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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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ILLINOIS COMMERCE COMMISSION	)	
On its Own Motion	)	
	)	
v.	)	03-0161
	)	
North Shore Gas Company	)	
	)	
Reconciliation of revenues collected under	)	
Coal Tar riders with prudent costs associated	)	
with coal tar clean up expenditures.	)	

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**REPLY BRIEF OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

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April 20, 2004

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Now comes the Staff of the Illinois Commerce Commission (“Staff”) pursuant to Section 200.800 of the Commission’s Rules of Practice (83 Ill. Admin. Code 200.10 et seq.), respectfully stating as follows.

**I. Introduction**

Initial Briefs were filed by Staff and North Shore Gas Company (“Company” and “North Shore”) on April 6, 2004. Staff will respond to certain arguments made by the Company. Staff’s silence as to other issues raised by the Company in this proceeding should not be construed as acquiescence in or approval of said arguments by Staff.

**II. Argument**

**A. Staff’s Proposal Does Not Entail a Unique Interpretation that Establishes a New Standard for Recovery of Costs**

In its Initial Brief, the Company argues that the “in connection with” language included in Rider 11’s definition of Incremental Costs allows any cost somehow related to MGP remediation to be included in Rider 11. The Company further argues that Staff’s interpretation is unique and establishes a new standard for recovery of costs through Rider 11. (North Shore IB, p.5) Staff has thoroughly discussed its position that Incremental Costs, as defined in Rider 11, only refer to costs that have been incurred due to actual remediation activities, as also defined in Rider 11. (See Staff’s IB, pp. 2-9) Therefore, Staff will not inundate the record with the same arguments. In its Initial Brief, Staff has shown how the Company’s interpretation of Rider 11’s language is not consistent with the Commission’s intent when it approved Rider 11, or with the Commission’s interpretation of similar language in recent orders. Therefore, contrary to

the Company's assertions, Staff's proposal is neither unique, nor does it denote an establishment of a new standard of recovery of costs in Rider 11.

**B. Staff's Proposal Does Not Depart from the Precedent Established by the Commission**

The Company argues that Staff's interpretation of the language of Rider 11, "represents a dramatic departure from the precedent established by the Commission its approval of similar costs in Rider 11 reconciliation proceedings over the past decade." (North Shore IB, p.6) To establish this argument, the Company uses the example of costs incurred for a public relations consulting firm to assist in communicating with site owners, occupants and neighboring communities and costs associated with having an independent public accountant review and certify annual statements of activity that are to be filed with the Commission. Staff cannot make a judgment about all costs that may have been included in Rider 11 for the past decade, however appropriately or inappropriately included in Rider 11. However, the costs the Company referred as an example are not similar to the insurance premium expense that Staff is proposing to disallow from Rider 11 recovery. Section D of Rider 11 states the following, "The statement of activity in the Deferred Accountant and the statement of activity in the Settlement Fund for an entire fiscal year included in the report for the quarter ending September 30 shall be certified by independent public accountants." (North Shore Group Ex. 5.0, Rider 11, p.3) Unlike the insurance premium, the audit fee is incurred because of a requirement in the Rider; Staff would find it inequitable to propose an adjustment for a cost mandated by the Rider itself.

The public relations consulting expenses also differ from Staff's proposed disallowances as these expenses are expected, if not in fact mandated, for coal tar remediation. The Order in the generic coal tar cases discusses the authority the Illinois Environmental Protection Agency ("IEPA"), via the Illinois Environmental Protection Act ("IEP Act"), has concerning coal tar remediation. ((Order, Docket Nos. 91-0080 through 91-0095, September 30, 1992, (LEXIS, IL Commerce Commission Decisions, p.32)) The order in the Case establishing Rider 11 contains a similar discussion concerning the IEPA's authority and the IEP Act. (Order, Docket No. 91-0010, November 8, 1991, p. 60) The IEP Act specifically anticipates public relations activities under the section that regulates the review and approval by the IEPA of remediation plans made by remediation applicants ("RA"). The IEP Act states the following about public relations:

The Agency shall develop guidance to assist RA's in the implementation of a community relations plan to address activity at sites undergoing remedial action pursuant to this Title...Notwithstanding any provisions of this Section, the RA of a site undergoing remedial activity pursuant to this Title may elect to initiate a community outreach effort for the site. ((415 ILCS 5/58.7(h) parts (1) and (4))

The environmental liability insurance premium is not comparable to the expenses the Company used as an example because it is not mandated by Rider 11 or directly discussed in the legislation originating the need for coal tar remediation.

