

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

**REPLY BRIEF OF
NICOR ADVANCED ENERGY LLC**

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Nicor Advanced Energy, LLC (“NAE”), by counsel, hereby submits its Reply Brief concerning North Shore Gas Company’s (“North Shore”) and Peoples Gas Light & Coke Company’s (“Peoples”) proposed general increase in natural gas rates. In this brief, NAE will comment on certain proposals of the Retail Gas Suppliers (“RGS”), and will respond to proposals made by the Companies and the ICC Staff in their initial briefs.¹

Peoples and North Shore claim that they want “to provide all customers the opportunity to select an alternative natural gas supplier.”² Unfortunately, however, the Companies’ proposals with respect to the Choices for You (CFY) Program do little to support their purported goal. Instead, they favor the utilities’ sales service over alternative natural gas supply service and create barriers to entry for suppliers wanting to participate in the CFY Program. And in the end, Peoples’ and North Shore’s customers will lose. Tellingly, Staff itself asserts that it would be appropriate for the Commission to model certain aspects of the Companies’ CFY Program after the Nicor Gas Customer Select Program, which enjoys a customer participation rate more than two times higher

¹ In its initial brief, NAE anticipated and responded to most of the Companies’ positions, and NAE will not repeat those arguments here. NAE’s initial brief is hereby incorporated by reference.

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

than the Companies' CFY Program. NAE Ex. 1.0 (Pishevar Direct) at 5, Table 1-1.

Accordingly, for the reasons set forth below, and in NAE's initial brief, the Commission should adopt NAE's and RGS's proposed modifications to the Companies' CFY Program.

ARGUMENT

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

A. Storage Rights and Delivery Flexibility

As explained by RGS in its initial brief, the CFY Program, as currently proposed by the Companies, forces customers who choose an alternative natural gas supplier to receive storage and delivery rights less favorable than the rights provided to the Companies' sales customers. RGS Init. Br. at 7-8, 10, 14-15, 18, and 20. In order to revive the moribund CFY Program, and to ensure that CFY customers receive the same storage and delivery rights as the Companies' sales customers, the Commission should modify the CFY Program consistent with RGS' proposals set forth in their brief with respect to this issue. *Id.* Notably, many of RGS' proposals on this issue are already present in the Nicor Gas Customer Select Program, which has a much higher customer participation rate. *Id.* at 9, 11-12, 14, 18, and 20.

The Companies' tariffs under the CFY Program (Rider SVT, Rider AGG and Rider SBO) and the treatment of storage, balancing and transportation for CFY customers are fundamental to the economics of customer choice. For a utility sales customer, the typical "price to compare" to a supplier's offer is the gas company's purchase gas adjustment (PGA) rate. *Id.* at 7. However, a supplier's pricing will include a myriad of

charges imposed on the supplier by the Companies under the CFY Program tariffs, in addition to the costs created by the Companies' allocation of storage rights among customers, rights regarding deliveries, and open access to utility assets. If the Companies are permitted to adopt tariffs and policies that create superior rights (or reduce costs) for utility sales customers (as compared to CFY customers), retail competition in the natural gas market will suffer and all of the Companies' customers will be deprived of supplier choice. *Id.* at 1-2, 6

B. Customer Data Issues

The Commission should require the Companies to provide, every six (6) months, a residential customer list that includes customer names, street addresses and phone numbers, along with an indication of the customer's Service Classification.

NAE agrees with the Companies' proposals to provide residential customer lists and to include in the lists an indication of the Service Classification of the residential customer. *See Peoples/North Shore Init. Br.* at 208. The Companies' proposals to provide the list to suppliers once every six months and to provide information only for those customers that are not on the Companies' "do not call" lists (*see id.*) are also reasonable, and should be adopted. The Companies should, however, be required to provide the customer lists to the supplier at no charge, because the Companies concede that they recover the costs of maintaining the lists from customers through their rates. *Tr. (Zack Cross)* at 633: 8-12; *NAE Init. Br.* at 8. The Companies maintain this data as part of serving their customers, and it should be provided to suppliers as well. *NAE Init. Br.* at 8. In short, suppliers should not be forced to obtain this data from costly data providers.

