STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NORTHERN ILLINOIS GAS COMPANY	**)**	
d\b\a NICOR GAS COMPANY	**)**	
	)	**No. 04-0779**
Proposed general increase in gas rates, and revisions to	**)**	
other terms and conditions of service	**)**	

INITIAL BRIEF OF
CONSTELLLATION NEWENERGY-GAS DIVISION, LLC

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INITIAL BRIEF OF CNE-GAS

Constellation NewEnergy – Gas Division, LLC ("CNE-Gas"), by its attorney, hereby submits to the Illinois Commerce Commission ("Commission") its Initial Brief in the above-referenced consolidated proceeding regarding the proposed general rate increase submitted by Northern Illinois Gas Company ("Nicor" or Nicor Gas"). As more fully discussed below, the evidence in the record does not support a number of the proposed tariff changes and proposed rate increases sought by Nicor Gas.

I.
BACKGROUND

Constellation NewEnergy-Gas Division, LLC ("CNE-Gas") is a natural gas marketing company that is a wholly owned subsidiary of Constellation Energy Group, Inc. CNE-Gas supplies natural gas and related transportation services to approximately 3,000 large commercial and industrial customers, municipalities, local distribution companies and cogeneration facilities in 35 states, Canada and Mexico. CNE-Gas provides natural gas commodity and related services to several hundred, large volume, commercial and industrial end users who receive their distribution service from Nicor Gas. (*See* CNE-Gas Exhibit 1.0, lines 5-19.) In this proceeding CNE-Gas presented the direct and rebuttal testimony of John M. Oroni, Regional Sales Director with CNE-Gas (*See* CNE-Gas Exhibits 1.0 and 2.0, respectively.) and co-sponsored with the Illinois Industrial Energy Consumers ("IIEC") the direct and rebuttal testimony of Dr. Alan E. Rosenberg, a consultant in the field of public utility regulation. (*See* Rosenberg Joint Testimony - IIEC/CNE Joint Exhibits 1 and 2, respectively.)

Mr. Oroni holds a M.S. Engineering degree in Management and Marketing, and Biomedical Engineering and Nuclear Engineering B.S. degrees. Mr. Oroni has been with CNE-Gas since 1995 and is responsible for its sales and marketing functions throughout Illinois and surrounding areas. Prior to 1995 Mr. Oroni was a senior sales engineer for GE Power Systems and also part-time faculty member at Waubonsee Community College in the Department of Engineering and Technology. (*See* CNE-Gas Exhibit 1.0, Exhibit A.)

Dr. Rosenberg's educational background, experience, and credentials that qualify him as an expert witness in various areas of public utility regulation and to testify in this proceeding are presented in IIEC Exhibit 1.

Mr. Oroni presented testimony on the following subject areas:

- Nicor Gas's proposal to implement cycling requirements for a transportation customer's storage gas inventory and the associated target levels for storage gas inventory (90% or greater by November 1 and 10% or less by April 1);
- the proposed penalties for noncompliance in meeting the proposed target levels;
- CNE-Gas's proposal that Nicor Gas adopt industry standards by allowing intraday nominations, as do other Illinois local gas distribution utilities;
- Nicor Gas proposals to reduce available storage capacity, storage withdrawal rights during the heating season, and maximum daily nominations to transportation customers during the heating season; and

- The magnitude of Nicor Gas' requested rate increase and the resulting negative impact on Illinois transportation customers.

Mr. Oroni also testified to the need for the adoption of the following recommendations to temper the negative impacts of Nicor Gas' proposal:

- Elimination of the existing 50-account limit per group in Nicor Gas's Rider 13;
- Allowance of super pools of groups; and
- Allowance of transportation customers to sell their storage gas to non-group members; and
- Rejecting Nicor Gas's proposal to eliminate Rate 81.

Dr. Rosenberg's Joint testimony addressed: Nicor Gas's proposed cycling requirements; Nicor Gas's proposal to limit the ability of transportation customers to inject and withdraw from storage by transportation customers; and Nicor Gas's calculation of the Storage Banking Service capacity entitlement.

As will be discussed in greater detail below, Nicor Gas has presented the Commission with a request for a substantial rate increase for transportation customers. In addition, Nicor Gas has proposed to significantly limit the ability of transportation customers to manage risk and properly hedge that risk. In certain instances, Nicor Gas has taken away certain choices from transportation customers. The Commission should reject this twofold assault on transportation customers.

II.

EXECUTIVE SUMMARY:

THE COMMISSION SHOULD MITIGATE NICOR GAS' PROPOSAL TO IMPOSE SIGNIFICANT RATE HIKES AND SIGNIFICANTLY LIMIT THE ABILITY OF TRANSPORTATION CUSTOMERS TO PROPERLY MANAGE RISK

The Commission should note Nicor Gas' proposal represents a significant rate substantially borne by transportation customers. At the same time that it seeks to impose a significant rate increase substantially borne by transportation customers, Nicor Gas has proposed to significantly restrict the flexibility of those customers to utilize Nicor's storage service and storage assets and limit their ability to continue to employ certain risk management tools.

If the Commission does not mitigate or phase-in the rate impact and the proposed reduction in flexibility, transportation customer will suffer severe hardships, rate shock, and the Illinois economy will suffer. Thus, if the Commission fails to direct Nicor Gas to modify their proposal, the transportation customers could well revert back to monopoly service with Nicor Gas.

Nicor has failed to demonstrate that its proposals are just and reasonable. Based upon the evidence in the record, CNE-Gas respectfully requests that the Commission:

1. **Reject Nicor Gas' proposed cycling requirements and associated target levels for transportation customers.** Nicor Gas has not sufficiently demonstrated any changes in its system's operations since its last rate case in 1995 that would justify its proposed rate increase and proposed restrictive and unnecessary measures. In fact, during the past 10 years since Nicor Gas' Storage Banking

Service ("SBS") has been available to transportation customers, Nicor Gas has demonstrated the ability to cycle its storage fields without the existence of the cycling requirements it now wishes to impose on transportation customers. (*See* IIEC/CNE Joint Exhibit 1, lines 1-7, page 6.) According to Nicor Gas Witness Bartlett, Nicor Gas has never failed to properly cycle its storage fields. (Tr. 505-506.) If the Commission is inclined to disregard this fact and to conclude that cycling requirements may be necessary, **prior to allowing Nicor Gas to implement such measures, CNE-Gas believes the Commission should condition such approval on Nicor Gas performing a follow-up study on its storage fields.** This follow-up study would help verify the results of the study by Fairchild and Wells, Inc. ("Fairchild-Wells study") presented by Nicor Gas in this proceeding. (*See* CNE-Gas Exhibit 2.0, lines 515-539.)

2. **Allow Nicor to adopt an April 1 target level, but reject the 10% or less target proposed by Nicor Gas as without justification and unnecessary to meet the stated goals for reducing storage balances by April 1.** In fact, during at least the past 10 years as Nicor Gas has cycled its storage fields, from beginning to end of one heating season after another, Nicor Gas itself has rarely reached the 10% target level it now wants to impose on transportation customers. As demonstrated by CNE-Gas, a target level of no lower than 30%-50% would be adequate (if such a target level is deemed necessary at all.) (*See* CNE-Gas Exhibit 2.0, lines 480-495, 496-514; CNE-Gas Exhibit 2.4; Tr. 556.)

3. **Allows Nicor to adopt a November 1 target level, but revise the proposed 90% or greater target. Nicor Gas'** proposal is without justification and

unnecessary to meet the stated goals for reducing storage balances by April 1. As such, it should be reduced to a lower level, which would not diminish Nicor Gas's stated needs. As demonstrated by CNE-Gas, a target level no higher than 75% would be adequate (if such a target level is deemed necessary at all.) (*See* CNE-Gas Exhibit 2.0, lines 496-514; Tr. 1074, 1077.)

4. **Rejects the proposed penalty provisions for noncompliance as punitive and counterproductive to compliance goals.** In particular, the penalty for noncompliance to the April 1 target, as proposed, would render it difficult for a customer to comply with the subsequent November 1 target. Accordingly, Nicor Gas' proposal may potentially ensure conditions for noncompliance as will be shown in more detail, Nicor Gas did not even review, discuss, or consider other methods to encourage cycling. (*See* CNE-Gas Exhibit 2.0, lines 549-569; Tr. 555.)

