

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	
)	
-vs-)	
)	
Peoples Gas Light and Coke Company)	
Respondent)	
)	
Investigation of the Cost, Scope, Schedule)	Docket No. 16-0376
And Other Issues Related to the Peoples Gas)	
Light and Coke Company's Natural Gas)	
System Modernization Program and the)	
Establishment of Program Policies and)	
Practices Pursuant to Sections 8-501 and)	
10-101 of the Public Utilities Act.)	

**RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION IN
OPPOSITION TO THE ATTORNEY GENERAL'S VERIFIED MOTION REQUIRING
PEOPLES GAS TO COMMISSION AN INDEPENDENT
ENGINEERING STUDY OF ITS GAS MAIN REPLACEMENT PROGRAM**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.190 of the Rules of Practice before the Illinois Commerce Commission ("Commission") and the direction of the presiding Administrative Law Judge, and in opposition to the Verified Motion of the People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("AG") seeking to require Peoples Gas Light and Coke Company ("Peoples Gas") to Commission an Independent Engineering Study of its Gas Main Replacement Program ("Motion"), respectfully states as follows:

I. Introduction

The AG's Motion seeks to have the Commission order Peoples Gas to commission a new or updated engineering study. The Motion should be denied because it is both factually and procedurally deficient. First, the AG's Motion contains no facts that demonstrate any commissioned study is necessary or that any study would bring to bear information not already before the Parties in this docket. Second, the AG's Motion is utterly bereft of facts that would demonstrate the necessity of undertaking or updating an engineering study at this point in time, in this docket. Finally, to the extent the AG seeks an update to the Kiefner Report,¹ the Motion is procedurally improper. For all these reasons, as set forth in detail below, the AG's Motion should be denied in its entirety.

II. Argument

A. The AG's Motion Does Not Demonstrate a Study is Necessary

In support of its contention that a new or updated engineering is necessary, the AG states "[t]here is no persuasive reason for not conducting either a new engineering study or an update of the Kiefner Report for this case." (Motion, 4.) At best, this is an illogical and circular argument.

Even if the AG's "you didn't prove you shouldn't" argument was logical, it does not follow that a study must or even should be undertaken. It is not enough to simply state there is no reason not to do something; to prevail on its Motion the AG must demonstrate that reasons exist for the Commission to revisit its decision and to ultimately take an action it clearly declined to take, namely to order engineering studies as part of or concurrent with this docket. The AG offers little in the way of argument in this regard.

¹ The Kiefner Report was a prepared for Peoples Gas by Keifner and Associates in 2007, in compliance with a condition set forth in the Commission's Final Order in Docket 06-0540.

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Further, the AG's argument is contrary to the law. The AG, in essence, argues that, because there has ostensibly been no demonstration that an engineering study should not be conducted, it follows that such a study should be conducted. It is well established that the party seeking relief generally bears the burden of proof. People v. Orth, 124 Ill. 2d 326, 337 (1988). The term "burden of proof" includes the burden of going forward with the evidence, as well as the burden of persuading the trier of fact. People v. Ziltz, 98 Ill. 2d. 38, 43 (1983). The burden of persuading the trier of fact does not shift throughout the proceeding, but remains with the party seeking relief. Ambrose v. Thornton Twp. School Trustees, 274 Ill. App. 3d 676, 690 (1st Dist. 1995), app. den., 164 Ill. 2d 557 (1995); Chicago Board of Trade v. Dow Jones & Co., 108 Ill. App. 3d 681, 686 (1st Dist. 1982).

Here, the AG seeks relief in the form of an order directing Peoples Gas to conduct, at the Company's expense,² a potentially costly and time-consuming engineering study, on no more evidence that there has been – at the outset of the proceeding - nothing adduced tending to show that conducting such a study would be a bad idea. The AG, in other words, proposes to reverse and reject traditional and long-standing notions regarding the burden of proof. Its arguments should be rejected.