Staff asserts that customer information should not be provided without prior explicit customer approval. Staff Init. Br. at 261. With respect to the Companies' provision of customer lists to suppliers, Staff's position should be rejected. As NAE explained in its initial brief (at 8), the information in the customer lists is public information available through a variety of sources such as telephone directories and the internet, and thus, no personal or sensitive information will be, or can be, released by providing the customer lists to suppliers. Therefore, there is no basis for Staff's proposal to require customer consent prior to providing the customer lists to suppliers.

The Companies should be required, prior to customer enrollment, to release to the supplier the customer's payment history and past due status as part of Tier II data when the customer gives explicit approval for the release.

NAE agrees with Staff that a customer's "sensitive personal and financial information, such as payment history" should not be released to suppliers, absent explicit customer consent. Staff Init. Br. at 261. Staff correctly recognizes that this information "belongs to the customer and not the marketers," and thus, it is the customer's choice whether to share that information to suppliers. *Id.* On the other hand, as recognized by RGS – and as Staff concedes – it is important for suppliers, subject to explicit customer approval, to have the ability to review a customer's payment history information *prior to enrollment* in order to avoid the expense of outside credit reporting and risks of bad debt. Staff Init. Br. at 262; RGS Init. Br. at 24.³ As explained in its initial brief (at 9-11), NAE's proposed definition of "explicit customer approval," which among other things

³ NAE also explained in its initial brief that access to information regarding a customer's arrears prior to enrollment is particularly important for suppliers who want to issue their own single bills, because under Rider SBO, suppliers cannot provide single billing to customers that have arrears with the utility. NAE Init. Br. at 5.

requires a supplier to obtain verifiable/auditable evidence of the customer's consent, satisfies Staff's concerns.

The Companies assert that the Commission should require a supplier to obtain third party verification as evidence of customer consent, with the costs of such verification to be borne by the supplier. *See Peoples/North Shore Init. Br.* at 210. The Companies' position should be rejected, because it would impose yet another cost on suppliers wanting to participate in the CFY Program. Furthermore, in light of newer technology such as internet enrollment, e-mail verification, digital recording of customer calls, third party verifications are simply unnecessary. The growth of electronic commerce over the last decade evidences consumer desire to use these new tools to purchase goods and services. Staff witness Dr. Reardon himself confirmed this fact at the evidentiary hearing when he testified that third-party verification is *not* necessary in order to obtain explicit customer approval, and that electronic verification can be used. *Tr.* (Reardon Cross) at 696: 5-22. In addition, the Nicor Gas Customer Select Program does not require a supplier to obtain third party verification before it can access customer information (*see Nicor Gas' Tariff, Riders 15 and 16, (attached hereto as Exhibits A and B respectively)*), and as a result, suppliers are able to obtain necessary customer enrollment information in a timely and efficient manner. Staff also notes that the system used by Nicor Gas has drawn few complaints, and states that it does not object to modeling the Companies' method on the Customer Select Program. *Staff Init. Br.* at 262. The Commission should therefore adopt NAE's proposal on this issue.

The Commission should reject the Companies' proposal to charge for the release of customer data.

The Companies have agreed to provide suppliers with necessary customer enrollment information as a part of the Tier I and Tier II data, but they want suppliers to pay for it. Peoples/North Shore Init. Br. at 211. The Commission should reject the Companies' position, and require the Companies to provide Tier I and Tier II data to suppliers at no cost. First, the Companies already keep the Tier I and Tier II customer data for their own use, and the costs of maintaining that information is recovered from sales and transportation customers through the Companies' rates. Tr. (Zack Cross) at 633: 8-12. The Companies should not be permitted to double-recover those costs by charging suppliers for access to that information. Second, customer-specific data that ties together a customer's usage, address and billing information is ultimately the *customer's* data. If a customer decides that it wants to have this information released to a supplier, the utility should release it to the supplier without imposing an additional charge. Third, the Companies previously indicated that they were willing to provide a variety of data without additional costs. *See id.* at 208; RGS Init. Br. at 23. Finally, part of the fees imposed on customers and suppliers in the CFY Program subsidize the administration and maintenance costs of that program, which should include mechanisms for allowing customers to provide their data to suppliers.

