

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

NORTHERN ILLINOIS GAS COMPANY  
d/b/a Nicor Gas Company

Proposed general increase in natural gas rates.  
(Tariffs filed on November 4, 2004).

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No. 04-0779

**REPLY BRIEF OF ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

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## **REPLY BRIEF OF ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

### **INTRODUCTION**

The Companies intervened in this case as the Illinois Industrial Energy Consumers (“IIEC”) will respond to certain arguments made by Northern Illinois Gas Company (“Nicor” or “Company”), the Staff of the Illinois Commerce Commission (“Staff”), the Citizens Utility Board and the Cook County State’s Attorney (“CUB/CSSAO”), and the Environmental Law and Policy Center (“ELPC”). IIEC’s failure to address the arguments or positions of any other party should not be considered as agreement with those positions, unless otherwise specifically stated in this brief.<sup>1</sup>

#### **VI. Cost of Service Rate Design and Tariff Terms and Conditions**

##### **A. Cost of Service Study**

##### **1. Marginal Cost of Service Study (MCOSS)**

##### **a) Response to Nicor on MCOSS**

Nicor argues that while the use of the MCOSS and equal percentage of marginal cost (EPMC) methods are appropriate for the allocation of the revenue requirement in this case and the record supports their use. It has, for the purpose of narrowing the issues, agreed to accept the idea of using an Embedded Cost of Service Study (ECOSS) for allocation purposes. (Nicor Br. at 106-107). Nicor does, however, continue to recommend the use of marginal cost principles in its rate design generally and for the purpose of establishing the level of the tail blocks for its multi-block rates and customer charges, with the exception of Rate 1. (Nicor Br. at 107).

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<sup>1</sup> IIEC has organized its brief in accordance with the ALJ’s outline referencing only the captions relevant to IIEC’s issues and arguments.

IIEC believes that an appropriately performed ECOSS should be used for revenue allocation in this case. Moreover, IIEC does not believe the use of a MCOSS and the EPMC method have been justified in this proceeding. (See Rosenberg, IIEC Ex. 1 at 13-15, Lns. 7-23, Lns. 1-25 and Lns. 1-11 and IIEC Ex. 2 at 19-20, Lns. 13-23, Lns. 1-17). As IIEC notes, marginal cost has not generally been used for the design of gas utility rates. Thus, the application of marginal cost methods in this case would clearly be inconsistent with past Commission practice and established precedent in the development of gas utility rates around the country.

Due to the lack of experience with marginal cost studies, such studies are largely untested. Moreover, marginal cost studies are controversial and complicate the cost allocation process. Furthermore, such studies are much less refined than Nicor's embedded cost of service study. For example, the MCOSS does not utilize Nicor's MDM study to directly assign the cost of distribution mains to the customer classes. Finally, all parties to this case, including Nicor, have accepted the use of the ECOSS to allocate Nicor's revenue requirement. For these reasons, the record does not justify the use of a MCOSS or the EPMC method for revenue allocation in this case.

While IIEC does not agree with the use of marginal cost principles for rate design in this case, it wishes to point out that Dr. Rosenberg's proposed rate design for Rates 77 and 76 is more aligned with the results of the Company's MCOSS than Nicor's proposed rate design. (Rosenberg IIEC Ex. 1 at 29, Lns. 7-11). Moreover, Dr. Rosenberg's cost allocation and rate design proposals conform to Nicor's ECOSS, and apply appropriate principles of moderation in designing the block rate component of Rates 77 and 76. For these reasons, the Commission should adopt IIEC's recommendations on the rate design for Rate 77 and Rate 76.

**b) Response to Staff on MCOSS**

Staff opposes the use of a MCOSS study to allocate the test year revenue requirements in this case. Instead, the Staff believes it is more appropriate to apply an ECOSS to allocate costs. (Staff Br. at 96-97). It correctly notes that Nicor has accepted the use of an ECOSS to determine the costs and revenue allocation by rate class. (Staff Br. at 97). IIEC agrees with Staff's position. However, IIEC does not support the specific ECOSS proposed by the Staff.

**c) Response to CUB/CCSAO on MCOSS**

CUB/CCSAO opposed the use of a MCOSS in this case. (CUB/CCSAO Br. at 30-35). Nicor suggested in its Initial Brief that CUB was supportive of Nicor's proposals relating to the allocation of revenue requirement and rate design, although CUB expressed reservations about marginal cost theories and further movements to marginal cost. (Nicor Br. at 106). However, CUB/CCSAO clearly takes the position that the use of a MCOSS for cost allocation and rate design purposes is inappropriate in this proceeding. (CUB/CCSAO Br. at 31).

IIEC agrees the MCOSS is not appropriate for use in this case. Dr. Rosenberg's proposed cost allocation and rate design is based on an embedded cost of service study. However, because Nicor's MCOSS produces a lower revenue requirement relative to the ECOSS, Dr. Rosenberg's rate design coincidentally approximates the results of Nicor's MCOSS. In fact, Dr. Rosenberg's rate design recommendations are closer to the MCOSS results than Nicor's own rate proposals (Rosenberg, IIEC Exhibit 1 at 19, Lns. 10-23)

**2. Embedded Cost of Service Study**

**a) Modified Distribution Mains Study ("MDM Study")**

**(1) Response to Nicor on MDM**

Nicor continues to support the MDM Study as the most accurate means to assign distribution main-related costs. Nicor opposes Staff's modification of that study and the

CUB/CCSAO proposal to reject the use of the study. (Nicor Br. at 108-109). IIEC agrees with Nicor.

## (2) Response to Staff on MDM

Staff recognizes the appropriateness of using the Nicor MDM Study for allocation of distribution mains in this case. However, Staff argues for the use of an adjusted MDM Study. (Staff Br. at 98-102). IIEC opposes the use of Staff's adjusted MDM Study.

Staff adjusts the peak demands used in the study because it believes the peak day demands of certain rate classes, such as Rates 1 and 4, were overstated relative to the peak day demands of other rate classes. (Staff Br. at 99). Staff reasons that the peak day demands of Rates 1 and 4 are overstated because the calculation of the class demands for these rate classes is based on 79 heating degree days (HDD) while the remaining class demands are based on Maximum Daily Contract Quantities (MDCQ), which are in turn based on 61 HDD.<sup>2</sup> (Staff Br. at 100-101).

Staff's adjustment to Nicor's MDM Study is based on a false premise. The class demands for the remaining classes are not based on MDCQs derived from 61 HDD. As Nicor witness Harms explained, the peak day use of customers metered on a daily basis (Rates 6, 7, 74, 76 and 81) is determined each year on the basis of the individual customer's highest day of use in the prior calendar year or the customer's use based on a regression analysis, **whichever produces the higher result**. Significantly, the regression analysis is based on the individual customer's actual daily metered usage for the three winter months of December, January and February, **adjusted for 79 HDD**. (Harms, Nicor Ex. 44.0 at 8-9, Lns. 177-184). Thus, contrary

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<sup>2</sup>Staff's brief references Rates 1, 4, 10 and 11. But, the Staff witness on this issue only offered testimony on the overstated demand of Rates 1 and 4. (See Luth, Staff Ex. 16.0 Rev. at 8-11, Lns. 152-240). Thus, Staff's argument that Rate 10 and Rate 11 demands are overstated is not supported by evidence in the record. Rates 10 and 11 represent less than 0.02% of the current base rates. (Rosenberg, IIEC Ex. 1, at 20, Lns. 4-5). In addition, Nicor proposes to eliminate Rates 10 and 11 and the Staff cost of service witness agreed to their elimination. (Luth, Tr. 1328).

to Staff's assumption, it is apparent the coincident peak demands for these classes were calculated based on 79 HDD. It is equally apparent the MDCQs of these customers reflect customer usage based on 79 HDD at a minimum.

The same is true for the monthly or bi-monthly metered classes, such as Rates 1 and 4. For these classes, the coincident peak demands were determined based on the sum of daily base use and heat use factors for each customer. The customer's heat use was then adjusted to 79 HDD. (Harms, Nicor Ex. 44.0, at 9, Lns. 188-190).

Therefore, the coincident peak demands of both the daily metered customers (Rates 6, 7, 74, 76 and 81) and the monthly or bi-monthly metered customers (Rates 1 and 4) were calculated with full consideration of 79 HDD. Moreover, the MDCQs of the daily metered customers do not reflect a year with 61 HDD.

Finally, customers served under contract also have their daily usage metered, but their MDCQs are established based on their estimated peak day use at the time they enter the contract. (Harms, Nicor Ex. 44.0 at 9, Lns. 184-187). Therefore, the coincident peak demands of these customers are not determined on the basis of a 61 HDD year, as assumed by the Staff in its argument.

Thus, the Staff's premise that all customers, other than Rates 1 and 4 customers, had their peak day usage determined on the basis of, or as a function of, a 61 HDD year is simply false. This premise is the foundation for Staff's argument in support of its adjustment of the MDM Study. Because the premise is false, the argument is without foundation. Therefore, Staff's adjustment to the MDM Study should be rejected.

Staff also reasons that its adjustment is appropriate because, absent the adjustment, the MDM Study would give no consideration to temperatures colder than 61 HDDs on the "MDCQ customer classes". (Staff Br. at 100). As demonstrated above, Staff's assumption that the

calculation of the peak demands for the “MDCQ” or daily metered customers is based on 61 HDD is simply wrong. Therefore, Staff’s adjusted MDM Study should be rejected.

Next, Staff reasons in support of its adjustment to the MDM Study that:

“If the peak day demands of one or a few customer classes are overstated relative to other customer classes, costs allocated according to demand will be excessive for the customer classes with overstated demand and will benefit the other customer classes.” (Staff Br. at 100).

