

STATE OF ILLINOIS

ILLINOIS COMMERCIAL COMMISSION

North Shore Gas Company and)	
Peoples Gas Light & Coke Company)	07-0241 &
)	07-0242
Proposed general increase in)	
natural gas rates)	
)	

**INITIAL BRIEF OF
NICOR ADVANCED ENERGY L.L.C.**

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Nicor Advanced Energy, LLC (“NAE”), by counsel, hereby submits its Initial Brief concerning North Shore Gas Company’s (“North Shore”) and Peoples Gas Light & Coke Company’s (“Peoples”)¹ proposed general increase in natural gas rates.

INTRODUCTION

Peoples’ and North Shore’s Choices for You (CFY) Program suffers anemic customer participation rates. It is no wonder then that one of the Companies’ “overall objectives” in this proceeding is “to provide all customers the opportunity to select an alternative natural gas supplier.”² That is NAE’s goal too. But unlike the Companies, NAE seeks to boost participation in the CFY Program by eliminating tariff and operational impediments and costs that hinder supplier participation in the first place, and that stifle residential and small commercial customer choice. Indeed, the Companies’ proposals generally disadvantage all CFY suppliers – except perhaps Integrys Energy Systems (the Companies’ supplier affiliate) – and unfairly discriminate against CFY suppliers that want to issue their own single bills under Rider SBO.

¹ Peoples and North Shore are collectively referred to as the “Companies”.

² Peoples Gas Ex. TZ-1.0 REV (Zack Direct), at 2; North Shore Gas Ex. TZ-1.0 REV (Zack Direct), at 2.

Through the Direct and Rebuttal Testimony of Lisa Pischevar (identified as NAE Exhibit Rev. 1.0 and NAE Exhibit Rev. 2.0 respectively), and through NAE's cross-examination of the Companies' and Staff's witnesses at the evidentiary hearing, NAE demonstrated that the following changes are necessary to eliminate the barriers to entry in the CFY Program and to facilitate increased supplier and customer participation:

- The Companies agreed that it is appropriate to provide suppliers issuing single bills under Rider SBO with a \$0.33 per bill per month billing credit to cover the costs of bill postage and paper stock, and the Commission should approve that change. The evidence also demonstrates that the Companies incur billing costs in addition to postage and paper stock, and thus, the Companies should conduct an embedded cost study to determine the true costs of billing and file a revised Rider SBO billing credit to reflect the results of that cost study. However, in no event should the Companies provide a Rider SBO billing credit of less than \$0.33.
- When a CFY customer makes a partial payment, the Companies should apply the "aged receivables" order of payments methodology (currently used with the LDC Billing Option under the Companies' Rider AGG) both to suppliers offering single-billing under the LDC Billing Option and to suppliers offering single-billing under Rider SBO.
- The Companies and the supplier should each be required to bear the risk associated with their own charges when a CFY customer pays with an NSF (non-sufficient funds) check, and the Companies should adopt a procedure that requires both parties to return the funds collected from each other, regardless of the single-billing option that is used.

- The Companies should provide a supplier with access to Tier II customer data when the supplier obtains “explicit customer approval.” “Explicit customer approval” should be defined as an express customer consent obtained by the supplier that is evidenced by a verifiable record that can be produced by the supplier.
- The Companies should, within 30 days of the Commission’s final order in this proceeding, complete their proposed upgrades to the PEGASys information system in order to improve suppliers’ access to customer data. The Companies should also provide suppliers with access to customer payment history information when it has obtained verifiable and auditable customer consent.

For the reasons set forth herein, and in NAE’s testimony, NAE respectfully requests that the Commission adopt its proposed modifications to the Companies’ CFY Program, as well the proposals of the Retail Gas Suppliers (“RGS”). NAE’s and RGS’ proposals are necessary to facilitate the development of a competitive market in the natural gas industry and to provide the Companies’ customers with greater choice of alternative natural gas suppliers.

ARGUMENT

I. CUSTOMER ENROLLMENT ISSUES UNDER THE COMPANIES' SMALL VOLUME TRANSPORTATION PROGRAM (CHOICES FOR YOUSM OR "CFY")³.

A. Customer Data Issues

NAE supports the Companies' proposed upgrades to their PEGASys system, and the Commission should approve them subject to NAE's proposed modifications described below. NAE's proposals will further improve the CFY Program by reducing the suppliers' costs associated with customer enrollment and by providing suppliers with increased access to customer information. This will enable CFY suppliers to better serve their customers and will make it easier for customers to choose a CFY supplier.

