

Docket Nos.: 14-0224/14-0225
Bench Date: 02/11/15
Deadline: N/A

MEMORANDUM

TO: The Commission

FROM: Terrance Hilliard and D. Ethan Kimbrel,
Administrative Law Judges

DATE: February 4, 2015

SUBJECT: North Shore Gas Company

Proposed general increase in gas rates. (tariffs filed February 26, 2014)

The Peoples Gas Light and Coke Company

Proposed general increase in natural gas rates.(tariffs filed February 26, 2014).

RECOMMENDATION: Grant Motion to Amend.

Background

On December 15, 2014, the Administrative Law Judges (“ALJs”) directed The Peoples Gas Light & Coke Company and North Shore Gas Company (collectively “NS/PGL”, the “Utilities” or the “Companies”) to provide a set of schedules that would show sample rates and bill impacts that would result from the revenue requirements established in the December 5, 2014 Proposed Order. The Companies filed their schedules on December 29, 2014. On January 5, 2015 the Attorney General’s Office (the “AG”) filed a Reply to the Companies’ filing. In its Reply, the AG stated that the Companies’ filing did not reflect a recent change in federal law. The AG explained that the “Tax Increase Prevention Act of 2014” (HR 5771) was passed by Congress and signed into law as Public Law No. 113-295 on December 19, 2014. The Act extends 50% bonus Depreciation through 2014, with retroactive effect to January 1, 2014. The AG argued that in calculating the 2015 test-year revenue requirements, the Companies did not reflect 50% bonus depreciation on 2014 additions to plant in service, as prior to the passage of the Act, bonus depreciation had been scheduled to expire at the end of 2013.

On January 7, 2015, the ALJs directed the Companies to provide quantification of the effect of the extension of 50% bonus depreciation through 2014 on their 2015 test-year ADIT balances, rate bases, and revenue requirements, with supporting work papers,

and that the effects on the revenue requirements be incorporated into the final determination of the rates being established in these dockets. On January 8, 2015, both the Companies and Commission Staff filed motions requesting additional time for interested parties to file their respective response and replies to the ALJs' ruling. On January 9, 2015, the ALJs modified their January 7, 2015 ruling and held that the Companies would have until January 13, 2015, to provide verified responses to the data requests regarding bonus depreciation and its impact on the Companies' 2015 test-year ADIT balances, rate bases, revenue requirements, and final rate rates. Interested parties would file their verified replies to the Companies' January 13th filing on January 15, 2015.

On January 13, 2015, the Companies filed their verified response to the ALJ ruling. Staff filed a reply to the Companies' filing and stated therein that it neither objected to the January 13th Companies' filing nor the Companies' January 14, 2015 Verified Motion to Supplement the Utilities' Compliance Filing and Correct Typographical Errors.

On January 21, 2015, the Commission entered a Final Order setting rates in this docket. On January 28, 2015, the Commission entered an Amendatory Order correcting numerical errors. Neither order incorporated any changes due to the bonus depreciation issue.

On January 26, 2015, the AG filed an Emergency Motion to Correct the Commission's Final Order of January 21, 2015 to Reflect in Rates the January 7, 2015 Ruling of the ALJs ("Motion"). On January 30, 2015, the Companies and Commission Staff filed their Responses to the AG's Emergency Motion. The AG filed its Reply on February 3, 2015.

Companies' Position

The Utilities acknowledge that the ALJs' ruling of January 7, 2015 provided for incorporating the 2014 bonus depreciation change in the final revenue requirements to be approved in these cases and that the ALJs' Post-Exceptions Proposed Order filed on January 21, 2015 (dated January 5, 2015), and the Commission's final Order, however, did not incorporate the bonus depreciation change. The Utilities note that they filed their final Order compliance tariff filing on January 23, 2015, Commission Staff reviewed it, and the Clerk of the Commission accepted it. The new rates went into effect on January 28, 2015.

Under these specific circumstances, the Utilities believe that the bonus depreciation change may be effected by an amendatory order (or by an order on rehearing), assuming its merit, but not as a "correction" of the final Order, or at least not as a retroactive correction. They argue that to make any "correction" retroactive in these circumstances would be contrary to the filed rate doctrine and to the rule on retroactive ratemaking. See, e.g., *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 124 Ill. 2d 195, 211 (1988).

The Utilities further note that although the figures referenced by the Motion for the bonus depreciation change are correct, if the change is approved, there is also a small correction that was appropriately made to a cash working capital figure in the final Order that also needs to be reflected here, and which reduces the Peoples Gas revenue requirement and related increase from what was presented in the Peoples Gas response to the ALJs' Ruling by an additional \$14,000.

The Utilities explain as well that if the bonus depreciation change is approved, the Commission's January 28, 2015 Amendatory Order (which corrected certain figures stated in the final Order relating to 2014 QIP costs in order to allow correct charges under Rider QIP) will need to revise those figures in order to allow amended charges under Rider QIP. According to the Utilities, the Commission's amendatory order also will need to revise the figures in the final Order regarding uncollectible expense amounts, in order to reflect the related revised amounts included in base rates under the Utilities' uncollectible riders.

The Utilities also state that if the bonus depreciation change is approved, the Utilities' preparation of the amendatory order tariff compliance filing will take some days, both for preparation as such and for internal review and implementation that complies with the applicable internal controls. They assume that Commission Staff will also want to review the filing. The Utilities request that, if the Motion is granted, then, upon the issuance of the Commission's amendatory order, the Utilities be given at a minimum five business days after receipt of the amendatory order to submit their compliance tariff filing. That period would include two business days for Staff review.