IIEC agrees with the principle set forth by the Staff and assumes the Staff is suggesting such a result is unfair. IIEC also agrees with that suggestion. However, for the reasons explained above, it is Staff’s adjusted MDM Study that inappropriately shifts costs to the daily metered or MDCQ customer classes to the benefit of the monthly or bi-monthly metering customer classes (Rates 1 and 4). This is because Staff’s study artificially understates the peak demands of the Rate 1 and 4 classes due to its misunderstanding of the manner in which Nicor calculated peak demands for the various classes.

Staff’s adjustment to the MDM Study also ignores the fact that it is not possible to determine the peak demands of monthly or bi-monthly metering customers as precisely as such demands can be determined for daily metered customers. Nicor witness Harms explained that Nicor could not precisely determine the peak day demand for customers on Rates 1 and 4 (metered on a monthly or bi-monthly basis) because the base use and heat factors used to calculate those demands are best used in the determination of monthly demands. They are not as accurate for estimating usage on “a single very cold day”. (Harm, Nicor Ex. 44.0 at 9, Lns. 190-192). According to Mr. Harms, this lack of precision in establishing the peak demands of the monthly or bi-monthly metered rate classes necessitated an adjustment to the estimated peak demands of these rate classes to ensure that the sum of the estimated peak demands for

all rate classes matched Nicor's peak day demand.<sup>3</sup> The Staff does not dispute these facts in its brief. Instead, it ignores or disregards these undisputed and unchallenged facts that explain how Nicor determined the peak day demands for each customer class. As a result, the Staff has misconstrued or misunderstood how the Company calculated those demands, and proposed an adjustment to the Company's MDM Study based on its misunderstanding or misapprehension of the facts. For that reason alone, the Staff's adjusted MDM Study should be rejected.

Staff also argues, in support of its adjustment to the MDM Study, that "it should also be recognized it is unlikely that 79 HDDs will be experienced in the test year (Confidential Nicor Workpaper "WP" (285.315)6)" . Staff then reasons that because 79 HDDs are unlikely to be experienced in the test year, Rate Class 17 and Rate Class 19 contract customers should be charged a greater share of the demand costs in a typical year based upon the likelihood it will not be necessary for Nicor to curtail deliveries to these customers to the full extent in a "typical" year. (Staff Br. at 100-101). This argument is difficult to follow and, even more importantly, it appears to be based on a document that is not part of the evidentiary record in this case. There is no reference to "Confidential Nicor workpaper (285-3150)6)" in Mr. Luth's rebuttal testimony and none in the transcript of his cross-examination. Therefore, the Staff's argument should be rejected if for no other reason than it is based on facts which are not in evidence.

Secondly, the argument is without merit because it somehow assumes that the MDCQs for contract customers, which would be used to determine each customer's peak day demand in the Nicor MDM Study, are somehow based on 79 HDDs. However, the record evidence shows this is not the case. Nicor witness Harms testified that the MDCQs for these contract

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<sup>3</sup>Staff states its witness, Mr. Luth, did not agree or disagree with the Company's projection of system design day demand. (Staff Br. at 99). No party has challenged the accuracy of the Company's design day peak estimate of 52,580,000 therms. Therefore, it is presumptively accurate.

customers, are determined based on the estimate of the customer's peak day use at the time the contract is executed. (Harms, Nicor Ex. 44.0 at 9, Lns. 184-186). Thus, the firm rights of these customers, on a peak day, are established by those negotiated contracts and do not exceed 1,830,000 therms. (Harms, Nicor Ex. 44.0 at 8, Lns. 163-166). Therefore, in calculating the coincident peak demands of Rates 17 and 19, it makes absolutely no difference whether Nicor is likely to experience 79 HDD in the test year.

Next, the Staff argues the application of its adjusted MDM Study is consistent with the application of the MDM Study in the last Nicor case, Docket 95-0219. (Staff Br. at 101-102). Staff is wrong again. Nicor witness Harms testified that Staff witness Mr. Luth had no valid basis for claiming Staff's change to the MDM Study was consistent with the approach approved by the Commission in the Company's last case (Harms, Nicor Ex. 44.0 at 10, Lns. 223-225). Mr. Harms was a Company witness in the last case. (Harms, Tr. 671, 672). The Commission applied a MDM Study in that last case that did not contain the Staff's erroneous adjustments. Therefore, Staff's proposed adjustments to the MDM study are clearly inconsistent with the Commission's order in Nicor's last rate case.

In addition, the Staff used an allocation factor that was weighted 73.24% to on-peak demand and 26.76% to average demand. According to Staff, these weightings are based on the system load factor using Staff witness Luth's "sum-of-the-parts" approach to determine the relative customer class peak demands. (Staff Br. at 101). A review of the Commission's order in Docket 95-0219 fails to disclose any reference to a "sum-of-the-parts" approach. (See Nicor, Dkt. 95-0219, Order, April 3, 2003 at 45-49). Therefore, Staff's position has not been shown to be consistent with the prior order and has been identified by witnesses who participated in Docket 95-0219 as being inconsistent with the Commission's approach in that case.

For all of the reasons identified above, the Commission should reject the use of Staff's adjusted MDM Study.

### **(3) Response to CUB on MDM**

CUB/CCSAO oppose the use of the MDM Study for any purpose. (CUB/CCSAO Br. at 36-38). They apparently do so because they believe the Commission should reject any approach that relies on the allegedly flawed coincident peak ("CP") methodology. (CUB/CCSAO Br. at 36). The Commission should reject their arguments on this issue for several reasons.

First, the MDM Study, as CUB/CCSAO correctly recognize, relies on an engineering study. (Id. at 36). By contrast, the CP method (and the A&P method) applies a generic allocation factor to allocate costs. (Heintz, Nicor Ex. 31.0 at 7, Lns. 148-151). The CP methodology is a method for allocating demand related costs that cannot be directly assigned. As the Commission itself has recently noted in the AmerenIP Case, it is necessary to use allocation methods to allocate transmission and distribution main investment only where direct assignment is not possible. (AmerenIP, Dkt. 04-0476, Order, May 17, 2005, at 64). Clearly, the MDM Study is a form of direct assignment. (Rosenberg Tr. 1397; Heintz, Nicor Ex. 14.0 at 11-12, Lns. 226-227; Harms, Nicor Ex. 32.0 at 10, Lns. 186-189; Heintz, Nicor Ex. 31.0 at 7, Lns. 152-155). Direct assignment is the most accurate method of determining cost causation. (Rosenberg Tr. 1396). Moreover, direct assignment is superior to and more precise than the application of a generic allocation factor. Therefore, contrary to the CUB/CCSAO argument, the MDM Study is not a form of the CP method. Rather, it is an engineering study that directly assigns cost responsibility for distribution mains on the Nicor system based on sound cost-causation principles.

Second, CUB/CCSAO ignores the fact that the Commission has approved the use of the MDM Study in Nicor's last case. That study allocated costs on the basis of "main sizes and peak day demand flow." (Nicor, Dkt. 95-0219, Order, April 3, 1996 at 47). There the Commission stated, in support of the adoption of that MDM Study:

"The allocation of main costs on the size of mains and gas flows is a proper methodology." (Id. At 49).

Consistent with the Commission's prior order, the MDM Study in this case allocates main costs based on the size of mains and gas flows. (Harms, Nicor Ex. 32.0 at 6, Lns. 118-120). Therefore, the MDM method is consistent with cost causation principles, superior to the use of generic allocation factors, and consistent with Commission precedent. CUB/CCSAO have not provided any valid reason to reject the MDM Study in this case.

Assuming, arguendo, that CUB/CCSAO are correct in their contention that the MDM method is based on coincident peak demand costing principles, this would not provide a basis for rejecting the MDM method in this case. Coincident peak demands are clearly the cost driver for investment in distribution mains (See Rosenberg, IIEC Exhibit 2 at 6-8, Lns. 17-23 and Lns. 1-2). Moreover, the Commission affirmed its support for the use of coincident peaks in the allocation of transmission and distribution main costs only a few weeks ago in rejecting the use of the Average and Excess allocation method, stating:

". . . an allocator that incorporates class coincident peak demands better reflects cost causation than one that incorporates 'excess' non-coincident peak demands." (AmerenIP, Dkt. 04-0476, Order, May 17, 2005 at 65).

Thus, even if one accepts CUB/CCSAO's assumption that the MDM Study somehow applies the CP method, the Commission has clearly stated that consideration of coincident peaks for allocation of transmission and distribution mains is appropriate.

Finally, CUB/CCSAO appear to object to the MDM Study because it considers only peak day flows. (CUB/CCSAO Br. at 37). Presumably, they do so because they assume that average flows are not considered in the MDM Study. However, the record shows that any main sized to meet peak day demand flows can accommodate average flows as well. (Rosenberg, IIEC Ex 2 at 6-7). The record further shows that if a customer makes no use of a particular sized main on a peak day, then it can also be assumed that the customer makes no use of that size of main on an average day. (Harms, Tr. 686-687). Therefore, there is no basis to allocate or assign distribution main costs on the basis of average flows, through the MDM Study.<sup>4</sup> In addition, the CUB/CCSAO objections overlook that the Commission approved the MDM Study in the last case because it believed a method which allocated costs on-peak day flows and main size was an appropriate method. Id. at 47, 49. For all these reasons, CUB/CCSAO's arguments in opposition to Nicor's MDM Study in this proceeding should be rejected. The Nicor MDM Study should be used for the allocation of distribution mains in this proceeding.

