

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION )  
On Its Own Motion )  
 )  
-vs.- )  
 )  
THE PEOPLES GAS LIGHT AND COKE )  
COMPANY )  
Investigation of the cost, scope, schedule 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 Section 8-501 and 10-101 )  
of the Public Utilities Act. )

ICC Docket No. 16-0376

**THE PEOPLES GAS LIGHT AND COKE COMPANY'S VERIFIED RESPONSE  
IN OPPOSITION TO MOTION TO COMPEL DISCOVERY RESPONSE**

The Peoples Gas Light and Coke Company (“Peoples” or “Peoples Gas”), through its attorneys Quarles & Brady LLP, submits this Response in Opposition to the Motion to Compel Discovery Response filed by the Citizens Utility Board (“CUB”). In its Motion, CUB asks the Commission to compel Peoples Gas to make available to CUB, its experts, and the Environmental Defense Fund (“EDF”) digital files that map out the precise locations of Peoples Gas’ distribution infrastructure. CUB asks the Commission to order Peoples Gas to provide these sensitive infrastructure files, ostensibly to allow EDF to look for natural gas leaks in the distribution system that Peoples Gas may not have identified itself. CUB fails to advance any persuasive explanation of why Peoples Gas should be required for the first time ever to release detailed maps of its entire distribution system to an intervenor, and the Motion should be denied. CUB and EDF can present evidence supporting the methodology they describe in Paragraph 16 of the Motion without the critically sensitive information sought by their data request and Motion. The security risks associated with sharing the requested information cannot be fully

resolved by a protective order because, among other concerns, that protective order cannot ensure that CUB, EDF, and their agents have the necessary cyber-security in place to protect that information once shared. Moreover, when Peoples Gas investigated the 349 “leaks” initially found by EDF in 2014, many were not leaks at all (but rather detections of methane from other sources) and only 10 were confirmed as leaks that rose to the level of being regulated by the federal United States Department of Transportation’s Pipeline Hazardous Materials Safety Administration (“PHMSA”) regulations. Given that record, the value of any additional work by EDF and CUB using information they may glean from the requested files is disproportionate to the risk that EDF, CUB, or their agents lose control of this sensitive information.

#### **I. LEGAL STANDARDS**

CUB correctly reports that the policy of the Commission is to permit discovery of “all relevant and material facts.” Although not mentioned by CUB, the burden is on the party seeking discovery to demonstrate its relevance and materiality to the matter at hand, and discovery should be denied “when there is insufficient evidence that the requested discovery is relevant.” *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 557, 692 N.E.2d 790, 797 (1998) (citing Ill S. Ct. R. 201).

Discovery requests must also be proportionate. On a motion to compel, the Commission must evaluate whether “the likely burden or expense of the proposed discovery, including electronically stored information, outweighs [its] likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.” Ill. S. Ct. R. 201.

Additionally, “[i]t is the policy of the Commission not to permit requests for information, depositions, or other discovery whose primary effect is harassment or which will delay the proceeding in a manner which prejudices any party or the Commission, or which will disrupt the

proceeding.” 83 Ill. Admin. Code § 200.340. The rules expressly authorize a hearing examiner to “issue such rulings as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, disadvantage or oppression.” 83 Ill. Admin. Code § 200.370(b).

## **II. ARGUMENT**

### **A. The highly sensitive information CUB requests poses security risks and there are federal laws and rules protecting its release to third parties.**

The electronic information that CUB seeks is breathtaking in scope. As set forth in Paragraph 11 of the Motion, CUB has requested maps and digital Geographical Information System (“GIS”) “shapefiles” (digital files showing physical maps) showing all of Peoples Gas’ infrastructure that has been identified for replacement. CUB implies that this appropriately limits the information it is seeking (Motion, ¶ 16), but it does not. As the Commission is aware, pipes in almost every neighborhood in the City will be addressed through Peoples’ System Modernization Project (“SMP”). Thus, CUB’s discovery and Motion seek GIS shapefiles covering the natural gas distribution system for the entire City.

