

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company :
 :
Petition Pursuant to Rider VBA of Schedule : **09-0123**
of Rates for Gas Service to Initiate a :
Proceeding to Determine the Accuracy of :
the Rider VBA Reconciliation Statement. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On February 27, 2009, North Shore Gas Company (“North Shore” or “the Company”) filed a Petition to initiate an annual reconciliation proceeding to determine the accuracy of the statement that North Shore submitted pursuant to Rider VBA of its Schedule of Rates for Gas Service (“Rider VBA”). With its pleading, North Shore also filed the direct testimony and exhibit of Valerie H. Grace, Manager, Gas Regulatory Services.

Pursuant to due notice, status hearings were held on March 23, 2009 and on November 12, 2009. Appearances were entered by counsel on behalf of North Shore, the Staff, and the Attorney General. At the March 23, 2009 status hearing, the Administrative Law Judge granted the intervention on behalf of the Attorney General of the State of Illinois (“Attorney General”) or (“AG”).

An evidentiary hearing was held on December 17, 2009. Admitted into the record was the direct and rebuttal testimony of Valerie H. Grace on behalf of North Shore. Also admitted was the direct testimony of Dianna Hathorn, Accountant in Accounting Department of the Financial Analysis Division, on behalf of the Commission Staff. At the close of the hearing on December 17, 2009, the record was marked “Heard and Taken.”

On December 22, 2009, Peoples Gas filed a draft proposed order. Thereafter, on January 6, 2010, the AG filed an initial brief and comments on the draft proposed order. On January 11, 2010, Peoples Gas filed a reply brief. No brief was filed by Staff.

On January 15, 2010, the Administrative Law Judge issued a Proposed Order. The AG filed a brief on exceptions on January 22, 2010 as did Staff. Peoples Gas filed a reply to exceptions brief on January 28, 2010. The Commission considers the whole of the record and the arguments presented.

II. THE EVIDENCE AND POSITIONS

A. North Shore's Evidence and Position

North Shore's Schedule of Rates for Gas Service includes Rider VBA, Volume Balancing Adjustment. The Company explains that the Commission approved Rider VBA by its Order dated February 5, 2008 in Dockets 07-0241 and 07-0242 (Consl.). Rider VBA became effective February 14, 2008. North Shore witness Grace explained that North Shore submits a statement to the Commission each month ("Filing Month"), beginning in April 2008, 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. Section C of the rider requires North Shore to file annually, no later than February 28 or 29, as applicable, a statement of the reconciliation adjustment ("RA") components that apply to the ten-month period beginning March 1. The first such filing was due February 27, 2009. Section D of the rider requires that North Shore, at the time it files its reconciliation statement, file a petition seeking initiation of an annual reconciliation to determine the accuracy of the statement. NS Ex. VG-1.0 at 3.

Ms. Grace stated that Rider VBA requires a reconciliation of revenues for a fiscal year ending December 31. This initial reconciliation reflects only a partial year as the first adjustments under Rider VBA were based on actual data for March 2008. The first reconciliation period is March 1, 2008, through December 31, 2008. *Id.*

Over the 10-month period beginning March 1, 2009, Ms. Grace stated that North Shore will refund \$341,742.40 to Service Classification ("S.C.") No. 1 sales customers and \$16,566.40 to S.C. No. 1 transportation customers through factor RA. *Id.* at 4; NS Ex. VG-1.1. The RA components for S.C. No. 1 sales and transportation customers are credits of .28 cents and .31 cents per therm, respectively. NS Ex. VG-1.0 at 4-5; NS Ex. VG-1.1.

Over the 10-month period beginning March 1, 2009, Ms. Grace stated that, North Shore will refund \$35,473.91 to S.C. No. 2 sales customers and \$14,637.01 to S.C. No. 2 transportation customers through factor RA. NS Ex. VG-1.0 at 5; NS Ex. VG-1.1. The RA components for S.C. No. 2 sales and transportation customers are credits of .12 cents and .02 cents per therm, respectively. *Id.*

B. Staff's Evidence and Position

Commission Staff witness Hathhorn reviewed North Shore's reconciliation. She presented the 2008 reconciliation by adjusting factor VBAR (Rider VBA Revenues), and she recommended that the Commission adopt her presentation. Ms. Hathhorn set out two additional recommendations.

