

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

**VERIFIED RESPONSE OF THE PEOPLES GAS LIGHT AND
COKE COMPANY AND NORTH SHORE GAS COMPANY
TO THE ILLINOIS ATTORNEY GENERAL’S
OFFICE’S “MOTION FOR A PARTIAL STAY OF
THE COMMISSION’S ORDER OF FEBRUARY 5, 2008
OR, IN THE ALTERNATIVE, MOTION FOR
COLLECTION OF RATES SUBJECT TO REFUND”**

The Peoples Gas Light and Coke Company (“Peoples Gas”) and North Shore Gas Company (“North Shore”) (together, the “Utilities”), under 83 Ill. Adm. Code § 200.190(e), submit this Verified Response to the Illinois Attorney General’s Office’s (the “AG”) “Motion for a Partial Stay of the Commission’s Order of February 5, 2008, or in the Alternative, Motion for Collection of Rates Subject to Refunds” (the “Motion”). The Motion is misleading, does not satisfy the requirements for a stay, and seeks extraordinary relief that is improper and against the interests of customers and the Utilities. The Motion should be denied.

INTRODUCTION

After considering a voluminous evidentiary record, the Illinois Commerce Commission (“the Commission” or “ICC”), on February 7, 2008, entered its 320-page Order in these consolidated rate cases (“Order”). The Order established new rates that it found just and reasonable under Section 9-201 of the Public Utilities Act, 220 ILCS 5/9-201. In the Order, the Commission approved, with certain modifications, the Utilities’ proposed “decoupling”

mechanism relating to volumetric natural gas delivery charges applicable to Small Residential and General Services customers, Rider VBA – Volume Balancing Adjustment (“Rider VBA”). Order, pp. 138-153. The Utilities filed their compliance tariffs on February 8, 2008, and they went into effect on February 14, 2008.

In the Motion, which the AG did not file until March 10, 2008, the AG requests that the Commission either: (1) stay implementation of those portions of the Order that authorize the Utilities to employ decoupling as provided for in Rider VBA; or, in the alternative (2) order that all revenues collected pursuant to *all* of the rates set by the Order -- not just those collected under Rider VBA -- be subject to refund pending the outcome of rehearing and judicial appeal proceedings that might ensue.

The Motion fails every test for a motion to stay. The Motion is misleading, inaccurate, does not demonstrate either a likelihood of prevailing on the merits or irreparable harm, and seeks relief that is improper and counter to the interests of customers as well as the Utilities. In seeking to show a likelihood of prevailing on the merits and irreparable harm, the Motion misleadingly distorts the nature and application of Rider VBA, implying that the effect of Rider VBA will always be to increase customer bills. In fact, Rider VBA will benefit utility customers and the Utilities because it is a symmetrical rate mechanism that ensures that the Utilities will recover from residential and General Services customers the fixed costs that are allocated to the volumetric delivery charges for these customer classes, nothing more and nothing less, and that these customers will pay nothing more or less. Indeed, as will be discussed in more detail below, had Rider VBA been in effect this past winter (as to December through February), customers would have received credits totaling \$3,784,000. This calculation

unequivocally illustrates the erroneous nature of the Motion's one-sided characterizations and rebuts the claim of harm, hence the Motion must fail.

Moreover, the Motion overlooks that the Order directed that the calculation of the Utilities' respective approved revenue requirements reflect a 10 basis point ("BP") reduction in each of their approved rates of return on common equity ("ROE"), due to the Commission's finding that such a reduction was warranted by the approval of Rider VBA. Thus, under the Utilities' compliance tariffs that have been in effect since February 14, 2008, customers have had the benefit of the resulting base rate reductions due to Rider VBA, which amount to an annual reduction in Peoples Gas' base rates of \$1,081,000 and an annual reduction in North Shore's base rates of \$188,000, based on the figures in the Order.¹ If the Commission stayed Rider VBA, then, given the Order's findings and conclusion, in order for the rates to be just and reasonable the Commission would have to allow the Utilities to increase their base rates during the stay period in order to recover these ROE shortfalls. As discussed below, however, that would be complex and difficult to implement and could be confusing to customers.

