

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

NORTHERN ILLINOIS GAS COMPANY	:	
d/b/a Nicor Gas Company	:	
	:	No. 08-0363
	:	
Proposed general increase in natural gas rates	:	

**IEC SUMMARY OF POSITIONS**

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**IIEC SUMMARY OF POSITIONS**

COME NOW the Illinois Industrial Energy Consumers (“IIEC”) and pursuant to the Case Management Order in this case, provide the following summary of positions:

**I. INTRODUCTION**

**VII. COST OF SERVICE AND ALLOCATION ISSUES**

**A. Overview**

IIEC accepts the use of the Average and Peak (“A&P”) main classification method in the context of the Nicor ECOSS, for the purpose of this case only. IIEC also supports the use of the modified distribution main (“MDM”) study results in conjunction with the A&P method. IIEC believes that Nicor has properly used the MDM study to allocate the demand portion of distribution mains, but has incorrectly ignored the MDM study in allocating the portion of mains that is deemed to be related to average demand/volume. IIEC has proposed a modification of the Company’s ECOSS, which applies the MDM study to the volume-related portion of mains.

IIEC also argues that the Nicor ECOSS inappropriately allocated storage related costs to transportation customers on the same basis that it allocates such costs to bundled service customers. It is IIEC’s position that storage cost responsibility should be assigned to transportation customers in a manner equal to the revenue recovered from those customers through a cost based storage charge, the Storage Banking Service (“SBS”) charge. IIEC originally argued that the Nicor ECOSS

incorrectly allocated storage losses to transportation customers, however, Nicor corrected its study and IIEC states this is no longer a contested issue.

IIEC also believes the results of a proper ECOSS (adjusted to more broadly apply the results of the MDM study and to properly allocate storage costs), should be used to move rates to cost of service and eliminate existing rate subsidies.

IIEC argues that if for any reason the Commission deviates from cost of service, an alternative approach to revenue allocation would be to impose a cap on the Rate 1 increase, and recover any revenue shortfall associated with that cap from the Rate 4 and Rate 74 rate classes. IIEC reasons that these classes would still see an increase well below the system average increase under such an allocation. In the further alternative, IIEC says that if the Commission is concerned about the accuracy or validity of the ECOSS in this case, it should approve an across-the-board increase for all rate classes.

**B. Uncontested Issues**

**2. Allocation of Storage Losses**

IIEC says the initial Nicor ECOSS (Heintz, Nicor Ex. 15.1) incorrectly allocated storage losses to transportation customers, that already pay for those losses in kind. In surrebuttal, Nicor corrected its ECOSS to eliminate the allocation of storage losses to transportation customers. (Heintz, Nicor Ex. 49.0 at 2). Consequently, IIEC says allocation of storage losses is no longer a contested issue.

## **C. Contested Issues**

### **1. Main Size Allocation**

IIEC says that Nicor advocates that its ECOSS allocate distribution mains using the Nicor MDM study results, in conjunction with the A&P classification method. IIEC says that Nicor adopted the A&P method in this case for the purpose of narrowing the issues. (Nicor Br. at 60). Nicor notes in its Brief that both the A&P method and the use of the MDM study were approved by the Commission in the last Nicor rate case in ICC Dkt. 04-0779. (the “2004 Rate Case”). (Id.)

IIEC also notes that the Staff has endorsed the Nicor ECOSS, including the Nicor’s use of the MDM study.

IIEC states that under the A&P method, the total cost of distribution mains is divided into two portions, a demand-related portion and a volume-related portion. In this case, the demand and volume-related portions are 76.9% and 23.1% respectively. The allocation method used to allocate the 76.9% demand-related portion, incorporates the Company’s MDM study results. IIEC says up to this point, there is no difference among the parties.

IIEC says a dispute has arisen among the parties over whether or not to apply the MDM study results to the 23.1% portion of distribution mains that is deemed volume-related. IIEC points out that Nicor does not apply the MDM study to that portion of the mains. IIEC argues that the Company’s study should be modified to apply the MDM study to the volume related portion of Nicor’s mains.

IIEC says the MDM study recognizes that Nicor’s system of mains is configured in such a way that not all customers in a class use all sizes of mains. The study does this by determining the peak day flows for each size of distribution main in service and the percentage of those peak day flows that are attributed to each customer class. By identifying the portions of each diameter main

that are used to provide service to specific customer classes, the MDM study accurately assigns main-related costs to the appropriate customer classes. IIEC points out that the MDM study results indicate that only a single Rate 77 customer, representing 3.374% of the total peak day usage for Rate 77, is served via two-inch diameter mains. When allocating the peak demand-related portion of the two-inch diameter main costs, Nicor's ECOSS uses the results of the MDM study to limit (or modify) the allocation to only those two-inch mains actually used to serve this customer.

IIEC says that in contrast, Nicor's ECOSS allocates the average demand/volume component of distribution mains as if every Rate 77 customer takes service from two-inch diameter mains. IIEC says that by ignoring the MDM study results in allocating the average demand/volume component of distribution mains, the Nicor ECOSS assigns costs associated with small diameter mains to customers that only take service from larger mains.

IIEC says that its witness, Dr. Rosenberg, extended Nicor's original MDM study to the volume-related portion of the Nicor distribution mains. Dr. Rosenberg did not simply apply Nicor's MDM study results to volume-related costs, but instead extrapolated the MDM peak-days flows, to the average day as well. In other words, IIEC says, Dr. Rosenberg used the relationship between average day demand and peak day demand for each class to impute the average demand for each class on each size main. This approach simply recognizes the physical fact that not all diameters of mains are used in serving some customers.

IIEC says that it is important to note that no party in this proceeding questioned the logic or theory of applying a distribution main size study to the volume-related portion of Nicor's mains in their testimony in this proceeding. IIEC says that this is because no one can dispute the fact that the same system of mains that is used on the peak day is used on every other day and, therefore,

customers who do not use a particular size main on the peak day, do not use it on any other day. IIEC points out that Nicor witnesses agreed that when a customer is not connected to a particular size main, no cost related to that main would apply to that particular customer. (Mudra, Tr. 366- 367).

IIEC argues that its broader application of the MDM study in this case produces a more accurate ECOSS by more accurately allocating distribution main costs to all rate classes by size of main. IIEC says that even Nicor has offered to consider this approach prior to its next rate case. (Mudra, Nicor Ex. 29.0-C at 4).

IIEC points out that Nicor does object to the implementation of IIEC's recommendation in this case on three principle grounds. First, that the Nicor ECOSS and use of the MDM study in this case are consistent with the Commission's rate order in the 2004 Rate Case. Second, that IIEC's proposal would serve to further increase residential rates and decrease commercial and industrial rates. Third, Nicor questions the accuracy of IIEC's calculation of the allocation factors for average demands.