**b) Coincident Peak (CP) Allocation Methodology**

**(1) Response to Nicor on CP**

Nicor argues that detailed evidence in the proceeding demonstrates the CP method is the most accurate method for allocating transmission and distribution plant that is not directly assigned through Nicor's MDM Study. (Nicor Br. at 109). IIEC agrees with Nicor in this regard. However, Nicor, for the purpose of "narrowing the issues" in this case, states it is willing to accept the use of an ECOSS based on the Average and Peak (A&P) method, but which incorporates the Nicor MDM Study. (Nicor Br. at 109). While IIEC agrees with Nicor that the Nicor MDM Study should be incorporated into the ECOSS ultimately used for revenue allocation in this case, it strongly disagrees with the use of the A&P method to allocate the cost of mains

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<sup>4</sup> If the Commission concludes otherwise, then Nicor and IIEC have demonstrated a way to do so while still maintaining the accuracy of the MDM Study. (See IIEC Br. At 13-14).

that are not directly assigned through the MDM Study. Rather, IIEC supports the use of the CP method for that purpose, as originally proposed by Nicor.

The Commission has noted that a properly constructed rate design allocates the cost of serving customers in accordance with the regulatory goals set out in Section 1-102 of the Public Utilities Act (220 ILCS 5/1-102) (Nicor Dkt. 95-0219, Order, April 3, 1996, at 45). Those goals include, but are not limited to, rates that accurately reflect the cost of delivering service and the allocation of the cost of supplying public utility service to those who caused the costs to be incurred. (220 ILCS 5/1-102(a)(iv) and (d)(iii)).

IIEC believes these goals should guide the Commission's decision here. Since the CP method, as IIEC and Nicor agree, is the most accurate, cost-based method of assigning the cost of mains which are not the subject of the MDM Study, the CP method should be accepted by the Commission for that purpose in this case.

## **(2) Response to Staff on CP**

Staff argues that the only dispute between it and Nicor, in regard to the CP issue, relates to the allocation of storage costs and the role the CP has in the development of the A&P allocation factor. It notes that both Staff and Nicor used the CP method to allocate storage costs but differ on how the CP should be calculated to allocate costs among the customer classes. (Staff Br. at 102-103). The Staff makes no specific arguments in opposition to the use of the CP method. Staff does, however, apply the same miscalculation of coincident peak demands for the peak component of the A&P allocator that it used in its adjusted MDM Study. The Commission should disregard the Staff's position on this issue for the same reasons set forth by IIEC in Section VI,A,2,a of this Reply Brief. There are additional reasons to reject the Staff's approach.

First, Staff did not feel compelled to make such an adjustment in the context of its direct testimony in this case. Staff witness Luth readily admitted that the A&P factor he developed in his direct testimony gave a weighting of 76.9% to the peak demand and 23.1% to average demand. But in rebuttal he gave a lesser weighting to peak demand (73.24%) and a greater weight to average demand (26.76%). This results in a greater allocation of costs to high load factor customers. (Luth Tr. 1309-1310).

The weightings of average demand and peak demand in his direct testimony were different than the weightings provided in his rebuttal testimony because Mr. Luth used a different denominator in the formula used to calculate the system load factor. In his direct testimony, Mr. Luth used the Company's design day peak demand of 52,580,000 therms. (Tr. 1312-1313). Mr. Luth did not disagree that Nicor must be prepared to meet, and design its system to meet, a design peak day demand of 52,580,000 therms. The Staff does not explain in its brief, and Mr. Luth did not explain in his testimony, how the Nicor system load factor can be calculated on the basis of any number other than Nicor's design day peak demand. As noted above, in Footnote 3 at page 7, Staff does not dispute Nicor's design day peak of 52,580,000 therms. No other party has done so. Therefore, it must be assumed by the Commission to be correct for use in this proceeding. Given that fact, Staff's calculation of a different number as a proxy of the system design day peak demand is presumptively wrong and the A&P factor developed based on its use must be rejected.

Second, the A&P allocation factor is based upon a weighting of average demands and peak demands. The peak demand referenced is the coincident peak demand of the system. It is the coincident peak demand of the system, which is the cost causative factor, that should be reflected in the A&P allocator. As noted above, the Commission adopted an A&P allocator in the recent Illinois Power case over the Average and Excess method because the A&P allocator

considered coincident peak demands. (AmerenIP, Order, May 17, 2005 at 64-65). It adopted the A&P allocator in that case primarily on the recommendation of the Illinois Commerce Commission Staff, who stated:

“. . . the coincident peak component recognizes that the system must be designed to: (1) meet peak demands, not just for individual classes, but for the system as a whole; and (2) meet full peak demands rather than excess of peak over average demands.” (Id. at 54-55).

Abandoning its position in the Illinois Power case and abandoning its position in its direct case in this proceeding, Staff now appears to argue that it is not coincident peak demands that must be used in the A&P allocator, but “typical year demands,” without regard to whether the system must be designed to meet the coincident peak demand. Staff appears to have abandoned cost causation principles, as well as the principles it supported in the IP case and in its direct case, in favor of an arbitrary, unreasonable and fundamentally unfair method for determining the peak demand component of the A&P method. It does so apparently because it did not like the results of the engineering study that directly assigned distribution main costs to customers in this proceeding.

The Staff approach leads to unfair and illogical results in several respects. First, the Staff approach results in the assignment of 2 inch distribution mains costs (which represent over half of Nicor’s investment in distribution mains) to customers who are not even connected to and make no physical use of those mains. (Luth, Tr 1278-1279). Second, the Staff approach assumes customer classes who have contracted for maximum firm service rights based on a peak day total of 1,830,000 therms, will actually use gas substantially in excess of their contract limits. (See Harms, Nicor Ex. 44.0 at 8, Lns. 163-166). Third, the Staff approach assumes that electric generation customers who have no peak day use and who, in some instances, are directly attached to interstate pipelines, will use 2,812,000 therms on a peak day. (Harms, Nicor

Ex. 44.0 at 8, Lns. 166-172). While no allocation method is perfect, it must bear some resemblance to the factual circumstances that actually cause costs to be incurred on the Nicor system. The Staff approach bears no resemblance to reality. Moreover, the Staff's proposals are completely divorced from cost-causation principles. If the Commission adopts the A&P method in this case for any reason, it should direct that the peak component be calculated using Nicor's coincident peak demand of 52,280,000 therms in the manner recommended by Nicor and accepted by the Staff in its direct testimony in this case.

### **(3) Response to CUB/CCSAO on CP Method**

CUB/CCSAO oppose the use of the CP method. They do so on the grounds that a utility cannot justify its transmission and distribution investment based on demands for a single day. CUB/CCSAO further argue that the distribution system has two major functions - it must be sized to accommodate peak demand, but it is used everyday. (CUB/CCSAO Br. at 38-39). They reason that because the CP method considers only peak day demands, it gives no consideration to the use of the system on other days. (*Id.* at 38). IIEC disagrees with CUB/CCSAO and recommends the Commission reject CUB/CCSAO's position on this issue for several reasons.

First, CUB/CCSAO do not claim that mains must be sized to accommodate annual throughput. They cannot do so because mains are sized in terms of capacity, not in terms of annual throughput. The capacity of a main is a measure of how much gas it can deliver in one day or even one hour. (Rosenberg, IIEC Ex. 2 at 6, Lns. 15-18). Therefore, annual throughput is not a cost causative factor in the design of mains.

Second, Staff and IIEC witnesses agreed that a system capable of fulfilling customer demands for gas on a peak demand design day must necessarily be capable of moving the customer's usage on any other day of the year. (Rosenberg, IIEC Ex. 2 at 6, Lns. 1-2). A

system built to meet design day peak demand will automatically be capable of delivering gas on any other day of the year. (Id. at 6-7). This means that no additional costs are incurred to accommodate annual throughput separate from the costs attributable to peak day demand. (Id. at 7, Lns. 1-2). Therefore, average usage, or throughput on days other than the peak day, does not drive the cost of the system. Rather, the cost of the system is driven by peak day demands. Thus, sound principles of cost causation require the use of a coincident peak demand allocator to allocate distribution main costs that are not directly assigned through the MDM study.

The fact that the system is used on more days than just the peak day does not justify rejection of the CP method. For example, gas meters are used every day of the year. CUB/CCSAO do not recommend the embedded cost of service study classify or allocate the cost of meters on the basis of annual usage. It is the number of customers that drives the cost of meters, not whether the meter runs one day or 365 days. (Rosenberg, IIEC Ex. 2 at 7, Lns. 12-14). Likewise, Nicor's investment in the T&D system is already in place and it is not dependent on whether the customer uses the system on one day or 365 days, nor is it dependent on whether the customer increases or decreases its usage at any time other than at the time of system peak. (Rosenberg, IIEC Ex. 2 at 7, Lns. 19-23).

Simply stated, the customer's usage on days other than a peak day is simply not a factor in the design of the system. Rather, the magnitude of Nicor's investment in distribution facilities is driven exclusively by the peak demands on its system. Therefore, use of the CP method for the allocation of main costs, not otherwise allocated by the Nicor MDM Study, should be approved by the Commission in this case.

**c) Average and Peak (A&P) Allocation Methodology**

**(1) Response to Nicor on A&P Methodology**

Nicor makes no specific arguments in support of the A&P method. (Nicor Br. at 110). In fact, Nicor recognizes that the CP method is the most accurate method for assigning cost responsibility for T&D costs not covered by its MDM Study. (Nicor Br. at 110, 109). IIEC agrees. IIEC continues to support the use of the CP method for that purpose. However, if the Commission concludes that use of the A&P method is appropriate for any purpose, IIEC agrees with Nicor's criticism of the embedded cost of service studies submitted by Staff and CUB/CSSAO.