5. **Consider whether a period of time for compliance, such as a 30-day period, is a more appropriate target level than specifically enumerated dates.** (Tr. 720.) As Dr. Rosenberg states, while Nicor Gas's storage fields have to be filled and emptied periodically, storage fields cannot read a calendar or a specific date. (*See* IIEC/CNE Joint Exhibit 2, lines 3-6, page 3.) Nicor Gas has eight separate storage fields, not just one, which can all be cycled separately. (Tr. 498, 507, 619.)

If the Commission approves Nicor Gas' proposed cycling requirements and target levels, transportation customers must be provided additional tools to replace their reduced ability to manage their storage assets, enable transportation customers to better utilize their storage, and mitigate the impact of higher rates these customers will bear from the instant proceeding. (*See* CNE-Gas Exhibit 1.0, lines 216-280; CNE-Gas Exhibit 2.0, lines 222-247, 261-316, 435-443, 592-608, 610-615.) Specifically, the Commission must reject Nicor Gas' proposed revisions to storage capacity allocations, storage withdrawal rights, and maximum daily nominations in order to partially offset the reduced flexibility afforded to transportation customers. (*See* IIEC/CNE Joint Exhibit 1, page 9-11; IIEC/CNE Joint Exhibit 2, page 11-13; CNE-Gas Exhibit 2.0, lines 466-478, 617-633.) The Commission should adopt the following proposals of CNE-Gas:

- Allowance of intraday nominations;
- The creation of Super Pools;
- Elimination of the 50-account limit per group for Rider 13; and
- Allowance of a transportation customer to sell gas from its storage account to a non-group member.

Implementation of each provision, as enumerated above and discussed in greater detail below, mitigate the severe and punitive impacts of Nicor's proposed rate increase and proposed reduction in storage management rights. While none of these tools independently (or even collectively) assist transportation customers in comporting with proposed cycling requirements, CNE-Gas' recommended changes greatly improve Nicor Gas' proposals in the instant proceeding. Moreover, the record supports a finding that Nicor Gas is able to implement each of these proposals. (*See* CNE-Gas Exhibit 1.0, lines 216-258, 262-274; CNE-Gas Exhibit 2.0, lines 222-247, 261-316, 435-443, 592-608, 610-615.) In addition, the Commission should:

6. Enter an Order that **moderates the level of rate increases proposed by Nicor Gas (and ICC Staff) for Rates 74, 76, and 77**. If the Commission approves increases to these rate schedules at levels approaching what is proposed by Nicor or ICC Staff, the increases should be spread over a minimum of two years. (*See* CNE-Gas Exhibit 2.0, lines 665-694.)

7. **Reject the unnecessary and unsupported rate increase to Storage Banking Service as proposed by the ICC Staff.** Staff's proposed rate design is especially unwarranted if it occurs in tandem with Nicor Gas' proposals to diminished the value of SBS service in the instant proceeding. (*See* CNE-Gas Exhibit 2.0, lines 427-433; Tr. 1287-1290, 1322.)

8. **Reject Nicor Gas' proposal to eliminate Rate 81, and continue the "grandfathered" status of Rate 81 customers.** Not only did Nicor Gas fail to provide advance notice of its intent to eliminate Rate 81, Nicor Gas now has the temerity to request a substantial rate increase for these "grandfathered" customers. Current Rate 81 customers may also face stranded capital investments as well as a doubling of distribution costs. (*See* CNE-Gas Exhibit 1.0, lines 165-200.)

III.

BRIEFING OUTLINE FROM THE ADMINISTRATIVE LAW JUDGES

In the instant proceeding the Administrative Law Judges ("ALJs") provided a Briefing Outline ("ALJ Outline") to the parties with instructions to adhere to the Outline in the submission of Initial Briefs. All of CNE-Gas' the issues are set forth in Section VI of the ALJ Outline, and are discussed below.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS
B. Rates, Riders, and Other Terms
6. Elimination of Rate 81- Energy Transportation

THE COMMISSION SHOULD REJECT NICOR'S PROPOSAL TO ELIMINATE RATE 81

In the instant proceeding, Nicor has proposed to eliminate Rate 81 and transfer the customers that are currently served under Rate 81 to Rate 74 or 76. Nicor Gas' proposal, if accepted by the Commission, would **double** the distribution costs of the average current customer on Rate 81. Proposing to transfer Rate 81 customers in this manner, Nicor Gas is effectively presenting a "double-whammy" to Rate 81 customers. The Commission should not allow Nicor to eliminate the Rate 81 class and transfer these customers to Rate 74 while, at the same time, propose and implement a large rate hike. (*See* CNE-Gas Exhibit 1.0, lines 165-175.)

Rate 81 was implemented to encourage the use of natural gas for on-site electric generation. Customers made significant capital investment in equipment in order to take service under Rate 81. It is unfair for Nicor to now potentially strand customers' investments simply due to its desire to no longer honor the tariff. (*See* CNE-Gas Exhibit 1.0, lines 176-184.) It is particularly distressing that Nicor proposed to eliminate this rate class at that same time as it proposes large rate hikes for the class to which these customers are to be transferred, a rate class that is already more costly for these customers. Any elimination of Rate 81 or transfer program to another rate class should only take place when the rates of the transferred to class are relatively stable in order to reduce the rate shock to customers impacted by the elimination of their service. (*See* CNE-Gas Exhibit 1.0, lines 185-200.)

CNE-Gas respectfully requests that the Commission reject Nicor Gas' proposal to eliminate Rate 81.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS

B. Rates, Riders, and Other Terms

8. Rates 74, 76, 77

a) Allocation

(1) Storage capacity rights

THE COMMISSION SHOULD REJECT NICOR GAS' PROPOSAL TO LIMIT CUSTOMER'S ENTITLEMENT TO STORAGE CAPACITY ALLOCATION

For the last ten (10) years, under Nicor Gas' existing tariff transportation customers have been allowed to nominate up to 26 times their Maximum Daily Contract Quantities ("MDCQ") in Storage Bank Service ("SBS") capacity entitlement. If SBS capacity is not fully nominated, customers have the ability to purchase some of the unused capacity. Nicor Gas proposes in this proceeding to reduce a customer's entitlement to 23 times the customer's MDCQ. The record fails to support this proposed change.

As such, CNE-Gas opposes Nicor's proposal to reduce transportation customer's entitled to storage capacity allocation. In fact, the record supports an increase in the number of days on which capacity entitlement is based. As IIEC/CNE witness Dr. Rosenberg demonstrates, the number of days should be increased to 27 days. (*See* IIEC/CNE Joint Exhibit 1, pages 10-11; IIEC/CNE Joint Exhibit 2, pages 11-13. *See also* CNE-Gas Exhibit 1.0, lines 204-211; CNE-Gas Exhibit 2.0, lines 445-451.)

Related to this issue of SBS capacity entitlement is transportation customers' access to residual SBS capacity, which Nicor Gas currently allows after all customers make their initial SBS elections. It is extremely important to transportation customers that this existing practice be maintained. CNE-Gas recommends that to maintain a level playing field between transportation customers and Nicor Gas's Hub Services, Nicor Gas ensure that residual SBS capacity be made available to Hub Services only after transportation customers have had their opportunity. (*See* CNE-Gas Exhibit 2.0, lines 635-664.)

a. NUMBER OF DAYS OF ALLOCATION

In the instant proceeding, there are two (2) competing proposals for the number of days on which SBS capacity entitlement should be based. Nicor Gas proposes a reduction from the present 26 days to 23 days times a customer's MDCQ. (*See* Nicor Gas Exhibit 8.0, lines 512-513.) Dr. Rosenberg provided a detailed analysis that supports increasing the entitlement to SBS capacity to 27 days. (*See* IIEC/CNE Joint Exhibit 2, page 13.) Based upon his own analysis, ICC Staff Witness Borden supports Dr. Rosenberg's recommendation that the MDCQ be increased from 26 to 27 days. (*See* ICC Staff Exhibit 17.0, lines 205-209; Tr. 1052.)

The calculation that Nicor Gas utilizes to derive the number of days available to a customer is Nicor Gas storage capacity divided by design day send-out. The difference of opinion in the number of days results from Nicor Gas proposing to use its "anticipated annual cycling" amount – 120 Bcf (billion cubic feet) as the numerator (storage gas capacity). (*See* Nicor Gas Exhibit 39.0, line 199.) Dr. Rosenberg determined that use of 149 Bcf as the numerator is more appropriate since it represents the total capacity of working gas in the storage fields available to Nicor Gas. (*See* IIEC/CNE Joint Exhibit 2, page 11; Tr. 488.) ICC Staff Witness Borden concludes that the average coincident peak for working gas in storage – about 141 Bcf – is appropriate as the numerator. (*See* ICC Staff Exhibit 17.0, lines 211-221.)