With regard to Nicor's first objection, IIEC says that rejection of a methodology that improves the accuracy of the Nicor ECOSS (i.e., insures that the cost of mains which are little used or not used at all by certain rate classes and customers are not allocated to those rate classes and customers) because it would be inconsistent with an approach approved by the Commission in a prior case, is contrary to the objective of improving the accuracy of the cost allocation process. IIEC says its approach is completely in accord with the philosophy recently embraced by the Commission in Commonwealth Edison Company, ICC Docket 07-0566. IIEC states in that case, the issue was whether customers served from primary electric distribution lines should be allocated the costs associated with secondary lines. IIEC says that if one substitutes "mains" for "lines", "large

diameter” for “primary” and “small diameter” for “secondary”, the issue in the Commonwealth Edison case is exactly analogous to the MDM issue in this case - namely whether customers served from large diameter mains should be allocated the costs associated with smaller diameter mains, which they neither use nor need. Citing to the Commission’s final Order in Docket 07-0566, (Commonwealth Edison Company, ICC Dkt. 07-0566, Final Order, September 10, 2008 at 206-207), IIEC points out the Commission concluded that arguments against the proper assignment of primary and second costs in that case overlooked the Commission’s policy objective of assigning costs where they belong, even though the result of correctly assigning those costs meant some classes would have lower rates and other rate classes would have higher rates. IIEC also notes in that case, the Commission found that the utility’s ECOSS was deficient because it did not separate and properly allocate primary and secondary service costs.

IIEC says that Nicor’s second objection is without merit because it makes no sense to reject a valid or more accurate ECOSS simply because the results of the more accurate ECOSS change revenue allocations to various customer classes. IIEC points out that while an additional \$8.3 million in revenue would be allocated to the Rate 1 residential class, this amounts to only 35 cents per month for Rate 1 customers or a little over a penny per day.

Finally, Nicor objects to IIEC’s calculation of the volume percentage allocation factors used by IIEC in the broader application of the MDM study. Nicor implies that IIEC used the same factors to allocate the volume-related component of mains that Nicor used to allocate the peak demand component. IIEC draws the Commission’s attention to Dr. Rosenberg’s IIEC Exhibit 1.1, Line 1, Column F. It says the MDM volume-related factors shown in that exhibit are different from the Company’s MDM peak demand factors. This is contrary to Nicor’s assumption that they are the

same. For instance, IIEC points out that the MDM demand factor for Rate 1 customers in the Nicor MDM study is 73.64% while IIEC's volume-related factor for that class is only 69.03%. Thus, the factors developed by IIEC for application of the MDM study results to the volume-related component of Nicor's distribution mains are not the same as those developed by Nicor for application of the MDM study to the peak demand related portion of mains.

IIEC says its application of the MDM study to the volume-related portion of Nicor's mains recognizes a primary fact that no party in this case has denied, larger customers in many instances do not use or need smaller diameter mains. IIEC says that Nicor's objection is tantamount to saying that the perfect should be the enemy of the good. IIEC opines that Nicor would rather be exactly wrong than approximately right. It says that IIEC was required to assume very little in its development of the ratios for application of the MDM study to the volume related component of Nicor's distribution mains. It says that for very large mains used by all customers, the ratio of average demand to peak demand is precisely known for each rate class because it is the same for the entire system. For very small mains, which are already known to be scarcely used by large volume customers, there is no need for approximation. Consequently, IIEC says there is no doubt that its modified study (more broadly applying the results of the MDM study), is more accurate than the Company's study and that is all that is necessary to adopt its use in this case.

IIEC points out that Staff, unlike Nicor, appears to oppose the use of the MDM study to allocate the volume-related portion of Nicor's distribution mains under any circumstance. IIEC says that Staff declined its opportunity to rebut or refute IIEC's proposal in its rebuttal testimony – and the Staff declined to cross-examine the IIEC witness, Dr. Rosenberg, on the proposal. According to IIEC, the Staff belatedly took issue with IIEC's suggestion to use the MDM study in a consistent

manner with respect to the volume-related portion of mains. The Staff objects to IIEC's proposal because IIEC failed to understand the purpose of the average component of the A&P in the allocation of main costs. Staff argued the average demand component recognized the role of year-round demands in shaping main investments.

IIEC describes Staff's argument as a red herring. IIEC says Staff's argument mischaracterizes IIEC's position as one which effects the classification of mains. However, the MDM study effects the allocation of the cost of mains to customer rate classes, not their classification as demand related, volume related or customer related. According to IIEC, Staff's position would have relevance only in the context of an argument about the appropriate method to use to classify Nicor's distribution mains (e.g., Coincident Peak method or the A&P method). But IIEC notes the classification of Nicor's distribution mains is not at issue in this case. IIEC points out that it and Nicor have accepted, for purposes of this case, that "year-round" demands play a role in cost causation. The pertinent question, in IIEC's opinion, is *which* average (or "year-round" to use the Staff terminology), demands should be used? IIEC says if a customer takes service directly from an 8-inch main, that customer will not impose any demand on 2-inch main, regardless of whether that demand is a peak or average demand. According to IIEC, such a customer simply will not use or need the smaller size mains on any day of the year and Nicor should not apply that customers' demand when allocating costs associated with the smaller size mains for the simple reason that such demand does not exist. IIEC says to argue otherwise would make no sense.

IIEC says Staff argues it would be considerably less viable on an economic basis for Nicor Gas to build a distribution system consisting of larger mains to serve only large nonresidential customers. (Staff Br. at 75). IIEC notes Staff provides no citation to the record for this assertion

because there is no support for this allegation in the record. IIEC says such an inference cannot be reasonably drawn from the evidence in the record. In fact, IIEC opines just the opposite is the case. IIEC says there is evidence, presented by IIEC and corroborated by Nicor, of the economies of scale for large diameter mains. (Rosenberg, IIEC Ex. 2.0 at 27-28; *see*, Mudra, Nicor Ex. 48.0-2<sup>nd</sup> C at 35-36). Also, the inverse relationship between customer size and the cost per Mcf of gas is demonstrated in the Nicor cost of service study. (Rosenberg, IIEC Ex. 2.0 at 28). IIEC says that cost of service study has been fully accepted by the Staff. (Staff Br. at 71). Thus, IIEC says, the only legitimate inference that can be drawn from the evidence in the record, is that if only large non-residential customers were being served, Nicor could very well have designed and installed a distribution system consisting of only large diameter mains, which would have been much less expensive per unit of capacity.

IIEC says Staff's next argument against reflecting the MDM implications in the allocation of the volume-related component of the mains is that smaller customers pay a significant share of the costs of larger sized mains and residential customers account for more than 52% of peak demand and 47% of throughput on the system. IIEC says this is generally true, but irrelevant. The percentage values discussed by Staff were taken from Nicor's ECOSS, but they are not the values Nicor used to allocate main-related costs. As such, IIEC says it is difficult to see how these particular numbers are applicable to the issue at hand. IIEC also notes Staff cites to Nicor Exhibit 15.1, Schedule H, Page 4 in support of its statement. (Staff Init. Br. at 75). According to IIEC, this same citation also shows that residential customers account for almost 57% of firm demand and 91% of the number of customers. Thus, IIEC says the residential customers are already disproportionately and unduly

advantaged by the decision to classify mains as part demand and part volume-related instead of part demand and part customer-related.