The term “GIS” refers to a family of computer programs used to capture, store, and analyze spatial and geographical data. The GIS shapefiles requested by CUB are extremely detailed digital maps which would allow a user to determine the precise location (within one to two feet in most cases), flow rate, operating pressure, and condition of all underground natural gas distribution lines and connections throughout the City. Peoples Gas treats these shapefiles as strictly confidential information and actively prevents their disclosure to the general public. The shapefiles are only available on a password-protected platform and are disclosed strictly on a need-to-know basis.

The maps and GIS data that CUB requests are extremely sensitive, and their disclosure to third parties -- such as CUB and EDF -- creates additional opportunities for the data to be compromised through a data breach. The data could be easily imported into a number of GIS programs and used to identify critical infrastructure within the system. The maps would allow anyone to pinpoint the precise location of critical mains. The maps and GIS shapefiles would also allow a third party to identify critical points within the system, making them targets for physical tampering. As has been demonstrated in vivid detail by recent natural gas explosions elsewhere in the U.S., the consequences when natural gas pipes are breached can be disastrous.

Federal statutes and regulations recognize the sensitivity and security risks posed by disclosure of such information.

The Federal Energy Regulatory Commission's ("FERC's") Critical Energy Infrastructure Information Rule ("CEII Rule"), 18 § C.F.R. 388.113, restricts public access to documents in that agency's possession that contain specific information about energy infrastructure. The CEII Rule defines "Critical Energy Infrastructure Information" as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) Relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) Could be useful to a person in planning an attack on critical infrastructure; (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and (iv) Does not simply give the general location of the critical infrastructure."<sup>1</sup> 18 C.F.R. § 388.113(c)(1). Infrastructure is "critical" if its "incapacity or destruction . . . would negatively affect security, economic security, public health or safety, or any combination of those matters."

Likewise, the Critical Infrastructure Information Act (the “CIIA”), 6 U.S.C 131, *et seq.*, restricts public access to “critical infrastructure information” that is shared with the Department of Homeland Security.

Both the CEII Rule and the CIAA set out procedures for obtaining access to critical infrastructure information. Under CEII, for example, a requestor must submit “a detailed statement explaining the particular need for and intended use of the information,” and FERC balances the “requestor’s need for the information against the sensitivity of the information.” 18 C.F.R. § 388.113(d)(4).

CUB suggests that Peoples Gas’ citation to the CEII Rule and the CIAA are a “red herring,” and questions whether the information requested meets the definition of critical energy infrastructure information or critical infrastructure information. Yet, the answer should be evident from the text of the request itself. CUB has requested maps and, among other things, “infrastructure material,” “infrastructure type,” diameter,” “operating pressure,” and “hazard ranking” of “each segment of mains or services in the shapefile.” Motion at ¶ 11. On its face, this is “specific engineering, vulnerability, or detailed design information” that gives more than “the general location” of critical infrastructure, “[r]elates details about the production, generation, transportation, transmission, [and] distribution of energy,” and “[c]ould be useful to a person in planning an attack on critical infrastructure.”

CUB proposes that the protective order in this proceeding resolves any and all security concerns, because CUB and its agents will agree to comply with the order. But this misses the point. Regardless of CUB’s intentions to comply with the protective order, if Peoples Gas

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<sup>1</sup> Footnote 3 of CUB’s Motion omits one key word in the definition of critical energy infrastructure information. According to CUB, the fourth requirement is that CEII “gives strategic information beyond the location of the critical infrastructure.” In fact, the definition actually provides that CEII gives strategic information beyond the **general** location of the critical infrastructure.” (Emphasis added.) The difference is meaningful. Information like

provides the requested information to CUB, the burden will lie with CUB, its agents, and EDF to ensure the security of that information, and to prevent its loss through a data breach. The Commission recently convened a policy session to address the need for cyber-security to protect critical infrastructure, and Peoples Gas' parent company, WEC Energy Group, Inc., participated in this session. In light of the presentations at that session, the risk associated with providing highly sensitive digital information to third parties without secure data systems should be clearly evident.

