

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

NORTH SHORE GAS COMPANY	:	
	:	No. 12-0511
Proposed general increase in rates for gas service.	:	
	:	(Cons.)
THE PEOPLES GAS LIGHT AND COKE COMPANY	:	
	:	No. 12-0512
Proposed general increase in rates for gas service.	:	

**RESPONSE OF NORTH SHORE GAS COMPANY AND  
THE PEOPLES GAS LIGHT AND COKE COMPANY  
TO ILLINOIS ATTORNEY GENERAL’S MOTION TO STRIKE**

North Shore Gas Company (“North Shore”) and The Peoples Gas Light and Coke Company (“Peoples Gas”), together, the “Utilities,” pursuant to the Administrative Law Judges’ January 24, 2013 Notice and Section 200.190 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice, 83 Ill. Adm. Code § 200.190, respond to the Illinois Attorney General’s Office’s (“AG”) January 23, 2013 “Motion to Strike and Deny The Peoples Gas Light & (sic) Coke Company’s and North Shore Gas Company’s Request for a Conditional SFV Tariff” (“AG Motion”).

The AG moved to strike certain testimony and exhibits related to what the AG called a “conditional 100% SFV tariff”<sup>1</sup> that North Shore and Peoples Gas filed. The AG Motion contends that the Utilities’ proposals are unlawful under Section 9-201 of the Public Utilities Act (the “Act”) , 220 ILCS 5/9 201, and would unlawfully circumvent the Appellate Court’s jurisdiction. The AG Motion includes factual errors, is incorrect as a matter of law, and in

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<sup>1</sup> “SFV” refers to a “straight fixed variable” rate design.

substance is a premature section of their post-hearing briefing, not a proper motion to strike, and should be denied.

## **I. BACKGROUND**

1. On July 31, 2012, North Shore and Peoples Gas each separately filed with the Commission a proposed general increase in rates for gas service. On September 6, 2012, the Commission suspended the tariffs contained in the July 31, 2012 filings.

2. North Shore and Peoples Gas each proposed language in their Service Classification (“S.C.”) No. 1, Small Residential Service, and S.C. No. 2, General Service, to set customer charges and distribution charges that would be in effect if Rider VBA, Volume Balancing Adjustment (“Rider VBA”), was no longer in effect. The AG Motion quotes the proposed language for each utility’s S.C. No. 1 on pages 11-12.<sup>2</sup>

3. Rider VBA is a full decoupling mechanism. North Shore Gas Company et al., ICC Docket Nos. 11-0280/11-0281 (cons.) (Order Jan. 10, 2012) (“Peoples 2011”), p. 143. In the Order approving Rider VBA on a permanent basis, the Commission correctly stated that the decoupling mechanism “is a symmetrical and transparent formula for collecting the approved distribution revenue requirements -- not more or less -- from customers if the Commission chooses not to provide fully for recovery of fixed costs through fixed charges.” *Id.*, p. 163. In Peoples 2011, the Commission did not provide for full recovery of fixed costs through fixed charges. *Id.*, p. 188.

4. The Utilities, *inter alia*, proposed specific rates, including customer charges and distribution charges, for their S.C. Nos. 1 and 2 (“first set of rates”) in the instant Dockets. The first set of rates presumes that Rider VBA remains in effect and, as with the rates that the

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<sup>2</sup> In the Utilities’ surrebuttal testimony filed on January 25, 2013, the Utilities modified the proposed language in response to Commission Staff testimony. The proposed modifications do not affect the Utilities’ response to the AG Motion.

Commission approved in Peoples 2011, provide less than full recovery of fixed costs through fixed charges. The Utilities, however, did not merely propose specific rates stated in dollars and cents but proposed rate design methodologies that, coupled with their embedded cost of service studies, will allow them to calculate specific rates based on the revenue requirements the Commission approves. Grace Dir., NS Ex. 12.0; Grace Dir., PGL Ex. 12.0; Grace Reb., NS-PGL Ex. 32.0; Grace Sur., NS-PGL Ex. 48.0. Additionally and alternatively, the Utilities proposed specific rates that would take effect if Rider VBA were not in effect (“alternative rates”) and would replace the first set of rates. The testimony and exhibits likewise state those rates and the methodology for deriving them using the revenue requirements the Commission adopts.