DISCUSSION

The legal test for whether a stay is warranted has been articulated by the Commission:

In deciding whether or not to grant a stay of the effectiveness of [an] Order ... [the Commission] should be guided by the traditional factors used by reviewing courts to grant interlocutory injunctive relief... : (1) the petitioner's likelihood of prevailing on the merits; (2) the irreparable harm petitioner will suffer if the stay is not granted; and (3) the harm to other parties which would result from the issuance of a stay.

In re Commonwealth Edison Co., ICC Docket No. 87-0427, 1993 Ill. PUC LEXIS 21, at *2 (Order Jan. 8, 1993) ("*Commonwealth Edison*") (citing *City of Chicago v. Ill. Commerce*

¹ The Utilities have contended in their pending Application for Rehearing that the existing evidentiary record did not warrant these 10 BP reductions in their approved ROEs, but, for purposes of this response to the Motion, the Utilities take the Order and their compliance tariffs as they stand.

Comm'n, 133 Ill. App. 3d 435 (1st Dist. 1985) (“*City of Chicago*”). The Supreme Court and the Appellate Court each recently denied the AG’s motions to stay a Commission Order in *Commonwealth Edison Co. v. Illinois Commerce Comm’n*, Ill. S. Ct. Docket No. 103954 (Order, Aug. 2, 2006), and Ill. App. Ct. Docket Gen. No. 2-06-0831 (Order, Dec. 29, 2006). The Motion, in addressing the standards for a stay, cites an Appellate Court case that applies the Administrative Review Law’s standards for a stay of an administrative order (Motion, ¶ 6, citing *Markert v. Ryan*, 247 Ill. App.3d 915, 917 (4th Dist. 1993)), but the Administrative Review Law does not apply to appeals from the Commission’s decisions. *E.g.*, Order, p. 320.²

As will be discussed in detail below, the Motion fails to meet each and every test set forth in *Commonwealth Edison*.

I. The Motion Does Not Demonstrate A Likelihood of Success on the Merits

The AG has not established and cannot establish the required likelihood of success on the merits (or irreparable harm). The Motion contains nothing that demonstrates that, on rehearing or review, there is a likelihood that the Rider VBA approval would be reversed. Indeed, the Motion contains little more than tired claims that have been asserted repeatedly in prior briefing. The Motion mischaracterizes the operation of Rider VBA, recites selective evidence, and offers misleading analysis for the purpose of distorting the evidentiary record.

Rather than actually demonstrating a likelihood of success on the merits, the AG has simply reiterated the same invalid arguments made in four prior briefs and oral argument. *See* AG Initial Brief (Corrected), pp. 29- 74; AG Reply Brief, pp, 24-40; AG Brief on Exceptions,

² Moreover, the Public Utilities Act adds special requirements for a court-ordered stay of a Commission decision. 220 ILCS 5/10-204(b) (“No order staying or suspending a rule, regulation, order or decision of the Commission shall be made by the court otherwise than upon 3 days notice to the Commission and after a hearing, and if the rule, regulation, order or decision of the Commission is suspended, the order suspending the same shall contain a specific finding based upon evidence submitted to the court, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage.”).

pp. 9-30; AG Reply Brief on Exceptions, pp. 5-39; Transcript, Jan. 23, 2008, pp. 11-18.³ The Utilities already have briefed at great length and thoroughly debunked the AG's legal arguments, showing that each one is incorrect, overstated, and/or misapplied as to Rider VBA and the facts of this proceeding. *See, e.g.*, NS-PGL Initial Brief, pp. 108-121; NS-PGL Reply Brief, pp. 87-107; NS-PGL Brief on Exceptions, pp. 40-57; NS-PGL Reply Brief on Exceptions, pp. 49-54; Transcript, Jan. 23, 2008, pp. 6-11, 32-43. The AG has not raised any new argument or presented any new facts that would demonstrate that a different determination might be reached by the Commission than was reached in the Order (or that the Appellate Court would do so).

