

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION)
On Its Own Motion)
)
-vs.-)
)
THE PEOPLES GAS LIGHT AND COKE)
COMPANY, INTEGRYS ENERGY GROUP,)
INC., and WISCONSIN ENERGY)
CORPORATION)
)
Investigation concerning possible violation of)
Section 5-202.1 of the Public Utility Act.)

Docket No. 15-0608

REVISED VERIFIED RESPONSIVE PLEADING OF THE PEOPLES GAS LIGHT AND COKE COMPANY, INTEGRYS HOLDING, INC., AND WEC ENERGY GROUP, INC.

The Peoples Gas Light and Coke Company ("Peoples Gas")¹, Integrys Holding, Inc. ("Integrys Holding"), and WEC Energy Group, Inc. ("WEC Energy Group")² (collectively, the "Respondents"), by and through their attorneys, hereby submit this Revised Verified Responsive Pleading in reply to the pleadings filed by the Illinois Commerce Commission's (the "Commission") Staff ("Staff") and jointly by the Illinois Attorney General's office ("AG" or "Attorney General") and the Citizens Utility Board ("CUB") (collectively, "AG-CUB"), as follows:

I. Introduction

1. Based upon the Initial Pleading filed by Staff and the Direct Pleading filed by AG-CUB, Respondents agree with Staff that most, if not all, of the factual matters that need to be determined in this proceeding can, at this time, be deemed admitted or established by stipulation.

Any legal arguments based upon those factual matters as to whether or not there has been a

¹ For purposes of this pleading, the term "Peoples Gas" also includes Peoples Gas' affiliated service company.

² In light of Wisconsin Energy Corporation's acquisition of Integrys Energy Group, Inc. ("Integrys"), which closed on June 29, 2015, there have been nominal and organizational changes with respect to two of these entities, Wisconsin Energy Corporation and Integrys. WEC Energy Group and Integrys Holding are the current names of these entities, respectively.

violation of 220 ILCS5/5-202.1 and, if so, what penalty the Commission should impose for that violation will be made by counsel in their briefing.

2. In this Verified Responsive Pleading, Respondents identify those statements or matters of fact in the Initial Pleading filed by Staff and the Direct Pleading filed by AG-CUB to which the Respondents admit and stipulate, and that should be deemed conclusively determined without the need for further proof being adduced.

II. Initial Pleading of Staff

3. Respondents stipulate to paragraph 4 of Staff's Initial Pleading.

4. Respondents stipulate that paragraphs 5 through 7 of Staff's Initial Pleading contain accurate statements from the transcript of the Commission's May 20, 2015 Open Meeting.

5. Respondents stipulate to paragraph 8 of Staff's Initial Pleading.

6. Respondents stipulate to the statements of fact set forth in paragraphs 10 through 21 of Staff's Initial Pleading, with the following clarifications:

(a) With respect to paragraph 12 of Staff's Initial Pleading, the "copy of this cost estimate model" distributed to three employees of Peoples Gas was a preliminary draft of the new cost model being developed by a Jacobs employee, as described in paragraph 4 of Respondents' Second Revised Initial Pleading; and

(b) With respect to paragraph 14 of Staff's Initial Pleading, the "Peoples Gas employees" who received a revised version of this draft on December 29, 2014

were the three Peoples Gas employees identified in paragraph 4 of Respondents' Second Revised Initial Pleading.

7. Respondents stipulate that the testimony of Staff witness David Sackett at ICC Staff Exhibit 1.0 at 7:122-130 correctly describes the Request for Proposal (RFP") that Peoples Gas issued on April 3, 2015. Respondents admit, as asserted in paragraph 23 of Staff's Initial Pleading, that Peoples Gas' RFP did not use the phrase "the Jacobs preliminary draft cost estimate model," and referred to the model as the "Peoples Gas Capital Construction Model" in the RFP's title.

8. Respondents stipulate to paragraph 24 of Staff's Initial Pleading.

9. Respondents stipulate to the statement in paragraph 25 of Staff's Initial Pleading that the Jacobs' employee in question had "more than 30 years of project and construction management experience."

10. Respondents stipulate to the admission of the documents and exhibits attached to Staff's Pleading and Mr. Sackett's direct testimony.

III. Direct Pleading of AG-CUB

11. While AG-CUB's Direct Pleading contains many arguments and legal conclusions asserted by AG-CUB, which Respondents will address in their legal briefs as appropriate, the Direct Pleading contains many assertions of underlying facts to which Respondents can stipulate in order to narrow the issues in this proceeding. Respondents will identify the underlying facts in AG-CUB's direct pleading to which they stipulate.