Contrary to Nicor Gas' assertions, it is appropriate to allocate physical capacity instead of its estimated amount of gas that will be cycled. (*See* Nicor Gas Exhibit 39.0, lines 226-227.) As Dr. Rosenberg explains, the SBS capacity entitlement is an entitlement of <u>capacity</u>. (*See* IIEC/CNE Joint Exhibit 2, page 11, emphasis added.) The 120 Bcf figure used by Nicor Gas to support its proposal (from 26 to 23 days) is not a capacity figure but its expected <u>cycling figure</u>; that is, the amount of gas that Nicor Gas estimates it will cycle on an annual basis, not the total working gas capacity of its storage fields or even the average coincident peak for working gas in storage over the past 10 years.

Both Dr. Rosenberg and ICC Staff Witness Borden agree that the appropriate capacity figure on which to base the capacity entitlement SBS number of days is between 140 Bcf and 149 Bcf. Staff Witness Borden settles on 140 Bcf as the average coincident peak for working gas in storage over the past 10 years for Nicor Gas's storage fields. In other words, Nicor Gas's own experience during the 1995-2004 period was that on average reached a level of 140 Bcf. (Tr. 1052.)

Nicor Gas would have the Commission believe that any number higher than 120 Bcf threatens its system's operations and thereby reliability to sales customers. This argument is a red-herring and should not act to distract the Commission from analyzing the evidence in the record. While Nicor Gas acknowledges that using coincident peak capacity makes some sense, it offers little to rebut the Staff and IIEC/CNE-Gas alternative proposal. (*See* Nicor Gas Exhibit 39.0, lines 220-227; *See also* Nicor Gas Exhibit 24.0, lines 325-335.)

Nicor Gas Witness Bartlett offers the analogy that prudent drivers will not drive until they fully cycle their gas tank before they fill-up, since to do so would risk running out of gas. Nicor Gas, as a prudent driver, believes it cannot cycle its entire gas in storage, but rather needs to "keep something in the tank." (*See* Nicor Gas Exhibit 24.0, lines 331-335.) Yet Nicor Gas does not have a single tank, but operates with eight separate tanks (or storage fields.) (Tr. 507.) If a prudent driver had eight separate gas tanks, it would fully cycle a single tank to empty, just as long as it did not run all eight tanks to empty at the same time. As Nicor Gas currently operates each of its eight fields differently throughout the year, with different timing of when fields are emptied and filled, Nicor Gas should be able to cycle a volume that is greater than 120 Bcf of gas. (Tr. 619.)

The record evidence regarding Nicor Gas' own average coincident peak over the past 10 years supports the proposals offers by Staff, IIEC, and CNE-Gas. For the past 10 years, sales customers have not been disadvantaged due to transportation customers' access to 26 days times their MDCQ. Accordingly, CNE-Gas submits that Nicor Gas has failed to meet their burden of justifying the justness and the reasonableness of a proposal to warrant a reduction in transportation customers' SBS capacity entitlement.

CNE-Gas respectfully requests that the Commission reject Nicor Gas' proposal to reduce the number of days times MDCQ. If the Commission determines that it should change the number of days times MCDQ, the record supports adoption of the use of 27 days.

b. CONTINUING AVAILABILITY OF RESIDUAL CAPACITY

Likewise, the Commission should recognize the importance of allowing transportation customers to continue to have the opportunity to select residual SBS capacity after the initial election period is completed. (*See* CNE-Gas Exhibit 2.0, lines 635-643.)

As a group, transportation customers must have the opportunity to acquire residual capacity that is initially made available to transporters. Nicor Gas should be directed to clarify in this tariff provision that residual storage capacity will be made available first to transportation customers and their transporters before such capacity is presented to Hub Services, an unregulated affiliate of Nicor Gas. Hub Services should not receive any preference by Nicor regarding the use of storage services. At a minimum, transportation customers should have the same storage benefits and flexibility that is afforded to Hub Services. (*See* CNE-Gas Exhibit 2.0, lines 639-643.) If Hub Services are afforded greater benefits and limits on storage, such as provided greater injection rights than the comparable limits placed on transportation customers, the Commission should require that Nicor submit a monthly report detailing all of these occurrences along with an explanation of why such different or preferential treatment is justified. (*See* CNE-Gas Exhibit 2.0, lines 645-656.)

More specifically, the Commission should direct Nicor Gas to amend its tariff to include a provision that clarifies that when bids are sent out for additional storage capacity there should be two bids issued. The first bid should be sent to existing transportation customers who are already paying for Nicor Gas system storage. These customers should be entitled to the first opportunity since they are paying the cost of this storage. If additional capacity remains after the first bids, then subsequent bids can be sent to other parties who are not already paying the cost of system storage but who are interested in buying any remaining storage capacity. (*See* CNE-Gas Exhibit 2.0, lines 658-664.)

According to Nicor Gas, the amount of storage that is allocated to Hub Services is primarily driven by the transportation customer selection of the amount of their allocated capacity compared to their total capacity rights, and then making available to Hub Services the difference, or in other words that amount of storage capacity that will be underutilized by sales, transportation and Customer Select customers. (Tr. 465-466.) At some times, for example October 2002, the amount of storage allocated to transportation customers can be roughly equivalent to the volume that is assigned to Hub Services. (Tr. 546-547; *See also* CNE Cross Exhibit 3.) In other years, for example October 2004, the volume allocated to Hub Services is less than that provided to the transportation class. (*See also* CNE Cross Exhibit 3.) In 2004 and 2005, SBS capacity was fully subscribed by transportation customers, yet Nicor Gas allocated SBS capacity to Nicor Hub Services. (*See* Nicor Gas Response to CNE-Gas On The Record Data Request 1.01 which is attached hereto and made a part hereof as Attachment A.)

CNE-Gas respectfully requests that when transportation customers are denied all the storage capacity they desire, Nicor Gas should be prevented from allocating storage to Hub Services until that time as all transportation requests for storage capacity have been met.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS
B. Rates, Riders, and Other Terms
8. Rates 74, 76, 77
a) Allocation
(2) Storage withdrawal rights

THE COMMISSION SHOULD REJECT NICOR GAS' PROPOSAL TO REDUCE A CUSTOMER'S SBS STORAGE WITHDRAWAL RIGHTS

Nicor proposes to reduce a SBS customer's storage withdrawal right from 2.3% to 2.1%. The impact of such a reduction in storage withdrawal rights is magnified by Nicor's proposal to implement cycling requirements as discussed more fully below. If Nicor Gas receives approval to implement cycling requirements, the Commission should not also simultaneously approve a reduction in storage withdrawal rights. By simply reducing storage withdrawal rights to 2.1%, this has roughly the same effect as missing the storage cycling fill-target by 10% even when no cycling requirements are in place. To implement both a reduction in storage withdrawal rights and cycling requirements at the same time, compounds the adverse impact on customers, resulting in a more significant reduction to storage withdrawal rights for any customer that does not achieve target levels. (*See* CNE-Gas Exhibit 2.0, lines 466-478.)

CNE-Gas respectfully requests that the Commission reject Nicor Gas' proposal to reduce a customer's SBS Storage withdrawal rights.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS
B. Rates, Riders, and Other Terms
8. Rates 74, 76, 77
a) Allocation
(4) Maximum daily nomination

THE COMMISSION SHOULD REJECT NICOR GAS' PROPOSAL TO REDUCE A CUSTOMER'S MAXIMUM DAILY NOMINATION

Nicor proposes to reduce a customer's maximum daily nomination annually from 2 to 1 times the MDCQ from November 1 through March 31. However, Nicor has failed to provide any empirical evidence that substantiates the need for this reduction in daily nominations which makes an already limited situation more restrictive for transportation customers. Commission Staff likewise appropriately recognized this deficiency in the evidence presented by Nicor in the instant proceeding. (*See* ICC Staff Exhibit 8.0, lines 238-243.) Nicor did not demonstrate that any harm accrues to sales customer through retaining the current limit of 2 times the MDCQ. (*See* CNE-Gas Exhibit 2.0, lines 617-633.) This proposal could actually harm sales customers, since during this time period gas prices are often higher than during the rest of the year. Higher nominations from November through March could actually serve to displace more costly gas purchases by Nicor. (*See* IIEC/CNE Joint Exhibit 1, lines 9-17, page 9.)