The Companies' proposed Tier II data should contain information as to whether a customer is in arrears and the magnitude of those arrears.

Prior to the enrollment of a customer in the CFY Program, a supplier must have access to certain pieces of customer information such as the customer's premise address, usage, and account number. A supplier must also have access to information as to whether a customer is in arrears for utility distribution charges, as well as information indicating the magnitude of any arrears. The Companies' current proposal, however, is to provide information regarding a customer's arrears only *after* a supplier has enrolled the customer and has started to flow gas to that customer. North Shores/Peoples Gas Ex. TZ-2.0 (Zack Rebuttal) at 56, lines 1247-1249.

³ All of the issues raised by NAE in this proceeding concern Part X. D. (Small Volume Transportation Program,) of the Compromise Proposed Common Briefing Outline, including Part 2 - Customer Enrollment, Part 3 - Rider SBO, Part 4 - Purchase of CFY Receivables, and Part 5 - PEGASys and Customer Information. NAE does not comment on Part 1 – Storage Rights and Aggregation Rights. NAE's Brief follows the Compromise Proposed Common Briefing Outline to the extent it applies to NAE's positions.

The Companies' proposal should be rejected for two reasons. First, all suppliers must know whether the potential customer is a credit risk before enrolling the customer in the CFY Program. The Companies can recover costs of bad debt through their rates (*see* Tr. (Zack Cross) at 620, lines 9-12), but a supplier cannot. Consequently, a supplier assumes a significant credit risk when it enrolls a customer that is in arrears with the utility. Moreover, if the Companies do not provide suppliers with information regarding the customer's utility arrears prior to the customer's enrollment in the CFY Program, a supplier would be forced (assuming the customer consents), to run a credit check, which consumes additional time and money.

Second, access to information regarding a customer's arrears prior to enrollment in the CFY Program is particularly important for those suppliers who want to issue their own single bills because, under Rider SBO, a supplier cannot provide single-billing to a customer that has arrears with the utility.⁴ Obviously then, a supplier wanting to bill under Rider SBO must have access to information – before customer enrollment – as to whether a customer is in arrears with the utility. If the supplier does not have this information, and it unknowingly enrolls a customer that is in arrears with the utility, it must use utility consolidated billing under the LDC Billing Option or issue a bill for supply charges separate from the utility's bill for distribution charges.

Both scenarios create a barrier to entry for suppliers that have a business plan to provide their own single billing to customers under Rider SBO. Forcing a supplier to use utility consolidated billing under the LDC Billing Option would remove an important

⁴ Section F of Rider SBO (Ill.C.C. No. 17 Orig. Sheet No. 95) provides: "A CFY Supplier may provide billing of the Company Charges for only those CFY Customers . . . (b) who have no arrearages with the Company, except if such arrearages are the subject of a complaint pursuant to 83 Illinois Administrative Code Part 280."

customer contact channel. In addition, the supplier would have to expend additional resources to establish the necessary information technology structure with the Companies for utility consolidated billing under the LDC Billing Option and would have to pay the Companies for the use of single billing service under the LDC Billing Option – solely for those instances where the supplier unknowingly enrolls a customer that has utility arrears. NAE Ex. 1.0 Rev. (Pishevar Direct) at 460-471. Separate billing by the supplier for its supply charges is also undesirable, because it is inconvenient for customers and does not facilitate a competitive market in the natural gas industry. Tr. (Zack Cross) at 617, lines 10-17.

The Companies and Staff contend that customer credit and payment history is sensitive information and that, absent evidence of explicit customer approval, suppliers should not be able to access such information. NAE agrees. However, as explained below in Section I.B, so long as a customer provides express consent (and the supplier is able to produce a verifiable record of that consent), the customer should be allowed to determine what information the supplier may access prior to enrollment in the CFY Program. Accordingly, when a customer provides explicit approval, the Companies should be required to provide suppliers – prior to customer enrollment – access to information concerning: 1) whether the customer is in arrears; 2) the amount of the arrears; and 3) the customer’s bill payment history. Alternatively, so long as the customer provides explicit approval, the Commission should require the Companies to provide a supplier with information concerning: 1) whether the customer is in arrears, and 2) whether the customer’s arrears with the Companies are greater than \$100.