12. Respondents stipulate to the first two sentences of paragraph 1 of AG-CUB's Direct Pleading. With respect to the last sentence of paragraph 1 of AG-CUB's Direct Pleading, Respondents state that the approximately \$2.47 billion estimate in the Testimony of Salvatore Marano was for the "Total Construction Cost" of the AMRP with a completion date of 2030. *See* ICC Docket No. 09-0167, PGL Exhibit SDM 1.0 Rev. at 53-57.

13. Respondents agree that paragraph 2 of AG-CUB's Direct Pleading contains accurate statements from the Commission's June 18, 2013 Final Order in ICC Docket Nos. 12-0511/0512 (cons.) ("the 2012 Rate Case"), that the Commission adopted Staff's proposal for a two-phase audit of the AMRP in the Final Order, and that the Commission selected The Liberty Consulting Group, Inc. ("Liberty") to conduct the audit.

14. Respondents stipulate to the statements in paragraph 4 of AG-CUB's Direct Pleading.

15. With respect to paragraph 5 of AG-CUB's Direct Pleading, Respondents agree that the \$4.5 billion estimate for the AMRP discussed in paragraph 4 of AG-CUB's Direct Pleading dated back to 2012 to the extent indicated in the documents cited in paragraph 5 of AG-CUB's Direct Pleading.

16. With respect to paragraph 6 of AG-CUB's Direct Pleading, Respondents do not dispute that the \$4.5 billion estimate for the AMRP discussed in paragraph 4 of AG-CUB's Direct Pleading was not disclosed by PGL in the 2012 Rate Case.

17. Respondents stipulate to paragraphs 7 through 16 of AG-CUB's Direct Pleading.

18. Respondents stipulate that the Joint Proxy Statement, portions of which are attached as Exhibit A to AG-CUB's Direct Pleading, accurately describe the "change in control payments" and other events that would occur if the transaction between Wisconsin Energy and Integrys was completed.

19. Respondents stipulate to paragraph 18 of AG-CUB's Direct Pleading.

20. With respect to paragraph 19 of AG-CUB's Direct Pleading, Respondents stipulate that the Joint Proxy Statement, portions of which are attached as Exhibit A to AG-CUB's Direct Pleading, accurately describe the amounts that the Integrys executives listed in

paragraph 19 of AG-CUB's Direct Pleading anticipated receiving upon completion of the transaction between Wisconsin Energy and Integrys.

21. Respondents stipulate to paragraphs 20 through 23 of AG-CUB's Direct Pleading.

22. Respondents stipulate that the quotations in paragraph 24 of AG-CUB's Direct Pleading are in the November 7, 2014 cover email from Jacobs' Ken Van Overberghe (RSP_000154 - RSP_000155) distributing a draft of the cost estimate he was developing.

23. With respect to paragraph 25 of AG-CUB's Direct Pleading, Respondents stipulate that the draft of the cost estimate that Jacobs' Ken Van Overberghe distributed on November 7, 2014 projected the long-term costs of the AMRP to exceed \$8 billion.

24. Respondents stipulate to paragraphs 26 through 28 of AG-CUB's Direct Pleading.

25. Respondents stipulate that the quotations in paragraph 29 of AG-CUB's Direct Pleading are in the December 29, 2014 cover email from Jacobs' Ken Van Overberghe (RSP_000256) distributing Revision C of the cost estimate that he was developing.

26. Respondents stipulate that the quotations in paragraph 30 of AG-CUB's Direct Pleading are from Liberty's January 5, 2015 Interim Report, and that the Interim Report expressed concern with the lack of development on cost estimation.

27. Respondents stipulate to paragraphs 31 and 32 of AG-CUB's Direct Pleading. With respect to paragraphs 31 and 32 of AG-CUB's Direct Pleading, Respondents note that the section of Liberty's Interim Report devoted to "Cost and Schedule Management" acknowledges that Jacobs' Ken Van Overberghe was responsible for developing a Peoples Gas cost model for the AMRP. Liberty Interim Report at 22.