Provided there is explicit customer approval, the Commission should not impose arbitrary restrictions on the use of a customer's information for the provision of non-supply goods and services.

Both Staff and the Companies assert that when a customer explicitly approves of the release of its information to a supplier, the supplier should be prohibited from using the customer's information for any "non-utility service" or "for any purpose other than in

connection with gas service.” Staff Init. Br. at 261; Peoples/North Shore Gas Init. Br. at 210. NAE understands concerns regarding the unauthorized sales of the customer’s information, but Staff’s and the Companies’ positions unreasonably disregard the customer’s autonomy and restrict the customer’s ability to receive non-utility goods and services that it may want, even when the customer explicitly consents to the provision of its information to another provider. For instance, if a supplier is prohibited from using a customer’s information “for any purpose other than in connection with gas service” an alternative retail electric supplier could not receive information from an affiliated alternative gas supplier, even if the customer explicitly consents to the provision of its information to the electric supplier. In addition, a customer may explicitly consent to information sharing between its CFY supplier and an affiliated company because it wants to have all its energy needs, including noncommodity goods and energy-efficiency services, presented on a single bill. NAE Ex. 1.0 (Pishevar Direct) at 15: 292-293. But under the Companies’ proposal, the supplier would not be allowed to use the customer’s information for that purpose. Accordingly, the Commission should allow a supplier to share customer information with other companies for the provision of non-supply goods and services, as long as the customer explicitly consents to the provision of its information to a supplier in the first place, and explicitly agrees that its information (subject to any statutory restrictions) can be shared with other companies for this purpose.

C. Evidence of Customer Consent

The Commission should adopt NAE’s proposed definition of “explicit customer approval.”

Staff contends that the Nicor Gas Customer Select Program could serve as a model for the Companies’ CFY Program with respect to this issue, and NAE agrees. *See*

Staff Init. Br. at 262. In its initial brief, NAE proposed tariff language addressing this issue, which is consistent with Nicor Gas' Customer Select Program Rider 15 (Customer Select) and Rider 16 (Supplier Aggregation Service).⁴ NAE Init. Br. at 10-11. NAE's proposal addresses the concerns of Staff and the Companies by requiring suppliers to: 1) warrant the receipt of explicit customer approval; 2) obtain verifiable and auditable evidence of the customer approval (which can include written or electronic records); and 3) indemnify the Companies as to the release of information. *Id.* Staff witness Dr. Reardon agreed that NAE's definition of "explicit customer approval" satisfies his concerns on this issue (Tr. (Reardon Cross) at 697: 14-21), and thus, NAE's proposal should be adopted. Furthermore, NAE agrees with the Companies' position that they "should not be responsible if there is any dispute between a CFY supplier and its customer about the scope or effectiveness of a customer's authorization of the Utilities to provide payment history or past due payment data to a CFY supplier." Peoples/North Shore Init. Br. at 209.

NAE also agrees with Staff's position that the authority of a supplier to receive a customer's Tier II—type data⁵ should rest on "clear, non-technical" contractual terms. Staff Init. Br. at 262. Clear and explicit contractual language should specifically identify the limits of access to customer data. RGS provides sample contract language in its initial brief that the Commission should accept generally as the type of contractual

⁴ Nicor Gas' Riders 15 and 16 are attached hereto as Exhibits A and B respectively. Among other things Riders 15 and 16 require suppliers to warrant they have obtained agency authority from the customer (as to gas service), adhere to truth in advertising laws, disclose certain contract terms, and to include certain information in voice-recorded contracts such as the name of the supplier, authorization of supplier as agent, etc.