CNE-Gas respectfully requests that the Commission reject Nicor Gas' proposal to reduce a customer's maximum daily nomination.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS

B. Rates, Riders, and Other Terms

8. Rates 74, 76, 77

a) Allocation

(5) Intraday nominations

THE COMMISSION SHOULD DIRECT
NICOR GAS TO ALLOW INTRADAY NOMINATIONS

CNE-Gas has proposed that Nicor Gas be mandated to include in its tariffs intraday nomination cycles, specifically: the Evening Cycle, Intraday 1 and Intraday 2 cycles, along with the Timely Cycle which Nicor Gas currently accepts. (*See* CNE-Gas Exhibit 1.0, lines 216-258; CNE-Gas Exhibit 2.0, lines 267-271.) The additional intraday nomination cycles would provide transportation customers the ability to change nominations when necessary after the Timely Cycle deadline has passed. As demonstrated in the record, the need to adjust nominations can arise for numerous unexpected reasons, including weather conditions, changes in a customer's production schedules, or due to a pipeline or utility system disruption. (*See* CNE-Gas Exhibit 2.0, lines 271-278.) To aid in the adoption of this proposal, CNE-Gas provided suggested tariff language for intraday nominations. (*See* CNE-Gas Exhibit 2.3.) This ability would be similar to what Nicor's own internal supply operations personnel can do, who use this capability to help maintain supply stability. (*See* CNE-Gas Exhibit 1.0, Exhibit C; CNE-Gas Exhibit 2.0, lines 271-278.) CNE-Gas suggests that transportation customers deserve the same option for the same reason – to help customers manage their load requirements when unanticipated changes occur.

Intraday nominations are the industry standard. The North American Energy Standards Board ("NAESB"), and its predecessor the Gas Industry Standards Board, have developed various standards for the purpose of ensuring smooth and efficient operations between producers, pipelines, local distribution utilities, marketers, and others. NAESB is the industry forum for the development and promotion of standards which will lead to a seamless marketplace, and its process for development and implementation of standards is consensus driven. (*See* CNE-Gas Exhibit 1.0, lines 219-227.)

CNE- Gas is not asking Nicor Gas to do something that other Illinois gas utilities have not already done. As demonstrated in the record, over 26 other gas utilities in the upper Midwest region contiguous to the state of Illinois have implemented the use of intraday nominations, including MidAmerican Energy Company; Peoples Gas Light and Coke Company; AmerenIP (Fall 2005); Madison Gas & Electric (Wisconsin); Wisconsin Electric Power-Gas Operations; Wisconsin Gas LLC; Wisconsin Power & Light; CenterPoint Energy Minnegasco; Xcel Energy (Minnesota); Aquila Networks (Minnesota); Alliant Energy (Minnesota); Great Plains Natural Gas Company (Minnesota); Aquila Networks-MGU (Michigan); Consumers Energy Company (Michigan); SEMCO Energy Gas Company (Michigan); Xcel Energy (Michigan); Vectren (Indian Gas Company, Southeastern Indiana Gas and Electric Company, and Vectren Energy Delivery Ohio); Atmos (Western Kentucky Gas, United Cities Gas-Tennessee); Cincinnati Gas & Electric; Columbia Gas of Ohio; Columbia Gas of Kentucky; Union Light Heat & Power Company (Kentucky); Louisville Gas & Electric; and, Baltimore Gas & Electric. (*See* CNE-Gas Exhibit 1.0, lines 245-258; CNE-Gas Exhibit 2.0, lines 261-266.)

Nicor Gas asserts that allowing intraday nominations for transportation customers would increase uncertainty in its system operations and increase costs. (*See* Nicor Gas

Exhibit 24.0, lines 848-849.) However, other than its baseless assertion, Nicor provides no record evidence to support its assertion. It is doubtful that 26 other gas utilities would implement the use of intraday nominations if it threatened the same and reliable operation of their systems. It is also doubtful that those same 26 other gas utilities would allow intraday nominations if the direct result was an increase in costs. In short, Nicor Gas' assertions are wholly without merit and not supported by the record.

Further, the record supports a finding that Nicor Gas' existing tariffs contain at least four (4) provisions that independently control the manner and extent to which transportation customers deliver gas into the Nicor Gas system that would render any assertions regarding threats to safe and reliable operation of Nicor's system moot. **First**, to assist Nicor Gas in monitoring a customer's deliveries and usage, a transportation customer on Rates 74, 76, or 77 must have a telephone line installed and Nicor Gas also installs a daily usage recording device. (*See* Ill.C.C. No. 16-Gas, 2nd Revised Sheet No. 46.) **Second**, transportation customers are also required to establish a MDCQ of natural gas which remains effective for a 12-month billing period. Nicor can refuse to allow a transportation customer an MDCQ that it believes to be unreasonably high. (*See* Ill.C.C. No. 16-Gas, 5th Revised Sheet No. 47.) **Third**, Nicor Gas is not obligated to accept a transportation customer's gas when nominations do not comply with Nicor's tariff procedures, and Nicor Gas controls the order of deliveries of gas into its system. (*See* Tariff Sheet, Ill.C.C. No. 16-Gas, 3rd Revised Sheet No. 49.) **Fourth**, Nicor Gas determines a customer's authorized and unauthorized use levels, and can terminate a customer with one-hour's notice if an unauthorized use level interferes with Nicor Gas's operations of its system. (Tariff Sheet, Ill.C.C. No. 16-Gas, 3rd Revised Sheet No. 51)

In addition, while Nicor Gas currently only accepts the Timely Cycle nomination, Nicor Gas does so electronically through its Electronic Nomination System available on Nicor's website at Gas Exchange. (*See* Nicor http://www.nicor.com/en_us/commercial/gas_xchange/nom_system_download.htm#elec_nom.) Utilities that currently allow intraday nominations in conjunction with the Timely Cycle nomination typically incorporate additional windows on their electronic bulletin board to accept intraday nominations; some make pre-arranged schedules with transportation customers and marketers in which utility personnel "let the customer/marketer back into" their electronic system to make the subsequent intraday nomination. In either case, if additional costs are incurred by Nicor Gas to accommodate intraday nominations, transportation customers and marketers would expect such costs to be recovered through transportation-related charges. There is no need for, nor would CNE-Gas expect, non-transportation customers to pay for the cost of a service not providing such customers any benefit.

CNE-Gas respectfully requests that the Commission direct Nicor Gas to amend its tariffs to allow for Intraday Nominations.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS
B. Rates, Riders, and Other Terms
8. Rates 74, 76, 77
b) SBS Charge

THE COMMISSION SHOULD REJECT STAFF'S
PROPOSED RATE DESIGN FOR THE STORAGE BANKING CHARGE

As part of this proceeding, Nicor Gas proposes a multitude of changes to its Storage Banking Service ("SBS") that result in (a) reduced storage volume; (b) less flexibility in using that storage capacity; and (c) a slight reduction in the charge for the service. The current rate for Nicor's SBS is $0.0039. In the instant proceeding, Nicor Gas proposed to slightly decrease the rate for SBS to $0.0038. (*See* Nicor Gas Exhibit 17.2, Nicor Gas Exhibit 32.0, lines 847-849.) In direct testimony, Commission Staff supported this rate of $0.0038. (*See* ICC Staff Schedule 7.2; Tr. 1283-1284.) However in rebuttal testimony, Commission Staff Witness Luth suggested that the rate for SBS be increased by 15% to $ 0.0045. (*See* ICC Staff Schedule 16.6 Revised; Tr. 1284, 1321.) The record demonstrates that Staff's revised proposal is in error as it incorrectly allocates costs to transportation customers that should not be allocated to transportation customers. (Tr. 1287-1288.) Staff's revised SBS rate design also ignores the recommendation of ICC Staff Witness Borden regarding the appropriate value to use in the denominator of the calculation. (Tr. 1289-1290.)

Since Staff has failed to adequately support an increase of this magnitude, the Commission should reject Staff's proposed 15% rate increase for SBS service. Such an increase in the rate of this service is especially unwarranted if it occurs in tandem with the diminished value to SBS service that will result if the many changes proposed by Nicor Gas to SBS service are adopted in this proceeding. (*See* CNE-Gas Exhibit 2.0, lines 427-433.) Staff acknowledged that they did not take into consideration the other proposed changes in the terms and conditions of SBS when proposing a 15% rate increase. (Tr. 1322) Among transportation customers, the increase to SBS is in addition to other rate increases proposed; rate hikes of 50%, 100% or even 500% if ICC Staff's rate design proposal is approved. (Tr. 1323-1327.)