IIEC says that in contrast, Rate 1 residential customers account for 83.65% of the peak day demand on Nicor's system of 2-inch diameter mains, and Rate 77 represents only 0.2% of the peak demand on 2-inch mains. Further, IIEC says residential customers account for 73.64% of the design day demand on Nicor's entire system of distribution mains. (Rosenberg, IIEC Ex. 1.1, Ln. 1, Col. B). IIEC believes that while it is reasonable to assume that the residential class' *average day* demand on 2-inch mains will be a somewhat lesser percentage than its design day demand – because they do have a relatively lower load factor – to assume that this average day demand (or “throughput”) will account for only 47% of the total, as the Nicor ECOSS does by ignoring the MDM study, is unreasonable.

IIEC says Rate 77 represents 7.45% of the total throughput on the system. (Rosenberg, IIEC Ex. 1.1, Ln. 10, Col. C) and so it is allocated 7.45% of all diameter mains for the 23% of the costs that are deemed volume-related by the A&P method. However, Rate 77 represents only 0.2% of the peak demand on 2-inch mains. Thus IIEC says the Rate 77 class is allocated responsibly for the cost of 2 inch mains equal to over 35 times its peak day demand on these mains. This is simply unfair and unreasonable according to IIEC.

IIEC says in summary that Staff has made arguments against IIEC's recommendation to use the Nicor MDM study to allocate the volume-related portion of distribution mains that mischaracterizes IIEC's proposal and are irrelevant to the issue to be decided. If accepted, IIEC's reasons such arguments would ensure that cost responsibility for a portion of the Nicor system of distribution mains is imposed on customers who make little or no use of those mains, in violation of

the Commission's explicit policy objective of assigning costs where they belong. Therefore, IIEC says Staff's positions should be rejected and IIEC's recommendation to apply the MDM study to both the peak demand-related component and the volume-related component of Nicor's distribution mains should be adopted.

## **2. Allocation of Storage Costs to Unbundled Transportation Customers**

IIEC argues the Nicor study inappropriately allocates storage related costs to transportation customers on the same basis as it allocates those costs to bundled service customers. (Rosenberg, IIEC Ex. 1.0 at 11-14; Rosenberg, IIEC Ex. 2.0 at 13-20). It is IIEC's position that storage cost responsibility should be assigned to these customers so that it equals the revenue recovered from these customers through a cost-based storage charge, i.e., the SBS charge. IIEC says this is because, by definition, the SBS charge, if properly determined, is cost based. Consequently the test year revenue presumed to be derived from the SBS charge must, of necessity, be equal to the cost responsibility allocated to the transportation classes in the cost analysis.

According to IIEC, Nicor attempted to show that the transportation storage cost allocation in Nicor Exhibit 49.1 (Nicor's revised ECOSS) is ostensibly not that much different than the presumed revenues. (Mudra, Nicor Ex. 48.0-2<sup>nd</sup> C at 32, Table 2). However, because Nicor's total revenue requirement, and the amount of storage allotted to transportation customers, as well as the denominator to be used in deriving the SBS charge, are all in dispute, there is no guarantee that the cost and revenues will remain close when final rates are ultimately derived. Consequently IIEC still urges that these values (cost and revenues) be synchronized. If they are not, and rates are brought to cost per the ECOSS, then any mismatch between presumed SBS revenues collected and storage costs allocated to the transportation customers, must of necessity, be made up by a mirror image

mismatch between cost and revenues in the distribution charge. (*See*, Rosenberg, IIEC Ex. 2.0 at 20).

IIEC says even though Nicor has opposed IIEC's proposal on the allocation of storage costs, Nicor witnesses indicated Nicor would not be opposed to IIEC's recommendation if and only if, the maximum storage allowance for Transportation customers remains at 28 days (28 times a customer's Maximum Daily Contract Quantity). (Mudra, Nicor Ex. 48.0-2<sup>nd</sup> C at 32-33). IIEC suggests that Nicor reasoned that acceptance of IIEC's recommendation should be conditioned upon retention of the 28 day storage allowance because the proposal was silent about adjusting SBS billing determinants if a larger storage allowance (e.g., 31 days) were approved in this case. According to IIEC, this is not a reason to reject its proposal on its merits. IIEC urges the Commission to accept its recommendation in any case. IIEC, however, does agree with Nicor that if the storage allowance is greater than 28 days, the presumptive billing units for storage service should be commensurately increased.

IIEC says Nicor opposed its position on several grounds. First, Nicor argued that no other party supports IIEC's storage cost allocation methodology. (Nicor Init. Br. at 64). IIEC argues this is not a basis for rejecting the IIEC position; if it were, then Nicor's request for an overall rate increase in this case should be rejected because no other party has supported that request.

Second, Nicor argued that its approach for allocation of the cost of storage is the same methodology approved by the Commission in past cases. (Nicor Init. Br. at 64). However, IIEC says Nicor witnesses have already indicated that Nicor would support the use of IIEC's approach under certain circumstances in this case. (*see*, Mudra, Nicor Ex. 48.0-2<sup>nd</sup> C at 32-33). Therefore, IIEC reasons even Nicor does not believe that simply because the current method has been accepted in past rate cases, it is inappropriate or improper to adopt the new and more accurate approach recommended

by IIEC in this case.

Finally, IIEC says Nicor argues that IIEC's storage allocation approach is an attempt to solve a problem that does not exist. (Nicor Init. Br. at 64). In response, IIEC points out the fact that there is ostensibly not much difference in the results produced by the current approach and the approach recommended by IIEC, does not guarantee they will produce closely related results going forward. (*see*, IIEC Init. Br. at 10-11). This is because the total revenue requirement, the amount of storage allocated to transportation customers, as well as the denominator to be used in calculation of the SBS charge are all at issue in this case. If they change, then the results produced by the two approaches may not, in fact, be ostensibly the same. Therefore, in order to eliminate that possibility, IIEC says its approach should be adopted.

#### **D. Interclass Allocation Issues**

IIEC states that it opposes Nicor's recommendation to perpetuate interclass subsidies by bringing Rate 1 to only 97.5% of its full cost of service as measured by the Nicor ECOSS, and setting Rate 76 and 77 at more than 106% of their cost of service. IIEC says that Nicor's proposal is especially egregious considering that Nicor is of the opinion that the A&P method does not accurately reflect cost of service and the allocation of any main related costs on a volumetric basis is an inappropriate deviation from the principle of cost causation. (Heintz, Nicor Ex. 15.0 at 5 and Nicor Ex. 49.0 at 5). Allocation of the cost of mains partly on a volumetric basis means that less of the cost is allocated to smaller volume customers than would rightfully be the case and, conversely, more of the costs are allocated to large customers such as Rate 76 and Rate 77 customers. (Mudra, Tr. 375).