Nicor correctly noted the A&P allocator in the CUB/CCSAO study is based upon a regression analysis that produces a result which is not credible. (Heintz, Nicor Ex. 31.0 at 6, Lns. 118-136). The Staff study contains an A&P allocator that is based upon the Staff's arbitrary and unsubstantiated changes to peak day usage by class and an MDM Study that the Staff inappropriately modified. (Nicor Br. at 110). IIEC agrees with Nicor, and urges the Commission to reject the cost of service studies proposed by the Staff and CUB/CSSAO in this case.

**(2) Response to Staff on A&P Methodology**

Staff recommends the use of an A&P method that allocates "transmission" costs. (Staff Br. at 104). It also recommends the use of the A&P method to adjust the demand portion of distribution main costs according to the Staff's adjusted MDM Study. (Staff Br. at 104).

Staff further suggests the A&P method described in its rebuttal testimony reflects the fact that transmission and distribution mains are not used on a few cold days of the year, but throughout the year. Finally, Staff contends the A&P method is appropriate because no party

has shown that differences in demand affect costs of the transmission and distribution system on a demand to cost basis. (Staff Br. at 105).

With regard to Staff's primary argument that the A&P method recognizes the use of the system on days other than the peak day, Staff incorrectly assumes that the cost of the system is driven by "use" on days other than the peak day.<sup>5</sup> As Nicor witness Heintz testified, Nicor designed its system to meet winter peak demands (plus reserves), not gas volumes flowing in other parts of the year, or on a non-firm basis. (Heintz, Nicor Ex. 31.0 at 3-4, Lns. 65-79). In fact, if Nicor were to make investment decisions based on meeting CUB/CSSAO's 64.3% of system peak demand, or Staff's 76.9% of system peak demand (the peak demand weightings in the Staff and CUB/CCSAO's A&P allocation factors), Nicor would not be able to serve the firm needs of all its customers on many days during its winter heating season. (Heintz, Nicor Ex. 31.0 at 4, Lns. 79-82). This very important fact is recognized as being "true" by the CUB/CSSAO witness Thomas. (Thomas, CUB/CSSAO Ex. 3.0 at 23, Lns. 507-513).<sup>6</sup> Thus, the A&P methodology advanced by Staff and CUB/CSSAO would have the Commission base its allocation of costs on a hypothetical T&D system that would not be capable of serving the real demands of Nicor customers. For this reason, the A&P method should be rejected.

As noted above, Staff also argues there has been no showing that differences in demand affect transmission and distribution costs on a proportionate basis, meaning that a doubling of demand capacity would not necessarily cause a doubling of T&D costs. (Staff Br. at 105). Staff's argument is misplaced. There has been no showing that increased volumes cause any increase in T&D costs to justify allocation on volumes as recommended by Staff.

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<sup>5</sup>IIEC has addressed this contention in Section VI,A,2,a and b as well.

<sup>6</sup>Interestingly enough, Mr. Thomas appears to suggest in his response that even if his A&P method, which does not reflect or recognize this reality, is adopted, Nicor will continue to make its investment decisions on the basis of meeting peak day demands. Therefore, it is apparently Mr. Thomas' position that the allocation method need not bear any meaningful relationship to how the Company makes its investment decisions for transmission and distribution.

The critical point, however, is that the cost driver for investment in distribution mains is the peak demand of the system. Once this basic cost causation principle is recognized, it is irrelevant whether there is a one-to-one, two-to-one, or three-to-one relationship between demand increases and capacity cost increases at any particular point in time. However, the fact that, over time, there is a positive correlation between customer maximum demands and system costs is the relevant consideration for cost allocation purposes.

Even if the Commission elected to adopt the A&P method for any purpose in this case, it should not adopt the Staff (or the CUB/CSSAO) version of the A&P method because these methods assume Nicor would design and build a system that would not be capable of meeting the peak demands of all Nicor customers. Therefore, the Commission should reject the use of such methods and adopt, if necessary, the A&P methodology proposed by the Company and reflected in the Staff's direct testimony in this case.

In developing its proposed A&P method, Staff inappropriately and arbitrarily changed its determination of the peak components. (Harms, Nicor Ex. 44.0 at 6, Lns 122-129). IIEC has addressed the Staff's actions in Section VI,A,2,a) and b) of this reply brief. In sum, the Staff's development of its A&P allocator completely ignores cost causation and results in a methodology which can be better described as the A&AP method (Average and Almost Peak method). (Harms, Nicor Ex. 44.0 at 7, Lns. 150-152). This is so because the Staff used a "typical peak" day of 49,073,000 therms rather than the Nicor design peak day of 52,580,000 therms in its determination of the A&P allocator. Staff uses this "typical peak" day in its calculation despite the fact that the Staff used the Company's design peak day in its direct testimony and does not object to or challenge the accuracy of the Company's design peak day. Nicor actually uses the design peak day of 52,50,000 therms for its investment decisions.

(Harms, Nicor Ex. 44.0 at 7, Lns. 142-151). Thus, the Staff's recommended A&P method is totally divorced from the reality of Nicor's system.

Therefore, if the Commission accepts the A&P method for any purpose in this proceeding, it should reject the Staff's unrealistic calculation of the A&P allocator factor, and instead use the allocation factor proposed by the Company.

### **3) Response to CUB/CSSAO on A&P Methodology**

In support of the A&P method, CUB/CSSAO argue that this methodology has been used in every LDC rate case in the last ten years. (CUB/CSSAO Br. at 40). They reason that "consistent with accurate cost causation principles, the Commission cannot rely on any allocation methodology that ignores the actual demands placed on the system." CUB/CSSAO then spend the remaining portion of this section of their brief trying to explain why their methodology, which ignores the actual demands placed on the system, should be approved by the Commission.

The Commission should reject CUB/CSSAO's arguments on this issue for several reasons. First, the A&P allocator used in their study is based on a regression analysis for which they did not provide any normal test of accuracy and which was not credible. (Heintz, Nicor Ex. 31 at 5-6, Lns. 105-136). The regression analysis performed by the CUB/CSSAO witness has no statistical significance. (Heintz, Nicor Ex. 42.0 at 8, Lns. 156-158). Moreover, the analysis provides no theoretical reason to support the weights given to peak demand and average demand in the CUB/CSSAO A&P allocator. (Heintz, Nicor Ex. 42.0 at 9-10, Lns. 178-183).

Second, CUB/CSSAO purport to oppose the MDM study because it allegedly incorporates the coincident peak methodology. (CUB/CSSAO Br. at 38). However, they also support the average and peak method that gives consideration to the coincident peak, and which was adopted by the Commission in its most recent decision on the subject precisely

because it considers the coincident peak. (AmerenIP Dkt. 04-0276, Order, May 17, 2005 at 64-65).

Third, CUB/CSSAO ignore the fact (which their witness has agreed is true) that if the Company were to design and build a system to meet the peak component of their A&P allocator (64.3%) it could not meet the demands of its customers on many days during the winter heating season. (See Heintz, Nicor Ex. 31.0 at 4, Lns. 79-82; Thomas, CUB/CSSAO Ex. 3.0 at 23, Lns. 507-513). As an afterthought, CUB/CSSAO's witness suggested that the Company will design and build its system to meet peak day demands regardless of how costs are allocated. In other words, cost allocation need bear no relationship to cost causation nor be "consistent with accurate cost causation principles." The Commission should reject this argument, which is clearly contradicted by sound ratemaking principles.

CUB/CSSAO, while arguing that the Commission should adopt the generic A&P allocation methodology (See Heintz, Nicor Ex. 31 at 7-8, Lns. 147-163) in place of the Company's specific engineering study, which directly assigns the responsibility for distribution main costs (the MDM Study), ironically adopt the aforesaid unreliable regression analysis to calculate the A&P allocator. (CUB/CSSAO Br. At 41). They do because it allegedly presents a more "accurate picture of the data." (*Id.* at 41). Thus, CUB/CSSAO throw out the engineering study, which directly assigns the responsibility for the cost of the Company's distribution mains very accurately, in favor of a generic A&P methodology which, in their opinion, must itself be adjusted to make it more "accurate."

Finally, CUB/CSSAO suggest their A&P allocator is appropriate because it considers something other than firm peak day throughput on the peak day, that is, the CUB analysis includes the demands of non-firm customers. However, CUB/CSSAO introduce no evidence to suggest that the Company designs its system to meet the demands of non-firm customers on a

peak day. In fact, the CUB/CSSAO position is not supported in the record because the record clearly establishes that Nicor does not in fact consider the non-firm customer demands in the design of its system. This is because Nicor is not required to meet those demands at the time of the system peak. (Heintz, Nicor Ex. 42.0 at 6, Lns. 104-112). Indeed, the record shows that in some instances, non-firm customers such as electric generators have no load flows on the Nicor system at the time of the system peak and are directly connected to the interstate pipeline system. (Harms, Nicor Ex. 44.0 at 8, Lns. 160-173). Thus, once again, CUB/CSSAO, in pursuit of their desire to be “consistent with accurate cost causation principles,” they conveniently ignore the facts to which the principles must be applied and thereby violate those principles of cost causation in designing their proposed A&P allocator. For all of the reasons set forth above, the Commission should reject CUB/CSSAO’s proposed A&P method for allocating distribution main costs.