⁵ Tier II data includes customer-specific usage, payment history, meter read dates and similar information.

provision needed to evidence customer consent. RGS Init. Br. at 25. This type of language should be in all supplier contracts.

II. RIDER SBO

A. Billing Credit

The Commission should approve a Rider SBO billing credit of at least \$0.33 per bill per month and should require the Companies to conduct an embedded cost study to determine their true billing costs.

The Companies assert that this issue should be resolved by adopting a \$0.33 per bill per month Rider SBO billing credit to reflect the Companies' "estimate" of postage and paper costs. Peoples/North Shore Init. Br. at 212. NAE disagrees because, as explained in its initial brief (at 11-14), \$0.33 per bill per month does not fully reflect the Companies' billing costs. The Commission should therefore require the Companies to conduct an embedded cost study to determine their true billing costs, and to file a revised Rider SBO credit reflecting the results of that study. NAE Init. Br. at 12-13. However, in no event should the Commission approve a Rider SBO billing credit of less than \$0.33 per bill per month. *Id.* at 13-14; Staff Init. Br. at 263.

B. Order of Payments

The Commission should adopt NAE's and RGS' positions on this issue and require the Companies to use the aged receivables order of payment methodology for both the LDC and Rider SBO billing options.

NAE's position throughout this proceeding with respect to the order of payments issue is that suppliers offering single billing under the Rider SBO billing option should be treated the same as suppliers offering single billing under the LDC billing option. The Companies agree to treat all suppliers the same, regardless of the single billing option they use, but propose to use for both single billing options the Rider SBO order of payment methodology, which disadvantages all suppliers by *increasing* the risk that a

supplier will carry a larger past-due balance or will not recover its supply charges at all. NAE Init. Br. at 15-17.

By contrast, the evidence in this proceeding demonstrates that the “aged receivables” methodology currently used under the LDC billing option (whereby a customer’s partial payment is allocated first to utility past due charges, then to supplier past due charges, then to utility current charges, and finally to supplier current charges) is more favorable to suppliers. NAE Init. Br. at 14-17. Under the LDC billing option order of payments methodology, the utility and supplier each receives payment for amounts in arrears prior to receiving payments for current balances. *Id.* at 14. In addition, the LDC billing option order of payments methodology does not result in increased customer disconnections because utility past due balances – the balances on which the utility bases a disconnection – are paid first.

The “equality” the Companies seek to impose on CFY suppliers therefore forces all suppliers into a blatantly inequitable position where the Companies receive first rights to both past due and current amounts, prior to any payments to suppliers. RGS Init. Br. at 29-30. The effect on the natural gas supply market is that receivables risks will be shifted to suppliers resulting in suppliers being forced to increase the prices they charge to choice customers. RGS Init. Br. at 31. Consequently, supplier offers will be relatively more costly as compared to utility sales services, which, all other things equal, will result in less choice and less competition in the natural gas supply market. *Id.* Such result does nothing to serve the Companies’ purported goal “to provide all customers the opportunity to select an alternative natural gas supplier.” Indeed, if the Companies wish to actually support customer choice, they should, as Staff suggests, model the CFY Program on the

Nicor Gas Customer Select Program, which uses an aged receivables order of payments methodology regardless of the single billing option used, and which boasts a customer participation rate two times greater than the CFY Program.⁶