The Companies should be required to provide suppliers, who have obtained explicit customer approval, with account numbers through data key

combinations that a customer may readily have such as a Social Security Number or a phone/address combination.

Under the Companies' proposed upgrades to the PEGASys system (*see* North Shore/Peoples Gas Ex. TZ 2.0 (Zack Rebuttal) at 1351-1365), a supplier's access to Tier II data (which is necessary to enroll customers in the CFY Program) would be dependent on the supplier's access to data keys such as a customer's account number, home address, phone number, or other unique customer identifiers. *See* Tr. (Zack Cross) at 621, lines 18-22; and NAE (Zack) Cross-Exhibit 2.0 (attached hereto as Exhibit A). Without ready access to the necessary "keys", a customer will not be able to switch his supplier, and the supplier will not be able to review customer information required for enrollment.

Currently, the Companies do not know whether they will provide a means to allow a customer and his supplier to retrieve the customer's account number by using information the customer knows off the top of his head such as his Social Security Number, address, or phone number. Tr. (Zack Cross) at 622, lines 2-12. Although a customer's account number is typically found on his bills, in some cases, a customer may be unable to find his utility bill or, if the customer has moved to a new residence, he may not have even received his first bill or his account number. In order to facilitate a customer's enrollment in the CFY Program, and provided the customer expressly consents, a customer and his supplier should be able to access the customer's account number by using information readily accessible to the customer.

The Commission should require the Companies to provide a residential customer list that includes customer names, street addresses and phone numbers, with a revised list to be provided every six (6) months.

In this proceeding, the Companies committed to provide CFY suppliers, every six months, with a residential customer list containing customer names, street addresses and

phone numbers, limited only by those customers who are on the CFY “do not call list.” North Shore/Peoples Gas Ex. TZ-2.0 (Zack Rebuttal) at 55, lines 1212-1218. Suppliers should not be charged for these lists because the Companies concede that the costs for such lists are already recovered in their base rates. Tr. (Zack Cross) at 633, lines 8-12. In addition, providing this information to suppliers would not burden the Companies, because they already maintain this information for their own use.

Staff’s position is that customer consent should be obtained prior to the release of this information. Tr. (Reardon Cross) at 689, lines 4-9. However, the customer lists contain only public information; they contain no sensitive, customer-specific information such as financial or other related data. Names, addresses and phone numbers are available from many public information sources, including the White Pages and the internet. In addition, under the Illinois Personal Information Protection Act (815 ILCS 530/1 *et seq.*), such information is not considered personal information.⁵ Accordingly, Staff’s position on this issue should be rejected.

B. Evidence of Customer Consent

The Commission should define “explicit customer approval” as an express customer consent obtained by the supplier that is evidenced by a verifiable record that can be produced by the supplier.

This issue concerns the terms and conditions on which the Companies will provide NAE and other suppliers with access to customer-specific information regarding arrears and payment history as a part of the Tier II data. *See* NAE Ex. 2.0 Rev. (Pishevar

⁵ Notably, under the Illinois Personal Information Act, “personal information” includes a combination of an individual’s name with one of the following, nonencrypted pieces of information: social security number, driver’s license or state identification card number or account number, debt/credit card number, and related access or security codes that would permit access to an individual’s financial accounts. 815 ILCS 530/5. Further, “personal information” “does not include publicly available information that is lawfully made available to the general public from federal, State, or local government records.” *Id.*

Rebuttal) at 11-12, lines 195-218; RGS Ex. 1.0 (Crist Direct) at 38-40; and RGS Ex. 2.0 (Crist Rebuttal) at 22-23; North Shore/Peoples Gas Ex. TZ-2.0 (Zack Rebuttal) at 55-57, lines 1230-1270; and North Shore/Peoples Gas Ex. TZ-3.0 (Zack Surrebuttal) at 34-35, lines 742-767.

Staff's position is that customer payment information should not be provided to suppliers "absent explicit customer approval." ICC Staff Ex. 24.0 Corrected (Reardon Rebuttal) at 19, lines 366-368. But the Companies provided no definition of what constitutes "explicit customer approval," and neither did Staff. Staff witness Dr. Reardon, however, testified at the evidentiary hearing that "explicit customer approval" could include – but would not necessarily require – a customer's written authorization or a third-party verification.⁶ Tr. (Reardon Cross) at 693, lines 1-6, 696, lines 5-22 .

