the CNG station in question was in 1995-1996. Staff IB at 22.) PNGV was dissolved in 2007. Kallas Supp. Dir. Test., NS-PGL Ex. 1.0 at 3. Peoples Gas readily admits it struggled to find data from this period to respond to Staff’s inquiries. Consequently, Peoples Gas could not ascertain if ratepayers improperly bore any costs for transactions with PNGV. Gregor Supp. Dir. Test., NS-PGL Ex. 4.0 at 6-7. Drawing conclusions about costs and services under an agreement that is no longer in effect,<sup>8</sup> involving a company that no longer exists, and a facility that no longer exists, is difficult, at best.

## **3. PEHS**

The Gas Companies addressed Staff’s allegations concerning PEHS (Staff IB at 25-34) in their Initial Brief and have little to add. NS-PGL IB at 19-21. They will address

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<sup>7</sup> For example, in 2012, Peoples Gas received \$173,039,762 of services from IBS. Kupsh Supp. Dir. Test., NS-PGL Ex. 3.0 at 9. The Commission found that Peoples Gas’ total operating expenses, including taxes, for its recently concluded test year 2015 rate case was over \$500 million dollars. *North Shore Gas Company et al.*, Docket Nos. 14-0224/14-0225 (cons.) (Second Amendatory Order, Feb. 11, 2015) at App. B, page 1.

<sup>8</sup> Indeed, even the agreement (the STA) that replaced the Docket No. 55071 agreement that was in effect until 2007 has been superseded by the Master Agreement.

Staff's incorrect reliance on the Act and the Commission's rules to conclude that violations of anti-discrimination requirements occurred.

First, Staff's argument that the Gas Companies discriminated against ratepayers in violation of Section 8-101 of the Act is wrong. Staff IB at 26-31. PEHS' PPP was not a Commission-jurisdictional service. The Gas Companies' provision of repair services to customers is not a Commission-jurisdictional service. The statutory requirement cited by Staff (220 ILCS 5/8-101, Staff IB at 29) applies to utility services, *i.e.*, services that a person applies for and is reasonably entitled to receive. For customers, the Gas Companies provided non-utility repairs to customer piping and equipment, subject to resource availability. By "non-utility," the Gas Companies mean that the repairs were not a utility service, like distribution of gas that a customer may obtain only from the utility and that is subject to rates approved by the Commission. In other words, customers apply for distribution service and are reasonably entitled to receive it. Customers were and are free to purchase repair services for customer-owned pipe from any entity. The Gas Companies likewise have no obligation to repair customer-owned piping. The Act clearly permits such "non-utility" services. See 220 ILCS 5/7-205, 7-206. For PPP, the Gas Companies provided services to PEHS under the terms of an affiliated interest agreement. The repair service -- whether performed by the Gas Companies or as part of the PPP -- did not involve company-owned facilities, so the Gas Companies are not responsible for maintenance of these facilities. The Gas Companies' repair services do not violate Section 8-101 of the Act because they are not a utility service that any person is entitled to receive.

Moreover the comparison between utility repair services and PPP is specious. A PPP customer paid a fixed monthly charge to demand service. The customer paid the charge to allow him to demand service from PEHS. A non-PPP customer paid no demand charge and, if he chose to request repair service from the Gas Companies and if he received service, he paid only for that service. These customers are quite differently situated; they received a different service but exactly the service for which they paid. A PPP customer had a contract right to demand that PEHS provide service. A non-PPP customer may request, but not demand, that the Gas Companies repair customer-owned pipe. Julian Supp. Dir. Test., NS-PGL Ex. 5.0 at 2-5.

Second, Staff's argument that the Gas Companies discriminated against ratepayers in violation of the Commission's rules (83 Ill. Admin. Code Sec. 550.20) (Staff IB at 30) is wrong for largely the same reasons. Indeed, one need only look at the language quoted in Staff's brief to see the flaw, namely that the rule covers services "provided under tariffs on file with the Illinois Commerce Commission (Commission), including contracts filed under tariffs filed pursuant to Section 9-102.1 of the Act [220 ILCS 5/9-102.1]." 83 Ill. Admin. Code Sec. 550.20(a). The repair services are not, and need not be, tariff services or services under Section 9-102.1 of the Act. Nothing in the Commission's Part 550 rules, Section 9-241 of the Act, which is the authority for Part 550, or the definition of "services" in the Act (Section 3-115) can reasonably be construed to reach services that are not "public utility" services, *i.e.*, "devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public." 220 ILCS 5/3-115. The Gas Companies do not hold themselves out to the public as providing repair services on customer-owned piping.

## **B. Changes to Gas Companies Affiliated Interest Agreement**

As stated in their Initial Brief (NS-PGL IB at 21), the Gas Companies will not belabor the back-and-forth that led to the proposed rider to the Master AIA. Only one issue was open, and that is the definition of Incidental Services. Based on communications with the Staff subsequent to the filing of the initial briefs, the Gas Companies believe this issue has been satisfactorily resolved. The definition includes an objective measure (10% for a fiscal year) and it is based on a benchmark (total operation and maintenance expense) that appropriately differentiates between “major” and “incidental.” The proposed language, with the key wording underscored, is:

“Incidental Services” shall mean Services identified as such in this Rider to Appendix C and for which the Parties expect that, in the normal course of business and under normal operating conditions, they shall provide infrequently or, if provided on a regular or day-to-day basis, shall not be within a fiscal year more than 10% of the dollar amount of the total operating and maintenance expense of either Party from the prior fiscal year.

See Attachment A.

The change to the definition of Incidental Services results in two additional changes in the rider, which are shown as revision-marked changes in Attachment A. Both changes appropriately follow from the revised definition.

The Gas Companies believe that they and Staff each supports the rider as shown in Attachment A as an acceptable change to the Master AIA.

## **IV. CONCLUSION**

The Gas Companies disagree that the record supports Staff’s claims of violations of the Act. They concede that billing errors and procedural glitches (*e.g.*, the failure to promptly add ITF to the STA) happened over the myriad transactions that occurred during the approximate 20-year period examined in this proceeding. They showed that

these errors had little, if any, effect on customers and, when placed in the context of the hundreds of millions of dollars and hundreds of thousands of individual transactions, are *de minimis*. The record also shows that the Gas Companies' management of affiliated interest services, especially the adoption of the shared services model, has matured and provides substantial protection against billing errors. They will not pretend that no errors occurred, nor can they promise that no errors will occur in the future, but processes and protections exist to limit and correct errors.

Nonetheless, the Gas Companies do not oppose the adoption of a rider to one of their current affiliated interest agreements (the "Master AIA" approved in Docket No. 10-0408) to restrict their activities with affiliated interests and impose additional requirements on asset transfers and annual audits. The rider attached to this Reply Brief as Attachment A is consistent with what the Gas Companies believe is acceptable to the Staff.

The Gas Companies respectfully request that the Commission adopt the attached rider as a resolution of all matters at issue in this consolidated proceeding.

Respectfully submitted,  
The Peoples Gas Light and Coke Company

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