Ms. Hathhorn stated that her schedule showing the reconciliation adjustments to be determined in this proceeding is identical to North Shore's, except for factor VBAR. Staff Ex. 1.0 at 3-4; Sch. 1.1. Ms. Hathhorn explained that her presentation of factor VBAR includes revenues for the November and December 2008 Reconciliation Months

that were billed in the January and February 2009 Effective Months. She stated that her adjustment results from comparing ten months of rate case margin revenues with the same ten months of actual margin revenues. While the adjustment would correct itself over the four-year Rider VBA pilot period, Ms. Hathhorn stated that adjustments would be mismatched without her proposed adjustment. Staff Ex. 1.0 at 4-5; Sch. 1.2. The resulting Factor O, including interest, to be collected (refunded) would be \$332,626.17 for 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. Ms. Hathhorn recommended that the Factor O amounts be recovered (refunded) through the Effective Component of Rider VBA in full or amortized up to 11 months. Staff Ex. 1.0 at 8; Sch. 1.1. During the hearing, Ms. Hathhorn agreed that, if the Commission issued its Order prior to February 16, 2010, it would be acceptable for the Factor O amount to be included in the Reconciliation Adjustment, as proposed by North Shore. Tr. 27.

Ms. Hathhorn further recommended that the filing date for the annual reconciliation be moved from the last day of February to March 31. In her view, the current February filing date makes it impossible to calculate the adjustment including all revenues as of the end of February. As such, Ms. Hathhorn recommended that North Shore be ordered to file a tariff change within 15 days of a final order in this proceeding. Staff Ex. 1.0 at 6.

Additionally, Ms. Hathhorn recommended that the Commission order North Shore to work with the Staff to revise the procedures for phasing out the final reconciliation adjustments at the end of the pilot period, ending Rider VBA in a more efficient and effective manner. Staff's concern is that the last effective component filing would be no later than March 20, 2012, but the refund or collection of reconciliation adjustments could extend through March 2014 at a minimum. Ms. Hathhorn also stated that, if North Shore requests and the Commission approves the continuation of Rider VBA, this concern would be moot. *Id.* at 6-7.

Finally, Ms. Hathhorn described an annual report of North Shore's rate of return and the impact of Rider VBA for 2008. Ms. Hathhorn referenced a data response from North Shore and stated that the report shows that the return on equity for 2008 including the Rider VBA results was 6.66% and excluding the Rider VBA results was 7.22%, meaning that Rider VBA reduced the return on equity for North Shore by 0.56%. The report also shows that the rate of return for 2008 including Rider VBA was 6.08% and the rate of return excluding Rider VBA was 6.42%, meaning that Rider VBA reduced the rate of return for North Shore by 0.34%. *Id.* at 8.

C. North Shore Response to Staff

Ms. Grace stated that North Shore generally accepts Ms. Hathhorn's recommendations. First, Ms. Grace testified, North Shore does not oppose adoption of her presentation of the reconciliation. Ms. Grace recommended, however, that North Shore include the resulting Factor O in the reconciliation adjustment ("RA") and not the Effective Component. Second, Ms. Grace testified, North Shore agrees to change the date of the annual reconciliation adjustment filing from the last day of February to March 31. According to Ms. Grace, however, this change requires some additional changes to

Rider VBA. Third, Ms. Grace confirmed that North Shore agrees to work with the Staff on procedures to phase out Rider VBA if it is not made permanent after the initial four-year pilot program period with Ms. Grace also noting that Rider VBA currently includes language that will allow, if necessary, a timely phase-out of the pilot program. NS Ex. VG-2.0 at 2.

Ms. Grace explained that Ms. Hathhorn's presentation includes revenue amounts billed under Rider VBA ("VBAR") for January and February 2009. She said that North Shore did not include these amounts in its presentation because, under its current tariff, these amounts would have been included as VBAR amounts in the annual reconciliation for 2009, which would be filed in February, 2010 and billed to customers effective March 1, 2010. To North Shore, however, Ms. Hathhorn's presentation is acceptable with one caveat, namely, if the Commission's order is issued after the next reconciliation is filed, Ms. Hathhorn's presentation would be moot as her recommended Factor O amounts would be subsumed in the RA filed no later than the last day of February 2010 and billed to customers effective March 1, 2010. *Id.* at 2-3.