This issue was resolved when Dr. Reardon agreed during cross-examination that NAE's proposed definition of "explicit customer approval" would satisfy his concerns as to the provision of sensitive customer information to suppliers. Specifically, in response to NAE's cross-examination, Dr. Reardon testified:

Q. If a supplier, number one, warrants and represents that it has explicit customer consent, two agrees to hold the [C]ompanies harmless from a customer's damage claims in the event it does not have such explicit customer consent, and three, can produce an audible verifiable record of customer consent, would your concerns be satisfied?

A. Yes.

⁶ The Commission should not restrict "explicit customer approval" to only a customer's handwritten signature or a third-party verification, which would require physical delivery to the Companies prior to a supplier's access to the information. Such a scheme would raise costs for suppliers and their customers participating in the CFY Program and would hamper customer enrollments in the CFY Program. Such delivery would also raise the Companies' cost of administering the CFY Program given the need to add resources to review such information.

Tr. (Reardon Cross) at 697, lines 14-21. Therefore, under NAE's proposal – which is consistent with other residential gas choice programs in Illinois – a supplier would not be able to view a customer's payment history and arrearage information without obtaining "explicit customer approval" evidenced by a verifiable record. The verifiable record could be a handwritten signature, an electronic acknowledgement (e-mail or website verification), a recorded phone approval, or any other verifiable record that evidences a customer's express acknowledgment. Further, in the event there is a dispute between the customer and supplier, the supplier would be required to produce the evidence of explicit customer approval. NAE Ex 2.0 Rev. (Pishevar Rebuttal) at 11-12, lines 206-218. Therefore, consistent with NAE's proposal, the Commission should approve the tariff language as follows:

As a change to Section D of Rider CFY:

Customer Information

The customer may agree to allow a CFY Supplier to receive its payment history, including information about past due amounts from the Company. The customer agrees that, if the CFY Supplier *obtains* verifiable and auditable authorization from the customer, the Company shall provide such information to the CFY Supplier.

And as a modification to the proposed new subsection 5, Section F of Rider AGG:

(5) the process by which the CFY Supplier shall request and receive customer payment history and customer past due amounts, which shall (i) require the CFY Supplier to indemnify and hold the Company harmless from any customer damage related to the utility provision of customer information to the CFY Supplier if the CFY Supplier does not have the requisite authority, (ii) make such information available to the CFY Supplier when the customer authorizes the CFY Supplier to have access to the information where such authority to have access to such information shall continue as long as the customer has authorized the CFY Supplier to have such information. (See NAE Ex. 2.0 lines 219-242).

In sum, NAE agrees that all parties should seek to protect customers' payment information and that access to such information should only be made available to a supplier when it has explicit customer approval. NAE's proposal accomplishes that goal, and thus, the Commission should adopt NAE's position on this issue.

II. RIDER SBO

A. Billing Credit

The Commission should approve a Rider SBO billing credit of \$0.33 per bill per month, order the Companies to conduct an embedded cost study to determine their billing costs and require the Companies to file a revised Rider SBO billing credit to reflect the results of the cost study.

The Companies, NAE and Staff all agree that it is appropriate for the Companies to provide suppliers using supplier consolidated billing under Rider SBO with a billing credit for, at a minimum, the costs of printing and mailing a bill. North Shore/ Peoples Gas Ex. TEZ-3.0 (Zack Surrebuttal) at 31, lines 686-692; NAE Ex. 2.0 Rev. (Pishevar Rebuttal) at 5, lines 61-70; ICC Staff Ex. 24.0 Corrected (Reardon Rebuttal) at 23, lines 449-452. Indeed, the Companies recover the costs of printing and mailing a bill through their rates, and thus, absent a bill credit, a CFY customer billed under Rider SBO would pay twice for billing costs – first for the costs associated with the supplier's billing and second for the costs of billing recovered through the Companies' rates. NAE Ex. 2.0 Rev. (Pishevar Rebuttal) at 4, lines 30-36. The evidence demonstrates that the average cost for the Companies to print and mail a bill is \$0.33 per bill per month (\$0.29 for postage and \$0.04 for paper stock). NAE Ex. 2.0 Rev. (Pishevar Rebuttal) at 5, lines 61-66; NAE Ex. 2.02; NAE Ex. 2.03. The Companies agreed to modify Rider SBO to provide suppliers with a bill credit of \$0.33 (North Shore/ Peoples Gas Ex. TEZ-3.0

(Zack Surrebuttal) at 31, lines 686-692), and the Commission should approve this change.