**B. Rates, Riders and Other Terms**

**3. Rider 6**

**a) Allocation of Hub Expenses Through Revenue Requirements**

**(1) Response to Nicor on HUB Revenues**

Nicor proposes to credit sales customers only for Hub revenues through Rider 6. (Nicor Br. at 110-112). The Nicor brief appears to rest primarily upon Mr. Bartlett’s argument that it was appropriate to credit Hub revenues to sales customers because the cost of gas is recovered primarily from sales customers. Nicor correctly notes that IIEC and Vanguard opposed Nicor’s proposal to credit Hub revenues to sales customers only. (It should also be noted that RGS, in its initial brief, has opposed crediting Hub revenues to sales customers only.) (RGS Br. at 12). The Staff, in its initial brief, supports a suggestion made by Nicor in surrebuttal

testimony on how to credit transportation customers with Hub revenues. (Staff Br. at 107). Therefore, all parties addressing the issue except Nicor appear to agree the Hub revenue should be credited to all Nicor customers (sales and transportation).

According to Nicor's brief, its principal opposition to IIEC's recommendation rests on the testimony of Mr. Bartlett to the effect that:

- (1) Nicor's purchased assets are used to supply gas for sales customers and to support and operate the system for all customers;
- (2) the cost of purchased assets are recovered from sales customers; and
- (3) Transportation customers have greater flexibility and sales customers pay all direct and individual costs necessary to operate the system. (Nicor Br. at 111).

Addressing Nicor's last point first, as noted in IIEC's initial brief, transportation customers and sales customers all use the Nicor delivery system. This case relates to a request for Nicor to increase its base rates to allow it to recover the cost of that delivery system and the operation of same from all customers (transportation and sales). Therefore, to the extent Nicor is somehow suggesting or implying that transportation customers are not responsible for the payment of the cost of the operation of the system, Nicor's argument is fundamentally wrong. On the other hand, to the extent Nicor is somehow implying that there are residual costs for operation of the system that are recovered from sales customers and not from transportation customers, the only other mechanism for recovering those costs is through Rider 6, the PGA. The PGA is designed primarily to recover gas costs. To the extent there are residual operating costs associated with the system that are not being recovered in the Company's base rates, but

are being recovered under the PGA, Nicor's position raises a question as to whether or not it is appropriately recovering those costs in the PGA. To the extent Nicor intends to suggest there are residual costs for operating the system recovered in the base rates applicable to sales customers, but not in the rates available to transportation customers, Nicor's argument, and hence Mr. Bartlett's position, appears to be based on the assumption that transportation rates are somehow designed to recover less of the system operating costs than the companion sales rate. This is in fact not the case according to Nicor witness Harms who is in charge of the Company's rate design. Mr. Harms testified that it was the Company's expressed intention that its rates be designed in such a manner as to prevent base sales rates from being more attractive than base transportation rates. (Harms, Nicor Ex. 32.0 at 21, Lns. 438-445). Mr. Bartlett's position and hence Nicor's brief, suggest that the opposite is in fact true.

If Nicor is suggesting Hub services are somehow provided from purchased assets and that sales customers pay for those purchased assets, the record shows that Hub services are provided from the Company's owned storage fields and transmission assets. (Bartlett, Tr. 529; Parmesano, Nicor Ex. 13.1 at 8). In addition, Mr. Bartlett himself testified that he did not intend to imply that Hub services were provided from purchased assets. (Bartlett, Tr. 539-540). Indeed, Hub services can be provided through "displacement" and transportation customers' own gas can be used for displacement. (Bartlett, Tr. 536).

Nicor appears to suggest that the activities of transportation customers somehow impose additional PGA costs on sales customers, and that this justifies crediting Hub revenues solely to sales customers. IIEC strongly objects to this allegation. The fact is that the use of the distribution system by transportation customers has absolutely no adverse impact on the cost of purchased gas for sales customers. In fact, Dr. Rosenberg demonstrated that, when actual transportation storage patterns are used, the storage activities of transportation customers

actually reduced PGA costs for sales customers by \$23.4 million (Rosenberg, IIEC/CNE Joint Exhibit 2, Schedule 3). Thus, there is record evidence which not only refutes Nicor's allegation of harm to sales customers, but supports the conclusion that transportation customers provide a net benefit to sales customers through a reduction in PGA costs.

Hub services can be provided from transportation customers' storage capacity which goes unutilized. (Bartlett, Tr. 537-538). Therefore, it is obvious that Hub services are provided from company owned assets. The cost of these assets are allocated to transportation customers through base rates. Transportation customer gas is used to provide Hub service. Storage capacity owned by transportation customers is used to provide Hub service. Under the circumstances, common fairness and equity dictate that transportation customers should receive credit for Hub revenues. The Nicor brief presents no compelling reason to conclude otherwise.

IIEC believes the most equitable means of ensuring that transportation customers receive credit for Hub revenues is to use the test year amount of these revenues to reduce the embedded cost of storage reflected in the SBS charge (Rosenberg, IIEC Exhibit 1 at 32). Alternatively, these revenues could be returned to all sales and all transportation customers through a separate rider on the basis of total throughput. If the latter goal can be readily accomplished through Rider 6 without major, time-consuming modifications to this rider, IIEC also considers this acceptable.

## **(2) Response to Staff on Hub Revenues**

The Staff brief initially recites that Staff witness Borden agreed with the Company's proposal to flow Hub revenues through its PGA clause (Rider 6) to sales customers. It concludes by suggesting that in surrebuttal, Nicor indicated that it would address the allocation of Hub revenues to transportation and sales customers through a credit to transportation

customers under the PGA, but notes that details were not provided and that such details are needed to assess the proposal's viability. Therefore, IIEC encourages the Company to develop such a proposal.

IIEC appreciates the Staff's recognition that these revenues need to be credited to transportation customers. It agrees further detail is needed on the Company's proposal to do so. It also agrees that an appropriate mechanism to flow Hub revenues back to transportation customers should be implemented. As noted above, IIEC believes that this issue can be resolved by crediting Hub revenues against the SBS charge or through a separate rider based on total throughput. However, IIEC finds acceptable crediting Hub revenues to all transportation customers via Rider 6, if a viable means of implementing this approach can be rapidly developed.

**8. Rates 74, 76, 77, Riders 15 and 16, and Terms and Conditions**

**a. Allocation**

**(1) Storage Capacity Allocation**

**(a) Response to Nicor on SBS Allocation**

Nicor proposes to reduce the SBS allocation to transportation customers from 26X MDCQ to 23X MDCQ. Nicor reasons there is general agreement on the formula to be used to calculate the allocation of the SBS entitlement for transportation customers. (Nicor Br. at 123). However, Nicor also states there is disagreement on the numerator to be used in the formula. (Nicor Br. at 123). Nicor says the numerator should be 120 Bcf, the amount of gas Nicor expects to cycle in a year. (Nicor Br. at 123). IIEC recommended the use of 149.74 Bcf on the basis of Nicor witness Bartlett's testimony. Mr. Bartlett, when asked to describe the capacity of Nicor's storage fields, testified:

“The Company maintains gas storage fields with a total capacity determined recently to be 466,266 Bcf. Of this amount, 149.740 Bcf is available to be filled by top gas, that is, gas that can be injected and effectively recovered during a storage cycle.” (Bartlett, Nicor Ex. 8.0 at 38, Lns. 348-350).

Nicor attempts in its brief to explain why the 149.740 Bcf which its witness testified was “available to be filled by top gas” should not be used as the numerator in the SBS formula.

First, Nicor says the 149.74 Bcf is the non-coincident capacity of the fields and not the capacity of the system as a whole at any particular time. (Nicor Br. at 123). However, as noted above, a Nicor witness testified that 149.74 Bcf was the amount “available” and this was the amount that could be injected and “effectively” recovered during a storage cycle. Nicor apparently charges customers for the 149.74 Bcf. (IIEC/CNE Jt. Ex. 2 at 11). If the Nicor witness on this subject states this is the amount available, and this is the amount that can be effectively injected and withdrawn in a storage cycle, and this is the amount that Nicor charges customers for, it should also be the amount that Nicor uses for the calculation of the SBS charge.

Nicor next argues its coincident maximum storage volume was 132 Bcf in 2004. However, Nicor does not propose to use this amount as the numerator in the calculation of the SBS capacity entitlement. IIEC notes the 132 Bcf figure was derived from only one year of data. The record shows the average maximum single day working gas capacity for the 1999-2004 time period was approximately 143 Bcf, while the equivalent figure for the 1995-2004 time period was 139.5 Bcf. (Rosenberg, IIEC/CNE Jt. Ex. 2 at 13, Lns. 5-7). Therefore, if the Commission accepts Nicor’s arguments that 149.74 Bcf is not really the amount of gas that is “available to be filled by top gas . . . gas that can be injected and effectively recovered during a storage cycle” as Mr. Bartlett testified, the Commission should direct the use of no less than 140 Bcf as the numerator in the formula for the SBS capacity entitlement. The latter figure is the

average of the maximum single day working gas capacity for 1995 to 2004, and is therefore the lowest reasonable representation of Nicor's maximum storage capacity. This figure yields a capacity entitlement of 27X MDCQ (Rosenberg, IIEC/CNE Jt. Ex. 2 at 13, Lns. 8-10).

Next, Nicor argues it is not appropriate to use the coincident peak capacity in the SBS capacity formula because it represents the amount of gas that could be injected and withdrawn under ideal conditions. (Nicor Br. at 124). One of those conditions would be the ability to withdraw working gas down to zero. Nicor reasons that drawing working gas down to zero would not be prudent. (Nicor Br. at 124).