Two-thirds of the Order's discussion of Rider VBA is devoted to careful analysis of each of the legal arguments raised by the AG and other opponents of the rider. The Commission, based on its detailed analysis, held: "The sum of our extensive review shows that Rider VBA complies with legal requirements, contains no other infirmity, and falls under our authority." Order, p. 150.

We confirm, on the basis of our legal analysis, that Rider VBA meets the criteria for a lawful rider in Illinois. In its operation, Rider VBA would have two primary functions. First, Rider VBA would increase rates to account for margin revenues which the Utilities would be unable to collect, in a given month, due to changes in customer usage. Second, Rider VBA would lower rates to account for any over-recovery of margin revenues by the Utilities, in a given month, due to customer usage changes. These rate increases and decreases would occur under Rider VBA by operation of a mathematical formula that is applied to the margin revenues that will have already been fixed and approved by the Commission in this proceeding. Thus, Rider VBA involves no more than periodic adjustments to a rate that is fixed and approved by the Commission and with such adjustment as determined by application of a set mathematical formula. This type of rider formulation is the type of mechanism that the Court endorsed in [*City of Chicago v. Illinois Commerce Comm'n*, 13 Ill. 2d 607 (1958) ("*City I*[")], *i.e.*, a rate schedule that

³ The one new wrinkle here is that the AG makes the inappropriate and disingenuous argument that Staff counsel, who represent the positions of Staff assigned to this proceeding, are the Commission's "own attorneys" (Motion, ¶ 15) and suggesting that Staff's opposition to Rider VBA prior to issuance of the Commission's Order, as presented to the Commission by Staff counsel, somehow undermines the legality of the Order.

contains “provisions which affect the dollars and cents cost of the product sold.”
City I, 13 Ill. 2d at 611.

Order, pp. 151-152.

Thus, the AG has utterly failed to demonstrate a likelihood of success on the merits. The AG’s lack of likelihood of success on the merits itself is sufficient grounds to deny the requested stay. *E.g.*, *City of Chicago*, 133 Ill. App. 3d at 450.

II. The Motion Fails to Establish Irreparable Harm

The AG has not shown and cannot show the required irreparable harm in order to justify the requested stay. The issue presented by the Motion is whether to stay a mechanism that provides for more accurate recovery of portions of the Utilities’ Commission-approved revenue requirements. The AG has presented no persuasive evidence or arguments that establish that implementation of Rider VBA would result in any harm at all, particularly harm that would justify a stay.

The AG certainly cannot claim that the Utilities’ recovery of their Commission-approved revenue requirements is a “harm”. The Utilities are legally entitled to recover those amounts under their Commission-approved tariffs.

Therefore, the only harm which the AG asserts is that Rider VBA will result in “surcharges”, by pointing to stale and inapplicable data. *E.g.*, Motion, ¶¶ 1, 18. The AG’s assertion of “harm”, however, is grounded in arguments that mischaracterize the operation of Rider VBA and distort the evidence of record. Rider VBA does not result in “surcharges,” nor does the selective use of certain record evidence establish that Rider VBA will result in surcharges in the millions of dollars. Rather, Rider VBA can result in credits or charges that are merely adjustments to ensure a more accurate recovery of a portion of the Commission-approved revenue requirements, nothing more or less.

The Motion's claim of harm also ignores the customer benefit of the reduced base rates that have been in effect since February 14, 2008, due to the reduction in the Utilities' approved ROE tied to the approval of Rider VBA.

A. Rider VBA Provides Credits and Charges And Is Not a "Surcharge"

In attempting to justify its request for extraordinary relief, the Motion presents Rider VBA in a one-sided light and distorts the meaning of decoupling. The Motion repeatedly refers to Rider VBA as a "surcharge". *E.g.*, Motion, ¶ 1. Rider VBA, as will be explained further below, does not result in "surcharges", and its effect on customer bills will result in both credits and charges.