The \$0.33 billing credit for postage and paper stock, however, does not fully reflect the Companies' billing costs. During cross-examination at the evidentiary hearing, Mr. Zack testified that there are additional costs associated with issuing a bill including quality assurance costs and information technology/programming costs. Tr. (Zack Cross) at 625, lines 6-8. NAE witness Ms. Pischevar further testified that the cost of remittance processing would be avoided by the Companies when a CFY supplier issues a single bill under Rider SBO. NAE Exhibit 1.0 Rev. (Pischevar Direct) at 8, lines 131-132. There may be additional billing costs the Companies incur, but no one knows for sure, because remarkably, the Companies have prepared no cost study to analyze their costs when a CFY supplier bills under Rider SBO. Tr. (Zack Cross) at 625, lines 10-12; NAE Exhibit 1.0 Rev. (Pischevar Direct) at 202-218. Nevertheless, the Companies will continue to recover through their rates billing costs above and beyond the costs for postage and paper stock when the supplier creates and issues its own single bill under Rider SBO.

In order to reflect the true cost of billing – and more importantly, to prevent double-recovery from CFY customers – the Commission should require the Companies to conduct a study to determine their embedded costs of billing and to file a revised Rider SBO billing credit that reflects the results of that study.⁷ An embedded cost captures all relevant costs associated with a particular activity and avoids the difficulty of allocating avoided or marginal capital costs. In addition, an embedded cost study will identify the

⁷ As a point of reference, Commonwealth Edison's embedded cost of service study for billing yielded a \$.63 per bill credit. NAE Exhibit 1.0. Rev. (Pischevar Direct) at 12, lines 200-201.

wider range of bill costs including information technology costs, remittance processing and capital costs. In its Interim Order in Docket No. 01-0423, the Commission determined that the preferred means of calculating a Rider SBO bill credit was on an embedded cost basis. Specifically, the Commission stated:

We note that the Commission has been presented with this question on two previous occasions, Docket No. 99-0117 and, more recently, Docket No. 00-0494. In both instances we rejected similar ComEd proposals that the SBO credit be set at short-run “avoided” costs according to the Company’s calculations. . . . [O]ur review of the evidence leads us to the conclusion that the Company again has failed to convince us of the merits of its position. The avoided-cost credits would be minimal and, we believe, not reflective of the actual long run savings that should accrue to the Company if it wisely makes better use of its freed-up billing capacity. . . . In any event, the Commission is of the opinion, as we were in our Docket No. 99-0117 Order that “this tariff will be in effect over the long term and, therefore, the credit must be calculated using long-term embedded costs”. ***This methodology we believe will ensure that customers pay only for costs that they incur.***⁸

Therefore, because the Companies recover their total billing costs from the their ratepayers, the embedded portion of the total billing costs that is no longer incurred by the Companies due to supplier billing under Rider SBO should be reflected in the Rider SBO billing credit.

Alternatively, if the Commission determines that calculating a Rider SBO billing credit through an embedded cost methodology is no longer appropriate, it should, at a minimum, require the Companies to perform an avoided cost study for billing costs that captures all avoided charges, including capital related charges, to determine the proper Rider SBO billing credit. However, the Companies admit that the \$0.33 for postage and paper stock are costs that they avoid when a supplier issues a single bill under Rider SBO

⁸ See *Commonwealth Edison Company Petition for Approval of Delivery Services Tariffs and of Residential Delivery Services Implementation Plan, and for Approval of Certain Other Amendments and Additions to its Rates, Terms and Conditions*, ICC Docket No. 01-0423, Interim Order, p. 138 (4/1/02) (emphasis added).

(Tr. (Zack Cross) at 625, lines 13-17) and thus, under no circumstances should the Commission approve a Rider SBO billing credit of less than \$0.33 per bill per month.

B. Order of Payments

The Companies' proposal regarding "order of payments" should be rejected because it disadvantages all CFY suppliers.

NAE witness Ms. Pischevar explained that the "order of payments" issue concerns the order in which funds are allocated between a CFY supplier and the gas distribution utility (Peoples or North Shore) when a CFY customer makes a partial payment for gas services. NAE Ex. 1.0 Rev. (Pischevar Direct) at 13, lines 228-235. During the proceeding, the Companies advanced two proposals regarding the order of payments issue, both of which should be rejected.