Nicor's argument is a red herring. The issue here is what is the appropriate level of storage capacity to calculate an SBS charge that is applied on a capacity basis. (Rosenberg, IIEC/CNE Jt. Ex. 2 at 12). If the charge is to be imposed on the basis of maximum capacity, it is clearly appropriate to use the actual maximum capacity of the Nicor storage fields, not the amount of gas Nicor expects to cycle in a given year, to calculate the SBS charge.

In addition, the Nicor argument fails to recognize that transportation customers do not draw down their storage gas volumes to zero either. (Rosenberg, IIEC Ex. 2 at 13, Ln. 4). However, they pay for a specific amount of maximum capacity anyway. Therefore, it is appropriate to calculate the maximum amount of storage capacity a transportation customer will be entitled to on the basis of the maximum capacity of the Nicor storage fields.

Finally, it is Nicor's position that a charge per unit of capacity should be calculated not on the basis of the actual capacity of the asset which is the subject of the charge, but the amount of gas that Nicor intends to cycle in and out of that asset. If Nicor insists on such an approach, the Commission should not apply the SBS charge to a customer's maximum capacity, but rather to the amount of gas transportation customers will cycle in and out of the storage fields. (Rosenberg, IIEC Ex. 2 at 13, LNs. 9-12). Nicor actually opposes such an approach. Because

Nicor opposes such an approach, and insists on applying the charge to capacity, it should be compelled to use the maximum capacity of its storage fields for the calculation of the charge. Nicor's use of 120 Bcf as the numerator in the formula used to calculate the SBS capacity entitlement is unreasonable and, therefore, its proposal to reduce the SBS entitlement to 23X MDCQ is unreasonable. The Commission should adopt Dr. Rosenberg's recommendations to use the 149.7 Bcf and increase the entitlement to 28 days, or at a minimum, accept the Staff's recommendation to increase the entitlement to 27 days.

**(b) Response to Staff on SBS Allocation**

Staff correctly states that it uses the coincident peak working gas in storage in the formula used to determine the SBS entitlement. Staff developed its calculation of the entitlement based on its estimate of the coincident peak working gas in storage for Nicor. If IIEC's primary recommendation on this issue is not accepted by the Commission, the Staff's recommended storage entitlement of 27X MDCQ should be adopted.

**(2) Storage Withdrawal Rights**

Nicor proposes, and Staff agrees, that withdrawal rights on an operational flow order (OFO) shortage day or critical day should be reduced from 0.023 times the customer's storage capacity to 0.021 times the customer's storage capacity. (Nicor Br. at 125-126). Nicor represents that Staff supports the Company's proposal. (Nicor Br. at 126 citing the testimony of Staff witness Borden).

IIEC only agrees with the reduction of the cap on storage withdrawals on OFO shortage days or critical days if the Commission adopts the IIEC's proposed storage entitlement of 28X MDCQ or the Staff's proposed entitlement of 27X MDCQ. Nicor's more restrictive cap on storage withdrawals, when combined with Nicor's proposed restrictions on the storage

entitlement, would constitute an unacceptable double penalty on storage customers. (Rosenberg, IIEC/CNE Joint Exhibit 2 at 13).

#### **(4) Maximum Daily Nominations**

Nicor proposes to reduce a transportation customer's maximum daily nomination right from 2X the customer's MDCQ to 1X the customer's MDCQ. (Nicor Br. at 127-128). Staff's accepts Nicor's proposal. (Staff Br. at 118-119). Staff makes no arguments in support of Nicor's proposal independent of those made by Nicor.

Nicor reasons that its proposal continues to provide "excellent" flexibility for transportation customers. (Nicor Br. at 127). Nicor opines that such customers will have the ability to inject gas into storage in the winter months in spite of the lower nomination limit. Nicor suggests this is so because the MDCQ is not an average daily use, but a maximum volume a customer is expected to use on a single day. (Nicor Br. at 127). However, Nicor overlooks the fact that many transportation customers have higher load factors and will use close to their MDCQ on most days. (Rosenberg, IIEC Ex. 2 at 25, Lns. 3-4). Dr. Rosenberg explained it would be difficult, if not almost impossible, for such customers to store gas in the winter months if the Company's proposal were adopted. (Rosenberg, IIEC Ex. 2 at 25, Lns. 4-7). Nicor witnesses did not disagree with this point, and Nicor does not disagree in its brief that transportation customers tend to have higher load factors and will use close to their MDCQ on most days.

Nicor's proposal would have the effect of reducing gas flows in the winter months, when gas use is highest. This could actually harm sales customers because gas prices are generally higher in the November 1 to March 1 time period, (Rosenberg, IIEC Ex. 2 at 25, Lns. 7-8) and high daily nominations by the transportation customers could help displace more costly gas

purchases by Nicor.<sup>7</sup> For this reason, gas flows in the winter should be encouraged, not discouraged, as they would be under the Nicor proposal to reduce the daily nominations for transportation customers from 2X MDCQ to 1X MDCQ. Nicor's proposal will be detrimental to sales and transportation customers. Therefore, Nicor's proposal should be rejected.

## **b) SBS Charge**

### **(1) Response to Nicor on SBS Charge**

Nicor correctly states that transportation customers are permitted to select a level of storage banking service (SBS) and pay a separate charge for that service. (Nicor Br. at 130). It argues that no witness disputed the formula Nicor used to calculate the SBS charge was conceptually a valid calculation. (Nicor Br. at 130). Nicor notes it calculated an SBS charge of \$0.0038 (0.38 cents) per therm. Nicor suggests that the only issue relating to the calculation of the SBS charge is using the correct numerator and denominator in the calculation. (Nicor Br. at 131).

Nicor suggests that IIEC made two principal arguments in regard to the calculation of the SBS charge. The first argument is that Nicor should have credited Hub revenues to the cost number in the numerator. The second argument is that Nicor should have used what Nicor claims to be the non-coincident maximum top gas figure (149.74 Bcf) instead of the 120 Bcf that Nicor anticipates cycling. (Nicor Br. at 131). IIEC addressed these issues in Section VI, B.8.a.(1) of this brief.

However, Nicor's description of the issues in dispute is incomplete. While IIEC witness Rosenberg recommended the embedded cost of storage of \$55 million be reduced by \$6.7 million in Hub revenues, (producing a numerator of \$48.3 million and a SBS charge of 0.335 cents per therm), IIEC also recommended an adjustment of the denominator from 120 Bcf to

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<sup>7</sup>In fact, Nicor witness Bartlett agreed that transportation gas could be used for "displacement" during his cross-examination on the assets used to provide Hub services. (Bartlett, Tr. 525-527).

149.74 Bcf, which would have reduced the SBS charge further to 0.269 cents per therm. IIEC made a third adjustment to the Company's SBS charge. IIEC recommended the SBS charge also be adjusted to reflect the fact that transportation customers do not cycle the full amount of gas they bank with the Company.

Nicor ignores the fact that Dr. Rosenberg analyzed the relationship between the amount of SBS capacity that transportation customers have reserved and the amount of gas they actually cycle. Based on that analysis, plus the appropriate crediting of Hub revenues to transportation customers, plus the use of the appropriate denominator in the SBS formula, IIEC recommended an SBS charge of 0.215 cents per therm per month, which is close to the marginal cost of storage calculated by Nicor witness Dr. Parmesano of 0.190 cents per month. (Rosenberg, IIEC Ex. 1 at 34, Lns. 18-21).

Nicor did assert that using the marginal cost of storage service as a pricing guide would undervalue the service being offered to transportation customers. (Harms, Nicor Ex. 17.0 at 19, Lns. 421-422). However, Dr. Rosenberg's proposed storage charge is based on an embedded cost analysis and is above marginal cost. Therefore, Nicor's assertion is not relevant to IIEC's proposed rate design. (Rosenberg IIEC Ex. 1 at 35, Ln. 9).

Nicor also defended its proposed SBS charge calculation by arguing it yields a charge that would be paid to an interstate pipeline to obtain equivalent day deliveries. (Harms, Nicor Ex. 17.0 at 19, Lns. 419-421). However, the cost of obtaining interstate pipeline capacity is not relevant to determining the cost of service on the Nicor system. (Rosenberg IIEC Ex. 1 at 35, Lns. 10-12). Therefore, this argument is without merit.

Nicor objected to Dr. Rosenberg's recommendation that the SBS charge be adjusted to reflect the limited amount of storage used by transportation customers relative to the capacity for which they pay. Nicor argued that IIEC's proposal to recognize the use of storage by

transportation customers in the SBS charge would result in those customers cycling more gas than they have historically. (Rosenberg, IIEC Ex. 2 at 13, Lns. 22-24). Nicor also argued that Dr. Rosenberg's proposal was akin to buying a gallon of milk but only being charged for a quart because that is all the customer wants to use. (Rosenberg, IIEC Ex. 2 at 14, Lns. 1-2).

However, Nicor did not contest the assertion that transportation customers use much less storage than they reserve. Therefore, it is entirely appropriate to reflect the reduced usage level in the calculation of the SBS charge. In addition, the Dr. Rosenberg proposal is based on cost of service principles. If transportation customers in the aggregate reserve 40 Bcf of gas, Nicor does not have to reserve 40 Bcf of storage capacity in order to provide the service, but something considerably less than 40 Bcf. This is because of customer diversity, and the fact that transportation customers will not use their full storage allowance in order to avoid penalties. (Rosenberg, IIEC Ex. 2 at 14, Lns. 3-13).