There appears to be little disagreement among the parties that the scope and pace of the gas main replacement program, as well as alternatives for replacement of at-risk pipe, must be considered in terms of safety. The May 31, 2016 Staff Report ("Staff Report") dedicated a full eight pages to the discussion of safety issues, presenting the

² While the AG's Motion is not clear regarding who is to pay for the study (as will be seen, one of the Motion's many deficiencies), based upon the AG's oral presentation seeking the same relief at a prehearing status conference on August 2, 2016, it appears Peoples Gas will be expected to do so.

opinions and views of all the interested stakeholders. Additionally, the Staff Report identified several specific key questions about Safety to be addressed in this docket:

- What are the risks associated with extending the program end date?
- Is the Main Ranking Index the most effective way to prioritize main replacement?
- How are emergencies addressed and what impact does this have on the Program's scope and schedule?
- What is the appropriate way to quantify safety risks? What benchmarks can be used to track any increase or decrease to risk?
- Is there empirical evidence that pipes are in danger of failing?
- Are defined safety metrics necessary or can/should the Commission rely on qualitative determinations?
- Are there public safety concerns associated with reduced affordability of gas service?

(Staff Report, 64.)

The very reason this docketed proceeding was initiated is to afford interested parties the opportunity to evaluate Peoples Gas' plan for its main replacement work, and to make recommendations regarding how that plan should be modified and conducted. The AG offers no evidence that a new or updated engineering study would be beneficial to this process; indeed, it offers no evidence, period. The AG's Motion contains no specific recommendations regarding the proposed scope, focus, schedule, budget or goal of any new or updated study, making it impossible to evaluate either the import of undertaking a new or updated study, not only at this juncture but at all, or the possible value of the findings of any such study.

The AG states "[a]n updated Kiefner Report or a new engineering study can provide critical insight on whether that report's conclusions are still valid or if circumstances have changed and safety concerns require or permit a different approach."

(Motion, 6.) A study is not necessary to determine if circumstances have changed, however; it is widely understood that circumstances have changed dramatically since the

Kiefner report. Significantly, the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued a "call to action"³ urging owners and operators to conduct a comprehensive review of their cast iron distribution pipelines and replacement programs and accelerate pipeline repair, rehabilitation and replacement of high risk pipelines. (See Staff Report, 10.) This call to action highlights the safety concerns associated with outdated facilities and requires utilities to identify and replace at-risk pipe on an expedited basis.

Additionally, since the Kiefner report was authored, Peoples Gas merged with Wisconsin Energy Corporation. Following the merger, Peoples Gas presented a new three-year plan for the gas main replacement program to the Commission and put in place a new management team to oversee that program. Simply put, the circumstances, the company and the program that were evaluated by the Kiefner Report no longer exist. As a result the Kiefner Report is not an appropriate basis, or even stepping-off point, for future actions.

It is possible the Commission will decide, at the conclusion of this docket, to order Peoples Gas to undertake additional studies. However, the AG should not be allowed to circumvent the process prescribed by the Commission – in other words, this proceeding - for defining the scope and schedule for the gas main replacement program and developing a comprehensive and sustainable plan for the program moving forward by demanding additional engineering studies before the Commission has been presented with the opportunity to make a decision whether studies are warranted, or with the information necessary to make that decision. The Commission will have that information

³ ADB-2012-05.

at the conclusion of this docket, not before. Accordingly, the decision whether to engage in further engineering studies should also be made at the conclusion of this docket.

B. The AG's Motion Fails to Demonstrate that a Study Must be Conducted Now

Even assuming for the sake of argument that some demonstrable reason to undertake a new or revised study currently exists, the AG fails to establish there is any urgent basis to beginning a study now. The Commission ordered the parties to present a post exceptions proposed order ("PEPO") in this docket to the Commission on or before January 11, 2017. (Initiating and Interim Order, 5.) The AG does not suggest that any new or updated study could be completed in time to be useful in this proceeding, because it cannot make any such showing.

In fact, the opposite is true. It would be virtually impossible to accomplish what the AG wants in the time available. The AG expects the Commission to "direct Peoples Gas⁴ to retain a qualified engineering expert to perform an independent engineering study of People's [sic] main replacement program" and to "order [Peoples] to commission either (1) an update to the 2007 Kiefner Report or (2) a new independent engineering study of its main replacement program." (Motion, 1, 7-8.) The AG admits, "[i]t is not imperative that an updated or new study be completed by the end of this docket." Id. at 7. In light of the demonstrated lack of urgency, it is far from clear why a study must be undertaken now.