The Companies' initial proposal would have applied different order of payment allocation methodologies to CFY suppliers using utility consolidated billing (under the LDC Billing Option in Rider AGG) and to suppliers issuing their own single bills under Rider SBO (supplier consolidated billing). For suppliers currently using utility consolidated billing under the LDC Billing Option in Rider AGG, an "aged receivables" order of payment methodology is used to allocate partial payments between utility and supply charges. The LDC Billing Option order of payment methodology applies a CFY customer's partial payment first to past-due utility charges, then to the past-due supplier charges, then to the current utility charges, and then – if any funds remain – to the current supplier charges. NAE Ex. 1.0 Rev. (Pischevar Direct) at 13, lines 236-246; NAE (Zack) Cross Ex. 1.0 (attached hereto as Exhibit B); Tr. (Zack Cross) at 611, lines 4-12.⁹

⁹ Past due charges are further grouped into 90-day, 60-day, and 30-day "buckets" so that partial payments will be applied first to the utility's 90-day receivable, next to the supplier's 90-day receivable, then to the

However, for suppliers wanting to issue their own single bills for both distribution and supply charges under Rider SBO, the Companies' proposed order of payment methodology would apply the CFY customer's partial payment first to past-due utility charges, *then to current utility charges*, and then – if any funds remain – to the past-due and current supplier charges. Exhibit B (NAE (Zack) Cross Ex. 1.0); Tr. (Zack Cross) at 611, lines 13-19.

In comparison to the LDC Billing Option order of payment methodology, the Rider SBO order of payment methodology increases the risk that a CFY supplier will carry a larger balance on its past-due charges when the customer does not pay for its gas service in full. *See* Tr. (Zack Cross) at 614, lines 11-22, 615, lines 1-14. Further, Mr. Zack's testimony at the evidentiary hearing demonstrates that when the Rider SBO order of payment methodology is used to allocate a partial payment, the supplier may be unable to recover *any portion* of its past-due charges if a CFY customer pays only for the utility distribution charges. *Id.* at 613, lines 18-22, 614, lines 1-10. Regarding the Companies' explanation of the order of payment methodologies provided in their response to Data Request No. NAE 1.07 (Exhibit B (NAE (Zack) Cross-Exhibit 1.0)), Mr. Zack testified:

- Q. Now, Mr. Zack, using the example on this page, suppose that the LDC billed customer has a total bill of \$120, that amount consists of \$40 of distribution charges and \$80 for supply charges. If the LDC customer pays only \$40 to the total bill, how much would be allocated to utility service charges?
- A. You are referring to our proposal?
- Q. No, I'm referring to the order of payments methodology as set forth on the attachment.

utility's 60-day receivable, then to the supplier's 60-day receivable, and so on. Exhibit B (NAE (Zack) Cross Ex. 1.0).

A. I believe in that example of the \$40, \$20 would be applied to the Peoples North Shore.

Q. Yes, correct. Now under the same scenario, how much of the \$40 partial payment would be allocated to supply charges?

A. \$20.

Q. Okay. Now, please refer to [] Page 4 of Nicor Advanced Energy [Zack] Cross Exhibit 1.0. And that's the page that describes the order of payments under the SBO billing option. Now using this example, suppose that the SBO billed customer has a balance of \$40 for distribution charges and a balance of \$80 for supply charges for a total balance of 120. If the SBO customer in this case pays only \$40, how much would be allocated to the utility service charges?

A. \$40.

Q. And how much would be allocated to the supplier?

A. Zero.

Tr. (Zack Cross) at 613, lines 3-22, 614, lines 1-10.. Mr. Zack's testimony proves that the LDC Billing Option order of payments methodology is more favorable to suppliers wanting to participate in the CFY Program.