IIEC says that both Staff and Nicor support capping Rate 1 at 97.5% of its cost of service on

the grounds of gradualism. IIEC acknowledges that gradualism, which IIEC understands to be tempering the implications of strictly adhering to the indications of a cost of service study by giving consideration to the impact on customers, to be a legitimate principle of rate design. However, IIEC argues it must be applied in an even handed and objective manner. IIEC notes that Staff witnesses concede that if bill impacts were an appropriate consideration, the consideration should apply to all classes, not just Rate 1. (Lazare, Tr. 528-529). IIEC points out that Nicor's ECOSS, if strictly applied, would result in a 35.6% increase in base rates to Rate 1, compared to a system-wide average increase of 26%. (Mudra, Tr. 324-325, 321). However, IIEC says the same study implies that a cost based rate increase for Rate 77 would be nearly a 46% increase. (Mudra, Tr. 333). Consequently, IIEC says if Rate 1 is deserving of having its increase capped at below its cost of service in the face of a 36% increase, on the grounds of gradualism, then certain Rate 77, which would experience nearly a 46% increase, would be deserving of the same consideration. IIEC argues that to do otherwise is undue discrimination and, thus, contrary to the tenants of proper regulation. IIEC cites to Section 9-241 (220 ILCS 5/9-241) of the Public Utilities Act which prohibits unreasonable difference in rates between customer classes.

IIEC says Staff attempts to rationalize this discriminatory treatment on the grounds that Rate 1 customers are encountering economic difficulties and that other energy costs are rising. (Lazare, Staff Ex. 7.0 at 29). The flaw in this logic, according to IIEC, is that (a) Staff never demonstrated that this reasoning applies to all Rate 1 customers, and (b) even if it did, these same circumstances are apt to apply to customers in other rate classes as well.

IIEC suggests that the arguments supporting such a discriminatory approach are so weak that Nicor witnesses stated they would not object if the Commission brought all classes to cost of service.

(Mudra, Nicor Ex. 48.0-2nd C at 9). Furthermore, bringing all rates to cost of service as measured by the Nicor ECOSS would only add about 50 cents per month to the average residential bill. (*See*, Mudra, Tr. 327).

IIEC also argues that the Commission has generally preferred to establish rates as close as reasonably possible or appropriate to cost of service. IIEC cites to Central Illinois Light Company d/b/a Ameren CILCO, et al., ICC Dkts. 07-0585 et al., (Cons.), Final Order, Sept. 24, 2008 at 279. IIEC reasons that given the fact that the Commission would only have to move rates for Rate 1 customers an additional 2.5 percentage points to bring them to full cost of service and that the cost of doing so is only about 50 cents per month, there is no reason why Rate 1 rates should not be moved to cost of service so as to eliminate existing rate subsidies in this case.

In the alternative, IIEC argues that if the Commission is concerned about bill impacts and gradualism, it should give consideration to the fact that under the Nicor revenue allocation, some customer rate classes, particularly, Rate 74 and Rate 4, will see increases well below the system average, while other rate classes such as Rate 77, will see increases more than two times the system average increase. IIEC notes that Rate 4 and Rate 74 are slated for increases of only 14.76% and 6.99% respectively (Mudra, Nicor Ex. 48.3) under the Nicor approach. IIEC suggests that under the circumstances, Rate 1 could be capped at something below its cost of service as proposed by Nicor and the Staff and the other remaining rates could be capped at their cost of service with any revenue shortfall created by the cap on Rate 1 recovered from Rate 4 and Rate 74 customers alone. This would still leave the increases for those classes below the system average, according to IIEC. (Mudra, Tr. 335).

In the further alternative, IIEC argues that if the Commission agrees with IIEC that the

Company's cost of service study should be modified to make it more accurate by more broadly applying the MDM study to both the volume-related component and the peak demand-related component of distribution mains, but is concerned about implementing the change in this case, the Commission could direct an across-the-board increase. IIEC says that such an approach would be the most likely approach to preserve the status quo. IIEC says that absent the more accurate study, there is no reason to abandon the status quo in this case.

## **VIII. RATE DESIGN**

### **A. Overview**

In the area of rate design, IIEC opposes Staff's proposal to increase the tail block for Rate 77 by approximately 1000%. IIEC says the Staff's proposal could produce almost triple digit rate increases for some Rate 77 customers. IIEC believes that rate design changes which produce triple digit increases for large customers in the current economic environment are by definition unreasonable. IIEC supports the continuation of a blocked demand charge structure for Rate 77 and recommends that the existing blocks be increased by an equal percent as they were in the 2004 Rate Case.

### **C. Contested Issues**

#### **6. Rate 7 and Rate 77 Design**

IIEC says Rate 77 consists of a customer charge, a single volumetric charge and a two-stepped demand charge. IIEC says that Staff proposes to increase the tail block demand charge in this rate, applicable to all therms above 10,000, from 2.63 cents per therm to 29.00 cents per therm, an increase of approximately one thousand (1000) percent. (Rosenberg, IIEC Ex. 2.0 at 25). The tail block demand charge represents almost 80% of the billing demand units for this class. (Lazare, Tr.

531). IIEC states that Staff's proposal should be rejected. IIEC argues that it is Staff's basic position that declining block rates are not conducive to conservation. (Lazare, Staff Ex. 7.0 at 41). IIEC says that Staff's claim has been convincingly refuted by Nicor. (Mudra, Nicor Ex. 29.0-C at 13). IIEC says that even assuming *arguendo*, that the Commission finds Nicor's position on this point to be unpersuasive, Staff's contentions were focused primarily on declining block consumption charges for Rate 1 and not the declining block demand charges for Rate 77. (Lazare, Staff Ex. 7.0 at 37-42). IIEC says moreover, there are compelling reasons for rejecting Staff's rate design.

First, IIEC submits that on its face, a 1000% increase clearly violates the principle of gradualism. Such an increase could produce close to triple digit increases for some Rate 77 customers. (Rosenberg, IIEC Ex. 2.0 at 26). If a cost based increase of 35.69% for Rate 1 customers demands gradualism, then *a fortiori*, a triple digit increase for Rate 77 customers is beyond any reasonable justification.

Second, Staff did not adequately consider the rate impacts of its proposal. The largest size customer on the Staff's bill comparison (Staff Ex. 7.0, Sch. 7.05 at 12) uses only 500,000 therms according to IIEC. However, IIEC says, the average customer on Rate 77 uses almost 1,000,000 therms per month and some customers use several times that number. (Rosenberg, IIEC Ex. 2.0 at 26). The impact on those customers could be devastating leading to triple digit increases for the average customer on Rate 77. (Rosenberg, IIEC Ex. 2.0 at 25-26).

