

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company)	
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)	
Petition Pursuant to Rider VBA)	ICC Docket No. 09-0123
Of Schedule of Rates for Gas)	
Service to Initiate a Proceeding to)	
Determine the Accuracy of the)	
Rider VBA Reconciliation Statement)	

**PEOPLE OF THE STATE OF ILLINOIS'
BRIEF ON EXCEPTIONS AND EXCEPTIONS TO THE
PROPOSED ORDER**

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People”), Part 200.830 of the Illinois Commerce Commission’s (“the Commission”) rules, 83 Ill.Admin.Code Part 200.830, hereby file these exceptions to the January 15, 2009 Proposed Order (“Proposed Order”) issued by the Administrative Law Judge in the instant docket, the first reconciliation of charges and credits issued by North Shore Gas Company’s (“North Shore” “NS” or “the Company”) from April 2008 through December 2008 under Rider Volume Balancing Adjustment (“Rider VBA”).

Introduction

The People do not question the accuracy of the mathematical calculation performed by the Company, revised with actual usage data from the last two months of 2008, and provided in the Proposed Order as “Factor O”. That being said, the People submit that no person reviewing the Order as presented by the Company and adopted by the Administrative Law Judge could discern what happened, on a net monthly basis, or even on an annual basis, to each customer class that was subject to the rider tariff. In the 2008 Rate Order that authorized Rider VBA, the Commission justified its approval of the controversial decoupling tariff by asserting:

The record in this case persuades the Commission that Rider VBA is appropriate as it reflects the particulars of declining and variable customer usage patterns and the concomitant revenue recovery impacts for Peoples Gas and North Shore. In our view, this evidence of usage patterns and margin recovery fluctuations calls for a regulatory response.

ICC Docket Nos. 07-0241, 07-0242 (cons.), 2008 Rate Order at 150. Accordingly, as noted in the People's Post-Hearing Brief, the alleged need for Rider VBA in the Commission's opinion was premised on its conclusions that Rider VBA would help offset revenue losses associated with alleged declining and variable (per customer) energy usage in general, as well as specific declines associated with customer participation in the Companies' new energy efficiency programs. *See* 2008 Rate Order at 150, 151.

The Rider VBA surcharge/credit mechanism is a complicated one that defies straightforward analysis by regulators of per customer usage patterns. One can only imagine the confusion customers must have when they stare at their North Shore Gas bills. The Proposed Order dismisses specific recommendations from the People for the Commission Order coming out of this proceeding to provide a straightforward assessment of what the net effects of Rider VBA were over the relevant 2008 time period for each customer class, and more specific analysis of whether per customer usage is, in fact, declining during the year being reviewed. In doing so, the Proposed Order states that "this proceeding is in the nature of a mathematical exercise intended to confirm that North Shore has correctly performed and implemented the calculation required under Rider VBA." The People do not debate the notion that a mathematical exercise, and a recalibration of the reconciliation adjustment and the establishment of the "Factor O" surcharge/credit amounts, is a critical piece of this proceeding. But it also cannot be disputed that the Commission's adoption of Rider VBA was an unorthodox ratemaking decision based on the conclusion that "evidence of usage patterns and margin

recovery fluctuations calls for a regulatory response.” 2008 Rate Order at 150. Rider VBA is a new rider that changes how people pay for their natural gas delivery service. The people who are affected by that “regulatory response” are entitled to a straightforward analysis of what the net effects were of the controversial rider and whether the assumptions that the Commission made in adopting it hold true. For these reasons, the People except to the Proposed Order as follows:

EXCEPTION 1: Contrary to the Proposed Order’s Conclusion, the People’s Recommendations to Provide A More Detailed Analysis of Rider VBA Need Not Be Supported by Testimony.