For these reasons, if this proceeding were occurring before FERC, it is likely that the maps and GIS data that CUB seeks would be protected by the CEII Rule. The State of New Jersey has likewise concluded that GIS information of the type requested is exempt from disclosure in a contested case proceeding due to the sensitivity of the information requested. *See Tombs v. Brick Township Municipal Utilities Authority*, 2006 WL 3511459 (NJ Sup. Ct. Dec. 7, 2006) (unpublished). Even if the CEII Rule and the CIAA do not absolutely prevent Peoples Gas from disclosing this information in this discovery proceeding, the CEII Rule and the CIAA demonstrate a strong federal policy against disclosure unless there is "particular need" for the information that outweighs any security concerns. *See* 18 C.F.R. § 388.113(d)(4).

CUB has not identified any Commission order directing an Illinois public utility to turn over GIS shapefiles of its system to intervenors. Further, CUB has not cited any case in which a court or agency, in Illinois or elsewhere, has ordered a public utility to release this information. Instead, CUB asserts that other utilities have agreed to work in collaboration with EDF and have shared unspecified "confidential infrastructure data" with EDF. Motion at ¶ 18 and n. 4-5. It is

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the GIS shapefiles CUB seeks that gives the precise, as opposed to general, location of energy infrastructure fits within the definition of critical energy infrastructure information.

not clear whether the unidentified “confidential infrastructure data” CUB references is as expansive as the information CUB demands Peoples Gas be compelled to produce. Even if other utilities have chosen to provide some level of confidential data, that does not speak to Peoples’ security concerns specific to its own system, and does not provide legal precedent for compelling Peoples to turn over this highly sensitive data to CUB.

**B. CUB has not demonstrated a particular need for the sensitive data it seeks.**

CUB’s attempt to explain the relevance of this information is found in Paragraphs 16-17 of its Motion. These two paragraphs are dense, and are packed with jargon and scientific and technical terms. However, they fail to put forth a coherent explanation of why CUB has a “particular need” for the data that it seeks.

CUB apparently wants this data to bolster its case urging the Commission to adopt an alternative system for detecting gas leaks that was developed by EDF, which is not a party to this proceeding. Motion ¶ 16. By way of background, during a pilot program in 2014, EDF sampled methane concentrations in eight neighborhoods in Chicago using a methane sensor mounted on a Google car.<sup>2</sup> That sampling identified 349 locations with detected methane concentrations above atmospheric background levels. Motion ¶ 17. CUB now wants EDF to “layer the locational infrastructure data [(i.e., the GIS mapping data)] on top of the methane leak data previously collected by EDF in Peoples Gas’ service territory[.]” Motion ¶ 17. By doing so, CUB alleges that it will be able to “attribute these leaks to particular section of the Company’s infrastructure.” Motion ¶ 17. Of note, attribution of leaks to certain infrastructure components is an essential element of Peoples Gas’ leak detection procedures already in place.

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<sup>2</sup> Peoples Gas understands this to have been a collaborative effort of Google Outreach, researchers from Colorado State University, and EDF.

CUB seeks far more than EDF needs to complete this exercise. CUB claims that its request is narrowly tailored because it is limited to infrastructure covered under the SMP (Motion, ¶ 16), but CUB conveniently ignores that SMP work will occur in almost every single neighborhood in the City. As shown above, the information CUB has requested is incredibly detailed, encompassing among other things the “infrastructure material,” “infrastructure type,” “diameter,” “operating pressure,” “date of installation,” “date[s] of replacement,” and “hazard ranking” of “each segment of mains or services” in the Peoples Gas system. CUB 2.01. There is no explanation whatsoever of why CUB or EDF would need the level of detail to identify the sections of infrastructure that could be the source of surface methane. CUB and EDF, just like any other party or consultant to a party to this docket, can make recommendations concerning the cost, scope, and schedule of the SMP without having a detailed, graphic representation of Peoples’ critical infrastructure.