IIEC says the third major problem with Staff's proposal is that eliminating the declining block structure on the demand charge is not cost based. IIEC's witness presented testimony that there are economies of scale in serving larger loads and that indeed, this is manifested in the cost of service study presented by Nicor. (Rosenberg, IIEC Ex. 2.0 at 27-28). IIEC points out that Staff did not

challenge IIEC's testimony on this issue through cross-examination. IIEC's contentions regarding the economies of scale inherent in serving large customers, were independently corroborated by Nicor. (Mudra, Nicor Ex. 48.0-2nd C at 24).

IIEC says the fourth problem with Staff's proposal to eliminate the declining block demand charge for these customers is that it would greatly magnify the impact on Nicor's revenues should the demands of these customers change from their presumptive use. (*see*, Lazare, Tr. 531). If usage increases, Nicor would experience windfall profits. On the other hand, if usage decreases under Staff's proposal, Nicor's profits would suffer and that would help precipitate another rate case.

Fifth, IIEC says that in its attempt to refute IIEC's arguments that the declining block demand charge in this case is justified by economies of scale, the Staff has implicitly conceded that a declining block demand charge is justified on the basis of cost to serve. Staff argues that IIEC's discussion did not contain any justification for a declining block demand charge of the magnitude present in Nicor's current rate structure on a cost basis. (Staff Br. at 97). IIEC says that the Staff thus appears to concede that a declining block demand charge is justified on the basis of the cost to serve, but argues that the magnitude of the decline has not been adequately supported. IIEC says that the Staff appears to be taking the position that under such circumstances, the Commission should decide there should be no declining block structure at all. IIEC states that the Staff ignores the fact that the current rate structure has existed for almost 30 years. IIEC says the burden of proof should be on the party proposing changes to that structure and Staff has not met that burden with any embedded cost analysis or marginal cost analysis. Instead the Staff has implicitly conceded that a declining block demand charge is reasonable. Under such circumstances, IIEC says the Commission should not adopt a position that is exactly wrong, because the status quo is only approximately right.

IIEC says Staff's proposed changes for Rate 77 should be rejected.

IIEC says for all of the reasons it has identified, the Commission should reject the Staff's proposal. It says that instead, the current demand charge blocks in Rate 77 should be increased on an equal percent basis, as was done in the 2004 Rate Case and as Nicor proposes in this case. (*See*, Rosenberg, IIEC Ex. 2.0 at 26).

## **IX. TARIFF REVISIONS AFFECTING TRANSPORTATION CUSTOMERS**

### **A. Overview**

IIEC opposes any new limits on the maximum daily nominations ("MDN") for transportation customers and recommends any such limits be rejected and that the status quo on daily nominations be retained. IIEC also opposes Nicor's changes to the formula used to calculate transportation customers' SBS entitlement. Specifically, IIEC says it opposes Nicor's suggestion that the formula be modified so that the maximum non-coincident capacity of the Nicor storage fields (149.7 Bcf) as approved by the Commission in the 2004 Rate Case, is no longer used as the numerator in the formula.

IIEC also opposes Nicor's proposals to use something other than the maximum non-coincident capacity (149.7 Bcf) in the formula used to calculate the SBS charge itself. IIEC recommends the Commission continue to use the 149.7 Bcf as the denominator.

IIEC has also proposed a modification of Nicor's current tariffs, terms and conditions, to allow transportation customers to have their Storage Withdrawal Factor ("SWF") determined on the basis of the customer's maximum storage inventory during the period between October 15 and November 15 of each year. IIEC says that currently Nicor's tariffs provide the SWF is based solely on the customer's inventory balance as of November 1 each year.

## C. Contested Issues

### 1. Proposed Reduction in Nomination Rights

IIEC says Nicor proposes new limitations on the MDN of transportation customers in the months of July through October and the months of March and April. IIEC points out that because a transportation customer's injections (or more technically speaking, its increases to its storage account) are deemed to be the positive difference between its nomination for that day and its usage for that day, Nicor's proposal will in effect restrict the amount of gas that transportation customers can place in storage. IIEC argues Nicor's new proposals add to the cost of energy for Nicor industrial customers. (Rosenberg, IIEC Ex. 1.0 at 17). According to IIEC this will diminish the flexibility that transportation customers have in economically managing their gas supply. In fact, IIEC says this new proposal will make it more difficult for customers to fill their storage banks to their total capacity, an objective that Nicor encouraged in its 2004 Rate Case. (*Id.* at 19).

IIEC says Nicor's witness on storage matters, conceded that this change will diminish the benefits that these customers currently have. (*see*, Bartlett, Nicor Ex. 4.0-C at 26). IIEC argues this is contrary to Commission policy as set out in the 2004 Rate Case. IIEC points out in that case the Commission found as follows:

“The Commission rejects Nicor's proposed change. To the extent possible, the Commission would prefer to increase rather than reduce the flexibility of customers, whether Transportation customers or Customer Select customers. Nicor has been operating under the existing maximum daily nomination for many years. While the Commission can understand Nicor's argument that storage injections in winter are inconsistent with Nicor's objectives to fully cycle its storage fields, winter injections also seem fully consistent with Nicor's objective of maintaining sufficient gas in storage to meet late winter demands for significant storage withdrawals.

The record contains no analysis that demonstrates Transportation customers intentionally interfere with Nicor's efforts to cycle its storage fields or that the activities of Transportation customers have ever actually interfered with

Nicor's efforts to cycle its storage fields. In the absence of additional empirical evidence or a more compelling argument, the Commission has no choice but to reject Nicor's proposed change." (Northern Illinois Gas Company d/b/a Nicor Gas, ICC Dkt. 04-0079, Final Order, Sept. 20, 2005 at 131, emphasis added).

The situation in this case is parallel to the last case according to IIEC. IIEC says Nicor again is proposing to change the terms and conditions under which it has successfully operated its storage fields, with absolutely no evidence that there is a problem, or that its proposed changes will solve the problem, even if one existed in the first place. IIEC notes that when originally asked whether the Company had any studies that purported to show the impact of transportation customers' use of SBS on the cost of purchased gas for sales customers, the Company conceded that it had not conducted or commissioned any such studies. (Rosenberg, IIEC Ex. 1.0, at 17).

IIEC says Nicor witnesses sponsored Nicor Exhibit 19.3 ("Exhibit 19.3") in rebuttal, which ostensibly demonstrated that transportation customers, by virtue of their "deviant" storage activity, cost sales customers \$12 million. (Bartlett, Tr. 182-183). IIEC opines it is important to appreciate that Nicor Exhibit 19.3 is really the only evidence that Nicor has put forth that purports to show that there is a problem, which Mr. Bartlett's proposals are intended to ameliorate. (Bartlett, Tr. 182, 210). However, in IIEC's opinion, Exhibit 19.3 does not constitute anything of the sort. IIEC points to numerous flaws in the exhibit. The flaws IIEC says exist are set out below:

1. Nicor Exhibit 19.3 was only produced in conjunction with Nicor's rebuttal testimony, filed September 25<sup>th</sup>.(Bartlett, Tr. 183). However, Nicor put forth its proposals on restricting the MDN in April. (*Id.*). Thus any so-called problem revealed in Exhibit 19.3 could not possibly have prompted the proposed changes to the MDN.
2. Exhibit 19.3 presumes that Nicor will, in fact must, always physically inject or withdraw the exact amount of gas specified in its storage plan. (Bartlett, Tr. 187). However, Nicor can and does deviate from its storage plan for reasons other than the activity of transportation customers, such as weather. (Rosenberg, IIEC Ex. 2.0 at 36;

Bartlett, Tr. 189-191).