THE COMMISSION SHOULD DIRECT NICOR TO REVISE ITS TARIFFS TO ALLOW SBS CUSTOMERS TO SELL GAS WITHDRAWN FROM THEIR STORAGE ACCOUNT

While numerous changes to SBS are suggested that diminish the value of the service to customers, CNE-Gas recommended a change to SBS that would enhance the value of this service without harm to Nicor or its sales customers. Currently transportation customers are restricted by Nicor so that they can only sell their gas in storage to other end users within the same group. Nicor should be required to remove this restriction so that SBS customers are able to sell gas withdrawn from their storage account to other end users or marketers. (*See* CNE-Gas Exhibit 2.0, lines 222-228.) SBS customers should be afforded the flexibility to buy or sell gas from other storage holders or to sell their excess gas supply to other marketers, increasing the competitiveness of the Nicor market. (*See* CNE-Gas Exhibit 2.0, lines 233-247.) Nicor Gas did not present any record evidence to support a finding that such a proposal would harm sales customers. (Tr. 724.)

Removing rules that restrict customer's ability to sell gas withdrawn from their storage account becomes even more important if Nicor imposes target levels for storage injections and withdrawals. (*See* CNE-Gas Exhibit 2.0, lines 228-231.) Such added flexibility will provide this group of customers with a tool that will assist them in achieving the target levels that Nicor will require by removing a restriction that currently limits their ability to cycle gas volumes. (Tr. 722-723.)

CNE-Gas respectfully requests that the Commission reject Staff's proposed rate design and resulting rate increase for SBS. In addition, CNE-Gas respectfully requests that the Commission direct Nicor to revise its tariffs to allow SBS customers to sell gas withdrawn from their storage account to other end users or marketers.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS

B. Rates, Riders, and Other Terms

8. Rates 74, 76, 77

c) Cycling

THE COMMISSION SHOULD REJECT
NICOR GAS' PROPOSED CYCLING REQUIREMENTS

Nicor Gas proposes cycling requirements that would be applicable to transportation customers. Specifically, a customer would be required to fill its gas storage account to at least 90% of its elected Storage Banking Service (SBS) capacity by November 1 and withdraw gas from its SBS account down to no more than 10% by April 1. The record does not support the alleged need for cycling requirements. As a condition precedent to approving cycling requirements, the Commission should conduct a study to verify the results of the Fairchild Report. In addition, after conducting the study, if the Commission still is inclined to adopt cycling requirements, the proposed target levels and penalty provisions should be modified.

NICOR GAS HAS FAILED TO
DEMONSTRATE THE NEED FOR CYCLING REQUIREMENTS

Nicor Gas's own history in operating its storage fields demonstrates that the proposed cycling requirements are operationally unnecessary. During the past 10-year period, Nicor Gas has been able to properly cycle its storage fields, in the manner and to the levels deemed necessary, to meet its own operational and seasonal requirements without any maximum or minimum storage level requirements imposed on transportation customers. Nicor Gas has never failed to properly cycle its storage fields in spite of no cycling requirements for transportation customers. (*See* IIEC/CNE Joint Exhibit 1, lines 1-7, page 6; *See also* Tr. 505-506.) Nor did Commission Staff prepare any analysis, study or provide other evidence that it is necessary to require transportation customers to fill their storage to 90% or higher by November 1 in order to ensure the safe and reliable operations of Nicor's storage fields. (Tr. 1074.)

In addition, over this 10-year period of time Nicor Gas itself has not met the target levels it wishes to impose on transportation customers in maintaining its System Customer Storage level. As examples, on November 1, 2004 Nicor Gas reached 88%; while, on March 31, 2000 it still had more than 34% in its storage fields. (*See* IIEC/CNE Joint Exhibit 1, lines 15-19, page 4**.**) Further, as demonstrated by CNE-Gas Witness Oroni, **only once in the past nine years** has Nicor Gas storage level fell below 10% on April 1, averaging about 32% during the five most recent years. (*See* CNE-Gas Exhibit 2.0, lines 341-349; CNE-Gas Exhibit 2.4; *See also* Tr. 556.)

Simply stated, Nicor Gas has failed to demonstrate the need and the appropriateness for the proposed cycling requirements. In the past, the record shows that Nicor Gas has been able to physically cycle its storage fields to operating levels for the heating season and withdrawal levels by spring in preparation for summer injections. Under Nicor's existing tariff provisions, SBS capacity allocations to transportation customers enabled them to utilize some of Nicor Gas's storage assets to inject and withdraw their own gas supply. During the past 10 years these two functions have co-existed without harm to Nicor Gas's storage operations or its tariff supply customers, and without the cycling requirements on transportation customers that Nicor Gas now suggests are necessary for the integrity of its storage fields. (*See* IIEC/CNE Joint Exhibit 1, lines 5-7, page 6.) Nicor Gas has not linked the need for these cycling requirements to either maintaining the operational integrity of its storage fields or protecting Nicor Gas and its customers from losing this asset or paying more for it. (*See* IIEC/CNE Joint Exhibit 1, lines 7-12, page 8.) Nicor Gas simply has not met its burden of proof to support this proposal.

Since Nicor was unable to present any evidence to support the imposition of cycling requirements on the grounds of "operational reasons," Nicor resorts to some specious arguments regarding the desire to protect captive ratepayers. Nicor Gas Witness Bartlett asserts that the interests of transportation customers are counter to Nicor Gas's system supply customers; and, therefore, Nicor Gas must protect its customers from higher costs through restricting transportation customers' use of rate base assets for which they pay. (*See* Nicor Gas Exhibit 8.0, lines 554-597.)

However, in the very same piece of testimony, Nicor Gas' own witness contradicts himself. (*See* IIEC/CNE Joint Exhibit 1.0, Page3, line 20 – Page 4, line 3.) On the one hand, Mr. Bartlett states that transportation customers tend to over-inject when injections for sales customers should be occurring, presumably referring to the spring and summer injection period and implying sales customers are harmed. (*See* Nicor Gas Exhibit 8.0, lines 572-579.) Yet, a few lines further down Mr. Bartlett claims that transportation customers under-inject during the spring and summer. (*See id*., lines 592-594.) As illustrated by IIEC/CNE-Gas Witness Dr. Rosenberg, it is Nicor Gas's proposed cycling requirements that present the real potential for higher costs to sales customers, not the behavior of transportation customers. (*See* IIEC/CNE Joint Exhibit 1, pages 6-8 and Schedules 1 and 2; IIEC/CNE Joint Exhibit 2, pages 5-8.)

The Commission should disregard the conflicting testimony that Nicor Gas has presented to support the alleged need for cycling requirements. The fact is for the past 10 years both transportation customers and sales customers have been able to utilize Nicor Gas storage field assets without harm to one another. Nicor Gas presented no studies or analysis that calculated actual financial losses suffered by sales customers due to the injection and withdrawal patterns of transportation customers since January 2000. (Tr. 559.) In addition, Staff Witness Borden acknowledged that transportation customer's failure to fill storage by 90% by November 1 will not necessarily harm sales customers; it could actually help sales customers. (Tr. 1077.)

CNE-Gas respectfully requests that the Commission reject Nicor's proposed cycling requirements.

THE COMMISSION SHOULD DIRECT NICOR TO CONDUCT A FOLLOW-UP STUDY ON NICOR GAS'S STORAGE FIELDS

CNE-Gas does not believe that Nicor Gas has met its burden of proof that cycling requirements are necessary as discussed above. However, if the Commission is considering the approval of cycling requirements for Nicor Gas, CNE-Gas respectfully recommends that one additional step be taken – an independent verification of the Fairchild-Wells study that Nicor Gas relies on, at least in part, to support its need for cycling requirements. (*See* CNE-Gas Exhibit 2.0, lines 515-526.)

CNE-Gas Exhibit 2.6 is Nicor Gas' Response to CNE-Gas Data Request 6.01 that addressed certain issues pertaining to the Fairchild-Wells report.[1] Nicor Gas states that the performance of its storage fields, presumably as demonstrated over the past ten years and as characterized by the Fairchild-Wells report, are not the reasons for "the resulting deliverability under the Company's proposal." (*See* CNE-Gas Exhibit 2.6.) Also, while CNE-Gas did not retain the services of a petroleum geologist as an expert witness in this proceeding, we point out to the Commission that Nicor Gas's storage wells cover a wide, geographic area, but that the information regarding the wells in the Fairchild-Wells report represents data from only the point in time of the study. (*See* CNE-Gas Exhibit 2.0, lines 526-537.)