There can be no dispute that Rider VBA actually provides for both credits and charges. The Order states, in one of its numerous findings and conclusions ignored by the Motion but not actually contested by the AG, that: "The proposed monthly adjustments under Rider VBA are symmetrical meaning that they are based on both the over-recovery as well as the under-recovery of target revenues." Order, p. 139. Yet, the Motion focuses exclusively on the effects of Rider VBA in the event of reduced customer usage and deliberately ignores the inherent symmetry of Rider VBA, which will result in bill adjustments for both increases and decreases in customer usage, as has been exhaustively established in the evidentiary record of these cases and found in the Order.

As the AG notes, the Order establishes new revenue requirements for the Utilities, resulting in a People Gas rate increase of \$71 million and a North Shore rate decrease of \$213,000. Order, p. 318. The Utilities' revenue requirements consist of the Utilities' prudent and reasonable costs incurred to provide distribution services (including the costs of their distribution systems) and customer services, and, it is undisputed, they do not include the costs of

gas sold to customers by the Utilities. *E.g.*, Borgard Direct (“Dir.”), PGL Ex. LTB-1.0 REV, 2:25-32; Borgard Dir., NS Ex. LTB-1.0 REV, 2:24-31. The Order confirms and reflects those basic facts. *E.g.*, Order, Appendix (“App.”) A, p. 1; Order, App. B, p.1. The evidence also is undisputed that nearly all of the Utilities’ costs that comprise their revenue requirements are fixed -- 95% as to Peoples Gas and 99% as to North Shore. *E.g.*, Grace Dir., PGL Ex. VG-1.0 2REV, 8:171-172; Grace Dir., NS Ex. VG-1.0 3REV, 6:131-132.

As discussed in detail in the Utilities’ testimony, Rider VBA is a new balanced rate mechanism that determines adjustments to volumetric delivery charges arising from variations in the amounts of gas delivered to customers due to variations in weather and changes in customers’ consumption patterns. Rider VBA will result in either credits on customers’ bills (*e.g.*, when weather is colder, all else being equal) or charges (*e.g.*, when weather is warmer, all else being equal). More specifically, each month, Rider VBA takes the difference between the Commission-approved distribution revenue per customer and actual distribution revenue per customer to determine credits or charges that are applied to customers’ bills, on a two month lagged basis, to recover the approved level of cost recovery, no more and no less. *See, e.g.*, Grace Dir., PGL Ex. VG-1.0 2REV, 47:1038-1052; NS Ex. VG-1.0 3REV, 42:928 - 43:942. *See also* Affidavit of Valerie H. Grace, ¶ 3 (the Affidavit is attached hereto).

Had Rider VBA and the rates approved in this proceeding been in effect applicable to service during December 2007 – February 2008 this winter, customers in the aggregate would have received net bill credits, rather than additional charges, on their February 2008 – April 2008 bills. Affidavit of Valerie H. Grace, ¶ 4 and Attachment 1 thereto. **If** Rider VBA had been in effect from December 2007 through February 2008, then Peoples Gas customers in the aggregate would have received net credits of \$3,076,000 and North Shore customers in the aggregate

would have received net credits of \$708,000, for total net credits of \$3,784,000, under the Rider VBA adjustments that would have been issued in February through April 2008. Affidavit of Valerie H. Grace, ¶ 4 and Attachment 1 thereto. That vividly demonstrates the symmetry of Rider VBA.⁴

Thus, the reality that is obscured by the Motion, like the AG's prior briefing, is that the AG is championing less accurate recovery of those costs, while claiming that that somehow is in the interests of customers. The AG's claim is not true.

The Motion is simply an attempt to cast the operation and effect of Rider VBA, and decoupling in general, in the most negative and distorted light in order to persuade the Commission to grant the extraordinary relief requested. The Commission should not be swayed by such manipulation of the record, particularly where, as here, giving credence to such misstatements and half-truths undermines the very basis of the Commission's carefully considered decision to approve Rider VBA.