3. Exhibit 19.3 presumes that when transportation customers withdraw more (or less), or inject more (or less), than their “proportionate” share of the storage plan, that variance must be made up at the difference between the Chicago City Gate Price and the settlement price for the NYMEX futures price for the prompt month. (Bartlett, Tr. 187, 197-199). The problem is that, as Nicor witnesses conceded, nowhere has Nicor demonstrated that this underlying assumption is correct. (Bartlett, Tr. 199). To the contrary, the available evidence is that this information is not correct. For example, Nicor has conceded that for the twelve month period encompassed by Exhibit 19.3, the Company did not purchase any gas at the NYMEX futures prompt month price. In fact in the previous case Nicor witnesses characterized Chicago City Gate First of Month prices as “actual” prices. (Bartlett, Tr. 200-203). Consequently, Exhibit 19.3 does not even use actual prices.
4. As Nicor acknowledged, Exhibit 19.3 focuses solely on daily fluctuations in the price of gas (Bartlett, Tr. 185), thereby ignoring seasonal price differentials. Consequently, Nicor could not describe the impact on sales customers were seasonal differentials to be incorporated into the analysis. (Bartlett, Tr. 186).
5. Transportation customers are not even aware of Nicor’s seasonal storage plan and no party has suggested that their storage activity should be tied to some percentage of Nicor’s plan. (*See*, Bartlett, Tr. 188-190, 196).
6. Exhibit 19.3 implies consequences that are not only improbable, but that are outright counter-intuitive and illogical. Consider December 1, 2006, the first day shown on Exhibit 19.3, page 2, for example. On that day, Nicor was planning to withdraw 680,000 MMBTu, but ended up actually withdrawing far more than that amount. Gas prices on that day were the highest for the month, and indeed nearly the highest for the year. (Bartlett, Nicor Ex. 19.3 at 2, Col. A; Bartlett, Tr. 204-208). Nevertheless, on that cold day when Nicor required more gas to serve its sales customers, its transportation customers were actually bringing in more gas to the system than they were using. (Bartlett, Tr. 204-205). Yet, Exhibit 19.3 implies that the actions by the transportation customers were costing the sales customers money when clearly the transportation customers were saving the sales customers money on that day.

IIEC says the only incontrovertible conclusion that one can possibly deduce from Exhibit 19.3, and which IIEC has demonstrated in the record in this case, is that *transportation customers use less storage than they purchase and pay for*. (*See*, Rosenberg, IIEC Ex. 2.0 at 37; Bartlett, Tr. 176-177).

IIEC opines that all witnesses who responded to Nicor Exhibit 19.3, Staff witness Mr. Sackett, CNE-Gas witness Ms. Fabrizius, and IIEC witness Dr. Rosenberg, showed that this exhibit is riddled with problems. (Sackett, Staff Ex. 24.0 Rev. at 7-8; Fabrizius, CNE-Gas Ex. 3.0 at 27-38; Rosenberg, IIEC Ex. 2.0 at 35-37). However, IIEC says the most remarkable thing about Exhibit 19.3 is that even if one assumes, for the sake of argument, that it does demonstrate a “problem”, Nicor was unable to say how its proposed restrictions would solve the hypothetical “problem”. (Rosenberg, IIEC Ex. 2.0 at 35; Bartlett, Tr. 184). In fact, IIEC says the record shows that transportation customers actions in injecting less gas and withdrawing less gas actually benefitted other customers by \$17.4 million. (Fabrizius, CNE -Gas Ex. 3.0 at 41). IIEC says this exceeds the \$12 million cost to other customers allegedly demonstrated by Exhibit 19.3

IIEC points out that Nicor indicated the Company would accept alternative restrictions on MDN. (Bartlett, Nicor Ex. 38.0 at 34). IIEC says this demonstrates that even Nicor acknowledges that the MDN restrictions it proposes are unnecessary.

IIEC says it opposes the proposed restrictions because Nicor has not demonstrated any need for them and because their adoption would run contrary to the expressed philosophy of this Commission, to provide transportation customers maxim flexibility that is conformant to proper allocation of the capacity of the storage fields to transportation customers and the satisfactory operation of the fields by Nicor. IIEC opines that its testimony noted that Nicor has been able to satisfactorily operate its storage fields without the new restrictions Nicor is proposing in this case. (Rosenberg, IIEC Ex. 1.0 at 17). Nicor acknowledged that IIEC was correct in its observation, qualified only by the ostensible problem portrayed in Nicor Exhibit 19.3. (Bartlett, Tr. 216). However, IIEC respectfully submits that the supposed analysis in Nicor Exhibit 19.3 has been

thoroughly discredited by the rebuttal testimonies of Dr. Rosenberg for IIEC, Ms. Fabrizius for CNE-Gas and Mr. Sackett for Staff, as well as through the cross examination of its sponsor, Nicor witness Mr. Bartlett. IIEC therefore recommends proposed new restrictions on MDN be rejected and that the status quo on maximum daily nominations be maintained. (Rosenberg, IIEC Ex. 1.0 at 16-21; Rosenberg, IIEC Ex. 2.0 at 34-39).

IIEC says that Nicor makes several arguments in support of its proposed changes to the MDN. First Nicor witnesses claimed that from an operational perspective, daily nomination limits make sense because they more closely match customers' storage utilization with actual storage field operating requirements. However, IIEC says that the Nicor position was accompanied by virtually no analyses, investigations or studies to back it up. IIEC says that in point of fact, Nicor has been able to satisfactorily operate its storage fields for at least 15 years or so without the new restrictions it is now requesting. (Rosenberg, IIEC Ex. 1.0 at 17). IIEC argues that the lack of a problem was corroborated by Staff observations (Staff Init. Br. at 104-105) and through the testimony and cross-examination of Nicor witnesses on this subject. (Bartlett, Tr. 216).

IIEC says that next Nicor argued that the new restrictions were necessary to ameliorate the extra costs the transportation customers' storage utilization patterns allegedly imposed on sales customers. IIEC says that this rationalization was developed only after Nicor had made its proposals to impose new MDN restrictions on transportation customers.