CNE-Gas believes that the Commission could benefit from a second view of the Nicor Gas storage fields. Such a study would not unduly delay implementation of cycling requirements, if ultimately deemed necessary, and could help ensure that the restrictive measures proposed by Nicor Gas that have been unnecessary for the past ten years are 100% necessary. (*See* CNE-Gas Exhibit 2.0, lines 537-539)

CNE-Gas respectfully requests that if the Commission allows Nicor Gas to implement cycling requirements that it first conduct a study to verify the alleged need for such requirements.

IF THE COMMISSION APPROVES CYCLING REQUIREMENTS, THE PROPOSED TARGET LEVELS AND PENALTY PROVISIONS SHOULD BE MODIFIED

CNE-Gas does not believe that Nicor Gas has justified the need for cycling requirements. However, if the Commission finds that Nicor Gas has met its burden of

[1] The Fairchild-Wells report on Nicor Gas storage wells is Exhibit 8.3 of Nicor Gas Exhibit 8.0, which is Nicor Witness Bartlett's Direct Testimony.

proof that cycling requirements are just and reasonable, CNE-Gas recommends that the Commission reject Nicor Gas' arbitrary and unsupported target levels. In addition, if the Commission finds that Nicor Gas has met its burden of proof that cycling requirements are just and reasonable, the compliance and penalty provisions of its proposal must be modified.

i. THE COMMISSION SHOULD REJECT NICOR GAS' PROPOSED 10% TARGET LEVEL FOR APRIL 1

Nicor Gas has clearly shown that it does not need to operate at a 10% target level for April 1 to meet its system supply responsibilities. CNE-Gas agrees with ICC Staff Witness Borden that Nicor Gas has not adequately supported its proposed 10% target level for April 1. (*See* ICC Staff Exhibit 17.0, lines 248-271; Tr. 1077.)

While it is clear that Nicor Gas does not itself consistently achieve the target levels it proposes for transportation customers, this is especially the case with regard to the April 1 date. (*See* CNE-Gas Exhibit 2.0, lines 480-495; CNE-Gas Exhibits 2.4 and 2.5.) As demonstrated in the record in CNE-Gas Exhibit 2.4, on average as of April 1 during the period 2000 through 2004, storage for Nicor Gas's system customers was 32% full. Clearly, if cycling requirements are implemented Nicor Gas's proposed 10% target level by April 1 is unwarranted based upon Nicor Gas' own history.

Nicor Gas's existing tariffs could make it difficult for a transportation customer to meet the proposed 10% target level. Nicor Gas's existing storage service tariff limits a customer's ability to reduce storage; the only real option is an extremely uneconomic one, to burn off gas. A warm March could also preclude a customer from compliance with the target. (*See* CNE-Gas Exhibit 2.0, lines 351-359.) These are real-life possibilities which support the need for the additional tools that CNE-Gas proposes that

Nicor make available to transportation customers to facilitate compliance with cycling requirements.

If the Commission finds that Nicor Gas has met its burden of proof that cycling requirements are just and reasonable, CNE-Gas suggests that the Commission adopt a more moderate target level. A more moderate target level would be sufficient particularly, given the absence of any operational emergency, or even need, presented by Nicor Gas for justification for the proposed cycling requirements. Using Nicor Gas's own most recent experience, the most stringent April 1 target warranted would be 32%. (*See* CNE-Gas Exhibit 2.0, lines 490-495; CNE-Gas Exhibit 2.4.) CNE-Gas believes a target level at 50% would meet the Commission's goal of moderation. (*See* CNE-Gas Exhibit 2.0, lines 496-514.) This is a level that is similar to what is used by Natural Gas Pipeline (NGPL) in its DSS tariff. (Tr. 563.) Nicor Gas admitted that it could implement other target levels, but had performed no study or analysis to support other levels. (Tr. 571-572.) Absent any study or analysis validating a particular target level, the Commission should reject cycling requirements, or at minimum accept a more moderate target level such as 50%.

CNE-Gas respectfully requests that the Commission reject Nicor Gas' proposed target level for April 1. Instead, the Commission should direct Nicor Gas to implement a more reasonable 50% target level for April 1 if it deems cycling requirements appropriate.

ii. **THE COMMISSION SHOULD TEMPER THE 90% TARGET LEVEL FOR NOVEMBER 1**

If the Commission concludes that Nicor Gas has met its burden of proof that cycling requirements are just and reasonable, CNE-Gas respectfully recommends that a more moderate level than 90% be introduced to provide customers an opportunity to make operational adjustments. (*See* CNE-Gas Exhibit 2.0, lines 496-514.) ICC Staff Witness Borden agreed that in this proceeding no analysis, study or other evidence was presented that showed it is necessary to require transportation customers to fill their storage to 90% or higher by November 1 in order to ensure the safe and reliable operations of Nicor's storage fields. (Tr. 1074.) Mr. Borden also recognized that transportation customer's failure to fill storage by 90% by November 1 may not only not harm sales customers, it could actually help sales customers since Nicor Gas will be able to purchase more storage gas during the summer months when gas prices have historically been lower. (Tr. 1077.) Absent any study or analysis validating the necessity of a 90% target level for November 1, the Commission should reject this requirement, or at minimum accept only a very moderate target such as 75%.

CNE-Gas respectfully requests that the Commission reject Nicor Gas' proposed target level for November 1. Instead, the Commission should direct Nicor Gas to implement a 75% target level for November 1 if it deems cycling requirements appropriate.

iii. THE COMMISSION SHOULD REQUIRE THAT COMPLIANCE NOT BE MEASURED BY A SINGLE SPECIFIED DATE

If the Commission concludes that cycling requirements are reasonable, CNE-Gas suggests that compliance with the target levels be measured over a period of time, such as the 30-day period used by Natural Gas Pipeline, instead of through a single, specified date. (Tr. 720.) For example, if a 50% target level is to be achieved at the end of the heating season, compliance would be achieved through attaining 50% at any single date throughout a 30 day window at the end of winter. As stated by IIEC/CNE-Gas Witness

Dr. Rosenberg, while Nicor Gas's storage fields have to be filled and emptied periodically, the storage fields cannot read a calendar or a specific date. (*See* IIEC/CNE Joint Exhibit 2, lines 3-6, page 3.) The physical nature of the fields does not require them to be filled by November 1 and emptied by April 1 of each year. (Tr. 498.) Nicor Gas acknowledged that currently each of their fields operates differently throughout the year with different timing of when fields are emptied and filled. (Tr. 619.) Each of the eight (8) Nicor Gas storage fields can be cycled at different times, allowing Nicor Gas to maintain deliverability without requiring a date-certain in order to achieve effective cycling. (Tr. 507.)

Nicor Gas seeks compliance at a single specified point in time, however, the customer or marketer may not have operational data available from Nicor that clearly delineates the volume that is currently in a customer's SBS account until days after the fact. (*See* CNE-Gas Exhibit 2.0, lines 211-217.) This reporting delay complicates the ability of a customer or marketer to achieve a specific percentage-fill at a single point in time, especially as a day or two of customer's usage could represent 10% or more of a customer's storage account capacity. (Tr. 562.) A lag of several days (e.g. 3-6 days) before receiving daily usage reports makes it virtually impossible to know actual storage levels within 10% accuracy at a particular point in time.

CNE-Gas respectfully requests that the Commission preclude Nicor Gas from measuring compliance with proposed cycling requirements by a single specified date.

iv. THE COMMISSION SHOULD REJECT NICOR GAS' OVERLY PUNITIVE PENALTIES FOR NONCOMPLIANCE

The proposed penalty provisions by Nicor Gas for noncompliance with the target levels are punitive and do not provide incentives for compliance. Commission Staff agreed and recognized that Nicor's proposed penalty for noncompliance with target levels was not commensurate with missing the target. (*See* ICC Staff Exhibit 8.0, lines 196-221.) In particular, the penalty for noncompliance with the April 1 target, as proposed, would make it difficult for a customer to comply with the subsequent November 1 target; thereby, potentially ensuring continued noncompliance rather than providing an incentive to comply. (*See* CNE-Gas Exhibit 2.0, lines 559-569.)