The Rider VBA approval was simply recognition that the Utilities' costs to provide distribution and customer services are almost entirely fixed and that the recovery of those fixed costs should no longer be tied to how much natural gas is delivered by the Utilities. When fixed cost recovery is tied to the amounts of natural gas delivered, customers as a whole will pay either too much or not enough for distribution and customer services, depending on the variations in their usage.

Rider VBA is designed to be symmetrical. Thus, Rider VBA would not result in any "surcharges" or any other "extra" charges to customers beyond what the Commission has already

⁴ The initial Rider VBA adjustments, consistent with the Utilities' tariffs, will become effective May 1, 2008. They will apply to service beginning on March 1, 2008, with the adjustments applied on an ongoing two month lagged basis as data becomes available. Because March is not over, the effects of the application of the rider to March service are not yet known and, of course, the same is true of future months.

approved. Rider VBA simply involves adjustments, up or down, to allow the Utilities to recover the applicable portions of the Commission-approved revenue requirements necessary to cover their fixed costs and expenses, nothing more and nothing less. By using the term “surcharge”, with its connotation of extra charges over and above the approved revenue requirement, the AG is using semantics to create a prejudicial environment as part of its misguided attempt to have the Commission ignore the real evidentiary record and reverse its decision approving Rider VBA.

B. The Motion Ignores The Reduced Base Rates Due to Rider VBA

The Motion’s claim of harm also ignores the customer benefit of the reduced base rates that have been in effect since February 14, 2008, that result from the Order’s imposition of 10 BP reductions in each of the Utilities’ approved ROEs based on the approval of Rider VBA and carried through into their approved revenue requirements. Order, p. 99. As noted earlier, due to the ROE reductions tied to the approval of Rider VBA, Peoples Gas customers are experiencing an annual reduction in base rates of \$1,081,000, and as to North Shore customers the figure is \$188,000. These reductions would not be valid if the rider were stayed, but the Motion makes no provision on this subject, as discussed further below.

C. The Motion Presents Selective Evidence and Distorts The Record

The Motion makes false assertions and selective use of record evidence that is unreliable and/or irrelevant, and thus is of little or no value in evaluating the future impacts of Rider VBA. The Motion asserts that “Rider VBA surcharge will begin appearing on customer bills in April of 2008.” Motion, ¶ 4. The fact is that Rider VBA results, whether charges or credits, will not appear on customer bills until May 1, 2008, and, much more importantly, the Rider VBA adjustments might be either credits or charges depending upon facts regarding March 2008 and

future usage that will not be known until after March ends and the future months are experienced, as discussed above.

In addition, the Motion cites figures from an exhibit covering the years 2002 through 2006 that is based on rates set in 1995, and no longer in effect given the Order, to suggest that if Rider VBA had been in place it might have resulted in customers paying \$218,000,000 and \$24,000,000 more for gas distribution and customer service, as to Peoples Gas and North Shore, respectively. Motion, ¶ 16.

The Motion's use of that evidence is misleading and disingenuous. It is misleading because it ignores the fact that: (1) the amounts noted by the Motion are based upon rates arising from billing units derived from a 30-year weather normalization period and old customer usage patterns from 12 years ago (*e.g.*, Motion, Appendix A; *see also, e.g.*, NS-PGL Reply Brief, pp. 102-104 (regarding the effect of Rider VBA on recovery of the approved revenue requirement if the rider had been in effect in 2003-2006)) and (2) the actual dollar impact of Rider VBA is entirely a function of the new rates that the Commission has established in the instant proceeding, which are based upon a more recent 12-year normalization period and more recent customer usage patterns (*e.g.*, Order, pp. 123-126). Accordingly, any adjustments determined under Rider VBA will be based upon future weather and usage patterns that will be better aligned with the more recent normalization period and usage patterns established in the instant proceedings. As discussed above, had the Rider VBA mechanism been in effect applicable to December-February this past winter under the rates approved by the Commission in this proceeding, as opposed to the rates that existed before the Order, substantial customer credits would have been issued.

