

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company	:	
d/b/a Nicor Gas Company	:	
	:	
Proposed general Increase in	:	ICC Docket No. 04-0779
rates, and revisions to other terms	:	
and conditions of service	:	

**REPLY BRIEF ON REHEARING OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code Section 200.830, respectfully submits this Reply Brief on Rehearing.

I. INTRODUCTION

The Initial Brief on Rehearing of the Staff of the Illinois Commerce Commission ("Staff IB on Rehearing" or "Staff's Initial Brief on Rehearing") was filed on January 24, 2006. The People Of The State Of Illinois', The Citizens Utility Board's, And The Cook County State's Attorney's Office's Joint Initial Brief On Rehearing ("AG/CUB/CCSAO IB on Rehearing" or "AG/CUB/CCSAO Initial Brief on Rehearing"), the Initial Brief On Rehearing Of The Illinois Industrial Energy Consumers ("IIEC IB on Rehearing" or "IIEC's Initial Brief on Rehearing"), Initial Brief on Rehearing of Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor IB on Rehearing" or Nicor's Initial Brief on Rehearing"), and the Initial Brief On Rehearing Of Dominion Retail, Inc. And The Retail

Gas Suppliers (“DRI/RGS IB on Rehearing” or “DRI/RGS’ Initial Brief on Rehearing”) were also filed on January 24, 2006.

II. ARGUMENT

A. Rehearing Issue 1

At the November 2, 2005 Commission Meeting, the Commission granted rehearing on the issue of uncollectibles expense computation. (See Notice of Commission Action, filed on e-Docket November 2, 2005) In particular, the Commission asked “[i]s an update to uncollectibles expense warranted to reflect changes attributable to base rate charge?” Nicor Gas asserts that the Commission, on rehearing, should correct an error in the uncollectibles expense amount reflected in the Order and Amendatory Order. (Nicor IB on Rehearing, pp. 5-11) Staff understands Nicor Gas’ concern to be that the \$37,748,000 amount should reflect the Company’s total uncollectibles expense based upon current rates before the Company’s proposed increase or the Commission’s adjustment to that proposed increase. Thus, Nicor Gas believes the \$37,748,000 amount should appear in column (d) rather than column (g) of the Order’s Appendix A, page 1, line 6. This would be accomplished by increasing the adjustment shown on page 4 in column (u) by \$864,000.

Staff notes that reflecting the \$37,748,000 amount as the total uncollectibles expense, before any rate increase, would be consistent with the way in which uncollectibles expense was presented during the pendency of the case. (See, for example, Company Exhibit 26.1, Schedule 1.04, line 15 compared with ICC Staff Exhibit 10.01-Revised, Schedule 10.01-Revised, column (d), line 6.) As Nicor Gas notes,

support for the \$37,748,000 amount is reflected in the record. (Nicor IB on Rehearing, p. 7) The Company's initial proposal in its direct testimony was \$30,355,000. (Nicor Gas Exhibit 11B.1, Sch. C-2.2, line 4) The effect of the March 31, 2005 update upon uncollectibles expense was \$7,393,000. (Company Exhibit 26B.2, Sch. 2, column (F), line 1) The sum of these two amounts (\$30,355,000 + \$7,393,000) produces the \$37,748,000 amount before any rate increase. Unless it is the Commission's intention not to reflect the effect of the March 31, 2005 update upon uncollectibles expense, the Commission should make the correction to uncollectibles expense requested by the Company.

B. Rehearing Issue 2: Staff does not object to Nicor's proposed change to the Order which increases the Rate 7 demand charge to account for the partial recovery of storage costs under Rate 77 through the Storage Banking Service ("SBS") charge

In Staff's Initial Brief on Rehearing, Staff suggested an increase in the Rate 7 distribution charge (Staff IB on Rehearing, pp. 8-9), which is a usage-based charge rather than a demand-based charge. Recovery of storage costs from potential Rate 7 customers through the demand charge is acceptable because storage costs are, for the most part, treated as demand-based costs in the cost of service study in this docket. In order to include storage costs recovered from Rate 77 customers through the SBS charge in the Rate 7 demand charge, the Commission's order on rehearing should modify the requirement that the demand charges for Rates 7 and 77 be identical (See Order dated September 20, 2005, p. 157) to allow for the difference. Staff recommends calculating the increase in the Rate 7 demand charge by adding the amount that results by dividing \$2,003,000 in Rate 77 SBS charge revenues by 15,651,000 demand billing

units (September 30th, 2005 e-Docket Report of Northern Illinois Gas Company d/b/a as Nicor Gas Company, Exhibit 11), or slightly less than \$0.1280. Rate 7 demand charges would then be \$0.9235 per therm of monthly demand through 10,000 therms, and \$0.1546 per therm of monthly demand over 10,000 therms.