At page 9, the Proposed Order (“PO”) makes reference to the fact that the People failed to file testimony in this case. PO at 9. The Proposed Order also opines that the AG failed to acknowledge “that it took no advantage of the opportunity to propose changes for the Rider ICR (sic) tariff at the relevant time.” PO at 10. These criticisms are irrelevant to the recommendations made in the People’s Post-Hearing Brief. Intervenors in utility rate filings are under no obligation to file testimony and assist a utility in either meeting its burden of proof or “proposing changes” to utility proposals, especially if those proposals are illegal or flawed. Requiring intervenors to prove unreasonableness was specifically identified by the Illinois Supreme Court as inappropriate and reflective of a fundamental misunderstanding of the utility’s burden of proof. Under the comprehensive scheme set out in the Public Utilities Act, the Commission is to be an active participant. The Commission is not merely an arbitrator between a utility seeking a rate increase and any parties who happen to oppose it. Rather, the Commission is an investigator and regulator of the utilities and it may not rely on intervening parties to contest a rate increase or to challenge the evidence offered by the utility. *People ex rel. Hartigan v. Illinois Commerce Comm’n*, 117 Ill.2d 120, 135 (1987).¹

¹ Nothing in the Public Utilities Act requires any party other than the Commission and the utility seeking a rate increase to participate in a ratemaking proceeding. Thus, any participation by persons or groups opposing an

The People recommended in the AG Post-Hearing Brief that the Commission order the Company to provide detail in all *future* reconciliation dockets during the life of the pilot of 1) the effect of the Company's energy efficiency program on achieving its rate case margin revenues and rate case per customer revenues; 2) a description of the net impact Rider VBA surcharges and credits had on the Company's revenue streams on a monthly and annual basis for each customer class affected by the rider; and 3) detailed information on how the Company calculated its reported rate of return so that the reported numbers have meaning and clarity in a ratemaking context. In addition, the People recommended that the final order *in this* docket should clearly state in the body of the Order what the net impacts of the rider were on an annual and monthly basis for each customer class affected by the rider. AG Brief at 8.

The first three recommendations in particular are appropriate arguments to make in a post-hearing brief, given that they include a reference to the Commission's 2008 rate order, an interpretation of that order and argument relative to the Commission's rationale for adopting Rider VBA. Expert testimony was not needed to make these recommendations, and the People should not be criticized for making these arguments at the brief-writing stage. The fourth recommendation to the Commission – to clearly state in the body of the Order in this docket and future Rider VBA reconciliation dockets what the net impacts of the rider were on an annual and monthly basis for each customer class affected by the rider – is a reasonable appeal to the Commission to write a clear order that reflects some sort of attempt to analyze what is happening to customer bills as a result of Rider VBA. It is especially appropriate within the context of the Commission's rationale for approving Rider VBA: to fix the utilities' alleged failure to recover

increase is voluntary and purely fortuitous. It is possible that no person or entity will seek to intervene when a rate increase is sought; in other cases, those who intervene may lack the financial resources or the incentive to launch a vigorous challenge to all aspects of the increase. (See [Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Com. \(D.C.Cir.1971\), 449 F.2d 1109, 1118.](#)) Requiring intervenors to establish unreasonableness is therefore no substitute for requiring proof of reasonableness. *Hartigan*, 117 Ill.2d at 135-136.

“margin revenues” in the face of alleged per customer revenue declines. It is likewise appropriate given the Illinois Supreme Court’s declaration that the Commission “is an investigator and regulator of the utilities.” *Hartigan*, 117 Ill.2d at 135.

The Proposed Order’s criticisms of the AG in this regard should be stricken from the Commission’s final Order in accordance with the proposed language provided later in this brief.

EXCEPTION NO. 2: Assessing the Impact of Rider VBA on Customer Rates and Company Revenue Streams, Within the Context of the Commission’s Rationale for Adopting Rider VBA, Is Relevant to this Proceeding.

At page 9, the Proposed Order asserts that “the AG provides no full explanation or analysis for its recommendations nor has it shown that these proposals are relevant and material to the instant proceeding.” PO at 9. The People respectfully disagree. As noted in the AG Post-Hearing Brief, the Commission justified its unorthodox approval of Rider VBA by concluding that per customer revenue streams were decreasing to the detriment of the companies:

The record in this case persuades the Commission that Rider VBA is appropriate as it reflects the particulars of declining and variable customer usage patterns and the concomitant revenue recovery impacts for Peoples Gas and North Shore. In our view, this evidence of usage patterns and margin recovery fluctuations calls for a regulatory response.