CUB has not attempted to explain why it could not present the information it seeks to present in this case about EDF’s methane emissions detection technology without the critically sensitive GIS mapping data or why it cannot present a methodology for incorporating its approach into the existing Peoples Gas ranking systems. To the extent CUB feels that the Commission should consider EDF’s findings, it can make that case. Peoples’ refusal to provide the sensitive information will not hamper that effort in any way.

Finally, CUB argues that Peoples and the Commission should ignore the PHMSA’s regulations that are specifically designed to ensure the safety of the nation’s natural gas pipelines. In particular, the PHMSA regulations set thresholds for classification of pipeline leaks. *See* 49 CFR 192.723(a) (with clarifying information supplied by GPT G-192-11 Tables 3a, 3b, and 3c). Peoples’ entire approach to identifying and addressing leaks is based on -- and fully compliant with -- these regulations and guidance. The SMP is specifically designed to first

address the neighborhoods that contain the most at-risk pipe that creates the greatest risk to the general public and largest anticipated maintenance cost for the customer. As explained more fully below, EDF's approach to identifying leaks is vastly different than the federal PHMSA regulations require. Adopting EDF's approach is therefore certain to inject unnecessary complication into this proceeding, without any benefit that would be recognized by federal regulators.

C. **CUB seeks to develop a state integrity management program that would far exceed that required by PHMSA.**

CUB claims that “[w]ithout the locations data sought by this motion, Peoples will effectively cloak the subsurface leaks and conditions that are to be addressed by the AMRP . . . .” Motion ¶ 19. This assertion assumes that CUB/EDF's approach accurately identifies natural gas leaks and Peoples Gas' approach does not. Neither of these things are true. The data previously provided to Peoples Gas by EDF yielded only 10 leaks triggering action under the leak detection program developed to comply with federal PHMSA regulations.

In January of 2015, EDF provided Peoples Gas with a list of GPS coordinates and classifications of the methane sources identified by EDF's pilot program conducted during the fall of 2014. The 2014 survey identified 349 discrete methane sources in the eight neighborhoods chosen for the study. Peoples Gas used the locational data provided by EDF to identify nearby natural gas facilities and then performed two leak surveys at each location using a portable methane detector (a Remote Methane Leak Detector). Of the 349 methane sources identified by EDF, Peoples Gas confirmed a total of three corresponding pipeline leaks in the first survey triggering action under PHMSA requirements, and seven leaks in the second survey that required action under PHMSA regulations.

There is also a methodological problem with EDF's approach. EDF measures methane concentrations at ground level. However, there are numerous sources of methane other than gas leaks that contribute to ground level methane. Indeed, EDF and its collaborators recently published a study of methane emissions in Indianapolis. That study concluded that pipeline leaks are a source of roughly 4.7% of methane in the city, meaning the remaining 95+% found by the study came from sources other than leaking pipelines.<sup>3</sup> This problem was apparent in EDF's 2014 survey. Again, only 10 of the methane "hits" detected through the EDF survey could be attributed to leaks in Peoples Gas infrastructure; some of the hits were located in areas in which Peoples Gas facilities simply did not exist.

In short, there is no need for the Commission to grant the motion to allow comparison of EDF's findings to existing Peoples Gas infrastructure -- that has already been done. Nor did the exercise provide a better way to identify leaks, as most of what it yielded were found to either not rise to the a level triggering action under PHMSA, or to have nothing to do with Peoples' facilities. Given that, the Commission should deny the motion, as Peoples Gas currently implements a leak survey program that meets the requirements of 49 C.F.R. § 192.723.

### **III. CONCLUSION**

For the reasons set forth above, the motion to compel should be denied.

Dated: September 13, 2016.

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<sup>3</sup> Direct and Indirect Measurements and Modeling of Methane Emissions in Indianapolis, Indiana 50 *Environ. Sci. Technol.* 8910, 8912 (August, 2016), available at <http://pubs.acs.org/doi/abs/10.1021/acs.est.6b01198>. For example, EDF found that emissions from landfills accounted for 62% of methane emissions, wastewater treatment accounted for another 10%, and uncombusted fuel, transportation, and power generation accounted for another 10% of emissions.

Respectfully submitted,

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