28. Respondents do not contest paragraph 33 of AG-CUB's Direct Pleading.

29. Respondents stipulate to the first two sentences of paragraph 34 of AG-CUB's Direct Pleading. With respect to the third sentence of paragraph 34 of AG-CUB's Direct Pleading, Respondents stipulate that David Giesler was the project manager of the AMRP at Peoples Gas, with the title "Senior Project Manager," and that he set up the meeting on January 6, 2015. Respondents stipulate to the fourth sentence of paragraph 34 of AG-CUB's Direct Pleading.

30. With respect to paragraph 35 of AG-CUB's Direct Pleading, Respondents stipulate that they believe the document produced as RSPV_000547-600 was the presentation Jacobs' Ken Van Overberghe made during the January 6, 2015 meeting discussed in paragraph 34 of AG-CUB's Direct Pleading, and stipulate that the information described in paragraph 35 of AG-CUB's Direct Pleading is included in that document.

31. With respect to paragraph 36 of AG-CUB's Direct Pleading, Respondents agree that Jacobs' Ken Van Overberghe's presentation contained slides that appear to compare the AMRP estimate produced by the new cost model he was developing to the prior AMRP cost estimates prepared by Jacobs from 2009 and 2012.

32. Respondents stipulate to paragraphs 39 through 41 of AG-CUB's Direct Pleading.

33. With respect to paragraph 42 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations in that paragraph are from January 20, 2015 (RSP_000404) and January 21, 2015 (RSP_000405-406) emails that Jacobs' Ken Van Overberghe sent to Peoples Gas employees Mark Kinzle and David Lazzaro.

34. With respect to the first sentence of paragraph 43 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation in that sentence comes from a January 23, 2015 email (*see* RSP_000416) that Jacobs' Ken Van Overberghe sent to Peoples Gas employees Mark

Kinzle and David Lazzaro. Respondents do not contest the second sentence of paragraph 43 of AG-CUB's Direct Pleading.

35. With respect to paragraph 44 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations in that paragraph are from a January 26, 2015 email (*see* RSP_000423) that Jacobs' Ken Van Overberghe sent to Peoples Gas employee Polly Eldringhoff.

36. With respect to the first sentence of paragraph 46 of AG-CUB's Direct Pleading, Respondents stipulate that the January 13, 2015 email and attachment from Jacobs' Ken Van Overberghe to Peoples Gas employee Polly Eldringhoff as RSP_000362-363 thanks Ms. Eldringhoff for her "time this afternoon," and purports to provide "the info requested." With respect to the second sentence of paragraph 46 of AG-CUB's Direct Pleading, Respondents do not contest that the attachment produced as RSP_000363 purports to contain the information listed by AG-CUB.

37. With respect to paragraph 47 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation in that paragraph is from a March 9, 2015 email (RSP_000091) that Peoples Gas employee William Morrow sent to Jacobs' Ken Van Overberghe.

38. With respect to the first sentence of paragraph 48 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation in that sentence comes from a March 9, 2015 email with attachment (RSP_000092-94) that Jacobs' Ken Van Overberghe sent to Peoples Gas employee and Integrys officer William Morrow in response to the email produced as RSP_000091 addressed in paragraph 47 of AG-CUB's Direct Pleading. With respect to the second sentence of paragraph 48 of AG-CUB's Direct Pleading, Respondents do not contest that the information sent by Jacobs' Van Overberghe purports to compare the 2010, 2012, and 2015 estimates.

39. Respondents stipulate to the first sentence of paragraph 49 of AG-CUB's Direct Pleading. With respect to the second and third sentences of paragraph 49 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations in those sentences come from Peoples Gas employee and Integrys officer William Morrow's March 9, 2015 email to Integrys officer Lawrence Borgard forwarding the email and attachment received from Van Overberghe on that same date (RSP_000098-101). Respondents stipulate to the fourth sentence of paragraph 49 of AG-CUB's Direct Pleading.

40. With respect to the first sentence of paragraph 50 of AG-CUB's Direct Pleading, Respondents stipulate that in a February 12, 2015 email sent by Jacobs' Ken Van Overberghe (RSP_000450), he references a "2/20 deadline." With respect to the second sentence of paragraph 50 of AG-CUB's Direct Pleading, Respondents stipulate that in this email, Jacobs' Van Overberghe asked Peoples Gas employee Mark Kinzle to let him know if "there are any issues that you want to clarify or change," (*id.*) and that the quotation in that sentence comes from Van Overberghe's February 12, 2015 email to Mark Kinzle. With respect to the third sentence of paragraph 50 of AG-CUB's Direct Pleading, Respondents stipulate that in Van Overberghe's February 12, 2015 email, he states: "recognizing there are other scenarios will run in the future that may change some of the assumption." (*Id.*) With respect to the fourth sentence of paragraph 50 of AG-CUB's Direct Pleading, Respondents stipulate that Mark Kinzle's response email (RSP_000450) included the statements: "I do not have any other edit for you for the assumptions. With those last changes that you did that should be it for now." With respect to the fifth sentence of paragraph 50 of AG-CUB's Direct Pleading, Respondents stipulate that in a February 19, 2015 email (RSP_000454-456), Ken Van Overberghe indicated that he would be running a Monte Carlo simulation on a revision of the model on February 20, 2015.