2008 Rate Order at 150. In addition, the Commission cited the Companies’ proposal to initiate an energy efficiency program² as a second basis for approving Rider VBA, noting:

While the GCI parties fully support EEP, they pay no mind to what this means for the Utilities. When dutifully considered, however, the effects of the implementation of energy efficiency programs flow exclusively to the benefit of customers. This means that

² Both Peoples and North Shore Gas Company proposed an energy efficiency program as a result of the Companies’ agreement to propose the program in its next rate case, the result of the Company’s settlement with the People of the State of Illinois, the Environmental Law and Policy Center, the City of Chicago, the Cook County State’s Attorney’s Office, the Utility Workers Union of America, AFL-CIO and UWUA Local Union No. 18007 in ICC Docket No. 06-0540, *WPS Resources Corporation, Peoples Energy Corporation, The Peoples Gas Light and Coke Company and North Shore Gas Company – Application pursuant to section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, to enter into an agreement with affiliated interest pursuant to Section 7-101, and for such other approvals as may be required under the Public Utilities Act to effectuate the Reorganization* (“the Merger docket”).

efficiency strategies and improvements, by their very nature, will worsen the Utilities ability to recover margin revenues in the immediate future. Furthermore, unlike simple conservation activities, efficiency improvements have more long-term sustained effects. In this regard, the Utilities are correct in arguing that our approval of Rider EEP will exacerbate the problem that Rider VBA I intended to address.

ICC Docket Nos. 07-0241, 07-0242 (cons.), 2008 Rate Order at 151. Accordingly, the alleged need for Rider VBA, in the Commission's opinion, was premised on their conclusions that Rider VBA would help offset revenues losses associated with alleged declining and variable (per customer) energy usage in general, as well as specific declines associated with customer participation in the Companies' new energy efficiency programs. AG Brief at 3-4.

Any explanation as to how customers fared under Rider VBA, which would provide some insight into what was happening with per customer revenue levels, is missing from North Shore's submitted testimony and the Proposed Order. As noted in the AG Brief, it is only upon reading the transcript that the Commission learns in any clear way that in order to derive that information, one must examine page 2 of 4 in Ms. Grace's Exhibit 1.1, line 7, which provides the Rate Case Margin figure minus the product of the Actual Margin divided by the Actual Customers times the Rate Case Customer number. Ex. NS VG-1.1, p. 2 of 4, line 7. AG Brief at 6-7. North Shore's simply failed to provide the information in any kind of straightforward, accessible manner so that the Commission can do its job: to "*be ever vigilant in our oversight of the deployment and impact of this new Rider.*" 2008 Rate Order at 152. That promise is rendered meaningless by the Proposed Order's failure to require the filing of relevant information by the Company.

The Proposed Order also sides with North Shore's assessment that the AG criticisms of the evidence presented and the AG's discussion of various intervenors' arguments against Rider VBA in the prior rate case veer close to "a collateral attack" on the rider. PO at 10. This criticism

is in error. First, as mentioned previously, Rider VBA was and continues to be a very controversial rider. An appeal of the Commission's approval of Rider VBA is currently pending before the First District Appellate Court.³ The Commission specifically recognized the unorthodox nature of their decision by noting:

Furthermore, given the unique nature of Rider VBA, the Commission deems it appropriate to implement VBA as a four year pilot program. The Commission further accepts the Utilities' suggestion that a general rate case needs to be filed if Rider VBA is to become effective upon the conclusion of the pilot program. *The Commission is mindful of the concerns expressed by Staff, the AG, and City-CUB. Given that this decoupling mechanism presents a case of first impression for the Commission, we will be ever vigilant in our oversight of the deployment and impact of this new Rider.*

2008 Rate Order at 152 (emphasis added). Moreover, Rider VBA adjusts customer rates on a monthly basis without regard to whether revenues collected from new customers or offsetting decreases in operational and capital expenses ameliorate any alleged declines in per customer revenues. Accordingly, there is a very real possibility that ratepayers could be assessed surcharges under Rider VBA that are unnecessary to respond to "the particulars of declining and variable customer usage patterns and the concomitant revenue recovery impacts for Peoples Gas and North Shore." 2008 Rate Order at 150.

