

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Citizens Utility Board,)	
)	
v.)	Docket No. 04-0034
)	
Nicor Solutions, L.L.C. and)	
Northern Illinois Gas Company d/b/a)	
Nicor Gas Company,)	
)	
Complaint requesting the ICC to order)	
Nicor Solutions to cease and desist)	
misleading marketing of gas offering.)	

**RESPONSE OF THE CITIZENS UTILITY BOARD TO
NORTHERN ILLINOIS GAS COMPANY’S
MOTION TO DISMISS AND REQUEST FOR INTERIM ORDER**

Pursuant to Section 200.190 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice (83 Ill. Admin. Code §200.190) and the September 2, 2004 Order of the Administrative Law Judge (“ALJ”), the Citizens Utility Board (“CUB”) hereby files its Response to the Verified Motion To Dismiss and Request for Interim Order (“Motion”) of Northern Illinois Gas Company (“Nicor Gas”).

Introduction

The ALJ should deny Nicor Gas’s Motion To Dismiss CUB’s Second Amended Complaint, because CUB’s Second Amended Complaint properly pleads allegations that Nicor Gas violated Sections 7-101(3), 8-501, and 9-250 of the Public Utilities Act (“the Act”). *See* Second Amended Complaint at ¶¶42-47. CUB’s Second Amended Complaint also provides sufficient legal bases for its prayer for relief.

In its Second Amended Complaint, CUB alleged Nicor Gas violated Section 7-101(3) by entering into an agreement with its affiliated interest, Nicor Solutions, to switch deceptively or

“slam” the gas supplier of enrollees of the Winter Cap program. Nicor Gas denies that it had such an agreement with Nicor Solutions. However, Nicor Gas’s own Motion contradicts that claim and shows that Nicor Gas and Nicor Solutions did, in fact, have such an agreement. Nicor Gas failed to file that agreement with the Commission for its approval, and, thus, violated Section 7-101(3) of the Act. *See* 220 ILCS 5/7-101(3).

CUB also alleged that Nicor Gas violated Sections 8-501 and 9-250 of the Act by engaging in an unjust and unreasonable practice affecting rates by slamming Winter Cap program customers’ gas suppliers back to Nicor Gas. Nicor Gas argues that CUB has failed to allege sufficient facts to support such causes of action against it. CUB has, to the contrary, stated sufficient facts in its Second Amended Complaint to support its allegations. Additionally, the Commission has expressly held that switching a utility customer’s service provider without adequate disclosure in plain language is an unjust and unreasonable practice in violation of Sections 8-501 and 9-250 of the Act.

CUB is seeking several measures of relief from the Commission to protect Winter Cap program customers harmed by Nicor Gas’s violations of the Act. Nicor Gas has erroneously argued CUB has no lawful basis for seeking certain types of requested relief from Nicor Gas, and it has asked the ALJ to remove Nicor Gas from certain subparts of CUB’s prayer for relief. CUB based its prayer for relief upon three alternative theories of liability, which together with the Act, fully support CUB’s requested relief.

Lastly, CUB notes that the ALJ and the Commission previously denied Nicor Gas’s prior motion to dismiss CUB’s First Amended Complaint that contained many of the same arguments it raises now. *See* ALJ’s April 30, 2004 Order and the Commission’s June 29, 2004, Order

Denying Nicor Gas and Nicor Solutions' Joint Petition for Interlocutory Review. For these reasons, the ALJ should deny Nicor Gas's Motion in its entirety.

Background

On July 23, 2004, CUB filed a Motion for Leave To File *Instantly* its Second Amended Complaint. CUB amended its First Amended Complaint in light of new information and to streamline the case going forward. Nicor Gas and Nicor Solutions untimely filed a Joint Response to CUB's Motion for Leave To File *Instantly* its Second Amended Complaint on August 11, 2004. CUB filed its Reply to the Joint Response on August 18, 2004. During a September 2, 2004, hearing, the ALJ granted CUB's Motion for Leave To File *Instantly* its Second Amended Complaint and required Nicor Gas and Nicor Solutions to answer the complaint or otherwise plead. On September 23, 2004, Nicor Gas filed its current Motion.