41. Respondents stipulate to the first sentence of paragraph 51 of AG-CUB's Direct Pleading. With respect to the second sentence of paragraph 51 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation in that sentence comes from a March 9, 2015 email Jacobs' Ken Van Overberghe sent to Peoples Gas employee and Integrys officer William Morrow, produced as RSP_000092-94.

42. With respect to paragraph 52 of AG-CUB's Direct Pleading, Respondents stipulate that the undated presentation referenced in this paragraph, produced as RSP_000511-517, shows a "Total Estimated Project Cost" that exceeded \$8 billion. Respondents note, however, that other presentations from the same timeframe show that the cost estimates being produced by the model were fluctuating. (*See, e.g.*, RSPV_017717-23, attached as Exhibit 1 (reflecting a total program cost slightly lower than \$8 billion); RSP_000469-470, attached as Exhibit 2 (reflecting a different total program cost in excess of \$8 billion)).

43. Respondents stipulate to the first sentence of paragraph 53 of AG-CUB's Direct Pleading. With respect to the second sentence of paragraph 53 of AG-CUB's Direct Pleading, Respondents stipulate that Cotter Consulting, Inc. ("Cotter") was chosen by Peoples Gas as a result of a Request for Proposal issued by Peoples Gas on April 3, 2015, and was retained by Peoples Gas pursuant to that process in early May 2015 (*see* May 12, 2015 emails produced as RSP_001193-94, attached as Exhibit 3), and started on May 21, 2015 (Respondents' Revised Init. Pleading at 6(¶14)).

44. Respondents stipulate to paragraph 54 of AG-CUB's Direct Pleading.

45. Respondents stipulate to the first sentence of paragraph 55 of AG-CUB's Direct Pleading.

46. With respect to paragraph 56 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from Liberty's May 5, 2015 Final Report.

47. Respondents stipulate to paragraph 57 of AG-CUB's Direct Pleading.

48. Respondents stipulate to the first sentence of paragraph 58 of AG-CUB's Direct Pleading. With respect to the second and third sentences of paragraph 58 of AG-CUB's Direct Pleading, Respondents stipulate that the relevant paragraph from Liberty's Final Report states, in its entirety:

Management estimated that it would take six months to complete work on a new cost model for use in generating a new estimate of total AMRP costs. Current initiatives continue to address these objectives. Three months after the end of management's six-month time estimate, however, the AMRP continues to lack an announced new cost plan and a current estimate of total program costs at completion, Liberty has no reliable information on when Peoples Gas plans to issue a new estimate.

Liberty Final Report at G-5 -- G-6.

49. With respect to paragraph 59 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from Liberty's May 5, 2015 Final Report.

50. Respondents stipulate to paragraph 60 of AG-CUB's Direct Pleading, except with respect to Jennifer Block, as it has been determined that she was not present at the May 12, 2015 meeting at issue.

51. With respect to the first sentence of paragraph 61 of AG-CUB's Direct Pleading, Respondents state that the questioning by Commissioners of senior executives of Integrys and Peoples Gas regarding Liberty's Final Report on May 20, 2015 occurred at the beginning of a regularly scheduled bench session of the Commission that took place that day. *See* 5/20/2015 Tr. at 2:5-7. Respondents stipulate to the second sentence of paragraph 61 of AG-CUB's Direct Pleading.

52. With respect to paragraph 62 of AG-CUB's Direct Pleading, in Respondents' Confidential Response to Requests for Information in the November 18, 2015 Initiating Order, Item 2, Respondents admitted that Messrs. Schrock, Schott, and Kleczynski "had or may have had knowledge prior to May 20, 2015 of preliminary draft information of the long-term costs of the AMRP exceeding \$8 billion." Respondents do not contest that Messrs. Schrock, Schott, and Kleczynski had knowledge of the information presented at the April 29, 2015 and May 12, 2015 meetings addressed in paragraphs 54 and 60 of AG-CUB's Direct Pleading as of May 20, 2015.

