

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NORTH SHORE GAS COMPANY)	
)	
Proposed General Increase In Rates For Gas Service.)	No. 07-0241
)	and
THE PEOPLES GAS LIGHT AND COKE COMPANY)	No. 07-0242
)	(Consol.)
)	
Proposed General Increase In Rates For Gas Service.)	

BRIEF ON EXCEPTIONS OF ENVIRONMENTAL LAW AND POLICY CENTER

VII. NEW RIDERS

D. Rider EEP (Merits of Energy Efficiency Programs and Rate Treatment)

1. Introduction

ELPC commends the ALJs for their decision on the merits of Peoples Gas’ and North Shore Gas’ Energy Efficiency Program (“EEP”) proposal. ELPC supports the ALJs’ recommendation that “the Utilities implement the energy efficiency program as proposed” with the findings that “the structure is fair and reasonable” and “the \$6.4 million that is allocated to Peoples Gas and the \$1.1 million that is allocated to North Shore, as well as the portion of each amount that would be available for low income programs” are reasonable. Proposed Order at 170.

The ALJs discuss the many ways their decision is supported by both the facts in the record and the law of the State of Illinois. As pointed out by the ALJs,

Energy efficiency programs are consistent with the policy goals contained in the Public Utilities Act. 220 ILCS 5/1-102. Moreover, in the recent Nicor rate case proceeding, the Commission recognized the importance and critical necessity of using energy efficiency plans as strategic tools to protect Illinois consumers and reduce their energy costs. Order at 193, Docket 04-0779 (September 20, 2005).

Id. at 169. The ALJs went on to note that “the proposed programs will make a significant positive contribution to the benefit of all ratepayers.” *Id.*

ELPC agrees with this reasoning behind the ALJs’ conclusion on the merits of the EEP and commends the ALJs for the strength of their decision. However, ELPC has one exception. As outlined below, the ALJs’ recommendation for the EEP funding to be recovered through a Rider is inconsistent with the reasoning supporting an EEP.

2. Singling Out the EEP In a Line Item Sends the Wrong Signal Regarding Energy Efficiency

In proposing the EEP and the allocation of funding for it, the ALJs emphasized the importance of energy efficiency. As noted above, the ALJs’ reasons for approving the utilities’ proposal are that energy efficiency is supported by the policy of the State, energy efficiency protects consumers and reduces energy costs, and such programs benefit all ratepayers. In addition, in discussing the VBA, the ALJs emphasized energy efficiency again. “Energy efficiency is an underutilized resource. All market participants, including the Utilities need to be part of a concerted effort to change the status quo.” Proposed Order at 132. Referencing the EEP, the ALJs stated, “we view this proposal as ground-breaking and in the best possible way.” *Id.* at 133.

This is inconsistent with singling out the EEP for Rider treatment and as a line item on customers’ bills. (Peoples Gas Ex. VG-1.1, at 25.) Singling out the EEP in that manner stigmatizes the program. It communicates that the program should not be considered part of a natural gas utility’s business as usual or integral to natural gas delivery service. Instead, it suggests that the program is an aside and tentative. The ALJs continue in this same vein when they also justify a Rider as being appropriate because it allows the Commission to terminate the

program at any time instead of waiting for a rate case. *Id.* at 171. This too suggests the same lack of commitment to energy efficiency. Similar to the EEP being a line item on the bill, this justification of the ALJs communicates that the Commission might be committed to energy efficiency in theory, but not in fact. The Commission should not be sending this message to customers about energy efficiency when, according the ALJs' Proposed Order, energy efficiency is the policy of the state, utilization of energy efficiency needs to be improved, and energy efficiency benefits all customers.

The inappropriateness of singling out the EEP as a line item is also apparent from the example bill attached to Valerie Grace's testimony. (Peoples Gas Ex. VG-1.1, at 25.) Except for the customer charge, every other line item on the example bill is variable and virtually all of the line item charges are usage based. In contrast, the EEP is fixed and doesn't vary with usage, nor is it reasonably expected to vary in any other manner, as will be further discussed below. As far as the other fixed charge on the bill, in contrast to the size of the customer charge, to say that the EEP is a nominal amount is an understatement. Such an insignificant, fixed charge is inappropriate as a line item. *A. Finkl & Sons Co. v. Illinois Commerce Comm'n*, 250 Ill. App. 3d 317, 327 (1st Dist. 1993).

