

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission                    )  
    On Its Own Motion                            )  
  )  
Amendment of 83 Ill.Adm.Code 551            )                    02-0844

**REBUTTAL OF PEOPLES ENERGY SERVICES CORPORATION TO  
STAFF’S REPLY TO RESPONSES TO STAFF’S SECOND COMMENTS  
REGARDING FIRST NOTICE OF RULEMAKING**

Pursuant to the Administrative Law Judge’s schedule set at the June 5, 2003 status hearing, Peoples Energy Services Corporation (“PE Services”) submits this Rebuttal to Staff’s Reply to Responses to Staff’s Second Comments (“Rebuttal”) on the Commission’s proposed rules revising Part 551, Certification of Alternative Gas Suppliers, 83 Ill.Adm.Code 551. PE Services objects to both: 1) the language added to Section 551.80, Financial Qualifications, in Staff’s Second Notice Comments that would require applicants for AGS certification to project future revenues in order to meet the financial qualifications, and 2) Staff’s language in its Reply, supporting the People of the State of Illinois’ position, adding a new subsection 551.140(f) requiring certified AGS to notify the Commission anytime they purchase other AGS’ customers. The Commission should reject Staff’s proposed revenue forecasting requirements from both Sections 551.80 and 551.140 because they inflict additional hardship and cost on AGS without any ascertainable corresponding benefit to customers and are not contemplated by the Article 19 amendment or Initiating Order in this proceeding.

PE Services stands on its Response but believes Staff’s Reply in fact strengthens PE Services’ position and highlights why the Commission should not adopt

the proposed forecasting requirements. PE Services' Rebuttal follows the organization of Staff's Reply.

### **I. Undue Hardship on AGS.**

"PE Services asserts that Staff's proposed revenue-forecasting requirement inflicts additional hardship and cost on alternative gas suppliers ("AGS") without any corresponding benefit to their customers . . . Staff does not agree that the revenue-forecasting requirement will cause hardship to an AGS." Staff Reply, pp. 1-2. Staff's lack of agreement with PE Services' assertion highlights both Staff's lack of understanding of the competitive market in which AGS operate and why PE Services strongly opposes Staff's forecasting requirements. PE Services does not object to revenue forecasting. PE Services objects to the regulation including, compliance filings, monitoring compliance requirements and schedules, and being subject to an administrative body's review of the forecasting accuracy because, as stated below, these proposed requirements are not necessitated by Article 19 or to protect consumers and are, therefore, an undue hardship.

### **II. The Purpose of the Rulemaking.**

Staff deflects PE Services' clarification that the purpose of the rulemaking is to ensure consistency between Part 551 and Article 19. In fact, the Initiating Order for this proceeding at page 1 states:

1. The primary change to Article 19 is the addition of AGS serving small commercial customers. Initiating Order, ¶1, p.1.
2. Staff, "recommends that the Commission initiate a rulemaking to ensure consistency between the amended Article 19 and 83 Ill.Adm.Code 551." Id, ¶2, p. 1; and

3. “The Staff Report details the Sections of the Part that need to be amended to include the suppliers serving small commercial customers.” Id.

Neither the Commission’s Order nor the amendments to Article 19 contemplate the forecasting requirement Staff now seeks. By amending Article 19 to extend to small commercial customers, there is nothing to suggest that the General Assembly considered the Commission’s rules on financial qualifications inadequate.

**III. The ARES Rules Do Not Have Similar Requirements and this Change Requires Higher Financial Requirements for Similarly Situated AGS than ARES.**

First, Staff again ignores PE Services’ point by offering a general discussion of the nicety of parallel language between similar Commission Parts. Staff Reply, p. 4. PE Services’ Response stated that the Staff Report initiating the original Part 551 Rulemaking acknowledged that AGS pose a lower financial risk than ARES, therefore Staff was recommending lower financial requirements for AGS vs. ARES. PE Services’ Response, p. 4 and Staff Report, Docket 02-0176, Feb. 22, 2002, p. 1. PE Services then detailed how when New Energy purchased NICOR’s electric accounts it did not have to report expected revenues or show additional financial resources for those expected revenues. PE Services’ Response, p. 4. To date there has been no reported calamity to New Energy’s ARES customers.

Then, Staff mysteriously cites the general financial requirements under Parts 451 and 551 to conclude that “Staff does not agree that its proposed changes . . . result in higher financial requirements for an AGS than an ARES.” Staff Reply, p. 4. Staff’s proposed changes do not address overall financial requirements. Rather, they address AGS customers acquired from other AGS. When Dominion acquired NICOR’s gas customers, it would have had to increase its financial requirement by 5% of expected

annual revenue under Staff's proposed change. New Energy's financial requirement was unchanged as a result of acquiring NICOR's ARES customers.

#### **IV. The Proposed Changes Are Vague and Ambiguous.**

Importantly, Staff agreed that its Second Comments proposed language needed clarity. Unfortunately, specific vague and ambiguous language PE Services highlighted with respect to the Section 551.80 language remains. Worse, the new language added as Section 551.140(f) is impossible to comply with. With respect to Section 551.80, PE Services repeats the issue raised in its Reply that Staff ignored:

“How can an AGS determine revenues “expected” or accounts “expected” to be acquired? Revenue expectations are based on a myriad of variables especially when considering an acquisition. For instance, if all of the certified AGS—Dominion, PE Services, Corn Belt, MX Energy, Santanna and Shell Energy—had been bidding or negotiating or considering on bidding or negotiating with Nicor Energy to acquire its natural gas AGS customers, were any or all expecting additional revenues? Would any or all have had to project additional revenues when calculating its financial requirements under proposed Section 551.80?”

PE Services Reply, p. 5.

Since Staff did not address the issue in its Reply, the record lacks support for Staff's proposed language to both Sections 551.80 and 551.140(f).

Staff's new Section 551.140(f) not only ignores the fact that AGS operate in a competitive market, but significantly, an AGS could not comply with Staff's language. The proposed language states, in part: “An AGS shall notify the Commission of any agreement into which that AGS has entered to purchase customer accounts from another AGS. The notice shall be filed at least 15 days in advance of consummation of that agreement.” Staff Reply, p. 17 (emphasis added). How can an AGS file notice 15 days in advance of consummation of an agreement it has already entered? Even if Staff again expands this proceeding further by offering additional language in its

surrebuttal, the Commission should reject any pre-consummation reporting because, in addition to the reasons stated above, AGS operate in a competitive environment and this revenue forecasting information is highly confidential.

WHEREFORE, for all the reasons set forth above PE Services urges the Administrative Law Judge to reject Staff's proposed Section 551.80 and Section 551.140(f) language changes concerning forecasting revenues.

Respectfully submitted,

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: Service List

PLEASE TAKE NOTICE that on this 19<sup>th</sup> day of June 2003, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Rebuttal of Peoples Energy Services Corporation to Staff's Reply to Responses to Staff's Second Comments Regarding First Notice of Rulemaking, a copy of which is hereby served upon each of the parties of record in Ill.C.C. Docket No. 02-0844 by placing a copy thereof in the United States mail with first class postage affixed, by e-mail, UPS or personal delivery.

Dated at Chicago, Illinois this 19<sup>th</sup> day of June 2003.

By \_\_\_\_\_  
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