IIEC says that Nicor offered a third reason for the proposed restrictions, namely, that they will somehow help to reduce the need to cap deliveries during the July through October months of the injection season. (Bartlett, Nicor Ex. 4.0-C at 25). IIEC says there are two problems with this justification for the new restrictions. In the first place, IIEC says Nicor could not guarantee that these

caps would not be needed even if the new restrictions are imposed. (Bartlett, Nicor Ex. 4.0-C at 25-26). IIEC argues that transportation customers are being requested to forego tangible and quantifiable flexibility for a hypothetical and non-quantifiable benefit. Secondly, IIEC notes that Staff has presented evidence to demonstrate that there are not many caps being imposed in those months. (Sackett, Staff Ex. 11.0 at 10).

IIEC says Nicor offers a fourth reason for its new restrictions. Nicor points out that customers can nominally inject gas during the months of March and April even though the Nicor storage fields are in withdrawal mode. IIEC says it is true that storage fields are typically still in the withdrawal mode for these two months and that transportation customers may be nominally injecting into storage during those months. IIEC says that nevertheless, this situation does not necessitate the imposition of the draconian measures proposed by Nicor. IIEC points out that Nicor is still buying gas during the subject months. Consequently, according to IIEC, when transportation customers nominate more gas than they use, all that is implied is that Nicor is buying less gas than it would otherwise require. IIEC says that Nicor can still cycle its fields. IIEC points out that Nicor acknowledged that it has avoided degradation in the storage field capability by greater cycling. (Bartlett, Nicor Ex. 19.0 at 18). IIEC agrees with Staff that the restrictions proposed by Nicor for March and April are just a more stringent reiteration of the cycling requirements in the Spring that were proposed by Nicor in the 2004 Rate Case and rejected. (Staff Init. Br. at 111-112). IIEC says that even in the worst case scenario, Nicor still has the ability to call a critical injection day and limit nominations. (Bartlett, Nicor Ex. 4.0-C at 25-26). Under such circumstances, IIEC says there is no need for blanket restrictions that will hamper the flexibility of transportation customers.

## **2. Storage Calculations**

### **a. Storage Banking Service Entitlement**

IIEC says the SBS entitlement is, by definition, the absolute maximum amount of gas that any individual transportation customer is allowed to maintain in its storage account with the Company. This entitlement is articulated as so many times the customer's Maximum Daily Contract Quantity ("MDCQ") or X days of storage. IIEC points out it is not contested by any party that this multiple of MDCQ should be established by dividing the maximum capacity of Nicor's storage field (the numerator), by the Company's design day sendout (the denominator), the Company's design day sendout is the Company's peak day sendout. IIEC states the Company claims its peak day sendout to be 49 million therms, and no party has contested the validity of the 49 million therm figure. However, according to IIEC, there is a dispute concerning the numerator, or the maximum capacity of the storage field. IIEC says the Staff, IIEC, and originally CNE, all recommended that the maximum capacity be set at what the Commission approved in the last case, 149.7 Bcf. (Sackett, Staff Ex. 11.0 at 20-23; Fabrizius, CNE-Gas Ex. 1.0 at 13-17; Rosenberg, IIEC Ex. 2.0 at 32-34). This is the non-coincident peak capacity of each of Nicor's eight storage fields, which is the sum of the maximum demonstrated capacity of each of those fields.

IIEC says that according to Constellation NewEnergy Gas Cross Exhibit 1, Staff's primary recommendation in the instant proceeding, with respect to the measurement of capacity in the Storage Banking Service ("SBS") calculation, is that the Commission continues to use peak non-coincident working gas storage of 149.74 Bcf as the measure of capacity in the SBS calculations for storage allocation, the factor for Storage Withdrawals and the SBS charge. Staff recommended the Commission adopt the 149.74 Bcf as the appropriate non-coincident working gas storage amount.

(CNE-Gas Cross Ex. 1, Par. 6).

IIEC argues no party claimed that the non-coincident maximum capacity of Nicor storage fields has been diminished from the last case. To the contrary, the capacity figure of 149.7 Bcf has been reconfirmed. The 149.7 Bcf figure is established by an engineering study that Staff submitted as ICC Staff Exhibit 24.0. This study was performed in 2004 to determine the actual amount of storage. IIEC says Nicor has confirmed that its storage field has not suffered any degradation in performance or capacity since the last case. (Bartlett, Tr. 213-214). IIEC argues that although the 149.7 Bcf was derived by adding achieved Mcf capacity in different years, Nicor confirmed that even in a single year, the top storage capacity achieved was 149.2 Bcf. (Bartlett, Tr. 211-212). IIEC says notwithstanding that Nicor never *explicitly* proposed to change the formula, approved by the Commission in Docket 04-0779 (*see*, Bartlett, Nicor Ex. 4.0-C at 21-23), Nicor is proposing to make a *de facto* change to the formula by coining a new term “operationally available capacity”, which Nicor claimed to be 134.6 Bcf. (Bartlett, Nicor Ex. 19.0 at 12). IIEC says there are several fallacies with this position however. In the first place, according to IIEC, Nicor never explained why this change is preferable. In the second place, unlike the sum of maximum non-coincident capacity levels, there is no easy way that this number can be confirmed by empirical evidence. In the third place, there is evidence that the 134.6 Bcf is not even correct. According to IIEC, the record shows that in the 2001-2002 withdrawal season, Nicor’s working gas/top gas in storage equaled 149.2 Bcf. (*see*, Bartlett, Tr. 212).

Finally, IIEC says even if one assumes for the sake of argument, the 149.7 was *not* operationally achievable (something which Nicor has failed to do on the record according to IIEC), it would be unfair and inappropriate to reject that number because transportation customers have never

“operationally” achieved their theoretical maximum amount of storage that they select. (See, Bartlett, Tr. 173-175). In fact, IIEC reasons even if it were pragmatically possible for a single transportation customer to achieve its absolute maximum entitlement, the only way that the transportation customers as a class could achieve that maximum, would be for every single one of the thousands of transportation customers on the Nicor system to achieve their maximum allowable storage balances on the same day. Thus, IIEC says Nicor’s proposal to use this notion of “operationally available capacity” to derive a “theoretical” but practically and empirically unachievable entitlement, is not comparing apples to apples and is thus unfair to transportation customers.

IIEC says Nicor claimed that sales customers would be unfairly treated if the storage entitlement is based on a total capacity of 149.7 Bcf, and analogized this to a grocer selling 150 lbs of bananas when he only has 135 lbs of bananas to sell. (See, Mudra, Nicor Ex. 48.0-2<sup>nd</sup> C at 42). IIEC points out, however, that Nicor’s hypotheticals are predicated on the assumption that it is correct that there are only 134.6 Bcf of storage capacity available. (Mudra, Tr. 348-349). IIEC says that is an invalid assumption. Moreover, IIEC argues if the Commission determines that Nicor is incorrect in its assessment of the maximum capacity of the fields, then even Nicor concedes that the Company’s proposal would be unfair to transportation customers. (Mudra, Tr. 349-350).