Ms. Grace stated that the Factor O should be included in the RA and not the Effective Component, as recommended by Ms. Hathhorn. She explained that Rider VBA includes Factor O amounts in the RA formula, thereby allowing any Factor O amounts to be billed to customers in the RA over a 10-month period. Ms. Hathhorn's proposal does not consider the ramifications of inclusion in the Effective Component. Including Factor O amounts in the Effective Component would shift such amounts into the fiscal year 2010 annual reconciliation and the resulting RA that would be billed beginning in 2011, thereby reversing the entire adjustment amount instead of accomplishing the timelier matching of amounts recommended by Ms. Hathhorn. Ms. Grace stated that her proposal to include Factor O in the RA would ensure that these amounts are fully and accurately billed to customers in 2010. *Id.* at 3-4.

Ms. Grace stated that North Shore agrees to move the reconciliation filing from the last day of February to the last day of March. She stated that this requires some additional changes to Rider VBA and included revision-marked tariff sheets to show the proposal if the Commission order is issued by February 16, 2010. *Id.* at 4; NS Ex. VG-2.1. Ms. Grace also presented tariff sheets that would apply if the Commission order is issued subsequent to February 16, 2010. NS Ex. VG-2.2. According to Ms. Grace, if the Commission issues an order after February 16, North Shore would be in the process of preparing its reconciliation filing for 2009 pursuant to the current terms of Rider VBA. It would have limited time to prepare and make a compliance filing that would delay the filing of the annual reconciliation to March 31. If the order timing is such that North Shore has submitted its annual reconciliation filing for 2009, additional tariff revisions would be needed to redefine VBAR to include the January and February amounts for 2010 and January and February for 2011 to fully implement Ms. Hathhorn's recommendations. NS Ex. VG-2.0 at 4-5. Finally, Ms. Grace stated that North Shore agrees to work with Staff to revise the procedures for phasing out the final reconciliation adjustments.

III. FURTHER ARGUMENTS AND POSITIONS

A. The AG's Arguments and Positions

The AG submitted no testimony in this proceeding. Nor did the AG file any pleadings prior to the hearing. But, the AG did file a Post-Hearing brief setting out recommendations both for the order in this case and proposals for future year proceedings.

The AG recognizes that this proceeding is the first reconciliation of North Shore's Rider VBA or Rider Volume Balancing Adjustment as was approved by the Commission in the Company's last rate case, for a four-year pilot program. In certain part, the AG repeats some of the arguments it made in opposing Rider VBA and notes that the Commission had acknowledged the controversy surrounding its adoption by stating that:

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).

In the AG's view, the annual reconciliation of Rider VBA provides the Commission with an annual opportunity to fulfill its stated goal of being ever vigilant in its oversight of the deployment and impact of this new Rider. The AG claims, however, that the instant record provides little foundation for that desired vigilance.

The AG criticizes the Company's testimony, exhibits and the draft order for providing no detail on: 1) the effect of the Company's energy efficiency program on achieving its rate case margin revenues and rate case per customer revenues; or 2) a description of the summary impact Rider VBA surcharges and credits had on the Company's revenue streams; or, 3) detailed information on how the Company calculated its reported rate of return so that the reported numbers have meaning and clarity. To date, the AG argues, the Company 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. Nor is it clear, the AG contends, whether North Shore has made any assessment of the effect on per customer margin revenues of the Company's energy efficiency program.

The AG urges the Commission to order North Shore to file such information as a part of the Company's annual reconciliation filings on a going-forward basis. In addition, the AG would have the order for this case clearly state what the net impacts of the rider

were on an annual and monthly basis for each customer class affected by the rider. Without such information, the AG argues, the Commission cannot perform the due diligence it promised would occur following its controversial implementation of Rider VBA.