Therefore, Staff proposed an alternative penalty structure that provides better correlation between cause and effect than do the either the Company's original or revised proposals. (*See* CNE-Gas Exhibit 2.0, lines 549-558.) As Nicor Gas has provided transportation service for over 15 years without any cycling requirements, it is unnecessary to implement any cycling requirements with penalties that are unduly harsh. If the Commission approves cycling requirements, in order to make compliance with target levels attainable, the Commission should adopt the CNE-Gas proposal to cap the reduction in withdrawal and injection rights. When a compliance level of 50% or less is achieved for November 1, a cap on further reductions in withdrawal rates should be put in place in order to maintain a reasonable ability for a customer to meet an April 1 target. If ICC Staff Witness Borden's proposal is approved, when a target level of 50% *or less* is achieved by November 1, withdrawal rights are capped at a 1.26% level. When a compliance level of 50% or more is achieved for April 1, a cap on further reductions in injection rights should be put in place in order to maintain a reasonable ability for a customer to meet the subsequent November 1 target. At some level it becomes counterproductive to continue to reduce storage withdrawal and injection rights if the goal is to achieve the next target level. (*See* CNE-Gas Exhibit 2.0, lines 571-590.)

Furthermore, Nicor Gas did not even review, discuss, or consider other methods to encourage cycling. (Tr. 555.)

CNE-Gas respectfully requests that the Commission reject Nicor Gas' overly punitive penalties for noncompliance. Instead, the Commission should adopt Commission Staff's noncompliance penalty modified by CNE-Gas' proposal to cap any proposed penalties.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS

B. Rates, Riders, and Other Terms

8. Rates 74, 76, 77

c) Cycling

(1) Super-pooling

THE COMMISSION SHOULD ADOPT CNE-GAS' PROPOSAL
TO REQUIRE NICOR GAS TO IMPLEMENT THE USE OF SUPER POOLS

CNE-Gas proposed that the Commission require Nicor Gas to offer the use of super pools as one of the tools for transportation customers and marketers to mitigate the extremely negative rate impacts of Nicor's proposed cycling requirements and target levels. Super pooling is a rather simple and straight-forward process where the total storage volumes for all groups of customers under the common management of the same marketer are used to determine compliance with both the November 1 and April 1 target level. (*See* CNE-Gas Exhibit 2.0, lines 435-443, 592-608.)

Nicor Gas suggests that cycling requirements are necessary for operational considerations, in that aquifer storage fields must be filled and emptied of working gas levels. (*See* Nicor Gas Exhibit 8.0, lines 557-566.) Nicor Gas further states that its goal is to maximize its storage inventory level on November 1 and minimize its inventory on

April 1. (*See* id., lines 607-609, 612-614.) The cycling requirements are aimed at placing transportation customers on the same cycling regime as Nicor Gas places itself.

The Commission should recognize that if Nicor Gas is truly interested in simply ensuring the cycling of gas volumes, then there is no logical reason to object to the pooling of gas between groups in order to determine compliance with the target levels. As an example, for a marketer with three separate groups, in determining compliance with a target level, Nicor Gas would add the amount of gas in storage for all customers in each of the three separate groups and then calculate that as a percent of the total storage capacity for each of the three groups under common supplier management. (*See* CNE-Gas Exhibit 2.0, lines 599-608.) This single percent would then become the basis to determine whether compliance with the appropriate target level was achieved.

In response to CNE-Gas' super pool proposal, Nicor Gas only says that maintaining the balancing requirements at the individual group level will provide "increased incentives" for the supplier to meet the cycling requirements, and that is of "greater benefit" to all customers that suppliers comply with the cycling requirements at the group level. (*See* Nicor Gas Exhibit 44.0, lines 916-924.) Nicor Gas simply failed to provide any substantive reason why super pools would not achieve the cycling requirements it wishes to impose. There is nothing inherent in the super pool proposal that would impact sales customers.

The super pool proposal is only a tool to allow a marketer with multiple groups of customers to treat all the storage volumes it has delivered to Nicor Gas's storage fields to count – in total – as the target level that a marketer is required to meet. CNE-Gas believes the super pools would help facilitate Nicor Gas's goal of cycling gas volumes by helping marketers and their customers to reach compliance with target levels. Nicor Gas provides no evidence or any credible testimony why super pools should not be allowed.

CNE-Gas respectfully requests that the Commission direct Nicor Gas to implement Super Pooling as a condition to imposing cycling requirements on transportation customers.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS

B. Rates, Riders, and Other Terms

8. Rates 74, 76, 77

d) Level of rate increase

THE COMMISSION MUST MODERATE THE IMPACT OF NICOR'S PROPOSED RATE INCREASES FOR RATE 74 AND 76 CUSTOMERS

The impact of Nicor's original rate design on Rate 74 customers using more than 240,000 therms annually is 30% or higher. (*See* CNE-Gas Exhibit 1.0, lines 56-58.) Staff's original rate design suggests even more severe results for these customers, increases of 63% to 100%. For Rate 76 large volume customers, Nicor's original rate design results in 40% to 42% increases, while Commission Staff's recommended rate design produces 46% to 51% increases for the CNE-Gas customers analyzed. (*See* CNE-Gas Exhibit 2.0, lines 83-89, 665-681; CNE-Gas Exhibit 2.1.) For certain transportation customers, under Commission Staff's proposed rate design proposal customers could experience rate increases of 50%, 100% or even 500%. (Tr. 1323-1327.)

Rate increases of the magnitude proposed for Rate 74 and 76 customers are counter to the concepts of rate stability and gradualism, would be extremely harmful to Illinois industry, and negatively affect economic development in Illinois. (*See* CNE-Gas

Exhibit 1.0, lines 125-164; CNE-Gas Exhibit 2.0, lines 94-98, 179-185.) As noted by ICC Staff Witness Luth, gradualism is one of the reasonable considerations of ratemaking. (Tr. 1316, 1319.) Rate increases of 70% or more could result in the loss of industrial load as customers revisit their operations. This could ultimately lead to the necessity to file additional rate cases. (Tr. 669-670.) While a typical residential customer experiences a 7.3% rate increase under Nicor's original proposal, and a 2% decrease under Commission staff's recommendation, a large transportation customer's utility distribution bill could nearly double in magnitude. (*See* CNE-Gas Exhibit 2.0, lines 100-109.) While even a 7% rate hike can result in hardship for certain customers, doubling rates are problematic for a greater number of customers. If a rate increase of the magnitude proposed by Nicor or Commission Staff is approved, the Commission should phase-in such steep rate hikes over a two-year or longer period. (*See* CNE-Gas Exhibit 2.0, lines 683-694.)

Whatever revenue requirement is approved by the Commission, CNE-Gas recommends that this revenue requirement be allocated across all classes of customers in a fair and equitable manner based upon the concept that the cost-causer pays. CNE-Gas agrees that Rate 74 and 76 customers should shoulder their appropriate burden of any reasonable rate increase. (*See* CNE-Gas Exhibit 2.0, lines 48-55, 142-145.) However, the Commission must also balance other considerations in its decision-making. (*See* CNE-Gas Exhibit 2.0, lines 145-146.) One of those being that the Commission should avoid unnecessary rate shock by phasing-in large percentage increase over a multi-year period. Such action would somewhat mitigate the impact of severe rate hikes on a monthly and annual basis to the affected customers. (*See* CNE-Gas Exhibit 2.0, lines 689-693.)

CNE-Gas respectfully requests that any significant rate increase approved for Rate 74, 76, and 77 customers be phased-in over no less than a 2-year period.

VI. COST OF SERVICE, RATE DESIGN, & TARIFF TERMS & CONDITIONS

B. Rates, Riders, and Other Terms

9. Rider 13 – Group size limitation

THE COMMISSION SHOULD DIRECT NICOR GAS
<u>TO REMOVE THE GROUP SIZE RESTRICTION UNDER RIDER 13</u>

In the instant proceeding, CNE-Gas proposes that Nicor Gas remove the current tariff restriction in Rider 13 that limits the size of each group to a maximum of 50 accounts. (*See* CNE-Gas Exhibit 1.0, lines 262-274; CNE-Gas Exhibit 2.0, lines 610-615. *See also* Ill.C.C. No. 16-Gas, 2nd Revised Sheet No. 71.) Since Nicor Gas first introduced Rider 13 in April 1996, the transportation market has matured and CNE-Gas respectfully suggests it should be up to marketers and their transportation customers to determine what size group is appropriate for their needs; not simply potential administrative ease considerations on the part of Nicor Gas. (*See* CNE-Gas Exhibit 1.0, lines 274-280.) Absent a showing by Nicor Gas that removing the 50-account group size limit would increase costs to non-transportation customers, this restriction should be removed. In the instant proceeding, Nicor Gas has failed to make such a showing. If Nicor Gas were able to show that removing this limit would cause Nicor Gas to incur additional costs, <u>which it has not done in this proceeding</u>, then Nicor should be able to recover such costs through an appropriate cost-causer type of charge.

