

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
-vs-	)	Docket No. 15-0608
	)	
The Peoples Gas Light and Coke Company,	)	
Integritys Energy Group, Inc.,	)	
And Wisconsin Energy Corporation:	)	
Investigation concerning possible violation of	)	
Section 5-202.1 of the Public Utilities Act	)	

VERIFIED RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION  
TO THE ATTORNEY GENERAL OF ILLINOIS AND CITIZENS UTILITY BOARD'S  
JOINT VERIFIED EMERGENCY MOTION FOR THE ISSUANCE OF  
SUBPOENAS AND EXTENSION OF THE SCHEDULE

NOW COMES the Staff of the Illinois Commerce Commission (Staff), by and through its undersigned counsel, pursuant to 83 Ill. Adm. Code 200.190 and the schedule set by the Administrative Law Judge, and in response to the Attorney General of Illinois' ("AG") and Citizens Utility Board's (collectively "AG / CUB") Joint Verified Emergency Motion for the Issuance of Subpoenas and Extension of the Schedule ("Motion"), respectfully states AG / CUB's Motion should be denied in its entirety.

In support thereof, Staff states as follows:

1. On November 18, 2015, the Commission issued its Order initiating the proceeding. (*See, generally, Initiating Order.*)

2. In its Initiating Order, the Commission directed that:

[P]ursuant to Section 5-202.1 and 10-101 of the Public Utilities Act a proceeding of a specified scope and duration [is] initiated to determine whether Peoples Gas, Integritys or WEC or any employee, agent or representative thereof knowingly misled or withheld material information from the Commission at its May 20, 2015 Open Meeting.

Id. at 2-3 (emphasis added).

3. The Commission further directed that “the Administrative Law Judge assigned shall submit a Proposed Order to the Commission within 180 days of entry of an order initiating an investigation.” Id. at 3.

4. At the November 18, 2015 meeting, prior to voting on the proposal to issue the Initiating Order, several Commissioners made statements regarding the matter. Commissioner Edwards stated that:

I would like to briefly add though that given the history and the ongoing nature of this issue, time is of the essence and I'm confident that the investigation will lead to a fair and expeditious resolution of this important matter. I just want to stress that I do hope we can move forward quickly, efficiently, and to use as little of the resources of our consumers as possible.

(Tr. 15-16, November 18, 2015 (emphasis added).)

5. Similarly, Commissioner McCabe stated that: “Staff's report and the proposed Order calls for information to be provided within 14 days and the inquiry to be completed within 180 days.” Id. at 16.

6. On December 9, 2015, a hearing was convened in this proceeding, and an agreed schedule consistent with the Commission's directive to complete the inquiry within 180 days was set. (Tr. 6-7, December 9, 2015.) At that proceeding, the AG first indicated that it might seek to have deposition subpoenas issued. Id. at 8-9.

7. At the request of the AG, a further hearing was scheduled for January 5, 2015 for the express purpose of revisiting the schedule after the parties had a chance to review additional materials produced by Peoples Gas. Id. at 10-11.

8. In the course of the January 5, 2015, hearing, an AG representative stated that it was “likely that [the AG would] filing a motion to request that the Commission issue

[deposition] subpoenas[,] [a]nd that pleading ... will be coming within the next several days.” Id. at 19-20.

9. On January 26, 2016, the AG finally filed, jointly with the Citizens Utility Board (CUB), a Joint Verified Emergency Motion for the Issuance of Subpoenas and Extension of the Schedule (*See, generally, Motion.*) In their Motion, AG / CUB request that the Administrative Law Judge (ALJ) issue subpoenas compelling the deposition of eight named persons, five of whom are no longer employed by Peoples Gas or Wisconsin Energy Corporation (“WEC” and collectively “Respondents”) in any capacity. Motion, ¶¶32-34. In concert with this request, AG / CUB request an extension of the existing schedule. Id. at ¶¶35-40.

10. Commission procedural rules provide that “[f]ormal discovery by means such as depositions and subpoenas is discouraged unless less formal procedures have proved to be unsuccessful.” 83 Ill. Adm. Code 200.340. In recognition of this, AG / CUB assert that attempts to obtain information through data requests – the usual method for conducting discovery in Commission proceedings – have been “insufficient.” Id. at ¶¶22, 27.

11. AG / CUB allege that Respondents’ responses to data requests have been based on documents rather than interviews with purportedly knowledgeable persons; are speculative; and in many cases were submitted subject to the caveat that such response is made “on information and belief.” Id. at ¶¶23-25, 27-28. AG/CUB assert that Respondents have attempted to “delay and obfuscate[e]” discovery in this proceeding. Id. at ¶27.