The People highlight these facts not to challenge the rider in this docket (the People have pursued that right in the appellate court), but to provide meaningful information to the Commission, which has promised to closely monitor both "the deployment and impact" of Rider VBA. Given the evidentiary presentation provided by the Company, however, both the Commission – and more importantly, ratepayers – are left in the dark as to the net effect Rider VBA has on customers' pocketbooks or Company coffers. The People's recommendations are meant to shed some light on the Rider VBA "deployment and impact" in light of the

³ The People, CUB and the City of Chicago appealed the Commission's approval of Rider VBA in *People of the State of Illinois v. Illinois Commerce Comm'n*, 1-08-2055 *et al.* The case is fully briefed.

Commission's conclusions in the 2008 Rate Order as to why Rider VBA was purportedly needed.

Finally, The Proposed Order's rationale for rejecting the People's recommendations also highlights the problem with riders in general. Rider tariffs permit significant changes in customer rates with minimal evaluation of whether those rate changes are reasonable. The annual reconciliation proceeding associated with a rider is viewed as a mere "mathematical exercise." PO at 9. With the exception of the prudence evaluation associated with gas purchases, no analysis accompanies the rate changes triggered by a rider tariff to determine whether that single-issue adjustment to rates is needed or appropriate.

Accordingly, the Proposed Order's rejection of the specific recommendations for both this Order and future reconciliation orders should be overruled. Specific language revising this finding is provided later in this Brief.

EXCEPTION NO. 3: The Company Should Be Required To File Rate of Return Information on a Ratemaking Basis That Clearly Describes the Methodology Used to Derive the Rate of Return Figures.

The Proposed Order rejects the People's recommendation that the rate of return reports in future reconciliation proceedings provide a more detailed explanation from the Company as to how that return was derived. PO at 10. The only rationale provided for rejecting this reasonable recommendation is that "Staff has made no recommendations on the matter." *Id.* With all due respect to Staff (who otherwise supplied two excellent recommended changes to both the Rider VBA tariff and the annual reconciliation calculation), the mere fact that Staff failed to comment on the Company's rate of return calculation is not a legitimate basis for a finding that the AG recommendation should be rejected. Why wouldn't the Commission want a better understanding

of how the reported return numbers were calculated? The Proposed Order never addresses that question.

As noted in the People's Brief, there is no explanation from the Company as to whether the return was calculated on a ratemaking basis. Stated another way, the Commission lacks specific information as to whether the results of utility operations were adjusted to reflect established Commission ratemaking principles (for example, excluding a portion of incentive compensation). In addition, the record is unclear as to whether the net income available for common equity was then calculated by deducting interest (calculated by multiplying the approved weighted cost of debt by the average rate base for the relevant period) from the adjusted operating income, and then calculated by dividing the net income available for common equity by the common equity applicable to rate base (calculated by multiplying the approved common equity ratio by the average rate base for the relevant period). Such information would place the rate of return figures reported by the Company in ratemaking context, consistent with principles applied by the Commission when it evaluates a Company's revenue requirement needs in a rate case.

As noted above, there are real, revenue and rate impacts associated with Rider VBA. The rate of return report filed by Staff includes only a perfunctory listing of the Company's returns, as calculated by the Company. The 2008 Rate Order sought information about the effect of Rider VBA on the Company's rate of return. 2008 Rate Order at 152. If that directive is to have any meaning, the Commission must understand how those reported numbers were derived. In addition, the Commission should assess whether actual, total net revenues from the affected classes exceeded the total forecasted revenue levels established by the Company as a result of the 2008 Rate Order. The information will help the Commission determine whether Rider VBA is,

in fact, necessary to address the Commission's presumption that some sort of regulator fix was needed.

As such, the Proposed Order's rejection of this common-sense recommendation is inexplicable, and certainly not supported by sufficient analysis.

(MECHANICAL) EXCEPTION NO. 4:

The Proposed Order mistakenly refers to Rider VBA as Rider ICR in the Commission Analysis and Conclusion. PO at 9-10. This correction is incorporated in the Proposed Language below:

PROPOSED LANGUAGE:

In accordance with the arguments presented above, the People propose that the following changes be made to the Proposed Order, beginning with the **Commission Analysis and Conclusion** at page 9:

I. COMMISSION ANALYSIS AND CONCLUSION

Through the testimony developed on record, North Shore has agreed with Staff's recommendations including proposed tariff changes and both parties urge that the Commission act quickly in these premises. More importantly, we are made to understand that there are no disputes between Staff and the Company in terms of the accuracy of the reconciliation statement.