53. Respondents stipulate to paragraph 63 of AG-CUB's Direct Pleading.

54. With respect to paragraph 64 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

55. With respect to paragraph 65 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

56. With respect to paragraph 66 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

57. With respect to paragraph 67 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

58. With respect to the first sentence of paragraph 68 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation is from the transcript of the Commission's May 20, 2015 bench session.

59. With respect to paragraph 69 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

60. With respect to the first sentence of paragraph 70 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session. With respect to the second sentence of paragraph 70 of AG-CUB's Direct Pleading, please see paragraph 69, above, of this Verified Responsive Pleading.

61. With respect to paragraph 71 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation is from the transcript of the Commission's May 20, 2015 bench session. Respondents also stipulate that Mr. Schrock did not disclose to the Commission his knowledge described in paragraph 69, above, of this Verified Responsive Pleading, during the May 20, 2015 bench session.

62. With respect to paragraph 72 of AG-CUB's Direct Pleading, Respondents stipulate that the portion of the transcript of the Commission's May 20, 2015 bench session from which the quotations in paragraph 72 of AG-CUB's Direct Pleading are taken states, in its entirety:

SCHROCK: . . . We have looked at Liberty's draft recommendations relating to the costs and have embarked on developing a model that will help us better track and predict the cost of the program.

As you might imagine, this is a complex issue. Because of the complexity we have of this complexity, we have engaged a third party consultant hired specifically to provide feedback on our assumptions, our calculations, risk and contingencies associated with the program and the model.

Simply keep in mind that AMRP is a program -- I emphasize program -- which is comprised of hundreds, hundreds of individual projects that span 20 years in total, so we need to be careful in estimating the cost.

We would appreciate the opportunity to discuss this program cost modeling and cost projections with the Commission Staff and other stakeholders when we have completed the development and the review of the model and have the information and the expertise available when such appropriate attention can be paid to the details.

May 20, 2015 Transcript at 28:2 -- 29:2.

63. With respect to paragraph 73 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

64. With respect to paragraph 74 of AG-CUB's Direct Pleading, Respondents state that with respect to Ken Van Overberghe's retention to develop a cost model, this information was disclosed in both Liberty's January 5, 2015 Interim Report and its May 5, 2015 Final Report. *See* paragraphs 42 and 65 *supra*, respectively.

65. With respect to paragraphs 76 through 80 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

66. With respect to paragraph 81 of AG-CUB's Direct Pleading, Respondents do not dispute AG-CUB's description of statements made by Commissioners during the Commission's May 20, 2015 bench session.

67. With respect to paragraph 82 of AG-CUB's Direct Pleading, Respondents stipulate that Messrs. Schrock, Schott, and Kleczynski did not disclose to the Commission the information described in paragraph 69, above, of this Verified Responsive Pleading, during the May 20, 2015 bench session.

68. With respect to paragraphs 83 through 86 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

69. With respect to paragraph 87 of AG-CUB's Direct Pleading, Respondents state that the transcript of the Commission's May 20, 2015 bench session provides the details of Commissioner del Valle's questions referenced in this paragraph.

70. With respect to paragraphs 88 through 96 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from the transcript of the Commission's May 20, 2015 bench session.

71. With respect to the first sentence of paragraph 97 of AG-CUB's Direct Pleading, Respondents stipulate that the quotation is from Liberty's May 5, 2015 Final Report.

72. With respect to the first three sentence of paragraph 98 of AG-CUB's Direct Pleading, Respondents agree that Cotter concluded that the approach of the model developed by Jacobs' Ken Van Overberghe was a valid modeling approach to use for estimating the long-term costs of the AMRP, and that an earlier draft of the probabilistic model evaluated by Cotter had produced estimates exceeding \$10 billion, but state that Cotter did not evaluate or validate the \$8.195 billion estimate (or any other estimate) produced by Van Overberghe's model. Respondents do not contest the sentences four and five of paragraph 98 of AG-CUB's Direct Pleading.