Legal Standard

Nicor Gas faces significant legal hurdles in order to succeed on a Motion to Dismiss. The Code of Civil Procedure applies to motions to dismiss before the Commission. *See* 735 ILCS 5/1-108(b). In deciding a motion to dismiss, the court or agency must accept all facts pleaded as true and indulge all reasonable inferences in favor of the plaintiff. *See Bd. of Educ. of the City of Chicago v. A, C and S, Inc.*, 131 Ill. 2d 428, 438 (1989); *Katz v. Belmont Nat'l Bank*, 112 Ill. 2d 64, 67 (1986). Pleadings "shall be liberally construed with a view to doing substantial justice between the parties." 735 ILCS 5/2-603. "To see if a cause of action has been stated the whole complaint must be considered, rather than taking a myopic view of a disconnected part." *A, C and S, Inc.*, 131 Ill. 2d at 438 (*quoting People ex rel. Scott v. College Hills Corp.*, 91 Ill. 2d 138, 145 (1982)). "A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle plaintiffs to recover." *Charles*

Hester Enter. v. Ill. Founders Ins. Co., 114 Ill. 2d 278, 286 (1986). See also, *Doyle v. Schlensky*, 120 Ill. App. 3d 807, 811 (1983); *Ontap Premium Quality Waters, Inc. v. Bank of N. Ill.*, 262 Ill. App. 3d 254, 258 (1994). Under a rule of pleading long established, CUB was not required to set out its evidence in its complaint. *Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1982). “To the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts.” *Id.* (quoting *Bd. of Educ. v. Kankakee Fed’n of Teachers Local No. 886*, 46 Ill. 2d 439, 446-47 (1970)). Therefore, CUB only had to allege ultimate facts within its Amended Complaint in order to survive a motion to dismiss.

Argument

I. CUB Has Pled Sufficient Facts To Support Its Allegation That Nicor Gas Violated Section 7-101(3) of the Act

CUB pled sufficient facts to support its allegation that Nicor Gas violated Section 7-101(3) of the Act as stated in Count I of the Second Amended Complaint. CUB alleged Nicor Gas violated Section 7-101(3) by entering into an agreement with its affiliated interest, Nicor Solutions, to slam customers of the Winter Cap program by switching deceptively their gas suppliers from Alternative Gas Suppliers (“AGSs”) back to Nicor Gas. See Second Amended Complaint at 9, ¶43. CUB also alleged facts showing how Nicor Solutions and Nicor Gas used the Winter Cap program enrollment form to switch customers’ gas suppliers to Nicor Gas. Second Amended Complaint at ¶24. Section 7-101(3) requires public utilities and their affiliates to file with the Commission any contract or arrangement between them furnishing any services, property or things. See 220 ILCS 5/7-101(3). Nicor Gas claims not to have any such agreement with Nicor Solutions and argues that since no agreement exists, CUB has failed to plead sufficient facts to support its allegation. Motion at 2, 5. However, Nicor Gas’s assertions are wrong as matters of fact and law.

a. Nicor Gas's Assertion That It Did Not Agree With Nicor Solutions To Switch Winter Cap Program Customers' Gas Suppliers Is Wrong As a Matter of Fact

Nicor Gas's assertion that it did not have an agreement with Nicor Solutions to slam the gas suppliers of Winter Cap program customers is wrong as a matter of fact. Indeed, the information that Nicor Gas claims supports its argument actually contradicts that claim and shows that Nicor Gas and Nicor Solutions did, in fact, have such an agreement.

First, Nicor Gas cites an affidavit from its employee, Ms. Ellen Rendos, Manager of Gas Transportation and Billing, to support its argument that it had no agreement with its affiliate. In her affidavit, Ms. Rendos stated:

Nicor Gas does not have an agreement with Nicor Solutions pursuant to which Nicor Solutions has agreed to switch its Winter Cap customers' gas suppliers from alternative gas suppliers ("AGSs") to Nicor Gas *in exchange for any consideration* from Nicor Gas.

Rendos Affidavit at ¶3 (emphasis added). Ms. Rendos has only stated Nicor Gas and Nicor Solutions do not have a formal, legally binding contract, requiring an offer, acceptance, and consideration, about switching Winter Cap program customers' gas suppliers to Nicor Gas. Importantly, Ms. Rendos did not deny that Nicor Gas had any agreement with Nicor Solutions, *only* that it did not have one involving an exchange of any consideration.