C. Rehearing Issue 3

1. Nicor's claim that its estimate of total therms in the test year is unchanged by the Rate 1 adjustment is illusory.

As explained by Staff in its Initial Brief on Rehearing, the total therms estimate should be increased as a result of the Rate 1 adjustment for a straightforward reason. No party, including Nicor, has shown that an increase in Rate 1 therms creates an equal, offsetting decrease in Rate 4 therms or therms delivered under any other rate. (Staff IB on Rehearing, p. 4) Since a factor in Nicor's test year forecast, Rate 1 therms, has been found to be understated, total therms in the test year should be increased by the amount of increase in Rate 1 therms, whether explicitly stated in the Order or not.

While the Clarification Order, dated November 22, 2005, authorized Nicor to implement rates based upon an offset to the Rate 1 adjustment, the fact remains that the Commission granted rehearing on the issue and in particular inquired into the proper treatment of an increase to Rate 1 therms on total therms. Nicor's argument is nothing more than a red herring and there is no significance to there being no mention in the Order dated September 20, 2005 that the Rate 1 adjustment necessarily increases total therms when the unadjusted estimates of other rate classes are added to the adjusted Rate 1 deliveries. Furthermore, Nicor cannot point to a Commission finding that total therms are not adjusted by the Rate 1 increase because there is no such finding. Nicor

attempts to claim that because the Order does not comment on the effect of the Rate 1 adjustment on total therms, the Order finds that Nicor's estimate of total therms should be preserved. (Nicor IB on Rehearing, pp. 23-24) To illustrate Nicor's illogical position, consider the following example. A person, who is about to begin a walk down the street, has a five-dollar bill and two one-dollar bills in his pocket, for a total of seven dollars. While walking down the street, he finds a dollar. This means that person now has eight dollars, even if the person explains only that he found a dollar on the street but does not indicate that he had eight dollars at the conclusion of the walk. The Nicor position would have that person losing a dollar sometime during the walk, even if it didn't happen.

Nicor argues that its estimate of total therms for the test year must not be adjusted because the total therms forecast is the basis for a second analysis that allocates the total among sales, transportation, and customer select customers, with a third analysis done to allocate the total among the various rates and revenue class. (Nicor IB on Rehearing, p. 20) Nicor then abandons the importance or accuracy of the second and third analyses as those analyses affect Rate 4 when it claims that, if the Commission maintains the Rate 1 adjustment, the allocation to Rate 4 must be decreased by the entire amount of the Rate 1 adjustment. By abandoning the importance or accuracy of the second and third analyses in developing test year rate-by-rate delivery estimates, Nicor casts doubt on the importance and accuracy of the first analysis, the estimate of total therms.

The *estimate* of total therms is not set in stone, and a change in a factor of that *estimate* does not mean that another factor in that estimate should be changed in the

opposite direction simply to preserve the total. Staff showed that Nicor agreed that a change in a factor of the estimate would change the estimate of the total when Staff asked whether a reduction in the number of customers would cause a change in the estimate of total therms. (ICC Staff Exhibit 24.0, p. 5, lines 106-117; also Attachment A to ICC Staff Exhibit 24.0) IIEC's note that "no party has challenged the accuracy of the estimate of therms distributed to any other rate class" (IIEC Initial Brief on Rehearing, p. 8) further supports the concept that therms delivered under any other rate, including Rate 4, should not be used to offset the Rate 1 adjustment. An increase in Rate 1 therms, therefore, necessarily increases total therms in the absence of a demonstration that an increase in Rate 1 therms causes a corresponding decrease in therms delivered under another rate.

2. Nicor would be able to recover its test year revenue requirement if the Rate 1 adjustment is not offset by a reduction in Rate 4 therms

Staff explained why it is not necessary to offset the Rate 1 adjustment by a corresponding decrease to Rate 4 therms. (Staff IB on Rehearing, pp. 7-8) As Staff explained, Nicor confuses the overstatement of the amount of the increase with test year revenue requirement. The Rate 1 adjustment increases the amount that Nicor would recover under rates in effect prior to October 4th, 2005 but does not decrease the test year revenue requirement. With an increase in the amount that Nicor would recover under rates previously in effect, the amount of the increase is reduced because the increase is measured by subtracting revenues under previous rates from test year revenue requirement. As Staff explained in its Initial Brief on Rehearing, test year

revenue requirement is not dependent upon the amount of the increase from revenues recovered under rates previously in effect. On the contrary, the amount of the increase is dependent upon the difference between test year revenue requirement and revenues recovered under previous rates. As a result, revenues recovered under previous rates and the amount of the increase should be restated as shown and highlighted in Schedules 1 and 2 of ICC Staff Exhibit 24.0. The test year revenue requirement would remain the same, unaffected by the adjustment to Rate 1 therms. Nicor's claim that it would not be able to recover the stated amount of the increase is irrelevant, and should be rejected by the Commission, because the amount of the increase can be restated without affecting the Commission's conclusion on what is relevant -- test year revenue requirement.