Nicor Gas would have the Commission believe that allowing Rider 13 groups to become larger than 50 accounts would increase costs, increase billing errors and create confusion. (*See* Nicor Gas Exhibit 27B.0, lines 327-329.) Nicor Gas offered no formal study or analysis that showed that expanding group size would increase costs, increase billing errors or result in more confusion. (Tr. 712-713, 716-717.) These arguments are pure red-herrings to obscure the fact that Nicor Gas's assertions are hollow and unsubstantiated. (*See* CNE-Gas Exhibit 2.0, lines 360-403.) Many other utilities appear to be able to allow group sizes without limits, presumably without confusion and error.[2] Nicor Gas asserts that increased billing errors would result since suppliers make frequent changes to their groups. (*See* Nicor Gas Exhibit 27B.0, lines 321-322.) In fact, Nicor Gas's own tariff states that changes occurring in a group during the course of a month can only be reflected as of the first of the following month. (*See* CNE-Gas Exhibit 2.0, lines 372-379.) Contrary to Nicor's assertions, CNE-Gas believes that the larger the group size the less likely a supplier will have the need to make changes.

Nicor Gas also attempts to convince the Commission that its administrative costs will increase, by implying that transportation customers want a service for which sales customers will pay. Simple logic would clearly suggest that by removing the limit of the size of a group would decrease the present number of groups, absent an unexpected influx of Rider 13-eligible customers. CNE-Gas believes that removal of the cap on

[2] As presented in CNE-Gas Exhibit 2.0 (lines 405-413), numerous other utilities do not cap the number of accounts in a group: AmerenCIPS and AmerenIP (Fall 2005) in Illinois; and, also Columbia Gas of Ohio; SEMCO Energy Gas Company; Vectren (Indiana Gas; Southeastern Indiana Gas & Electric Company; and Dayton Power and Light); Cincinnati Gas & Electric; Citizens Gas (Indiana); Louisville Gas & Electric; Pacific Gas & Electric; Southern California Gas; Baltimore Gas and Electric Company; Piedmont Natural Gas; and Dominion East Ohio Gas.

group size would actually save Nicor Gas time and money compared to the current level of administrative costs incurred. (*See* CNE-Gas Exhibit 2.0, lines 396-403.)

As stated above, if there are additional costs to Nicor Gas that result from removal of the Rider 13 group size limit, then if properly demonstrated to the Commission; Nicor Gas should be allowed to design a charge to collect these costs. If such a charge is approved by the Commission, along with removal of the group size limit, then the market will determine whether group sizes greater than 50 are desirable by marketers.

CNE-Gas believes that marketers and transportation customers should determine for themselves what size group makes sense for their own needs. (*See* CNE-Gas Exhibit 1.0, lines 270-274.) Nicor Gas should be neutral on this decision, only ensuring that Nicor Gas recovers its costs for administering the Rider 13 pools, whatever group size each is.

IV.

CONCLUSION

Constellation NewEnergy – Gas Division. LLC became involved in the instant proceeding due to the fact that Nicor Gas has proposed a significant rate increase for its transportation customers while simultaneously proposing severe restrictions on the flexibility afforded to transportation customers to utilize storage assets. Nicor Gas has failed to meet its burden of proof to justify the very radical changes that it proposes in the instant proceeding.

If the Commission chooses to allow Nicor Gas to impose the significant rate increases for transportation customers, the Commission should temper the immediate impact of the resulting rate shock. Alternatively, CNE-Gas has presented a compelling case that demonstrates Nicor Gas' failure to justify many of the proposed changes to Storage Banking Service and the use of storage assets. In addition, CNE-Gas has offered the Commission some rather straight-forward and easily implemented revisions to Nicor Gas' proposals.

WHEREFORE, in accordance with arguments herein, Constellation NewEnergy – Gas Division, LLC respectfully request that the Commission enter an Order that:

1. **Rejects the cycling requirements for transportation customers as proposed by Nicor Gas.** Nicor Gas has failed to demonstrate that any changes in the operation of its system warrant such restrictive and unnecessary measures.

2. **If the Commission deems cycling requirements necessary, prior to their implementation, the Commission should more fully substantiate Nicor Gas's alleged need by authorizing a follow-up study on it storage fields in order to validate Nicor Gas's assertions regarding the operational needs for cycling requirements.**

3. **If the Commission approves cycling requirements for transportation customers, the Commission should:**

    a) **Reject the April 1 target level of 10%** as it is without justification and unnecessary for Nicor Gas to meet its stated goals. A 10% target level is overly restrictive and not supported by the record, nor is it even attained by Nicor Gas.

    b) **Lower the November 1 target level** from 90% as this would temper the adverse impacts of this radically new concept without seriously diminishing Nicor Gas's stated needs.

c) **Expand the compliance period from a single day to a window of time that is no shorter than 30-days.**

d) **Reject the Nicor Gas proposal for penalties due to target level noncompliance as overly punitive.** The Commission Staff proposal for noncompliance penalties is more reasonable and should be adopted.

e) **Reject Nicor Gas's proposals to (i) reduce the allocation of storage capacity to 23 days, (ii) reduce storage withdrawal rights to 2.1%; and (iii) reduce the maximum daily nomination during the heating season to one times the MDCQ**. If cycling requirements are approved, these reductions in existing rights are not warranted as they are measures that serve to further restrict SBS.

f) **Reject ICC Staff's proposed 15% increase to the rate for Storage Banking Service (SBS) as it is unnecessary and unsupported.** Such an increase is unwarranted especially if the diminished value associated with cycling is approved.

g) **Require Nicor Gas to implement super pools in order to mitigate the adverse impacts due to cycling and the associated requirements to achieve certain target levels at the start and end of the heating season.**

4. **In order to mitigate the impact of higher rates and the greater restrictions proposed in this proceeding, the Commission should** require that Nicor Gas:

(a) Accept intraday nominations,

(b) Eliminate the 50-account limit per group on Rider 13; and

(c) Allow transportation customers to sell gas from storage accounts to non-group members.

If the Commission approves Nicor's cycling requirements, eliminating the 50-account limit per group on Rider 13 and allowing transportation customers to sell gas from storage accounts to non-group members are essential. Even if cycling is not required, all of these tools should be adopted since they enable transportation customers to better utilize their storage without harm to Nicor Gas or its other customers.

5. **Reject Nicor Gas's proposal to reduce the number of days of storage capacity from 26 times the MDCQ to 23.** If anything, the number of days on which capacity entitlement is based should be increased to 27.

6. **Nicor Gas should clarify in its tariffs that transportation customers and their transporters are entitled to any residual storage capacity that is available.** Likewise, tariffs should delineate that if Nicor Gas distributes bids for additional storage capacity, these bids should first be sent to existing transportation customers who pay for the cost of storage, before bids are sent to other parties who are not paying the cost of system storage, such as Hub Services. Any time that Hub Services is given treatment that allows it to receive benefits that are greater or restrictions that are less than those afforded transportation customers, Nicor Gas should submit to the Commission a report explaining why such differential treatments is justified.

7. **Deny Nicor Gas's request to reduce a transportation customer's maximum daily nomination during the heating season from 2 times to 1 times the**

MDCQ. Nicor Gas did not demonstrate any harm to sales customers by keeping the limit at 2 times the MDCQ.

8. **Moderate the rate increases proposed to Rates 74, 76, and 77.** Rate increases of 30%, 50% and even 500% defy the long-accepted ratemaking concepts of stability and gradualism. The Commission should seek to moderate such steep hikes in order to preserve the economic vitality of the State of Illinois. If rate hikes of this magnitude are unavoidable, the Commission should phase these increases in over a multi-year period.

9. **Maintain Rate 81 as a grandfathered rate class.**

Respectively submitted,

CONSTELLATION NEWENERGY-GAS DIVISION, LLC

By: ______________________________

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