Against this showing, there are a number of recommendations presented by the AG that have merit, and are particularly appropriate given the Commission's rationale for adopting Rider VBA in ICC Docket Nos. 07-0241, 07-0242. Our approval of Rider VBA in that Order was premised on our conclusions that Rider VBA would help offset revenues losses associated with alleged declining and variable (per customer) energy usage in general, as well as specific declines associated with customer participation in the Companies' new energy efficiency programs. ICC Docket Nos. 07-0241, 07-0242 (cons.), 2008 Rate Order at 150-151. We also noted "the unique nature of Rider VBA", and the concerns expressed by Staff, the AG and City/CUB in that docket, in our conclusion to approve Rider VBA on a limited, four-year pilot basis. *Id.* at 151. We further noted:

Given that this decoupling mechanism presents a case of first impression for the Commission, we will be ever vigilant in our oversight of the deployment and impact of this new Rider.

2008 Rate Order at 152 (emphasis added).

The testimony and Draft Proposed Order filed by the Company provide no substantive discussion of the “deployment and impact” of the new rider. Absent a calculator and a reading of the transcript, no person can look at the Draft Proposed Order and determine what the net impact of Rider VBA was on customers and the Company. Moreover, the Company’s testimony, exhibits and the Proposed Order provide no detail of 1) the effect of the Company’s energy efficiency program on achieving its rate case margin revenues and rate case per customer revenues; 2) a description of the summary impact Rider VBA surcharges and credits had on the Company’s revenue streams; and 3) detailed information on how the Company calculated its reported rate of return so that the reported numbers have meaning and clarity. The Company to date has done no analysis to determine whether per customer usage for each customer class has decreased since Rider VBA was first implemented in terms of assessing the need or value of Rider VBA (given the Commission’s assumption that such phenomena was occurring and necessitated Rider VBA). Tr. at 52-54. It is unclear from the record whether the Company has made any assessment of the effect on per customer margin revenues of the Company’s energy efficiency program.

Company witness Valerie Grace provided direct and rebuttal testimony in this case detailing the “Reconciliation Adjustment” components that apply to the 10-month period of March 1, 2008 through December 31, 2008. The Reconciliation Adjustment is calculated annually for each Rate 1 and Rate 2 service classification that reflects the amount due the Company or the customer arising from the reconciliation of rate case margin revenues and actual margin revenues received, plus revenues arising from application of the Effective Component, which is defined in the Rider VBA tariff. See PGL Ex. VG-1.1, pp. 55-58, ICC Docket No. 07-0241, 07-0242; PGL Ex. VG-2.1. Ultimately, a “Factor O” or dollar amount to be refunded to or collected from customers as a result of the reconciliation is produced. See ICC Ex. 1.0, Schedule 1.1.

While this gives the Commission specific information about the reconciliation amounts going forward, it in no clear way sheds light on what the *net* impact each month and annually was for sales and transportation customers in the Rate 1 and Rate 2 classes. Upon cross-examination, Ms. Grace confirmed that customers in all four rate classes received an overall refund for the 10-month period. Tr. at 73. Reconciliation numbers were then updated, based upon Staff witness Dianna Hathhorn’s recommendation to include actual numbers from November and December of 2008 in the Reconciliation Calculation going forward. See ICC Staff Ex. 1.0 at 4-5. Missing from the record, too, is any straightforward listing of the monthly net impacts of the rider on affected customers.

The fact that the Reconciliation Adjustment produces a “Factor 0” surcharge for three of the four customer groups tells neither the Commission or the Company’s customers anything about the net impacts of Rider VBA. All of this could have and should have been explained in testimony by the Company so that the Commission has the information it needs to assess the pilot rider.