Therefore, for all the reasons stated above, the Nicor proposal for a 0.38 cents per therm SBS charge should be rejected, and IIEC's recommendation for a lower SBS charge should be accepted. If Hub revenues are credited back to transportation customers through the PGA as recommended by Staff, there would be no need to credit Hub revenues against the embedded storage costs used in the numerator of the SBS charge. Under this scenario, the IIEC's proposed SBS charge would be somewhat higher than the charge originally calculated by Dr. Rosenberg (.045¢ higher if Nicor's denominator is used and .035¢ higher if IIEC's denominator is used).

## **(2) Response to Staff On SBS Charge**

The Staff argues it is in basic agreement with Nicor concerning the calculation of the SBS charge. (Staff Br. at 119). The Staff also recognizes the impact of the 2% storage withdrawal factor was included in its calculation of the cost of service for transportation

customers. Therefore, Staff agrees the storage revenue requirement it calculated for transportation customers should be reduced by the amount of the adjustment included in the revenue requirement as shown on Staff Ex. 16.0 Rev., Sch. 16.5.

Staff goes on to state that it did not allocate the cost of the 2% storage withdrawal to transportation customers because Staff witness Luth allocated the 2% storage withdrawal factor to the customer classes according to their sales volumes. Staff states that, in its rate design, the revenues from the SBS charge were used to reduce the revenues required from the demand charge. Therefore, if the SBS charge were reduced to eliminate the effects of the 2% storage withdrawal factor, there would be a necessary increase in the demand charge to compensate for the lost revenue from a lower SBS charge. (Staff Br. at 120).

IIEC is pleased to note the Staff has recognized its error in the calculation of the SBS charge and has agreed to correct it. As noted elsewhere in this reply brief, the IIEC urges the Commission to reject the Staff's proposed ECOSS. However, if the Staff's cost study is accepted, IIEC agrees that Staff's proposed adjustment to the demand charge would be necessary to reflect the removal of the 2% storage withdrawal factor from the calculation of the SBS charge.

### **c) Cycling**

Nicor still insists on imposing new cycling requirements for transportation customers. Its Initial Brief, however, not only raises no new arguments for its position, but actually reinforces and corroborates the points made by IIEC and others for its rejection. Nicor starts its argument by noting that aquifer storage fields require that the gas be physically cycled. However, that is not germane to the issue, as no party in this case denied this fact. IIEC also notes that even Nicor does not claim that the aquifer fields can read the calendar and so there is no requirement

that the fields should be filled precisely on November 1st and emptied (or nearly emptied) on April 1<sup>st</sup>.

Rather than contradicting IIEC's argument, Nicor's Brief actually acknowledges one of the key points made by Dr. Rosenberg, namely that Nicor can continue to cycle its fields, as it has done for the past 15 years during which unbundled storage has been available, **regardless of the actions of the transportation customers.** (Nicor Br. at 132, first paragraph and at 134-135) Nicor does make the following assertion:

“. . . transportation customers have used their complete freedom of injections and withdrawals in ways that are detrimental to maintaining the operational integrity of the fields and forced the utility to work harder to keep its fields performing.” (Nicor Br. At 131-132).

Nicor's statement is belied by the fact that Nicor does not have, and apparently has not had, for at least the last fifteen years, any cycling requirements in its transportation tariffs. (Bartlett, Tr. 506). Problems of the kind suggested by Nicor have not come to the attention of the Staff witness Borden, who agreed that Nicor was able to provide storage service to transportation customers over that fifteen year time period without such a requirement and that he has been unaware of any problems in the operation of Nicor's storage fields over the last fourteen years, which would require the imposition of the cycling requirements Nicor proposes. (Borden, Tr. 1075-1076).

Nicor also states:

“The arguments made by the intervenors, and picked up in part by Staff, that there are various operational things Nicor Gas could do to cycle its fields even with the transportation customers continuing to work against it, ignore the cost of these solutions and who incurs that cost.” (Nicor Br. At 134).

Once again there is no citation to the record, and for good reason – the statement is simply incorrect. Dr. Rosenberg's testimony directly addressed the issue of cost. His

undisputed evidence shows that, under the reasonable assumption that gas prices are higher in the winter withdrawal months than in the summer injection months, sales customers are actually better off if gas is not cycled. Mr. Bartlett could not refute this and conceded that his own “counterexample” depended upon the price of gas. (Bartlett, Tr. 533-534). Mr. Bartlett and Nicor have been unable to offer any evidence which quantifies or identifies the specific amount of additional costs incurred by Nicor or any customer group, as the result of the injection and withdrawal activities of transportation customers. In fact, Staff witness Borden agreed with IIEC that Nicor’s sales customers could actually be helped and not harmed if transportation customers failed to meet the cycling requirements Nicor proposes. (Borden, Tr. 1076-1077, Rosenberg, IIEC/CNE Jt. Ex. 1 at 6-8, Lns. 15-23, Lns. 1-24, Lns. 1-2).

Dr. Rosenberg presented an illustration which demonstrated this phenomenon. Dr. Rosenberg made only three assumptions in his illustration. First, that average gas prices are higher in the withdrawal period than in the injection period. Second, Nicor continues to cycle as it has historically regardless of the behavior of transportation customers. Third, transportation customers cycle their gas in accordance with Nicor’s cycling restriction and in a manner different from Nicor’s cycling restrictions. (IIEC/CNE Jt. Ex. 2 at 4-5, Lns. 21-26 and 1-2). Nicor witness Bartlett presented a responsive illustration in which the assumed gas prices were higher in the injection season and lower in the withdrawal season. (Bartlett, Nicor Ex. 24 at 23, Lns. 514-524 and Ex. 24.2). Nicor claimed this was a “real world illustration.” However, Mr. Bartlett testified on cross-examination that “typically, historically,” pricing over the heating season is generally higher than in the non-heating season. (Bartlett, Tr. 500). Therefore, Nicor’s “real world example” is actually an atypical example. Dr. Rosenberg’s example on the other hand, is based on the typical pattern of prices and shows sales customers are not only unharmed but helped by transportation customers contrary to Nicor’s argument.

Staff witness Borden agreed with Dr. Rosenberg that the 10% minimum limitation should be rejected. (Borden Staff Ex. 17.0 at 13, LNs. 248-256). Nicor's arguments against this are without merit. For example, Nicor states that it "prudently does not cycle every therm of its working gas." Neither do transportation customers! Transportation customers have economic reasons why it would be imprudent to withdraw too much gas. They do not draw their storage to zero. (Rosenberg, IIEC Ex. 2 at 13, Ln. 3). Nicor also asserts that its "fields do not reach their minimum level all at the same time." Transportation customers do not reach their minimum level all at the same time. In fact, all of the transportation customers do not reach their maximum level at the same time either. (Rosenberg IIEC/CNE Jt. Ex. 2 at 12, Lns. 7-8). Nicor chooses to ignore this fact. This is yet another reason why Nicor's onerous restrictions are unreasonable and unnecessary. These restrictions will add further cost to transportation customers without yielding any benefit – and indeed possibly adding to the costs – for the sales customers.

**d) Level of rate increase.**

In its initial brief, the Staff asserts its proposed increases to Rates 76 and 77 are not unreasonable when the increases to the various classes are measured on a per therm basis. (Staff's Brief at 124-125). However, Staff's per therm analysis is an inappropriate yardstick for evaluating the impact of a rate increase on a particular customer class. The correct measure of the impact of a rate increase on a customer class is the magnitude of that increase on a percentage basis, relative to existing rates. The absolute dollar amount of the increase for a class is not a legitimate measure of rate impact. In other words, it is critically important to consider existing rate levels when evaluating the impact of a proposed rate increase. A \$10 million rate increase may be relatively small for a customer class contributing \$400 million in revenues at current rates. However, that same \$10 million increase would have an enormous

impact on a customer class that currently provides only \$10 million in revenues. Staff's effort to express its proposed rate increases on a per therm basis is a thinly veiled attempt to disguise the dramatic adverse impact that its proposals would have on high load factor transportation customers.

Moreover, Staff's approach to measuring rate impacts in this case is directly at odds with the Commission's rules. The Commission requires that rate impacts be determined on a bill comparison basis. The bill comparisons are made separately for the residential, commercial and industrial classes based on various levels of usage within each class. See 83 Ill. Adm. Code 285.5135, Sch. E-9. The Commission does not compare unit charges for residential customers to unit charges for industrial customers to determine the reasonableness of an increase.

Finally, the Staff's approach contradicts the method of evaluating rate impacts that the Staff has applied in prior rate cases. For example, in a recent order on rehearing in Illinois-American Water Company, Dkt. 02-0690, Staff witness Luth evaluated the need to adjust the revenue allocation in that case and in doing so, evaluated the need for such adjustment considering the impact on residential customers served in the first block of the water company's rates and noting that customers in that block ". . . would experience no more than approximately one-third of one percent of an increase. Illinois-American Water Company, Dkt. 02-0690, Order on Rehearing, February 4, 2004, 2004 Ill. PUC Lexis 44 \*4 and \*20. The Staff considered the impact on the customer's bill in that instance. It did not evaluate the proposed adjustment on the basis of a comparison of the increase in residential rate components in comparison to the increase in industrial rate components for any purpose. See also Interstate Water Co., Dkt. 94-0270, Order, April 19, 1995, 1995 Ill. PUC Lexis 283 \*182-183 where Staff witness Borden evaluated the impact of an increase on a percentage basis.

The Staff also contends the impact of Staff's proposed rates should be considered in the context of the total cost of gas service, including the cost of gas supply (Staff's Brief at 125). This argument is a red herring. This rate case is focused on Nicor's transportation costs for both sales and transportation customers. If it were relevant, then the overall level of increase requested by the Company would not be a matter of concern to Staff and other parties because the commodity portion of all customer bills is relatively large. If Staff is right, the Company could argue the size of its increase and its impact on customers is not an important consideration. Therefore, the cost of gas supply is irrelevant to a proper rate impact analysis in this case.