There is also no legitimate basis for the Company's position to use the Rider SBO order of payment methodology for both single billing options. The Companies' purported rationale for scrapping the LDC billing option order of payment methodology (which is used today under the Companies' Rider AGG) and adopting the Rider SBO order of payments methodology for both billing options, is that the Commission approved the Rider SBO methodology in Docket Nos. 01-0469/01-0470, but never "weighed in on" – or otherwise addressed – the LDC billing option methodology. Peoples/North Shore Init. Br. at 213; Tr. (Zack Cross) at 650:2-22, 651:1-4. However, the Commission's orders in Docket Nos. 01-0469/01-0470 were issued over five years ago when the CFY Program was in its infancy, and the Commission's determination to adopt the Rider SBO order of payment methodology was based on the limited evidence presented in those proceedings by MidAmerican Energy Company ("MEC").⁷ Specifically, in its Order in Docket No. 01-0470, the Commission accepted MEC's proposal for the Rider SBO order of payments methodology, stating that it saw "no harm" in adopting the methodology.⁸ But the overwhelming evidence in this case demonstrates that the Rider SBO order of payments methodology *would harm* the development of a competitive market in the natural gas industry by creating a barrier to entry for suppliers wanting to participate in the CFY Program. *See e.g.* NAE Init. Br. at 14-17; Tr. (Zack Cross) at 613: 18-22, 614: 1-22, 615: 1-17.

⁶ NAE Exhibit Rev. 1.0 (Pishevar Direct) at 5, Table 1-1.

⁷ *See* Final Order, Docket No. 01-0470, at 21, 29 (March 5, 2002).

⁸ *Id.* at 29.

For these reasons, the Commission should adopt NAE's and RGS' proposals on the order of payments issue, and require the Companies to use the LDC billing option "aged receivables" order of payment methodology for both single 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.

In their brief, the Companies assert that if the "Utilities were to accept NAE's proposal on this issue, the Utilities always would assume all risk under both options and suppliers, whether billing themselves under SBO or through the Utilities, [] would have no risk." Peoples/North Shore Init. Br, at 214. The Companies' argument should be rejected because it ignores the testimony of their own witness. As NAE pointed out in its initial brief (at 19), Mr. Zack admitted during cross-examination that the Companies' position is wrong, and that, under NAE's proposal, the Companies and suppliers would share the risks associated with NSF checks. Tr. (Zack Cross) at 619: 6-7. Therefore, there is no basis for the Companies' position.

The Companies believe that the party that bills is in the best position to manage the risk of an NSF payment, but there is no evidence to support that claim. By contrast, NAE's position is that each party should manage the receivables risks associated with its own charges, and should be responsible for pursuing its own actions against a customer that does not pay. NAE Init. Br. at 18-19. For example, with respect to non-payments, the Companies can, and do, pursue their own disconnection and collections activities, and the same goes for suppliers. There is no reason not to use the same procedure when a

customer pays with an NSF check. The only difference between a nonpayment and an NSF payment in practice would be that with an NSF payment, the party that was initially credited by the receiver of the check would be required to pay the funds back. This could be accomplished by a simple process change, whereby the supplier (under the LDC billing option) would pay back the funds it received from the utility before the check was determined to be NSF, and the utility (under the Rider SBO billing option) would pay back the funds it received from the supplier. In short, NAE's proposal is reasonable and should be adopted.

III. 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.

NAE is pleased to learn that the Companies have not stood still on improvements to the PEGASys system and welcomes the Companies' improvements. Peoples/North Shore Init. Br. at 217. But, the sooner the improvements to the PEGASys system are in place, the more all customers of the Companies – sales customers, choice customers, and suppliers – will benefit. NAE concurs with the Companies that all such improvements should be implemented correctly and cost-effectively. *Id.* at 218. However, NAE and RGS remain concerned with the Companies' proposed open-ended deadline for the full implementation of the PEGASys enhancements. *See* NAE Init. Br. at 21; RGS Init. Br. at 37-38. In order for the Companies to maintain their current progress toward completing the enhancements to the PEGASys system, NAE requests that the Commission set a fair, yet expeditious deadline for the improvements.

CONCLUSION

Based on the foregoing, and for the reasons set forth in NAE's initial brief and testimony, NAE respectfully requests that the Commission enter an Order directing the Companies to modify their proposed tariffs and policies consistent with NAE's and RGS' proposals in this proceeding.

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Respectfully submitted,

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