

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

North Shore Gas Company	)	
	)	
	)	
Petition Pursuant to Rider VBA	)	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	)	

**BRIEF IN REPLY TO EXCEPTIONS OF  
NORTH SHORE GAS COMPANY**

Pursuant to Section 200.830 of the Illinois Commerce Commission's ("Commission") Rules of Practice and the schedule established by the Administrative Law Judge, North Shore Gas Company ("North Shore"), files its Brief in Reply to Exceptions in the above-captioned proceeding. This Brief is in reply to the brief on exceptions of the Attorney General of the State of Illinois ("AG").

The AG's brief on exceptions ("BoE") generally repeats arguments already included in its initial brief that North Shore addressed and refuted in its reply brief. Accordingly, this reply to exceptions will be limited.

**I. Overview**

The AG either does not respond or responds inadequately to the legal deficiencies in its position, namely, that its arguments are beyond the scope of this proceeding; it is seeking to expand the scope of this proceeding without notice to the parties; it bears the burden of proof, and failed to meet that burden, for positions it is advancing; and its continued opposition to Rider VBA is before an Illinois Appellate

Court, not this Commission, and repeating its arguments to this Commission about the decision in North Shore's 2007 rate case<sup>1</sup> are barred by collateral estoppel. See North Shore Rep. Br. at 2-4.

## **II. The AG Does Not Dispute the Accuracy of the Reconciliation Statement**

The purpose of this case is to determine the accuracy of North Shore's reconciliation statement. The AG does not question the accuracy of the statement, as revised by the Commission Staff. AG BoE at 1. There is nothing more the Commission need or should consider in this proceeding. Colorful adjectives and statements<sup>2</sup> are not legal support for expanding the scope of the proceeding, nor are they evidence in support of the AG's recommendations.

The AG's recommendations have no place in this proceeding. Whatever the merit (or lack of merit) of the AG's recommendations, the AG improperly and belatedly introduced them in a proceeding that is not a general review of the pilot program that the Commission approved for Rider VBA. Likewise, future reconciliation cases will not be such a review, as the Commission-approved tariff describes the specific purpose of those cases. The AG introduced and cited no evidence supporting its proposals, and the record has no support for its proposals.

The caption of this case is "Petition Pursuant to Rider VBA of Schedule of Rates for Gas Service to Initiate a Proceeding to Determine the Accuracy of the Rider VBA Reconciliation Statement." North Shore filed to initiate this proceeding because Rider

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<sup>1</sup> *In re North Shore Gas Co., et al.*, ICC Docket Nos. 07-0241/07-0242 (Cons.) (Order Feb. 5, 2008) ("*North Shore/Peoples 2007*").

<sup>2</sup> For example, the AG uses the terms "controversial" (AG BoE at 1, 3 and 7); "unorthodox ratemaking decision" (*Id.* at 2); and "unorthodox approval" (*Id.* at 5) to describe Rider VBA. Also, the AG's statement that "it also cannot be disputed that the Commission's adoption of Rider VBA was an unorthodox ratemaking decision ... ." (AG BoE at 2) is contrary to extensive evidence summarized in the rate order. *North Shore/Peoples 2007* at 136-138. North Shore demonstrated that there is nothing "unorthodox" about decoupling.

VBA specifies that, annually, North Shore shall file with the Commission a statement of reconciliation adjustment. Rider VBA states that: “At this same time, the Company shall also file a petition with the Commission seeking initiation of an annual reconciliation to determine the accuracy of the statement.”<sup>3</sup> The purpose of this proceeding is to determine “the accuracy of the statement.” The “statement” refers to the statement of the reconciliation adjustment. Very simply, the purpose and scope of this case are limited, and the AG’s efforts to expand it are contrary to law.

### **III. The AG Exceptions Should Be Rejected**

The AG argues that it need not provide testimony to support its recommendations. AG BoE at 3-5. The legal authority that the AG cited is inapplicable to the issues in this proceeding. The AG is not making legal arguments. Instead, the AG is asking the Commission to impose reporting requirements for which it offers no record support, either its own or another witness’ testimony. Citing the Commission’s Order from North Shore’s rate case approving Rider VBA does not remove the need for record support or expand this proceeding beyond a review of the reconciliation statement. North Shore filed a reconciliation statement pursuant to the terms of an approved rider. It is not asking for approval of the rider. The AG is not contesting what North Shore filed. The allusion to “illegal or flawed” proposals (AG BoE at 3) is, despite the AG’s claims to the contrary (AG BoE at 7), a collateral attack on the Commission’s approval of Rider VBA. The Commission rejected the AG’s arguments that Rider VBA is “illegal or flawed.” The proposal in this proceeding is to review a reconciliation statement. The AG does not contest that statement (AG BoE at 1), much less claim it is “illegal or flawed.” The Proposed Order properly criticized the AG for making arguments

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<sup>3</sup> The relevant text from the tariff is shown in Exhibit NS VG-2.1, page 5 of 5.

that lacked record support and for commenting on the AG's decision not to file testimony in support of its proposals. The AG's first exception should be rejected.

The AG's second and third exceptions are predicated on its improper expansion of the scope of this proceeding and its failure to provide record support for the recommendations. North Shore's Reply Brief comprehensively addressed these problems, and this reply will not repeat those arguments. The AG's second and third exceptions should be rejected.

WHEREFORE, North Shore Gas Company respectfully submits its Brief in Reply to Exceptions in this proceeding.

Respectfully submitted,

North Shore Gas Company

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Dated at Chicago, Illinois  
this 28th day of January, 2010

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**NOTICE OF FILING AND CERTIFICATE OF SERVICE**

To: Service List

PLEASE TAKE NOTICE that on this 28th day of January, 2010, I have filed with the Chief Clerk of the Illinois Commerce Commission, the Brief in Reply to Exceptions of North Shore Gas Company, a copy of which is hereby served upon you by e-mail, messenger, overnight courier and/or United States Mail on January 28, 2010.

/S/ MARY KLYASHEFF  
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