In response to the Companies' initial proposal, NAE argued that using the Rider SBO order of payments methodology would create an uneven playing field and a barrier to entry for suppliers wanting to offer their customers the convenience and other benefits¹⁰ of supplier consolidated billing by providing an unfair advantage to suppliers choosing the utility's single-billing service. NAE Ex. 1.0 Rev. (Pishevar Direct) at 15, lines 279-294. In response to NAE's argument, the Companies changed their initial position and conceded that the same order of payment methodology should be used for

¹⁰ Ms. Pishevar testified that, in addition to the convenience of receiving a single bill for distribution and supply charges, there are other benefits to supplier consolidated billing such as the ability for the supplier to offer noncommodity items such as energy efficiency services to the CFY customer. NAE Ex. 1.0 Rev. (Pishevar Direct) at 15, lines 290-294.

both single-billing options. North Shore/Peoples Gas Ex. TZ-2.0 (Zack Rebuttal) at 60, lines 1328-1330. However, instead of adopting the LDC Billing Option order of payments methodology (which is currently used by CFY suppliers), the Companies propose to use the Rider SBO order of payment methodology which – by Mr. Zack’s own admission – could *increase* the risk that a supplier will carry a larger past-due balance or will not recover its supply charges at all. Tr. (Zack Cross) at 614, lines 11-22, 615, lines 1-17. The Companies’ new proposal is a step in the wrong direction. It disadvantages *all* suppliers wanting to offer their customers single-billing and thus, creates a barrier to entry for suppliers who want to participate in the CFY Program. In short, the Companies’ new proposal directly contradicts their “overall objective” in this proceeding “to provide all customers the opportunity to select an alternative natural gas supplier,” and it should be rejected.

Finally, in his Surrebuttal Testimony, Mr. Zack flippantly responded to NAE’s position by stating:

[T]he LDC Billing Option and Rider SBO are, as their names imply, options. Transportation customers do not have to take either option, and they could bill their services independently without concern for how the utility would post the payments.

North Shore/Peoples Gas Ex. TEZ-3.0, at 32, lines 700-703. That argument is nonsense. Indeed, Mr. Zack himself admitted that single-billing is a convenience that suppliers can offer their customers and that single-billing can aid in the development of a competitive market in the natural gas industry. Tr. (Zack Cross) at 617, lines 10-17. Accordingly, CFY suppliers should not be forced to forego the provision of single-billing to their customers in order to increase their ability to recover supply charges. The Commission should therefore reject the Companies’ proposal, and should adopt the order of payment

methodology currently used under the LDC Billing Option for both utility consolidated billing and supplier consolidated billing options.

C. NSF Checks

When a CFY customer pays with an NSF (non-sufficient-funds) check, the Companies and the supplier should bear the risk associated with their own charges, and the Companies should establish a procedure that requires both parties to return the funds collected from each other, regardless of the single-billing option that is used.

This issue concerns what happens when a CFY customer, who receives a single bill under the LDC Billing Option or Rider SBO, pays for his gas services with an NSF (non-sufficient funds) check. NAE witness Ms. Pischevar explained that, under the Companies' proposal, when Peoples or North Shore receives a check from a customer billed under the LDC Billing Option, it will remit to the supplier funds to cover the supply charges. NAE Ex. 2.0 Rev. (Pischevar Rebuttal) at 9, lines 152-153. If the check turns out to be an NSF check, Peoples or North Shore does not seek repayment of the funds from the supplier. *Id.*, lines 153-155. Similarly, under Rider SBO, when the supplier (the bill issuer in that case) receives a check from a customer, it will remit to Peoples or North Shore funds to cover the utility distribution charges.¹¹ *Id.* lines 155-157. If the check is an NSF check, the Companies will not credit those funds to the supplier. *Id.* lines 157-158.

The Companies' proposal should be rejected for two reasons. First, it forces suppliers who want to issue their own single bills through Rider SBO to subsidize the Companies' distribution charge receivables and bad debt, which the Companies already

¹¹ If a supplier is paid by check, the transfer of funds to the Companies occurs prior to the twenty-four to seventy-two hour period when the supplier would become aware that the check was denied for non-sufficient funds. NAE Ex. 1.0 Rev. (Pischevar Direct) at 19, lines 368-372.

recover through their rates. Tr. (Zack Cross) at 620, lines 8-12. Second, it favors suppliers who choose utility consolidated billing under the LDC Billing Option, and thus, creates a disincentive and barrier to entry for suppliers wanting to issue their own single bills under Rider SBO. By contrast, under NAE's proposal, suppliers would participate in the CFY Program on level playing field, because NAE's proposal requires the Companies and suppliers to bear the risks associated with *their own charges*, regardless of whether the CFY customer is billed under the LDC Billing Option or Rider SBO. Specifically, under NAE's proposal, when a CFY customer pays with an NSF check under the LDC Billing Option, the supplier would be required to pay back to the Companies funds it received for supply charges. Likewise, when a CFY customer pays with an NSF check under Rider SBO, the Companies would be required to pay back to the supplier funds they received for distribution charges.