12. The AG concedes that it has not made, or even perfected its right to make, a Motion to Compel more complete responses to the data request responses it considers inadequate. Id. at ¶14.

13. The AG / CUB Motion should be denied, for any of several reasons.

14. First, AG / CUB have not demonstrated they have pursued and exhausted less formal discovery procedures before seeking the relatively drastic step of issuance of deposition subpoenas. Respondent has produced something on the order of 22,000 documents in addition to responses to data requests. AG / CUB do not suggest that either has reviewed all such production. Further, as the AG concedes, it has not attempted to compel what it considers to be more adequate, complete production; indeed the AG appears not to have consulted with Respondent in an attempt to resolve the AG's objections to Respondents' production to date, as required by 83 Ill. Adm. Code 200.350. (See Motion at ¶14 (a "meet and confer" is "pending").) It therefore cannot be said that "less formal [discovery] procedures have proved to be unsuccessful" within the meaning of 83 Ill. Adm. Code 200.340.

15. Second, AG / CUB do not make a compelling case that additional information is required. As noted, Respondents' document production has been extensive and neither the AG nor CUB affirm it has reviewed all the documents. Further, and without going into great detail, Respondents have made admissions of fact in their Initial Pleading which establish certain facts without additional fact-finding. (See, *generally*, Respondents' Initial Pleading, Section II, ¶¶1-21.)

16. Third, the AG / CUB request is likely to result in parties incurring substantial expense, contrary to at least one Commission's express injunction that the proceeding

be concluded in a manner that conserves resources, as several of the proposed deponents appear to reside in Wisconsin and thus subpoenas must be served and depositions taken out of state.

17. Fourth, as AG / CUB recognize, their request for depositions will result in extension of the schedule. Motion, ¶¶35-40. However, the deadline for decision here was established by the Commission itself, which directed in its Initiating Order that the ALJ submit a Proposed Order within 180 day of the Proceeding being initiated. Initiating Order, 2-3. Accordingly, the ALJ cannot extend the schedule without first submitting the matter to the Commission.

18. This presents an insuperable problem. AG / CUB have managed to make a Motion that, while unripe as described above, is also, paradoxically, untimely. Staff and Intervenor pleadings and testimony are currently due to be filed on February 4, 2016. To obtain an Order from the Commission extending the schedule (and staying the February 4 date), the ALJ must (a) determine that such an extension is in his view warranted (which, as shown above, he should not do); and (b) submit the matter to the Commission for its decision on or prior to February 4. However, the Commission will not convene a regularly Scheduled Open Meeting between the due date for this Response and February 4, 2016. See <http://www.icc.illinois.gov/meetings/calendar.aspx> (no meeting scheduled during the week of February 1, 2016). Accordingly, there is no way, short of convening a Special Open Meeting on an emergency basis, for the Commission to rule on the ALJ's request that the schedule be extended, assuming that he is inclined to make such a request.

19. This problem could, of course, have been obviated, by the AG / CUB filing their Motion "within the next several days" after the January 5, 2016 status hearing, as

the AG led the parties to understand the AG would do. (Tr. 19, 20, January 5, 2016.) However, by waiting over three weeks, AG / CUB effectively foreclosed the relief they seek.

20. In summary, AG / CUB have not made a case that normal discovery procedures have not and will not be sufficient, nor have they demonstrated that depositions are necessary. Likewise, their Motion was brought in an untimely manner which prevents it being granted.

21. For all the foregoing reasons, AG / CUB's Motion should be denied in its entirety.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that Administrative Law Judge deny the Attorney General's and Citizens Utility Board's Joint Verified Emergency Motion for the Issuance of Subpoenas and Extension of the Schedule.

Respectfully submitted,

---

John C. Feeley  
Marcy A. Sherrill  
Matthew L. Harvey  
Office of General Counsel  
Illinois Commerce Commission  
160 North LaSalle Street, Suite C-800  
Chicago, IL 60601  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
[jfeeley@icc.illinois.gov](mailto:jfeeley@icc.illinois.gov)  
[msherrill@icc.illinois.gov](mailto:msherrill@icc.illinois.gov)  
[mharvey@icc.illinois.gov](mailto:mharvey@icc.illinois.gov)

January 29, 2016

Counsel for the Staff of the  
Illinois Commerce Commission