**C. Staff Does Not Propose Recovery of Incremental Costs through Base Rates**

The Company argues that the wording of Rider 11 does not restrict North Shores' right to recover any Incremental Costs that meet the prudence standard. (North Shore IB, p. 7) The Company further argues that even though Staff correctly observed that coal tar riders were established by the Commission as the preferred

method of tracking and matching environmental remediation costs that typically are widely variable and difficult to predict, “it does not follow that every cost that is otherwise recoverable under Rider 11 must meet a particular threshold for variability and unpredictability in order to be recovered.” (Id) Staff respectfully reminds the Commission that the question it must decide is not whether there is a variability and unpredictability issue that exists for recovery of coal tar remediation costs, but rather, do these proposed disallowed expenses meet the criteria of being Incremental Costs. Staff has consistently argued that this cost does not meet the definition of Incremental Costs. Staff has also argued that this cost is a base rate component. Staff is not also arguing that this cost should be disallowed on the basis that it is more predictable and less variable than typical Incremental Costs should the Commission, contrary to Staff’s recommendation, find that this cost is indeed an Incremental Cost as defined in Rider 11. The only relevant question is whether this cost meets the Incremental Cost standards set forth in Rider 11.

**D. Policy Reasons do not Supersede the Requirements of Rider 11**

The Company argues that the procurement of insurance in connection with specific business activities is a generally accepted and sound business practice. The Company further argues that disallowing insurance costs through a rider is a disincentive to utilities who seek to address MGP sites in a prudent manner and who desire certainty regarding the amount and timing of their costs. (North Shore IB, p. 8)

Staff generally agrees that obtaining insurance is a prudent and sound business practice. That is one reason insurance expenses are included in base rates. However, one central theory of ratemaking is that utilities are entitled to an opportunity to recover



insurance expense included in the previous general rate proceeding covered the specific policy at issue in this proceeding. (North Shore IB, p.9) This is a misunderstanding of Staff's position.

As stated in Staff's Initial Brief, Staff is aware that this policy was not in effect during the prior general rate case and Staff is also aware that the Company asserts that the policies in affect at that time did not cover the same potential liabilities. (Staff IB, p. 10) But, as also more fully explained in Staff's Initial Brief, at page 10, the most relevant issue is not whether this specific policy existed at the time of the last rate case. Base rates are set based upon a normal test year level of costs. The costs represented in that level do not remain the same from year to year. Sometimes they increase, and sometimes, as is the case with North Shore's overall cost for insurance premiums, they decrease. If the existing rate structure becomes insufficient, companies will generally apply for a rate increase. To allow recovery of this insurance premium in Rider 11, while the Company's existing insurance policies at the time were included in base rates, is a form of double recovery. This is recognized ratemaking theory and is reality regardless whether the specific policy in question existed at the time of the prior general rate case. Therefore, the most relevant question is whether this cost is a base rate component. As Staff has shown, this cost is a base rate component and not Incremental Cost as defined by Rider 11.

### **III. Conclusion**

For the reasons stated above, the Commission should accept Staff's proposal and disallow costs related to the environmental liability insurance premium. Staff respectfully recommends that the Commission accept the reconciliation of revenues

collected under the Rider 11 factor with the actual costs of coal tar remediation as reflected in Staff Exhibit 1.0, Schedules 1.01 through 1.03. Staff also recommends that its Schedule 1.03 be attached to the Final Order. As reflected on these schedules, Staff recommends a decrease of \$23, 634 for the insurance premium.

**WHEREFORE**, for the foregoing reasons, Staff respectfully requests that its recommendations be adopted by the Commission in their entirety.

Respectfully submitted,

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