In addition, the ALJs' other justifications for Rider treatment are not persuasive. The ALJs' reliance on uncertainty of costs is contrary to the record because the ALJs' citation to Charles Kubert's testimony is incorrect. Proposed Order at 170. Mr. Kubert never testified that these costs may be uncertain. Mr. Kubert testified that initial startup costs might decline over time, Tr. at 1432, but this is very different from saying that the overall expenditures on the program might be uncertain or vary. To the contrary, the record is replete with evidence that \$7.5 million is a reasonable expenditure and therefore is likely be fully expended every year,

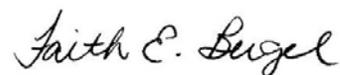
making program costs a consistent from year to year. In fact, it would be possible to spend far more on an energy efficiency program. “\$7.5 million represents the low end on a percentage of revenue basis of what gas utilities around the Midwest are spending on energy efficiency programs.” ELPC Ex. 2.0 lines 177-179; see also ELPC Ex. 1.0, lines 112-118. This virtually ensures that the Company will spend the full allotment every year.

Finally, as to the ALJs’ adoption of reconciliation, this must be consistent with the rollover provisions proposed by the utility. The rollover provisions, as outlined in the Utilities proposal, (Peoples Gas ex. VG-1.0 at 40:894-41:898), were also adopted by the ALJs in their language stating “the Commission orders the Utilities to implement the energy efficiency program as proposed.” Proposed Order at 170. Reconciliation and rollover can be compatible, yet some attention is required to the manner in which this is done.

3. Conclusion

In sum, ELPC strongly supports and agrees with the ALJs’ decision on the merits of Peoples and North Shore Gas’ EEP proposal and the reasoning behind the decision. Nonetheless, the ALJs’ decision as to Rider treatment is inconsistent with the basis for adopting an EEP. The costs of the program are fixed and certain and Rider treatment stigmatizes and undermines the reasoning behind the EEP. ELPC respectfully urges the Commission and ALJs to adopt the exceptions language amending the proposed order, as set forth in Attachment A to this brief.

Respectfully Submitted,



Faith E. Bugel
Attorney for the ELPC

Attachment A

ELPC Exceptions and Suggested Revised Text to Proposed Order, pp. 170-171

Commission Analysis and Conclusion

Rider Treatment of EEP.

The Commission further considers and finds that Rider EEP costs merit ~~rider treatment~~ recovery through base rates. The parties objecting to rider treatment have argued that because the Utilities have agreed to spend \$7.5 million, i.e., a fixed amount, that the Utilities cannot utilize a rider to recover these expenses because since the amount is known, it cannot possibly be “unexpected, volatile or fluctuating”. We ~~agree~~ disagree.

The parties prominently rely on the Finkl case. ~~Later decisions, however, have held that nothing in Finkl limits the use of a rider to only those instances where costs are unexpected, volatile or fluctuating~~ City of Chicago v. Illinois Commerce Commission, 281 Ill. App.3d 617 (1st Dist. 1996). ~~In any event, spending~~ There are specific legal standards that must be met before rates can be recovered through a rider and the circumstances must “warrant such treatment.” Citizens Utility Board v. Illinois Commerce Comm’n, 166 Ill. 2d 111, 138 (1995). Factually, the case of A. Finkl & Sons v. Illinois Commerce Commission is precisely on point. A. Finkl & Sons Co. v. Illinois Commerce Comm’n, 250 Ill. App. 3d 317 (1st Dist. 1993). In that case, the court was considering the appropriateness of the use of a rider for recovery of costs for a demand side management program, which in essence, is an energy efficiency program. Id. at 326-27. The court held that demand side management costs could not properly be recovered through a rider because they were not volatile nor were they beyond the Company’s control. Id. at 327. The court also noted in that case that the rider was not proper because the amount of dollars to be recovered through the rider was not significant and the costs were recoverable through the usual base rate mechanism. Id. Cf. Citizens Utility Board v. Illinois Commerce Comm’n, 166 Ill. 2d at 138-39 (holding a rider appropriate because there were “wide variations and difficulties forecasting the costs” to be recovered).