Second, Nicor Gas's own Motion shows that Nicor Gas and Nicor Solutions certainly had to agree to switch Winter Cap program customers' gas suppliers to Nicor Gas before doing so. Nicor Gas states in its Motion that it applies on a "unilateral" basis a "process across-the-board to each and every third party, including Nicor Solutions, that *asks* Nicor Gas to take action necessary to transfer a customer on that third party's behalf." *See* Motion at 2, fn. 2 (emphasis added). However, every time Nicor Solutions asked Nicor Gas to switch a Winter Cap customer's gas supplier to Nicor Gas and it did so, the Commission can only conclude these

actions demonstrated an agreement existed between Nicor Solutions and Nicor Gas. Nicor Gas, on the other hand, would have the Commission believe that Winter Cap customers' gas suppliers were switched from an AGS to Nicor Gas serendipitously, and no agreement existed between the two. Nicor Gas's interpretation is simply implausible, and the Commission should reject it. Nevertheless, the Commission need only conclude that Nicor Gas's and Nicor Solutions' switching of Winter Cap program customers' gas suppliers to Nicor Gas was an "arrangement" sufficient to trigger the requirements of Section 7-101(3).

b. Nicor Gas's Argument That A Formal Legally Binding Contract Between Nicor Gas and Nicor Solutions Is Required Before Triggering the Requirements of Section 7-101(3) Is Wrong As a Matter of Law

Nicor Gas urges the Commission to apply an incorrect interpretation of Section 7-101(3) when analyzing Nicor Gas's switching of Winter Cap program customers' gas suppliers. Nicor Gas denies in its Motion that it had any agreement with Nicor Solutions to switch Winter Cap program customers' gas suppliers to itself and cites Ms. Rendos's affidavit as support. Motion at 2, 5. Therefore, according to Nicor Gas, CUB has failed to show how Nicor Gas could have violated Section 7-101(3).

Nicor Gas's argument fails because it attempts to convert the lack of a formal, legally binding contract into an immunity from Section 7-101(3) based on Ms. Rendos's affidavit. Again, Ms. Rendos only said that no formal, legally binding contract regarding switching customers' gas supplier existed. *See* Rendos Affidavit at ¶3. But, Section 7-101(3) of the Act does not require that public utilities and their affiliated interests only file contracts between them for approval with the Commission. Section 7-101(3) states in relevant part:

no contract or *arrangement* . . . for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission.

220 ILCS 5/7-101(3) (emphasis added). Section 7-101(3) requires public utilities and their affiliated interests also to file “arrangements . . . for the furnishing of any service, property or thing” with the Commission for its approval before those arrangements can go into effect. *Id.* Nicor Gas and Nicor Solutions did not have to cement an agreement to slam Winter Cap customers’ gas suppliers in a formal contract in order to trigger the requirements of Section 7-101(3), a mere “arrangement” sufficed. Accordingly, Nicor Gas’s argument that, because it did not have an “agreement . . . in exchange for any consideration,” it could not have violated Section 7-101(3) is wrong as a matter of law.

c. Nicor Gas Also Falsely Argues that any “Decision Nicor Solutions Made To Limit Its Winter Cap Service to Nicor Gas’ Customers Was Made Independently”

Nicor Gas has also argued falsely that: “[a]ny decision Nicor Solutions made to limit its Winter Cap service to Nicor Gas’ customers was made independently of Nicor Gas.” Motion at 5-6. An examination of the facts shows that that is simply incorrect.

According to Nicor Gas, it had an oral contract with Nicor Solutions to abide by the terms of an advertising agreement originally signed by Nicor Gas and another affiliate, Nicor Services, regarding bill inserts. Nicor Gas Response to CUB DR 1.25 (Attachment 1). That advertising agreement states: “Nicor Gas may, at its discretion, reject any proposed advertising insert/coupon deemed unsuitable for any reason . . . Final approval is contingent upon receipt of finished product not later than (10) days before first insertion date.” Advertising Agreement (NG 000074) (Attachment 2). Therefore, Nicor Gas, at a minimum, reviewed and approved the Winter Cap solicitation form before sending it to its customers.