The AG suggests that some of the evidence at hand was not presented in a clear and understandable fashion. For example, the AG points out, while the testimony of North Shore witness Grace gives the Commission specific information about the reconciliation amounts going forward, it does not clearly shed light on what the *net* impact was each month and annually for sales and transportation customers in the Rate 1 and Rate 2 classes. The AG contends that only by reading the transcript is made clear that in order to derive such 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, at 2 of 4, line 7. There and upon cross-examination, the AG notes, Ms. Grace confirmed that customers in all four rate classes received an overall refund for the 10-month period. Tr. at 73. Further, the reconciliation numbers were then updated, based upon what the AG considers to be Staff witness Hathhorn's excellent recommendation to include actual numbers from November and December of 2008 in the Reconciliation Calculation going forward. Yet, what the AG considers to be missing from the record is any straightforward listing of the monthly net impacts of the rider on affected customers. All of this and more, the AG asserts, could and should have been better explained in testimony by the Company so that the Commission has in one place all of the information it needs to assess the pilot rider.

The AG recognizes that this reconciliation proceeding marks the end of only one of the four years in the pilot. Nevertheless, the AG argues, 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. For these reasons, the AG urges the Commission to order the Company to provide detail in all future reconciliation dockets during the life of the pilot as to: 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 AG asks the final order produced in this docket 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.

B. North Shore's Response to the AG.

North Shore responds to the AG's arguments in its reply brief. At the outset, North Shore observes the AG to recommend that the Commission order North Shore to include certain additional information in its reconciliation filings. These proposals, North Shore points out, were first set out in the AG's post-hearing brief and those recommendations have nothing to do with the accuracy of the reconciliation statement.

According to North Shore, the recommendations that the AG urges are beyond the scope of the proceeding and no notice was ever provided of the AG's intent to expand the scope of the proceeding.

Given the timing and manner of the AG recommendations, North Shore states that neither it nor Staff had any opportunity to respond with evidence. Nor was there an opportunity to conduct discovery about these proposals. In the end, North Shore argues, it is limited to addressing the new recommendations in this reply brief.

To begin, North Shore addresses itself to the purpose and scope of this proceeding. North Shore notes Rider VBA to specify that, annually, North Shore shall file with the Commission a statement of reconciliation adjustment. It observes Rider VBA to state 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." The relevant text from the tariff, North Shore explains, as approved and on file with the Commission, is shown in Exhibit NS VG-2.1, page 5 of 5. North Shore points out that it filed the required petition on February 27, 2009. The instant proceeding resulting from that petition is the required annual reconciliation, and the purpose of this proceeding, North Shore asserts, is to determine "the accuracy of the statement." The "statement" refers to the statement of the reconciliation adjustment. This reconciliation, North Shore argues, is one of the "safeguards" that the Commission adopted "to protect ratepayers." Order at 152, Dockets 07-0241/07-0242 (consl). (February 5, 2008).

Rider VBA, North Shore explains, precisely and narrowly defines the purpose of this proceeding. Contrary to the AG's recommendations, the Company asserts, this proceeding is not about the effect of North Shore's energy efficiency programs on achieving rate case margins; or the net impact of Rider VBA on customer classes; or the calculation of the rate of return with and without Rider VBA. This proceeding, North Shore maintains, is to assess the accuracy of the reconciliation statement. In other words, it is fundamentally a mathematical exercise to confirm that North Shore correctly performed and implemented the calculations spelled out in Rider VBA. North Shore would have the Commission note that the AG submitted no evidence concerning the accuracy of the reconciliation statement and its initial brief likewise does not address the accuracy of the reconciliation statement.

In response to AG's recommendations, the Company begins by explaining that the reconciliation adjustments ("RA") are the products of a specific formula set forth in Rider VBA. It directs attention to NS Exs. VG-1.1 and VG-2.1 at 3 of 5 (wherein is provided the statement, and related tariff formula, respectively). The Company would have it be noted that the statement provides detailed data - both by month and by service classification - to support the adjustments. NS Ex. VG-1.1 at 3-4.

North Shore points out that the AG does not claim that the statement lacks any of the information required to perform the calculation of the adjustments. Nor does the Company see the AG to claim that the information about "*net* impact each month and annually" for which it argues and emphasizes, is a factor in the calculation. In other

words, North Shore asserts, the information that the AG wants the Commission to order the Company to include with its reconciliation filing is information that is superfluous to the reconciliation calculation and unnecessary to ascertaining if the calculation is accurate. For Staff's part, North Shore observes that its witness Hathhorn did not contest the accuracy of the data. What she proposed however, and what North Shore agreed to, is to adjust the period included with respect to a component of the calculation. Staff Ex. 1.0 at 4-5; North Shore Ex. VG-2.0 at 2-3.