In the present case, the program costs are a set \$7.5 million per year. These costs cannot be described as volatile, unpredictable, or likely to fluctuate. Spending levels are not uncertain and have been acknowledged as such, by ELPC witness Kubert. Annual costs While annual expenditures during start-up period will may be lower and the extra money will may be spent in later years, this does not affect costs because the amount to be recovered from ratepayers is fixed. In addition, because the amount to be recovered is fixed, costs are within the Utilities’ control. The Utilities proposed the spending level and administrative structure and also will participate in program administration. \$7.5 million is a reasonable amount to expend on a program of this type and therefore is likely be fully expended every year, making program costs a consistent from year to year. The fact that it would be possible to spend far more on an energy efficiency program, “\$7.5 million represents the low end on a percentage of revenue basis of what gas utilities around the Midwest are spending on energy efficiency programs,” ELPC Ex. 2.0 lines 177-179; see also ELPC Ex. 1.0, lines 112-118, virtually ensures that the Company will spend the full allotment. This is sufficient evidence that program costs are predictable and within the companies control thus justifying rate treatment instead of rider treatment. In sum, since the EEP costs are both fixed and, for that reason, not beyond the Utilities’ control, they cannot properly be recovered through a rider.

~~More important in our decision to adopt base rate treatment the Utilities' rider treatment is that the manner in which this money will be spent is far beyond the Utilities' control. A. Finkl, 250 Ill.App.3d at 327. As set out on record, the Governance Board's voting procedure ensures the independence of the board from the Utilities. Because the Utilities do not control how much of the \$7.5 million will be spent each year, it is not appropriate for the program costs to be included in rate base. The Commission further finds that Rider EEP is a reasonable means by which the Utilities may recover the EEP costs that they incur as a result of the programs and benefit ratepayers in that they will only be charged the amount actually spent.~~

~~Also, as discussed above in Rider ICR, costs are appropriately included in rate base when savings can be expected. This balancing, however, will not occur for the energy efficiency costs. We expect that any money the EEP spends on energy efficiency will decrease the Utilities revenues as customers use less gas.~~

~~Further, knowing that the energy efficiency program will be administered by an independent board lessens our concern over the costs of administering Rider EEP. In other words, and given the composition of this body, we expect that that any reconciliation proceedings would likely not be litigious because most if not all would have had a say in the efficiency program spending process.~~

~~As importantly, Rider base rate treatment for EEP gives this Commission's full imprimatur of approval on this ~~more control in this new and unpracticed~~ undertaking by the Utilities. Utilities witness Rukis made clear in testimony that the Commission would maintain authority over the EEP. Through reports provided to the Board, the Commission would have the ability to review the on-going progress of the EEP. ~~Assuming *arguendo*, that the Commission found reason to halt the program, it could not at that time undo the rates. It is our understanding, however, that we could put a halt to the program, and to rider recovery, outside of a rate case.~~ While these are important oversight provisions, the Commission also believes that inclusion of this program in base rates communicates the important message to the Utilities, interested parties, and consumers that energy efficiency is to be considered "business as usual" for the Utilities and is now a permanent aspect of the status quo.~~

CERTIFICATE OF SERVICE

I, Faith E. Bugel, being an attorney admitted to practice in the State of Illinois and one of the attorneys for the Environmental Law & Policy Center, herewith certify that I did, on the 12th day of December, 2007, electronically file with the Illinois Commerce Commission **Brief on Exceptions of Environmental Law & Policy Center**, and caused the same to be electronically served upon the persons identified as parties of record in Docket No. 07-0241, 0242.

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