The Winter Cap program solicitation form, which Nicor Solutions contracted with Nicor Gas to insert within Nicor Gas’s customers’ bills, included the sentence: “[b]y enrolling in the

Winter Cap program, you authorize Nicor Solutions to cancel any Customer Select agreement you may currently have.” *See* Exhibit 1 to Second Amended Complaint. The Staff has previously commented that this disclosure was likely inadequate to inform customers as to what they were actually agreeing to by saying:

because the only reference to authorization to terminate service with a customer’s alternative supplier is in fine print at the bottom of the enrollment form, and only makes reference to Customer Select rather than ‘your supplier’, I suspect that some customers are unaware that enrollment in Winter Cap could result in termination of service with their supplier.

Iannello Affidavit at 6. By virtue of the Advertising Agreement, Nicor Gas reviewed and approved of this language while knowing that it was certain to benefit economically from switching any customers’ gas supplier. In fact, Nicor Gas did benefit and actually received more revenues, \$146,039, from switching 221 Winter Cap customers’ gas suppliers to itself than Nicor Solutions received from 1,703 customers for the entire Winter Cap program, \$98,279.95. *See* Nicor Gas Responses to CUB DRs 1.15, 1.16, 1.10 and 1.11, respectively. (Attachments 3-6). Also, Nicor Gas knew, at the time it reviewed and approved the Winter Cap program bill insert, that, unless those customers whose gas suppliers Nicor Gas had switched to itself chose to go back to their original AGS within 45 days, those customers would have to remain with Nicor Gas for the next 12 months. *See* Nicor Gas Company Rider 15, Customer Select, Tariff Sheet No. 75.2 (Attachment 7). Therefore, not only did Nicor Gas gain customers and revenues from competing AGSs by deceptive means, but it also prevented those customers from returning to an AGS for the next year.

The Commission should not permit Nicor Gas, as the incumbent monopolist for residential retail gas supply in its service territory, to compete with AGSs using unfair and deceptive means such as these. Indeed, from the facts above, the Commission can only conclude

that any decision Nicor Solutions made to “limit” its Winter Cap service to customers of Nicor Gas was in no way independent of Nicor Gas. Accordingly, CUB has pled sufficient facts to support its allegation that Nicor Gas violated Section 7-101(3) by failing to file its agreement with Nicor Solutions to slam Winter Cap customers’ gas suppliers with the Commission for approval. *See* Second Amended Complaint at ¶¶24,43.

II. CUB Has Pled Sufficient Facts To Support Its Allegations, in Counts II and III, that Nicor Gas Violated Sections 8-501 and 9-250 of the Act

Contrary to Nicor Gas’s arguments, CUB has pled sufficient facts to support its allegations that Nicor Gas violated Sections 8-501 and 9-250 of the Act, as stated in Counts II and III of the Second Amended Complaint. Section 8-501 of the Act prohibits public utilities from engaging in unjust and unreasonable practices. *See* 220 ILCS 5/8-501. Section 9-250 of the Act prohibits unjust and unreasonable rates or charges. *See* 220 ILCS 5/9-250. Nicor Gas claims that CUB’s Second Amended Complaint only alleges actions by its affiliate Nicor Solutions, not Nicor Gas. Motion at 7. Nicor Gas also states: “Nicor Solutions’ wording on its enrollment form is not an action by Nicor Gas.” *Id.* However, CUB alleged that Nicor Gas has violated Sections 8-501 and 9-250 because it deceptively switched or slammed Winter Cap program customers’ gas suppliers to itself. *See* Second Amended Complaint at ¶¶44-47.

The Commission has recognized deceptive switching of public utility service providers as violations of Sections 8-501 and 9-250 of the Act. Section 8-501 states in relevant part:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the . . . *practices* . . . of any public utility. . . are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, *practices*, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and it shall fix the same by its order, decision, rule or regulation.