According to North Shore too, the AG has erroneously described the reconciliation adjustment as producing a "Factor O." AG Init. Br. at 6. In reality, North Shore explains, Rider VBA combines the RA amounts with the monthly Rider VBA Effective Components. The RA takes effect on the first of the month after North Shore files the reconciliation statement. North Shore states that it has already billed the applicable RA to customers, for the ten-month period beginning March 1, 2009. The "Factor O" is an adjustment that requires a Commission order. If the Commission approves Staff's and North Shore's proposal, the Company states that the Factor O resulting from this proceeding will be included in the next reconciliation adjustment. (If the Commission issues an order in this case prior to February 16, 2010, and approves Staff's and North Shore's recommendations, then North Shore will file the RA on or before March 31, 2010.) North Shore Ex. VG-2.0 at 3-4; Tr. at 26-27.

North Shore observes the AG to also request that the Commission order North Shore to address, in its annual reconciliation filing, how North Shore's energy efficiency program affects its recovery of rate case margins. AG Init. Br. at 5. Here again, North Shore points out, the AG fails to establish any link between this recommendation and the scope of this proceeding. It is true that the Commission cited the energy efficiency program in its analysis of Rider VBA, North Shore argues, but there is nothing in the Order or Rider VBA that draws the energy efficiency program into the annual reconciliation statement or proceeding.

Finally, North Shore observes the AG to complain about the calculation of the effect of Rider VBA on North Shore's rate of return. The Company points out that Staff presented information about North Shore's return with and without Rider VBA in response to the 2008 rate case Order that directed the Staff to provide such information to the Commission (without specifying the exact time and manner for the submission). On the AG's part, the Company notes, there was no evidence presented on this subject and the AG conducted no cross-examination of the Staff witness sponsoring the rate of return information. Yet, despite failing to create a record or showing why the rate of return calculation is relevant in this proceeding, the Company sees the AG to propose that the Commission direct North Shore to include additional information in its annual reconciliation filing. Aside from being irrelevant to this proceeding, North Shore argues that the recommendation has no record support.

North Shore contends that the AG's recommendations pertain to additional information that the AG believes would be reasonable for the Commission to consider in assessing the effects of Rider VBA. According to North Shore, however, when and how the Commission opts to analyze the impact of Rider VBA is not the subject matter of this

proceeding. At this point, North Shore observes, whether the Commission chooses to consider the sorts of information suggested by the AG is an open question and one that is not ripe for consideration in this proceeding.

North Shore asserts that its evidence and the Staff's evidence support the adoption of the reconciliation statement included as an exhibit to Staff witness Ms. Hathhorn's testimony. Staff Ex. 1.0 at 3-5; Scheds. 1.1 and 1.2; North Shore Ex. VG-2.0 at 3-4. North Shore maintains that the evidence showing the accuracy of that reconciliation statement is uncontested.

For all these reasons, North Shore Gas Company requests that the Commission proceed to: (1) approve the reconciliation statement, as proposed by Staff witness Ms. Hathhorn and supported by North Shore witness Ms. Grace; (2) approve North Shore's proposed tariff changes to implement Ms. Hathhorn's recommended changes to the reconciliation statement process; (3) issue an order before February 16, 2010; and (4) reject the AG's proposed recommendations.

IV. 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 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. Viewed from the prospective of the parties, late action of this type undercuts procedural fairness. 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 VBA 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. The oft-repeated claim that Rider VBA proposal was controversial is irrelevant given that most every rider proposal that the Commission considered to date has been controversial. In this respect, we agree with the Company that certain of the AG's arguments veer close to mounting a collateral attack on Rider VBA 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 VBA'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 North Shore 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 appropriately 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, NS Ex. VG-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 and do not accept 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. In terms of such future reports, 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 in the matter, and that the AG put no questions and sought no explanations from Staff at the hearing, we will not consider this request that lacks support in the record.

In the final analysis, 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 the arguments and the recommendations of the AG which ultimately 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) 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 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) 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) 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%; and
- (11) 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, North Shore Gas 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 North Shore Gas 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.

By Order of the Commission this 10th day of February, 2010.

(SIGNED) MANUEL FLORES

Chairman