5. The approved tariffs would state both sets of rates and their effective dates, either in terms of the effective date stated on the sheet or the precisely defined events described in the tariff sheet that would result in the alternative rates taking effect and replacing the first set of rates. Only one set of rates would be in effect at any time. Both sets arise from the same revenue requirements that the Commission approves in this proceeding. Both sets would be included in the Utilities’ compliance filings following issuance of the Commission’s Order in this proceeding. Grace Dir., NS Ex. 12.0; Grace Dir., PGL Ex. 12.0; Grace Reb., NS-PGL Ex. 32.0; Grace Sur., NS-PGL Ex. 48.0.

## **II. FACTUAL ERRORS**

6. The Utilities first address factual errors in the AG Motion because those errors underlie the erroneous legal conclusions about relevance and about consistency with Section 9-201 of the Act. The AG Motion appears largely premised on the incorrect belief that the Utilities are asking for the latitude to change rates without Commission oversight and without required

notice to customers. To the contrary, the Utilities are asking the Commission to approve specific rates and rate designs based on Commission-approved revenue requirements. One set of such rates would take effect following a compliance filing in this proceeding. The alternative rates, included in tariff sheets in that same compliance filing, designed to recover the same revenue requirements, would take effect upon the occurrence of an event defined in the approved tariff. The Utilities' proposal fully meets the requirements of Section 9-201 of the Act, including providing notice and defining the time when the applicable rates take effect.

7. The AG Motion contends that under the Utilities' proposal "rates would suddenly increase." AG Motion at 6. In fact, under the Utilities' proposal, rates would change, but not increase, because the proposed, alternative rates would be based on the same, Commission-approved revenue requirements. The AG Motion is correct that the customer charge would increase, but the "rate" is not limited to the customer charge. The increase in the customer charge would be offset by a corresponding decrease in the distribution charge. The amount any given customer pays may increase or decrease, but that does not mean the rates increased or decreased.

8. The AG Motion contends that the Utilities' proposal would make a "radical change" in rates without allowing the Commission to assess if the change is consistent with a court order.<sup>3</sup> AG Motion at 7-8. That is incorrect. First, as described above, the change is to effectuate recovery of the Commission-approved revenue requirements through a different split of recovery of the Utilities' revenue requirements between customer and distribution charges. That is hardly "radical." The Utilities, Staff and intervenors have proposed various such splits for the Commission's consideration. Second, the specific rates that would take effect are rates

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<sup>3</sup> A court order is one but not the only way that the Utilities' proposed alternative would take effect. For example, action by the General Assembly to disallow decoupling would trigger the proposed switch to an alternative rate design.

that the Commission would approve in this proceeding. That is, the tariff that the Commission approves will include the specific rates, and the Utilities would not change those approved rates. Also, consistent with Section 9-201, the Commission will review the compliance filing tariff to determine if the rates comply with the Commission's Order prior to such rates taking effect. In other words, the Commission would already have reviewed and approved the rates. Third, the triggering act contemplated in the proposal is disallowance of decoupling. The Utilities' proposal is fully consistent with elimination of its decoupling mechanism (Rider VBA) and substitution of straight fixed variable ("SFV") rate design or a modified version of SFV.<sup>4</sup> Moreover, nothing deprives the Commission of the ability to conduct a proceeding, as required or desired, based on a court or legislative action to disallow decoupling.

9. The AG Motion contends that the Utilities' proposal "sets in motion a change in rates without following the dictates of Section 9-201 of the Act and the Commission's test year rules." AG Motion at 9. That is incorrect. First, the Commission would be approving the rates that would take effect in the instant proceeding, i.e., in a Section 9-201 proceeding. Second, the test year for all the Utilities' proposed rates is the same -- 2013. The Utilities' proposal does not circumvent the test year requirements. The Utilities' proposal simply presents two ways of designing rates using the same revenue requirements.