In addition, the 2008 Rate Order sought information about the effect of Rider VBA on the Company's rate of return. 2008 Rate Order at 152. While the Company submitted information to the Staff about its rate of return, which Ms. Hathorn included as an exhibit to her testimony, there is no explanation from the Company as to whether the return was calculated on a ratemaking basis. Stated another way, the Commission lacks specific information as to whether the results of utility operations were adjusted to reflect established Commission ratemaking principles (for example, excluding a portion of incentive compensation). In addition, the record is unclear as to whether the net income available for common equity was then calculated by deducting interest (calculated by multiplying the approved weighted cost of debt by the average rate base for the relevant period) from the adjusted operating income, and then calculated by dividing the net income available for common equity by the common equity applicable to rate base (calculated by multiplying the approved common equity ratio by the average rate base for the relevant period). Such information would place the rate of return figures reported by the Company in ratemaking context, consistent with principles applied by the Commission when it evaluates a Company's revenue requirement needs in a rate case.

The 2008 Rate Order sought information about the effect of Rider VBA on the Company's rate of return. 2008 Rate Order at 152. If that directive is to have any meaning, the Commission must understand how those reported numbers were derived. In addition, the Commission should assess whether actual, total net revenues from the affected classes exceeded the total forecasted revenue levels established by the Company as a result of the 2008 Rate Order. The information will help the Commission determine whether Rider VBA is, in fact, necessary to address the Commission's presumption that some sort of regulator fix was needed.

The bottom line is that the testimony submitted by the Company lacks sufficient detail for the Commission to have a clear understanding of how Rider VBA is working or whether the assumptions that led the Commission to approve the decoupling rider, in fact, hold true. While the People recognize that this reconciliation proceeding marks the end of only one of the four years in the pilot, it makes no sense to wait until the end of the pilot to assess the effects of Rider VBA in conjunction with the rider's stated goals. In addition, the sparse record in no way assists the Commission in remaining "ever vigilant" in its oversight of the pilot tariff.

Rider VBA adjusts per therm usage charges, up or down, based on whether actual per customer usage levels by class fell below or exceeded the benchmark level the Company forecasted for a particular month. If actual usage levels exceeded the established benchmark level (derived from the revenue requirement approved in the last rate order), customers received credits. If actual usage levels fell below the benchmark levels North Shore set for each affected customer class, customers received surcharges. Company witness Valerie Grace explained that, beginning in April 2008, North Shore submits a statement to the Commission each month ("Filing Month"), showing the adjustments to be effective for the next month ("Effective Month") based on an analysis of actual data for the prior month ("Reconciliation Month"). Thus, there is a two month difference between the Reconciliation Month and the Effective Month under

Rider VBA. Analysis by the Commission of usage patterns through Rider VBA should occur in this and every reconciliation docket that occurs between now and the end of the pilot.

Did the Rate 1 sales (bundled) residential customer class pay more in 2008 than they otherwise would have because of Rider VBA? Why did Rate 1 transportation customers (who buy their gas from alternative retail gas suppliers) receive a credit in some months under Rider VBA when Rate 1 bundled sales customers were assessed a surcharge? How, has Rider VBA affected the Company's ability to maintain its "margin revenue level," the phrase first introduced to the Commission and the ALJs overseeing the 07-0241, 07-0242 rate case?

The Commission agrees with the AG's that the Company must provide detail in all future reconciliation dockets during the life of the pilot of 1) the effect of the Company's energy efficiency program on achieving its rate case margin revenues and rate case per customer revenues; 2) a description of the net impact of Rider VBA surcharges and credits had on the Company's revenue streams on a monthly and annual basis for each customer class affected by the rider; and 3) detailed information on how the Company calculated its reported rate of return so that the reported numbers have meaning and clarity in a ratemaking context. In addition, the Company is directed in its Factor O compliance filing to clearly state what the net impacts of the rider were on an annual and monthly basis for 2008 for each customer class affected by the rider.