73. Respondents stipulate to paragraph 99 of AG-CUB's Direct Pleading.

74. Respondents do not contest paragraph 100 of AG-CUB's Direct Pleading.

75. Respondents stipulate to paragraphs 101 through 103 of AG-CUB's Direct Pleading.

76. Respondents do not contest paragraph 104 of AG-CUB's Direct Pleading.
77. Respondents stipulate to paragraphs 105 through 107 of AG-CUB's Direct Pleading.
78. With respect to paragraph 108 of AG-CUB's Direct Pleading, Respondents state that the text of Mr. Charles Matthews' July 27, 2015 letter speaks for itself.
79. With respect to paragraph 109 of AG-CUB's Direct Pleading, Respondents stipulate that the quotations are from Liberty's September 30, 2015 quarterly report and that the text of this report speaks for itself with respect to what Liberty said in that quarterly report.
80. Respondents stipulate to paragraph 110 of AG-CUB's Direct Pleading.
81. With respect to paragraph 111 of AG-CUB's Direct Pleading, Respondents agree that the Commission's November 18, 2015 Initiating Order in this proceeding directed the Respondents to provide information in response to four requests for information, and to provide "[a]ny and all correspondence, documents and records associated with such an estimate" in a fifth request for information. Respondents state that the text of the Commission's November 18, 2015 Initiating Order provides the details of what information the Respondents were directed to provide in response to the Commission's requests for information.
82. Respondents stipulate to paragraph 112 of AG-CUB's Direct Pleading.
83. With respect to paragraphs 113 through 115 of AG-CUB's Direct Pleading concerning Peoples Gas' submission of the Burns & McDonnell Engineering Company's ("Burns & McDonnell") report on November 30, 2015, Respondents state that this information is not relevant to the scope of this proceeding which, as stated in paragraph 110 of AG-CUB's Direct Pleading, is to determine whether Respondents knowingly misled or withheld material information from the Commission at its May 20, 2015 Open Meeting. *See* 11/18/2015 Initiating

Order at 2. Information regarding the report of a cost estimate that Burns & McDonnell began preparing well after the Commission's May 20, 2015 bench session at issue here is not relevant to this proceeding. Moreover, the characterization of the Burns & McDonnell cost estimate in paragraphs 114 and 115 of AG-CUB's Direct Pleading is incomplete and not accurate.

84. Paragraphs 116 through 131 of AG-CUB's Direct Pleading set forth AG-CUB's arguments and legal positions. Respondents reserve the right to address these items in their briefing.

85. Respondents stipulate to the admission of the AG-CUB Direct Pleading, as well as the documents and exhibits attached to AG-CUB's Direct Pleading. The direct testimony of David Manek (Respondents Ex. 1.0) establishes the chain of custody to Peoples Gas/Integrays for the documents cited and attached to AG-CUB's Direct Pleading, as well as those cited and attached in this Verified Responsive Pleading.

IV. Conclusion

86. Based upon the positions of the Respondents, Staff, and AG-CUB with respect to the underlying facts set forth in the pleadings, it is the Respondents' belief that there are no material factual issues remaining for the Administrative Law Judge ("ALJ") to decide in order to make a determination about whether there has been a violation of 220 ILCS 5/5-202.1. While Staff asserts that the materiality of any misrepresentation or omission is a factual determination remaining for the ALJ to make, to the extent that Staff is correct³, Respondents assert that the facts upon which the ALJ will base that determination have been established without the need for

³ While there have been no prior decisions under 220 ILCS 5/5-202.1, "materiality" under Illinois law is at times treated as a matter of fact, other times as a matter of law, and still other times as a mixed question of law and fact. Compare *Napcor Corp. v JP Morgan Chase Bank, NA*, 406 Ill. App. 3d 146, 153-154 (2nd Dist. 2010) (materiality of misrepresentation is a question of fact in a common law fraud action); with *People v. Powell*, 160 Ill. App. 3d 689, (5th Dist. 1987) (materiality of false testimony in a perjury case is a question of law for judge to determine); and *Taylor v. Police Bd. of Chicago*, 2011 IL App (1st) 101156 ¶¶32-33 (determination by police board of whether officer had committed perjury during divorce proceeding was a mixed question of law and fact).

further evidence to be adduced. Respondents request that the ALJ consider accepting the verified pleadings and filings into the record, along with any testimony submitted by the parties (which can be admitted by affidavit)⁴, and proceed to briefing by the parties.

Dated: April 5, 2016

Respectfully Submitted,

THE PEOPLES GAS LIGHT AND COKE
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WEC ENERGY GROUP, INC.

By: 

One of their attorneys

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⁴ Which would also include admissible testimony and evidence submitted by Staff and AG-CUB in their rebuttal testimony.