Staff's Position

Staff agrees with the AG that the Commission's Final Order did not reflect the change to the law regarding bonus depreciation, nor take into consideration the revised schedules that the Companies provided on January 13, 2015, in response to the ALJs' January 7 Ruling. Staff also agrees with the AG on the \$188,000 dollar impact on North Shore but notes that this change is approximately 0.22% of North Shore's final revenue requirement. Staff believes that due to the *de minimis* impact on rates, it is not an efficient use of Staff and North Shore resources to change rates again on an emergency basis.

Staff agrees with the AG that the difference in Peoples Gas' revenue requirements from the Companies' ALJ Ruling Response is \$3,614,000, or a 0.54% decrease. Staff explains that for Peoples Gas, however, the bonus depreciation impact is affected by the Company's Rider QIP. Staff notes that the Final Order revised Rider QIP to require Peoples Gas to adjust its Rider QIP surcharge for the difference between the actual cost, and amounts approved in its rate case, for QIP plant and depreciation. This adjustment to the Rider QIP surcharge is effective February 1, 2015. The actual cost used in this QIP adjustment will reflect Peoples Gas' use of bonus depreciation. Staff argues because of this QIP adjustment, if there is no additional Commission action, Peoples Gas' ratepayers will be charged only actual amounts for Rider QIP plant with bonus depreciation; no further adjustment is necessary to reflect bonus depreciation on QIP

additions. Staff states as well that the majority of additions placed into rate base in this case qualify as Rider QIP additions, therefore, the majority of the impact of bonus depreciation for Peoples Gas will be reflected in rates via the adjustment to Rider QIP. Staff concludes that the net impact on Peoples Gas ratepayers to reflect bonus depreciation will be less than the \$3,614,000 amount cited in by the AG and thus when this Rider QIP adjustment is taken into account the AG's statement regarding the impact of the bonus depreciation on Peoples Gas' revenue requirement is overstated.

Staff maintains that an amended order on or after February 10, 2015 would reverse the effect of the Rider QIP adjustment, and therefore require another Rider QIP adjustment to account for the corrected order. Staff is concerned that this may cause confusion to ratepayers and provide opportunity for further inadvertent errors in implementing adjustments and corrections. In light of the amount of impact on the Companies revenue requirements, and the complexity of the interaction of the correction with Peoples Gas' Rider QIP, Staff does not support the AG's Emergency Motion to Correct.

AG's Position

The AG submits that no party has objected to its contention in its January 5, 2015 filing and reiterated in its Emergency Motion, that the recent change to 2014 bonus depreciation rules in federal tax law should be reflected in the Companies' new rates that result from this proceeding. Neither the Companies in their January 13, 2015 Verified Statement, filed in response to the ALJs' January 7th ruling that required the Companies to incorporate the effects of the bonus depreciation extension into the final determination of the rates being established in these cases, nor Staff in its January 15, 2015 Reply, objected. The AG notes that the same entities again did not object to its core contention when those entities filed their January 30, 2015 Responses to its Emergency Motion.

The AG does not object to the Companies' contention that the necessary changes to the Commission's final order must be filed through an amendatory order and that this change is not retroactive.

Regarding Staff's suggestion that the adjustment of \$188,000 to North Shore's revenue requirement is *de minimis* and thus not an efficient use of Staff and North Shore resources to change rates again on an emergency basis, the AG states that the omission of the adjustment appears to be an error made by the Commission and that the amount is not *de minimis*.

The AG also argues that relying on Rider QIP to implement the adjustment to Peoples Gas' revenues that was mandated by the ALJs' January 7th ruling would fail to implement at least half of the required adjustment. The AG suggests that implementing the effect upon the 2015 test-year revenue requirement by properly adjusting rate base is a more straightforward approach rather than implementing it through a rider. The AG states, as well, that none of the bonus depreciation extension impact for North Shore will be picked up through Rider QIP.

The AG states that Staff's angst over an amendatory order and how this would require another Rider QIP adjustment in addition to the Rider QIP adjustment on February bills is overstated. The AG finds that any customer confusion will be well worth the reduction in rates. Further, the Companies who will have to address any customer confusion have not expressed worry about such a possibility. Lastly, Staff has not established that the additional Rider QIP adjustment would entail any additional line item on March bills.

The AG submits that in the event that the Commission were to grant its Emergency Motion, it would not object to the rate base and revenue requirement changes to Appendices A and B of the final Order that the Companies have shown in Attachment A to their Response, and further described at paragraph 7 on page 3 of their Response. The AG also do not object to the amendatory language to the final Order that the Companies have included at Attachment B to their Response, and further described at paragraphs 9-10 on page 4 of their Response. Additionally, the AG do not object to the Companies' request at paragraph 4 of their Response that they receive five business days after an amendatory order to submit their compliance tariff filing, including two days for Staff to review the filing.

Recommendation

We find that the AG, Staff and the Companies agree that the federal law is applicable to these dockets and that the numerical adjustment for both Peoples Gas and North Shore is correct. We are not troubled by Staff's concerns noted above especially in light of the AG and the Companies' agreement as to how the amended order should be realized. Accordingly, we recommend that the Commission grant the motion to amend the Order of January 21, 2015. Alternatively, the Commission may prefer that the parties address this issue in rehearing. However, because of the effect of the filed rate doctrine, prompt action by this Commission adopting a 2nd Amended Order incorporating the above referenced agreed to changes between the AG and the Companies will maximize the benefit to rate payers.

DEK/TAH:fs