~~Against this showing, there are a number of recommendations coming in late from the AG. This concerns us because the matter has been pending since February and there was ample opportunity for the AG to present testimony in the matter or otherwise set out its recommendations in a timely manner. When proposals come at the eleventh hour, other parties are left unable to effectively debate the particulars and yet it is this type of exchange that best informs the Commission. The AG implicitly recognizes this infirmity and for this reason urges the acceptance of its recommendations on a going-forward basis. But, even at that, the AG's recommendations are not supported. In other words, the AG provides no full explanation or analysis for its recommendations nor has it shown that these proposals are relevant and material to the instant proceeding.~~

~~That said, the Company has been able to muster some response to the recommendations. At bottom, we agree with the Company that this proceeding is in the nature of a mathematical exercise intended to confirm that North Shore has correctly performed and implemented the calculation required under Rider VBA. It is the accuracy of the reconciliation that is squarely at issue and that concerns the Commission. In this respect and on record in this proceeding, we observe that the evidence showing the accuracy of that statement is uncontested.~~

~~Given the nature of its recommendations and other arguments, the Commission believes that the AG misapprehends the purpose and scope of this reconciliation proceeding. As such, the AG confuses the singular matter at hand with an overall study and assessment of the Rider ICR pilot program that would require a different set of~~

~~factors and evidence. Moreover, we are not convinced that the scope of this manner of proceeding, identified by its caption and consistent with the tariff, would ever allow for such a different undertaking. For example, there is nothing in a reconciliation that lends itself to an account of energy efficiency program impacts. Merely because the Commission recognized the implementation of such programs as one factor in its approval of Rider VBA does not mean that the reconciliation proceeding is open to a consideration of tangential matters that bear no materiality to what is at hand. The AG has not convinced us otherwise. Stated another way, the AG has not shown with any specificity how its recommendation assists in determining the accuracy of the reconciliation statement.~~

~~We observe the AG spend considerable amounts of time reminding the Commission of the challenges to our adoption Rider VBA and to its workings. In so doing, however, the AG is neither complete in relating the features of this mechanism nor does the AG acknowledge that it took no advantage of the opportunity to propose changes for the Rider ICR tariff at the relevant time. In any event, we agree with the Company that certain of the AG's arguments veer close to mounting a collateral attack on Rider ICR that is both improper and of no value to our work in this proceeding.~~

~~The AG fails to consider that Staff's review and testimony along with the Company's record filings is an integral part of our vigilant oversight of Rider ICR's operations. The process at hand was viewed by the Commission as an important safeguard at the time we adopted this Staff-recommended annual reconciliation and we find that Peoples Gas has complied in initiating the instant proceeding as required. Just as the Company recognizes, this proceeding is intended to protect customers by ensuring that the charges and credits implemented under Rider VBA were accurately deployed such that North Shore does not over- or under-collect on its rate case margin. And, the reconciliation adjustment is the mechanism that implements the results of the review. This is where the Commission's focus lies.~~

~~In terms of the present order, the AG does not contend that certain evidence, i.e., impacts of the rider on an annual and monthly basis for each customer class subject to the rider, is not in the record. Indeed, the AG cannot so claim. See Statement at pages 3, 4, PGL Ex. VB-1.1 All that we understand the AG to argue is that such evidence was not clearly set out in the testimony. Given that this information is not a factor in the calculation, we see no merit to the AG's argument or its recommendation.~~

~~There is yet another matter for the Commission to consider. We observe that the Order in Docket 07-0241/0242 (Consol) did not expressly require the informational report about North Shore's rate of return to be provided in the reconciliation proceeding. Nevertheless, Staff has chosen to make its report here and North Shore has not objected. The Commission accepts this presentation. Going forward, however, we note that the AG asks that there be a more detailed presentation on the methodology used by the Company to calculate its reported rate of return. Noting that Staff has made no recommendations on the matter, we will not consider this request that lacks support in the record.~~

The evidence presented by Staff and the Company leads the Commission to approve the reconciliation statement and the recommendations set out by Ms. Hathhorn. For the reasons stated above, we ~~reject~~ adopt the arguments and the recommendations of the AG which ultimately will ensure that future reconciliation proceedings meaningfully assess both “the deployment and impact” of this new rider. ~~have no bearing on the matter at hand, i.e., the accuracy of the reconciliation statement.~~