### **III. ARGUMENT**

10. The AG Motion (at 10) seeks to exclude evidence on the grounds that it would be unlawful for the Commission to approve the Utilities' rate design proposals. The AG's arguments supporting its conclusion that the proposals are unlawful are flawed, but, more importantly for purposes of this response are not a proper basis for striking evidence. Post-

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<sup>4</sup> "SFV" refers to recovery of 100% of a utility's fixed costs through fixed charges. The Commission has also used the term "SFV" to refer to rates that recover 80% of fixed costs in fixed charges. Northern Illinois Gas Co. d/b/a Nicor Gas Co., ICC Docket No. 08-0363, (Order Mar. 25, 2009), at 71, 90-91.

hearing briefs are the appropriate vehicle for the AG and others to argue legal issues concerning evidence about rate design or any other proposals. Indeed, the entire case is essentially about what the Commission has legal authority to adopt under its statutory obligation to approve just and reasonable rates. For example, it would not be proper for a party to move to strike return on equity evidence on the grounds that its approval would result in unjust and unreasonable (i.e., unlawful) rates or that a proposal to eliminate Rider VBA is unlawful, and evidence supporting such a position should be stricken, because the Commission has ruled that it has the authority to approve decoupling mechanisms.

11. The AG Motion cites Section 200.610(a) of the Commission’s Rules of Practice, which states: “In all proceedings subject to this Part, irrelevant, immaterial or unduly repetitious evidence shall be excluded.”<sup>5</sup> 83 Ill. Admin. Code § 200.610(a). The AG Motion then quotes the Federal Rules of Evidence’s definition of evidence and concludes that evidence concerning an “unlawful tariff” is irrelevant. AG Motion at 10.

12. It is the Commission’s role to weigh the evidence and set lawful rates and approve lawful tariffs in this proceeding. It is also the Commission’s role to assess legal arguments and reach conclusions of law. The deference that a court will accord the Commission’s findings of fact and conclusions of law differs, but it is the Commission’s role to assess legal arguments. The AG will have the opportunity to brief its legal arguments.

13. The evidence that the AG Motion seeks to exclude is part of the broader rate design questions before the Commission of what level of fixed costs to recover through fixed charges. Clearly, relevant evidence includes many rate designs for the Commission to consider in assessing the several proposals for fixed cost recovery, whether through varying degrees of

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<sup>5</sup> Similarly, the Rules of Practice provide that an Administrative Law Judge may “exclude irrelevant, immaterial, unduly repetitious or otherwise inadmissible evidence.” 83 Ill. Admin. Code § 200.680.

recovery through fixed charges, through a rate design that includes a decoupling mechanism, through elimination of the decoupling mechanism or through alternatives with defined effective dates.

14. The AG Motion contends that the Utilities' proposed SFV or modified SFV rates somehow would undermine an Appellate Court decision finding the Commission lacked authority to approve Rider VBA. AG Motion at 9. Assuming, arguendo, that the Court made that finding, it seems that the AG is arguing that the Commission would also lack authority to approve 100% or 80% recovery of fixed costs in fixed charges. The Utilities are aware of no such argument pending before the Appellate Court, and the Commission has approved modified SFV rates in two proceedings.<sup>6</sup> To contend that such a rate design proposal is unlawful, and, under the AG Motion's logic, irrelevant evidence, is without merit.

WHEREFORE, North Shore Gas Company and The Peoples Gas Light and Coke Company respectfully request that the Administrative Law Judges deny the Illinois Attorney General's January 23, 2013 Motion to Strike.

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<sup>6</sup> Ameren Illinois Utilities, ICC Docket Nos. 07-0585, et al. (cons.), (Order Sept. 24, 2008), at 237; Northern Illinois Gas Co. d/b/a Nicor Gas Co., ICC Docket No. 08-0363, (Order Mar. 25, 2009), at 71, 90-91.

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Respectfully submitted,

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