The Motion's use of the evidence is disingenuous because it characterizes the \$218 million and \$24 million evidence as "undisputed" and the Motion implies that it is undisputed that Rider VBA revenues should be evaluated in relation to the Utilities' earned return. Motion, ¶ 16. To the contrary, the fact is that the Utilities consistently pointed out that the levels of their earned return during the period in question should have no bearing on whether Rider VBA is justified, and the Utilities disputed the use of the backcasting figures for purposes of making predictions about the impact of Rider VBA or its reasonableness. *E.g.*, NS-PGL Reply Brief, pp. 95-97, 102-106. The Commission must disregard the distortions and one-sided analyses in the Motion in view of the overwhelming evidence of record that contradicts or renders meaningless the assertions of the Motion and the snippets of evidence that it cites.

III. The Requested Relief Is Improper and Is Against the Interests of Customers As Well As the Utilities

The third factor to be considered by the Commission is the harm to other parties that would result from the issuance of a stay. The discussion above shows that a stay of the Order as to Rider VBA would be against the interests of customers as well as the Utilities. Moreover, if it later were held that a stay should not have been granted, or if the AG's claims ultimately are rejected by the Commission and the Appellate Court, there is no mechanism for customers to get the credits they would have been issued, or for the Utilities to recover any costs they would have recovered, but for the stay, because that would be contrary to the doctrine of retroactive ratemaking. *E.g.*, *City of Chicago*, 133 Ill. App. 3d at 449.

In addition, the AG's requested alternative relief is inappropriate and overbroad. As noted above, in the alternative, the AG seeks an order that all revenues collected pursuant to all of the rates set by the Order -- not just those fixed costs collected under Rider VBA -- be subject

to refund pending the outcome of rehearing and judicial appeal proceedings that might ensue. To extend any stay to revenues collected under any rates or riders other than Rider VBA is not something that the Motion even purports to justify. To do so would be utterly improper and unfair because the Motion is limited to claims about Rider VBA.

Moreover, the requested alternate relief is entirely one-sided, *i.e.*, it makes no provision for staying any credits that the Utilities would be required to provide to customers under Rider VBA or for recovering any credits that may be issued. So, under the AG's requested alternate relief, its "heads I win, tails you lose", because revenues are subject to refund, not just under Rider VBA but under all rates and riders, while any credits that the Utilities give to customers under Rider VBA are gone forever. This is yet another illustration of the lack of merit, and the recklessness, of the Motion. In any event, the Motion fails to meet the third test for a stay.

Furthermore, the AG, while making various references in the Motion to the subject of rates of return, omits that customers have the benefit of the reduced ROEs reflected in base rates that the ICC imposed based on the approval of Rider VBA, as noted earlier. The Motion makes no provision for staying that ROE reductions reflected in base rates while Rider VBA is stayed (or while the Motion's alternative relief is in force), were the Commission to award the AG's requested relief. Such a measure would be required for the base rates to be just and reasonable given the Order's findings and conclusions. However, while necessary for that reason, developing rates and incorporating and implementing tariff changes that addressed the unfairness of continuing the base rate reductions tied to Rider VBA while Rider VBA is stayed or the requested alternative relief is in place would be complex, difficult, and costly to implement, and could be confusing for customers. Affidavit of Valerie H. Grace, ¶ 5. These are additional

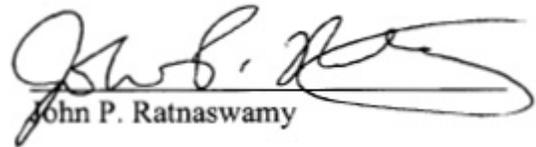
serious harms that would be inflicted on customers and the Utilities were the Motion to be granted, and they are more than sufficient reason for denying the Motion.

CONCLUSION

The Motion fails all of the applicable tests for a motion to stay, and the requested relief does not prevent, but rather causes, irreparable harm, both to customers and the Utilities. The Motion should be denied.

Dated: March 21, 2008

By:


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