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) The North Shore Gas Company is an Illinois corporation engaged in the distribution of natural gas to the public in the State of Illinois and, as such, is a public utility within the meaning of the Public Utilities Act;
- (2) the Commission has jurisdiction over The North Shore Gas Company and of the subject matter of this proceeding;
- (3) the recitals of fact and the conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) The North Shore Gas Company has filed a reconciliation of rate case margin revenue and actual margin revenue under Rider VBA, Volume Balancing Adjustment, of its Schedule of Rates, for the period March 1, 2008, through December 31, 2008;
- (5) Staff filed an adjusted presentation of the reconciliation that included revenues for the November and December 2008 Reconciliation Months that were billed, respectively, in the January and February 2009 Effective Months;
- (6) The North Shore Gas Company should implement Factor O refunds to be collected (refunded) of \$2,421,798.71 for S.C. No. 1 sales; (\$32,571.92) for S.C. No. 1 transportation; \$654,484.45 for S.C. No. 2 sales; and North Shore Gas Company should implement Factor O refunds to be collected (refunded) of \$332,626.17 for Service Classification (S.C.) No. 1 sales; (\$5,591.67) for S.C. No. 1 transportation; \$51,469.40 for S.C. No. 2 sales; and \$104,891.75 for S.C. No. 2 transportation if the amounts are not subsumed into an RA previously filed with the Commission;
- (7) the Commission approves Staff's presentation of North Shore Gas Company's reconciliation statement as reflected in Appendix A (Staff Schedules 1.1 and 1.2) to this Order if the amounts on line 8 are not subsumed into an RA previously filed with the Commission;

- (8) North Shore Gas Company should revise Rider VBA to change the reconciliation filing date from the last day of February to the last day of March and make other changes to Rider VBA required by the change in filing date;
- (9) North Shore Gas Company should work with the Commission Staff to revise the procedures for phasing out the final reconciliation adjustments, ending Rider VBA in a more efficient and effective manner if the pilot program is not implemented on a permanent basis;
- (10) North Shore Gas Company's return on equity for 2008 including Rider VBA results was 6.66% and excluding Rider VBA results was 7.22%, and its rate of return for 2008 including Rider VBA was 6.08% and the rate of return excluding Rider VBA was 6.42%;
- (11) the Company is hereby ordered to provide detail in all future reconciliation dockets during the life of the pilot of 1) the effect of the Company's energy efficiency program on achieving its rate case margin revenues and rate case per customer revenues; 2) a description of the net impact of Rider VBA surcharges and credits had on the Company's revenue streams on a monthly and annual basis for each customer class affected by the rider; and 3) detailed information on how the Company calculated its reported rate of return so that the reported numbers have meaning and clarity in a ratemaking context. In addition, the Company is directed in its Factor O compliance filing to clearly state what the net impacts of the rider were on an annual and monthly basis for 2008 for each customer class affected by the rider;
- (12) the Company is hereby ordered to file revenue information so that the Commission can assess whether actual, total net revenues from the affected classes exceeded the total forecasted revenue levels established by the Company as a result of the 2008 Rate Order; and.
- (13) all motions, petitions, objections or other matters in this proceeding which remain undisposed of should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED that, consistent with Appendix A of this Order, North Shore Gas Company implement Factor O refunds to be collected (refunded) of \$332,626.17 for Service Classification (S.C.) No. 1 sales; (\$5,591.67) for S.C. No. 1 transportation; \$51,469.40 for S.C. No. 2 sales; and \$104,891.75 for S.C. No. 2 transportation, with such adjustments included in the Reconciliation Adjustment if the amounts are not subsumed into an RA previously filed with the Commission;

IT IS FURTHER ORDERED that, within fifteen days of the date of this Order, The North Shore Light and Coke Company file to revise Rider VBA to change the

reconciliation filing date from the last day of February to the last day of March and make other changes to Rider VBA required by the change in filing date;

IT IS FURTHER ORDERED that The North Shore Light and Coke Company work with the Commission Staff to revise the procedures for phasing out the final reconciliation adjustments, ending Rider VBA in a more efficient and effective manner if the pilot program is not implemented on a permanent basis; and

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Conclusion

WHEREFORE, for the above stated reasons, the People request that the Commission enter an order in accordance with the recommendations described above.

Respectfully submitted,

People of the State of Illinois
LISA MADIGAN, ATTORNEY GENERAL

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