

Remarks of Brien J. Sheahan, Chairman
Illinois Commerce Commission
Docket No. 16-0376
January 10, 2018

This is a difficult case with important implications for the safety of one of the oldest natural gas systems and its customers. Some background is essential to understanding our decision today.

Peoples Gas, the city's first utility, has served Chicago since 1850. In fact significant portions of the gas infrastructure buried underneath Chicago streets was laid during the era of World War I and subsequent building boom. During this period more Americans began to live in cities than in rural areas and to accommodate this growth utilities across the county used materials that were readily available, but of limited durability, including cast and ductile iron.

As these uncoated materials are buried in the ground, exposed to moisture (much of Chicago was originally built on landfill) and age, they deteriorate, they rust, become brittle and occasionally fail unpredictably and with catastrophic effect. Some gas lines in Chicago have been in its moist clay soil for a century or more.

Gas distribution systems—like all physical infrastructure; whether they be water systems like the one in Flint Michigan, or the subway in New York, or roads in Chicago—require significant investments to operate, maintain and eventually rebuild. In fact utilities in 35 states across the country, in other major, densely-populated cities like New York, Baltimore, Washington DC and Philadelphia, are replacing cast and ductile iron gas mains.

Nearly ten years ago Peoples Gas began the process of planning for and replacing its aging infrastructure. The project literally entails digging up half the streets in the City of Chicago and replacing 2,000 miles of cast iron mains, upgrading 300,000 customer service lines, and relocating gas meters to the outside of homes and businesses.

Over the past decade, gas system safety has received national attention. In September of 2010, a 30-inch steel gas pipeline located in San Bruno, California exploded, killing eight people and injuring over 50, destroying 38 homes and causing billions of dollars in damage. Similar incidents involving aging cast iron mains in cities such as Allentown, Pennsylvania; Austin; Philadelphia; and East Harlem killed dozens of people and injured many more.

In early 2011 the U.S. Secretary of Transportation Ray LaHood announced a "Call to Action" through the Pipeline and Hazardous Materials Safety Administration (or "PHMSA") urging utilities to accelerate the repair or replacement of high-risk pipelines. The Call to Action "engage[d] all the state pipeline regulatory agencies, technical and subject matter experts, and

pipeline operators in accelerating the repair, rehabilitation, and replacement of the highest-risk pipeline infrastructure.”

In May 2013, through legislation introduced as Senate Bill 2266, the Illinois General Assembly responded to PHMSA’s Call to Action by passing legislation that authorized gas utilities to use a Qualifying Infrastructure Plant (or “QIP”) Rider to recover the costs of replacing mains made of cast and ductile iron and other at-risk materials. The General Assembly specifically tied such work to the critical need to ensure the safety and reliability of natural gas delivery systems and economic development. The Attorney General and the ICC (at the time) were involved in negotiating the legislation and in exchange for withdrawing their opposition agreed to a cap on recovered qualified costs and investments (i.e., replacing at-risk materials) of up to 4% of rate base delivery revenues, or 5.5% in any given year. The Citizens Utility Board consistently opposed the legislation because the bill did not offer the same ratepayer and other protections as formula rates had for the electrical utilities.

The newly enacted legislation (Public Act 98-57), signed into law by Governor Quinn on July 8, 2013, added Section 9-220.3 to the Illinois Public Utilities Act.

Under Section 9-220.3, natural gas utilities are authorized to implement a rider to recover the costs of replacing qualified infrastructure, which includes such things as gas mains constructed of cast iron, ductile iron, bare or mechanically coupled steel, and certain types of obsolete plastic. Importantly, gas utilities could also recover the costs of upgrading systems to medium pressure, which reduces outages due to water infiltration and allows the utilities to install excess flow valves to shut off gas to a customer’s premises if service lines are compromised. It also allows companies to recover costs associated with moving customer meters outside, which facilitates inspections to ensure system safety and provides additional reliability.

The Commission approved Peoples Gas’s Rider QIP, effective January 1, 2014. Approval of the tariff has the same effect as a state statute -- it is law of the land. The Commission reviews QIP expenditures on an annual basis for prudence and we currently have three years of QIP reviews at various stages of review.

Concerned with its pace and cost, the ICC ordered an audit of the program – proposed by Commissioner del Valle-- which culminated in a report that included 95 recommendations for improving its planning and execution. The report was a comprehensive and resulted in recommended changes to essentially all of the processes and procedures underlying the work. Peoples Gas accepted and has implemented the vast majority of these recommendations.

In 2015 Peoples was acquired by the WEC Energy Group. The company’s new management undertook a review of the program and agreed with the concerns of the Commission and

consumer advocates, recognizing there was a significant need to improve the project through better project management practices.

Also however, in response to allegations uncovered during the Commission's audit it was determined that the ICC had been knowingly misled by Integrys executives regarding their estimates of the cost of the program. The Commission's investigative proceeding resulted in two settlement agreements, totaling \$18.5 million in penalties and refunds.

For the past two years the Commission has been studying the company's plans, our staff's analysis and recommendations for future Commission action. We have felt it important to turn over every stone to help ensure that the project is understood and well managed. All parties essentially agree that this is critically important and necessary work but disagree on the pace among other things. We have also explored in depth our authority to affect the project's pace and budget which brings us to the present docket.

This case can be distilled into basically one fundamental question. Can the Illinois Commerce Commission—in contravention of the plain language of the Public Utilities Act negotiated by the Attorney General, adopted by the legislature, signed by Governor Quinn, and approved by ICC tariff—limit the utility's investment in statutorily defined categories of work during the effectiveness of the law? The answer according to the career professional staff of the Illinois Commerce Commission is that we cannot. It is with reluctance that I accept their opinion.

While the management of WEC and Peoples Gas under their leadership have made significant strides in improving the project management of the System Modernization Program, eliminated an artificial project deadline, and voluntarily extended the project timeframe, I have publicly expressed my disappointment with their annual spending goals. I believe that even with a ten year extension of the program—taking it out 30 years rather than the original 20—the long-term annual cost they have proposed will cause too great a burden for too many households in Chicago.

I, and this Commission care deeply about the impact of our decisions on ratepayers and the communities we serve. This is reflected in our very intentional commitment to diversity and inclusion at the Commission. No other Administration in the history of the Illinois Commerce Commission has been more inclusive in diversifying upper management positions to ensure we have the personal insight of people from all walks of life and identity represented in our agency.

But the Commission is not without tools to ensure that the ratepayer's capital is spent reasonably and prudently.

For the first time since Illinois utilities were building nuclear power plants the ICC is going to employ outside independent accounting and engineering firms to help ensure that every dollar of this program is spent appropriately.

It also important to note that our action today does not change the law. This is not a rate case. The QIP which will expire in 2023 and the manner in which WEC and Peoples have managed expectations around their intentions virtually guarantees that the law will not be renewed.

Estimates of the burden that this important project will impose on ratepayers made by simply extrapolating maximum spending under the law on an indefinite basis are simply false. After 2023 recoupment of utility investment in this program will revert to traditional rate cases where the ICC will have greater leverage. In the meantime, we welcome any opportunity to be part of a discussion regarding legislative solutions to give the ICC greater oversight of spending underneath the QIP caps.

As a quasi-judicial administrative agency, our role is to apply the law as it exists-- not to rewrite the law as we might wish it to be. Our powers are limited by statute and well settled law. In this case, our role is limited to ensuring that Peoples Gas invests ratepayer funds prudently and within the statutory constraints of the Public Utilities Act.