⁴ The AG appears to have retreated from its original request, articulated in its oral motion made at the prehearing conference on August 2, 2016, in which it requested that Staff be directed to retain the engineering expert, and Peoples Gas be directed to pay for the study. Tr. (not yet available). As the Staff noted at the hearing, the Illinois Procurement Code virtually forecloses a Staff-conducted retention of an engineering expert in the time available for this proceeding. Among other things, Staff would be required to prepare, submit and post a Request for Proposal, and evaluate and rank such proposals as it received pursuant to stringent guidelines before it could make an award. 30 ILCS 500/20-15.

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As the AG noted in its Motion, Staff is of the opinion that there may be merit in updated engineering studies. Id. at 5. However, whether additional studies should be undertaken and, if so, what those studies should entail, is just one of the issues to be addressed in this docket. To attempt to address the issue now by commissioning a new or revised study circumvents the very process for reviewing and monitoring the gas main replacement program this docket was intended to establish. Should the Commission deem it appropriate to order additional studies, it should do so based on the conclusions reached in this docket, not as a reactionary measure at the inception of the docket. There is simply no reason to rush to start studies now when the AG concedes that any studies won't be completed in time to be useful to the Commission's deliberations in this docket.

Not only is there no reason to rush to commence a study, there is every reason to wait to address the issues of studies at the conclusion of this docket, when the Commission will have the necessary information to evaluate not only whether additional studies are needed but also what the scope of any additional studies should be. The AG appears to accept this point. The AG states "[a]n updated or new engineering study finished after this case has ended could reveal new and valuable information that could compel the Commission to reassess any findings about the [main replacement program] reached here." Id. at 7. Rather than commission a study that could be rendered obsolete by the findings in this docket, or render the findings in this docket obsolete by commissioning a study that does not take this findings in this docket into consideration, the process would be better served by allowing the Commission to fully evaluate the findings of this docket before deciding if additional studies are needed and, if so, what those studies should address.

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This points to yet another defect in the AG's Motion – its lack of detail. The AG appears to seek a Commission order requiring Peoples Gas to (a) update the Kiefner Report; or (b) conduct another engineering study, of unspecified scope or parameters. Further, the AG's Motion is silent regarding who will bear the cost of the engineering studies. The AG presumably expects the Commission to order Peoples Gas to do so, but it points to no authority pursuant to which the Commission can direct Peoples Gas to defray the costs of such a study.⁵ Significantly, the Kiefner Report was the result of an engineering study conducted pursuant to a merger condition, and so requiring the report was squarely within the Commission's authority. Here, the AG's Motion is silent regarding what will be studied, who will pay, and why the Commission can grant relief in the first place.⁶ For all these reasons, the AG's Motion should be denied.

C. The AG's Motion is Procedurally Improper

To the extent the AG seeks to require an update to the Kiefner Report based upon its argument that completion of follow-up studies at five year intervals is a condition of the Commission's Order in Docket No. 06-0540, that argument is not properly raised in this proceeding. Should the AG wish to address what it perceives as a failure to comply with the terms of a Commission Final Order in Docket No. 06-0540, the AG must petition the Commission to reopen that docket so that any necessary corrective action can be taken, after due notice to all parties of record.

⁵ See Order, App. A, Condition 23, WPS Resources Corporation, Peoples Energy Corporation, The Peoples Gas Light and Coke Company, and North Shore Gas Company: Application pursuant to section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, to enter into an agreement 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. 06-0540 (February 7, 2007) (merger condition requiring Kiefner study); see also 220 ILCS 5/7-204(f) (Commission authorized to impose conditions on mergers).

⁶ The Staff does not suggest that the Commission lacks authority to order such a study. Rather, the Staff points to the AG's silence regarding this significant detail.

III. Conclusion

The AG fails to demonstrate that any new or updated study would provide additional information beyond that already possessed by the parties of record in this docket. Additionally, the AG fails to demonstrate why any new or updated study must commence now, rather than at the conclusion of this docket. In entering the Initiating Order and adopting the Staff Report, the Commission clearly declined to initiate additional engineering studies at this time. The AG's Motion offers no persuasive reason the Commission should reconsider its ruling.

WHEREFORE Staff respectfully requests that the AG's Motion be denied in its entirety.

/s/ _____

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