3. Nicor's Reliance on Actual 2005 Data Is Improper

Nicor also appears to argue that an increase in total therms is improper based on its contention that actual 2005 data somehow show its forecast based on 2004 data to be overstated:

Nicor Gas has shown that total therms have decreased when comparing the 2004 forecast with the actual normalized 2004 therms. (Harms Reh'g Dir., Nicor Ex. 58.0, ln. 82 (Table)). In fact, when the Efron methodology is employed to forecast total therms for 2005 based on normalized actual 2003 and 2004 results, it yields an even lower total therm amount than Nicor Gas originally had forecast. Staff's new argument would require the Commission not only to reject its previous findings on total therms, findings that enjoy ample support in the record in the initial proceeding, but also **would require the Commission to reject the compelling evidence presented on rehearing that total therms for 2005 will be less than originally forecast by Nicor.**

(Nicor IB on Rehearing, p. 21 (emphasis added)) Staff is not aware of any such evidence, compelling or otherwise, and Nicor's brief cites to none. To the contrary, the Administrative Law Judges have already made clear that Nicor waived its opportunity to seek rehearing based on actual 2005 data and properly excluded such testimony:

The AG is correct that the use of actual 2005 data is not an issue raised by Nicor in its application for rehearing, nor an issue that the Commission accepted for rehearing. Instead, the potential use of actual 2004 data was the issue presented and accepted for rehearing. Therefore, any potential issue as to the use of actual 2005 data has been waived, and any testimony regarding the same is outside the scope of the rehearing.

Nicor argues that the actual 2005 data is the latest, most accurate information, and the Commission should use it to make its decision. This argument fails due to the waiver of the issue and the scope of rehearing just discussed. There is a further reason to reject the actual 2005 data, however. The AG contends that it is irrelevant as evidence and a violation of the rules regarding updates to future test years. We concur that the mixing of test years is improper. This rate case is based on the election by Nicor of a 2005 future test year. (See Order (Sep. 20, 2005) at 3-4.) Acceptance of Nicor's 2005 actual data at this stage of the proceeding would effectively convert the test year for this issue to a 2005 historical test year. The mixing of test years is inconsistent with 83 Ill. Adm. Code 287.20 in particular, and Code Parts 285 and 287 generally. Furthermore, deciding issues with mixed test years may produce results other than the just and reasonable rates required by 220 ILCS 5/9-101 et seq. Nicor's position therefore must be rejected, and this portion of the Motion GRANTED.

(Administrative Law Judges' Ruling, pp. 2-3 (January 11, 2006)) Nicor's arguments in this regard are improper and must be rejected.

4. If the Commission orders an offset to the Rate 1 adjustment, Rate 4 should not be targeted for the full amount of the offset.

Nicor claims that Rate 4 is a natural candidate for an offset to the Rate 1 adjustment because Rates 1 and 4 have similar rate structures. (Nicor IB on Rehearing, p. 25) Similarity in rate structure is meaningless when one rate class is

forced to absorb the effect of an adjustment to another rate class when no party, including Nicor, suggested that an increase in Rate 1 usage creates a decrease by the same amount in Rate 4 usage. Nicor's claim that the lack of inverse relationship between Rate 1 and Rate 4 usage is irrelevant is puzzling. Nicor's does not answer the obvious question "What other reason would result in one rate class fully absorbing an offsetting adjustment resulting from an adjustment to another rate class?" Without an answer to that question, reducing Rate 4 usage to offset the Rate 1 adjustment is arbitrary. A similarity in rate structure of Rates 1 and 4 might be convenient, but not fair or logical. In the absence of an inverse relationship between increased Rate 1 deliveries and decreased deliveries under another rate, the only reasonable and fair solution to offsetting the Rate 1 adjustment is to reduce test year therms for all other rates by a uniform percentage.

Nicor and IIEC claim that because Nicor has more precise information available on the actual usage of daily-metered customer classes, the estimate of test year deliveries to those rate classes should not be reduced. (Nicor IB on Rehearing, p. 26, IIEC IB on Rehearing, p. 8) Staff explained that Nicor's estimates for customer classes other than Rate 1 and Rate 4, which would include daily-metered customer classes, are no more accurate, and actually less accurate, than the estimates for total therms or Rates 1 and 4. (ICC Staff Exhibit 25.0, p. 5, lines 92-103; ICC Staff Exhibit 25.0, Schedule 2) Despite more precise information available on daily-metered customers, a full offset to the Rate 1 adjustment targeting Rate 4 customers to the exclusion of rate classes other than Rate 4 would not be based upon reasonableness, nor would it be

appropriate. If an offset is to be implemented, terms delivered under all rates should be reduced by a uniform percentage.

VII. CONCLUSION

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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