The Staff further asserts that "other rates should not be required to subsidize Rates 76 and 77." (Staff's Brief at 125). In a similar vein, Nicor complains that Dr. Rosenberg's proposed rates would yield a \$76 million rate increase for residential customers and a decrease for commercial and industrial customers. (Nicor's Brief at 137). These statements ignore the fact that Dr. Rosenberg's recommended revenue allocation is directly taken from the results of a properly conducted embedded cost of service study, and therefore represents no shifting of costs among rate classes. Thus, there is no legitimate basis for intimating that Dr. Rosenberg's rate proposals are unfair. The true inequity lies in the rate proposals submitted by Staff and Nicor, because these proposals deviate from cost-based rates to benefit residential customers at the expense of transportation customers.

IIEC notes the Commission previously required Nicor to file a revenue neutral rate case to better align its revenue allocation with cost causation principles See Northern Illinois Gas Company, Dkt. 88-0277, Order, June 21, 1989, 1989 Ill. PUC Lexis 150\*4. This clearly demonstrates the emphasis the Commission places on eliminating cross-subsidies in Nicor's rates. Given that Dr. Rosenberg's proposed revenue allocation is entirely consistent with the results of a properly conducted ECOSS, IIEC's rate proposals are aligned with the

Commission's objectives in this regard. For these reasons, IIEC urges the Commission to adopt Dr. Rosenberg's proposed revenue allocation in this case.

### **13. Rider 7 - Local Government Compensation Adjustment; Rider 2**

Nicor proposes to revise its Rider 7 to include recovery of all franchise and related costs imposed on Nicor by units of local government, and to recover such costs only from the customers taking service within the boundaries of that unit of local government imposing the franchise fee. (Nicor Br. at 145). Nicor proposes these costs be recovered on the basis of a monthly charge per customer. (Nicor Br. at 146). No party addressing this issue appears to oppose the recovery of these charges on a per customer basis, to the extent the Nicor proposal is approved. IIEC agrees these charges should be recovered on a per customer basis.

### **15. Energy Efficiency Programs**

Under Illinois law the Commission has no authority except that which is expressly granted or authorized by statute. See Harrisonville Telephone Co. v. Illinois Commerce Commission, 343 Ill.App. 3<sup>rd</sup> 517, 523, 797 N.E. 2d 183, 189 (5<sup>th</sup> Dist. 2003). The Commission's authority to implement energy efficiency programs was originally found in Section 8-402 (220 ILCS 5/8-402) of the Public Utilities Act (the "Act") which imposed the obligation on utilities to pursue DSM.<sup>8</sup>; A. Finkl & Sons v. Commerce Commission, 250 Ill. App. 3d 317, 333, 620 N.E. 2d 1141, 1152 (1<sup>st</sup> Dist. 1993). Section 8-402 pertained to electric utilities. Illinois Courts have held that Section 8-402 applied to electric energy efficiency programs. See, Peoples Gas Light & Coke Company, et al., v. Illinois Commerce Commission, 286 Ill.App.3d 21, 24, 675 N.E.2d 246, 248 (1<sup>st</sup> Dist. 1996), affirming a Commission decision that Section 8-402 applied to electric service. Section 8-402 was removed from the Act effective December 15, 1997 pursuant to the Customer Choice and Rate Relief Law of 1997 (220 ILCS 5/16-101 et

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<sup>8</sup> ELPH says its energy efficiency programs are also referred to as demand side management programs (9DSM). (ELPC Br. at 2, Fn. 2).

seq.). Since the only provision that granted the Commission authority to impose energy efficiency programs on any utility has been amended out of the Act and has not been replaced with a statute that applies to gas utilities, the Commission has no express authority to impose such a program on Nicor at this time.

ELPC claims the Commission has the authority to direct the adoption of energy efficiency programs under Section 9-250 of the Public Utilities Act (the “Act”) (220 ILCS 5/9-250). Section 9-250, on its face, grants the Commission the authority to determine the just and reasonable rate or rates for a public utility upon a finding that the rate or rates were unjust and unreasonable. This section provides in pertinent part:

“Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates or other charges . . . by any public utility . . . are unjust, unreasonable . . . the Commission shall determine the just, reasonable rates. . . .”  
(220 ILCS 5/9-250).

Obviously Section 9-250 does not grant the Commission the authority to impose or require the implementation of DSM programs.

In addition, to the extent Section 9-250 is applicable, *arguendo*, this section has been interpreted to require the Commission, in fixing rates, to consider a utility’s operating expenses, depreciation and reserves which in good business judgment are necessary for the operation of the utility business. See Village of Milford v. Illinois Commerce Commission, 20 Ill. 2d 556, 563-564, 170 N.E. 2d 576, 580 (1960).

There has been no showing that any particular DSM program referenced by ELPC in its testimony is an expenditure necessary for the operation of Nicor. Because ELPC has not identified any specific program to be implemented, it recommends a process to identify specific programs after this case is completed. The Commission cannot determine the “justness and

reasonableness” of rates reflecting expenditures for programs that have yet to be identified and where there has been no cost quantification.

ELPC also relies on the preamble to the Illinois Public Utilities Act (220 ILCS 5/1-102); the preamble to the Energy Policy and Planning Act (20 ILCS 1120/2) and the preamble to the Renewable Energy Efficiency and Coal Resource Development Law of 1997 (20 ILCS 687/6-2) in support of its argument that the Commission has the authority to require Nicor to implement energy efficiency programs.

ELPC’s reliance on Section 1-102 of the Act is misplaced. (220 ILCS 5/1-102). Under Illinois law the stated goals and objectives of legislation are not considered to be substantive provisions of the statute. Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 413, 414, 680 N.E.2d 374, 380 (1977). In particular, Section 1-102 has been interpreted in Illinois courts as a provision which does not provide the Commission with any substantive authority. See Monarch Gas Co. v. Illinois Commerce Commission, 261 Ill.App. 3d 94, 99, 633 N.E. 1260, 1264-1265, (5<sup>th</sup> Dist. 1994) appeal denied 157 Ill.2d 505, 642 N.E. 2d 1284. Therefore, Section 1-102 of the Act does not provide the Commission the substantive authority to impose energy efficiency programs upon Nicor.

Likewise, ELPC’s reliance on the preamble of the Energy Policy and Planning Act and the Renewable Energy Efficiency and Coal Resource Development Law of 1997, is misplaced. It is a general principle of statutory interpretation in Illinois that the preamble or prefatory portion of a statute is not an operative part of the enactment. It does not confer powers or determine rights. See, Illinois Independent Telephone Assn. v. Illinois Commerce Commission, 183 Ill.App. 220, 236-237, 539 N.E.2d 717, 726 (4<sup>th</sup> Dist. 1988). Indeed, it is a function of the preamble to provide explanations and reasons for the enactment of the statute. Id.

The Energy Policy and Planning Act purports to give the Department of Natural Resources the authority to prepare energy contingency plans and recommend a comprehensive energy plan for the State of Illinois (20 ILCS 1120/4). It does not grant the Commission authority to implement or direct the implementation of energy efficiency/DSM programs. In fact, the Act indicates that the plan developed by the Department shall “conform to the requirements of Section 8-402 of the Public Utilities Act.” Id. As noted above, Section 8-402 has been amended out of the Public Utilities Act. The Commission’s only role under the Energy Policy and Planning Act is to jointly develop objectives for the Comprehensive Energy Utility Plan established under the Act. (20 ILCS 1120/5). Thus, this Act provides no specific authority to the Commission to implement energy efficiency programs. In addition, the preamble of this Act does not apply to the Public Utilities Act and, therefore, cannot be used to interpret or determine the Commission’s authority under the PUA since preambles are intended to identify the intention of the legislature in adopting the legislation to which they are appended. Id. at 720.

In addition, the Renewable Energy, Energy Efficiency and Coal Resources Development Law of 1997 applies to electric utilities and retail electric suppliers, not gas utilities. (See, 20 ILCS 687/6-6(a)). It establishes a trust fund to be dispersed to “residential electric customers”. (20 ILCS 687/6-6(b)). Thus, the Act does not pertain to gas service and provides no basis for the ELPC program. Nor does the preamble of the Act provide any basis for determining the Commission’s authority under the Act since the preamble applies only to the Renewable Energy, Energy Efficiency and Coal Resources Development Law of 1997.

In sum, ELPC has not provided a valid legal basis for the Commission to impose, under the circumstances of this case, mandatory energy efficiency programs, which have not been specifically identified, and the cost of which is not quantified, by requiring Nicor to simply increase its base rates by \$38 million or \$10 million. Nor has ELPC provided specific evidence

that any particular program or group of programs represents the “least cost approach” of providing gas service under its interpretation of the Public Utilities Act. Therefore, the ELPC proposal should be rejected in the context of this case.

DATED this 5th of July, 2005.

Respectfully submitted,

ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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I, Eric Robertson, being an attorney admitted to practice in the State of Illinois and one of the attorneys for the Illinois Industrial Energy Consumers (IIEC), herewith certify that I did on the 5<sup>th</sup> day of July, 2005, electronically file with the Illinois Commerce Commission, the Reply Brief of IIEC, and electronically served same upon the parties identified on the Commission's official e-docket service list.

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SUBSCRIBED and sworn to before me, a Notary Public, on this 5th day of July, 2005.

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Notary Public

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