220 ILCS 5/8-501 (emphasis added). Section 9-250 states in relevant part:

Whenever the Commission . . . shall find that *the rates or other charges . . . demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith . . . affecting such rates or other charges, or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law . . . the Commission shall determine the just, reasonable or sufficient rates or other charges, classifications, rules, regulations, contracts or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided.*

220 ILCS 5/9-250 (emphasis added). Using these two bases, the Commission has ruled that switching a public utility customer's service provider without adequate disclosure is an unjust and unreasonable practice prohibited by the Act. *See* Final Order, *Citizens Util. Bd. v. Ill. Bell Tel. Co. (Ameritech Ill.)*, ICC Docket No. 00-0043, (Jan. 23, 2001) ("Simplifive"); Final Order, *MCI Telecomm. Corp. v. Ill. Bell Tel. Co.* ICC Docket Nos. 96-0075 & 96-0084 (cons.), at 21 (Apr. 3, 1996).

As a result, CUB can properly bring an action against Nicor Gas for deceptively switching Winter Cap program customers' gas suppliers. CUB's complaint alleged that:

Nicor Solutions also includes a provision in Winter Cap that automatically cancels customers' gas service from Alternative Gas Suppliers ("AGSs") after they enroll in Winter Cap. Therefore, Nicor Solutions switches the gas service provider customers who subscribe to the program and use an AGS for gas service, instead of the utility, to its affiliated interest, Nicor Gas. However, because the enrollment form only states: "[b]y enrolling in the Winter Cap program, you authorize Nicor Solutions to cancel any Customer Select agreement you may currently have" and makes no mention of switching gas service back to Nicor Gas, customers likely do not realize that enrollment in Winter Cap also cancels their gas service with their AGS and switches it to Nicor Gas.

Second Amended Complaint at 6-7, ¶24. While Nicor Gas has focused on a narrow parsing of CUB's allegations in its claim that CUB has not pled sufficient facts, the Commission "[t]o see if a cause of action has been stated" must consider "the whole complaint . . . rather than taking a myopic view of a disconnected part." *A, C and S, Inc.*, 131 Ill. 2d at 438. Of course, the Commission must also bear in mind that Nicor Solutions cannot logically switch a Winter Cap customer's gas supplier to Nicor Gas by itself; it needs the agreement of Nicor Gas to do so. In fact, Nicor Gas admits that it did so on at least 221 instances. *See Nicor Gas Response to CUB DR 1.15 (Attachment 3)*.

Furthermore, as discussed *supra*, Nicor Solutions' wording on its enrollment form was certainly an action by Nicor Gas, given that the utility reviewed and approved the solicitation before mailing it. Worse, Nicor Gas did so with the knowledge that it was certain to benefit financially from switching any customers' gas supplier. As a consequence of that switching, competing AGSs lost 221 customers and Nicor Gas received \$146,039 more revenues than it otherwise should have. *See Nicor Gas Responses to CUB DRs 1.15 and 1.16 (Attachments 3-4)*. Nicor Gas has offered no legitimate business reason for accepting these customers who according to the Staff were likely "unaware that enrollment in Winter Cap could result in termination of service with their supplier." Iannello Affidavit at 6. Thus, the Commission cannot dismiss CUB's allegations on the pleadings unless it clearly appears that CUB can prove no set of facts can which will entitle it to recover. *See Charles Hester Enter. v. Ill. Founders Ins. Co.*, 114 Ill. 2d 278, 286 (1986).

In the present case, a clear set of facts exists that, if CUB proves, will show that Nicor Gas and Nicor Solutions did have an agreement to switch deceptively Winter Cap program customers' gas supplier. Such facts would clearly allow CUB to prevail on its allegations that

Nicor Gas violated Sections 8-501 and 9-250. For these reasons, the Commission can only conclude that CUB did plead sufficient facts to support its allegations. *See e.g.* Second Amended Complaint at ¶¶24, 45, 47.

III. CUB's Theories of Liability and the Act Support CUB's Prayer of Relief Against Nicor Gas

CUB's theories of liability and the Act support CUB's prayer for relief against Nicor Gas. CUB has alleged three alternative theories of liability and has requested relief pursuant to each. Nicor Gas has asked the Commission to remove Nicor Gas from subparts b), d), f), and h) of the prayer of relief. Motion at 8. However, CUB's theories of liability and the Act support its prayer for relief. CUB, for clarity's sake, outlines below its theories of liability and the relief associated with each.