In his Rebuttal Testimony, the Companies' witness Mr. Zack asserted that NAE's proposal should be rejected because it would require "the Utilities [to] assume all the risk under both options and suppliers (SBO or LDC) would have no risk." North Shore/ Peoples Gas Ex. TZ 2.0 (Zack Rebuttal) at 60, lines 1337-1339. That argument is simply wrong. Mr. Zack himself admitted during cross-examination that under NAE's proposal, the Companies and suppliers would *share* the risk associated with NSF checks. Tr. (Zack Cross) at 619, lines 6-7. The Companies provided no other evidence – and indeed there is none – to support their position on this issue. Thus, the Companies' position should be rejected, and the Commission should require the Companies to establish a remittance procedure consistent with NAE's proposal on this issue.

III. PURCHASE OF CFY SUPPLIER RECEIVABLES.

NAE supports RGS' position as to the Companies' purchase of receivables. (*See* RGS Ex. 1.0 (Crist Direct) at 31, lines 1-13). Purchases of receivables programs have extensive application in many choice programs across the nation. *Id.* at 34, lines 6-14. However, under the current proposal, the program would apply only to suppliers using the LDC billing option. In order to ensure parity between suppliers using Rider SBO and suppliers using the LDC Billing Option, NAE respectfully requests, if the Commission adopts RGS' proposal on this issue, that purchases of receivables apply to all suppliers in the CFY Program, regardless of billing method.

IV. PEGASYS™ AND CUSTOMER INFORMATION

The Commission should order the Companies to have in place and operating the improvements to the PEGASys System within thirty (30) days after the Commission's final decision in this proceeding.

All of the supplier groups welcome the improvement of the Companies' customer information system - PEGASys.¹² Improved use of electronic file transfers, access, and improved customer data resources should, if implemented properly, reduce suppliers' and customers' costs of participating in the CFY program. All other things equal, a reduction in the costs associated with the CFY program will encourage the development of alternative natural gas supplier competition in the Companies' service territory and serve the Companies' objective in this proceeding of "provid[ing] all customers the opportunity select an alternative natural gas supplier." Peoples Gas Ex. TZ-1.0 Rev. (Zack Direct) at 2, lines 29-30. Unfortunately, the Companies have indicated that

¹² *See e.g.*, the comments of RGS, Ex 1.0 at page 40, lines 9-12, indicating that Peoples' data management system is the worst among all customer choice programs. *See also* North Shore/Peoples Gas Ex. TZ-2.0 (Zack Rebuttal) at 61, lines 1351-1365 and Exhibit A (NAE Cross Ex. 2.0) for a description of the proposed improvements.

improvements will not be fully made until August, 2008. North Shore/Peoples Gas Ex. TZ-2.0 (Zack Rebuttal) at 61, lines 1366-1372. According to the Companies, earlier implementation of the PEGASys improvements is not possible, because the Companies are uncertain as to whether the proposed improvements will be approved of by the Commission. *Id.* at lines 1373-1377.

The Commission should reject the Companies' refusal to implement improvements to the PEGASys system until well after the completion of this proceeding. Indeed, under the Companies' proposal, over half a year may pass before the Companies actually make the necessary improvements to the PEGASys system. This delay will do nothing but hamper the expansion of customer choice in the CFY Program. Instead, the Commission should adopt a firm deadline of thirty (30) days from the completion of the instant proceeding for the implementation of the PEGASys upgrades as proposed by the suppliers.¹³

CONCLUSION

The CFY Program – as currently proposed by the Companies – discourages supplier participation, disadvantages suppliers seeking to issue their own bills to customers under Rider SBO, and does little to serve the Companies' "overriding objective" in this proceeding "to provide all customers the opportunity to select an alternative natural gas supplier." The Companies' proposals should therefore be rejected. For the reasons explained above, and in NAE's testimony, NAE respectfully requests that the Commission enter an Order directing the Companies to modify their proposed tariffs and policies consistent with NAE's proposals set forth herein.

¹³ NAE Ex. 1.0 Rev. (Pishevar Direct) at 22, lines 438-444 and RGS Ex. 1.0 (Crist Direct) at 4, lines 16-21.

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Respectfully submitted,

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