First, CUB alleged that Nicor Gas and Nicor Solutions violated Section 7-101(3) by entering into an agreement to switch Winter Cap program customers' gas suppliers in a deceptive manner. Second Amended Complaint at ¶43. The remedies CUB has sought associated with this theory of liability include subparts c) and h) of the prayer for relief. Subpart c) of the prayer for relief asks for an order voiding any agreement between Nicor Gas and Nicor Solutions regarding switching Winter Cap program customers' gas supplier. *Id.* at 11. Subpart h) of the prayer for relief asks for an order warning Nicor Gas and Nicor Solutions that further violations of the Act will be considered repeat violations. *Id.* at 12.

Second, CUB alleged that Nicor Solutions was acting as a mere instrumentality of Nicor Gas, and the Commission should pierce the corporate veil to regulate them both as public utilities with regard to the Winter Cap program. *Id.* at ¶32. The remedies CUB has sought associated with this theory of liability include subparts d), e), and h) of the prayer for relief. Subpart d) of the prayer for relief asks for an order terminating Winter Cap program contracts without

penalties and requiring Nicor Solutions to refund customers the monthly fees they have paid.

Second Amended Complaint at 11. Subpart e) of the prayer for relief asks for an order requiring Nicor Solutions to reimburse customers for any termination fees paid to AGSs. *Id.* Subpart h) of the prayer for relief asks for an order warning Nicor Gas and Nicor Solutions that further violations of the Act will be considered repeat violations. *Id.* at 12.

Third and lastly, CUB alleged that Nicor Solutions acted as an AGS by “furnishing gas” within the meaning of the Act. The remedies CUB has sought associated with this theory of liability include: subparts b), f), and h) of the prayer for relief. Subpart b) of the prayer for relief requests an order requiring Nicor Solutions and Nicor Gas to cease and desist their marketing of the Winter Cap program. *Id.* at 11. Subpart f) of the prayer for relief asks for an order terminating Winter Cap program customers’ enrollment and making Nicor Solutions and Nicor Gas re-solicit them. Second Amended Complaint at 11. Subpart h) of the prayer for relief asks for an order warning Nicor Gas and Nicor Solutions that further violations of the Act will be considered repeat violations. *Id.* at 12.

CUB’s theories of liability support subparts b), d), f), and h) of the prayer for relief against Nicor Gas. As the facts demonstrate Nicor Gas was intimately involved with Nicor Solutions in the switching of Winter Cap program customers’ gas suppliers regardless of whether the Commission accepts one theory of liability over another. CUB’s requested grants of relief also arise naturally from subpart c) of the prayer for relief. Again, subpart c) of the prayer for relief seeks an order voiding any agreement between Nicor Solutions and Nicor Gas about switching Winter Cap program customers’ gas suppliers. In voiding those agreements, the Commission should endeavor to put customers in the position they were in prior to enrolling in the Winter Cap program. Putting customers in the positions they were in prior to enrollment

includes, among other things: 1) that Nicor Solutions and Nicor Gas must cease and desist their marketing of Winter Cap, 2) terminating Winter Cap customers' enrollment without penalties and requiring Nicor Solutions and Nicor Gas to refund customers the monthly fees they have paid, 3) terminating Winter Cap program customers' enrollment and making Nicor Solutions and Nicor Gas re-solicit them, and 4) warning Nicor Gas and Nicor Solutions that further violations of the Act will be considered repeat violations.

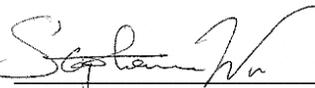
IV. The Commission Should Limit Any Interim Order To Explaining Its Decision As CUB Remains the Master of Its Complaint Who Defines the Scope of the Proceeding

CUB takes no position with regard to Nicor Gas's request for an interim order except to note two things. First, the ALJ has recently denied a similar request. *See* ALJ's August 20, 2004 Order Denying the Joint Request for a Final and Appealable Written Order of Nicor Solutions, L.L.C. and Northern Illinois Gas Company. Second, if the Commission grants Nicor Gas's request, the Commission should limit any interim order to explaining whatever decision the Commission reaches on Nicor Gas's Motion. CUB as the plaintiff in this case remains "the master of [its] complaint." *See Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712, 718 (4th Dist. 1998). CUB and its Second Amended Complaint define the scope of this proceeding going forward.

Conclusion

WHEREFORE for the foregoing reasons, CUB respectfully requests that the ALJ deny Nicor Gas's Motion.

Respectfully Submitted,

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