IIEC ultimately recommends the formula for determining the SBS entitlement, as approved by the Commission in Nicor’s last rate case, remain unmodified. IIEC states that because Nicor’s design day demand for gas (now 49 million therms) has decreased since the last case, the use of the Commission approved formula would produce an entitlement of 31 days, instead of the 28 days determined by Nicor under its modified formula. (Rosenberg, IIEC Ex. 2.0 at 32-34). IIEC says the Commission should continue to require the use of the maximum non-coincident capacity of the Nicor

storage field (149.7 Bcf) as the numerator in the formula for determining the SBS entitlement.

**b. Storage Banking Service (“SBS”) Charge**

IIEC says Nicor proposes to increase the SBS charge in this case from 0.29 cents to 0.42 cents per therm per month, an increase of 45%. (*see*, Mudra, Nicor Ex. 14.3 at 1-2, Col. M, Present Change; 14.2 at lines 45, 57 and 66; Rosenberg, IIEC Ex. 2.0 at 11). IIEC takes exception to the denominator Nicor used in the formula (storage cost divided by storage field capacity) to calculate the SBS charge. IIEC says that, as with the issue of the correct numerator to use in the calculation of the SBS entitlement, the crux of this issue involves whether the denominator should be the empirically observable non-coincident maximum capacity of the storage fields, as approved in Docket 04-0779, (which is 149.7 Bcf) or to use the alleged “operationally available capacity”, (which Nicor claims is 134.6 Bcf). IIEC states while there is no a priori reason why the Commission could not use a different capacity for the denominator of the SBS charge than for the numerator of the SBS entitlement, IIEC does agree with Nicor that the same capacity should be used for both purposes. (Mudra, Nicor Ex. 29.0-C at 38). Moreover, IIEC also agrees with Nicor that if the same capacity is used for the numerator of the SBS entitlement as well as for the denominator to derive the SBS charge, the total SBS revenue will be the same regardless of the measure of capacity chosen.

As with the issue on the SBS Entitlement, IIEC says it concurs with the position of the Staff and the original position of CNE-Gas that the correct measure of capacity is the one approved by the Commission in Docket 04-0779. (Fabrizius, CNE-Gas Ex. 3.0 at 3-6; Sackett, Staff Ex. 24.0 Rev. at 23-26). The reasons for IIEC’s position are much the same that the Commission expressed in its Order in the last case (i.e., the SBS charge is predicated on a maximum amount of capacity and not on usage Northern Illinois Gas Company, d/b/a Nicor Gas, ICC Dkt. 04-0779, Final Order,

September 20, 2005 at 120), as well as the rationale that IIEC gives in support of the use of the non-coincident maximum capacity for the calculation of SBS entitlement.

IIEC draws the Commission's attention to what it says is Nicor's amorphous position on this issue. IIEC points out in the 2004 Rate Case, the Nicor witness on this issue, Nicor witness Mr. Harms, testified:

“This revenue requirement related to company-owned storage is then divided by 1 billion, 200 million therms, which is the annual amount that the company can cycle from storage.” (Mudra, Tr. 340).

IIEC says the record in this case makes abundantly clear, the Commission flatly rejected that methodology in Docket 04-0779. (Mudra, Tr. 340, 341; Sackett, Staff Ex. 24.0 Rev. at 17-18). But IIEC says notwithstanding the expressed disapproval of that methodology in the last case, in this case Nicor continued to advocate that method in this case. It notes Nicor witness Mudra testified the “. . . storage revenue requirement was then divided by 1,346,330,000 therms which is the amount of top gas inventory that the company expects to cycle from storage”. (Mudra, Nicor Ex. 14.0 at 24).

IIEC says Mr. Mudra's characterization of the denominator in his direct testimony was virtually the same as Nicor witness Mr. Harms' testimony in the 2004 Rate Case. In its rebuttal testimony, IIEC says Nicor agreed that the numerator of the SBS entitlement formula and the denominator of the SBS charge calculation should be the same. (Mudra, Nicor Ex. 29.0 at 38). In its surrebuttal Nicor characterized the denominator for the SBS charge as the maximum amount of noncoincident storage capacity. (Mudra, Nicor Ex. 48.0 at 49; Mudra, Tr. 344-345).

IIEC says that at this juncture, it appears all parties, including Nicor, agree that the correct denominator for the SBS charge calculation is the maximum amount of non-coincident working gas capacity. According to IIEC the only issue to be decided is the correct amount of that maximum

amount of non-coincident capacity. IIEC says for the reasons explained in its arguments on the SBS entitlement, it is IIEC's position that this correct amount of capacity is the one approved by the ICC in Nicor's previous case (149.7 Bcf) and not the 134.6 Bcf claimed by Nicor. Use of the correct denominator would result in an SBS charge of 0.38 cents per therm per month. This still would represent a 31% increase over the current rate, well above the requested system average increase. (Rosenberg, IIEC Ex. 1.0 at 16; Rosenberg, IIEC Ex. 2.0 at 28-32).

**c. Storage Withdrawal Factor**

**ii. Timing of Storage Withdrawal Factor Calculation**

IIEC proposes that the Terms and Conditions provisions in Nicor's tariffs be modified so as to establish SWF on the basis of the customer's maximum storage inventory during the period between October 15 and November 15 of each year. Currently, the tariffs provide that the SWF is based solely on the inventory on November 1. (Rosenberg, IIEC Ex. 1.0 at 21-22). IIEC is proposing to somewhat relax the currently rigid requirement that customers reach their absolute maximum capacity precisely on November 30, or be subject to diminished withdrawal capability. IIEC says the November 1 date is somewhat arbitrary. IIEC argues while November 1 is notionally the date that Nicor attempts to hit its maximum inventory, it believes that the customers should have a little bit of latitude. IIEC says even Nicor does not always reach its maximum working gas inventory exactly on November 1. Thus, it proposes replacing the customer's "November 1 Inventory Balance" with the customer's *Maximum Inventory Balance between October 15 and November 15*. IIEC says its position is in accord with the Commission's expressed opinion to provide transportation customers with increased flexibility, yet it does not compromise the basic objective of the SWF.

IIEC says there is evidence in the record, from Mr. Bartlett himself, that in recent years Nicor's individual storage fields achieved their maximum inventory from as early as October 22<sup>nd</sup> to as late as December 13<sup>th</sup>. (Bartlett, Tr. 220-222). IIEC says that despite Nicor's own inability to achieve a maximum balance for each of its fields on precisely November 1, Nicor was critical of IIEC's proposal. Initially Nicor gave only one reason for rejecting IIEC's proposal to relax the window, namely that IIEC witness Dr. Rosenberg had taken one provision from NGPL's DSS tariff and ignored all the other provisions. However under cross examination, Nicor witness Bartlett conceded that Dr. Rosenberg did not base his recommendation on NGPL's DSS tariff, although IIEC notes that the existence of this similar tariff provision speaks to the reasonableness of its proposal.

In fact the only really substantive objection to this proposal was voiced by Nicor witness Mr. Mudra. Mr. Mudra noted that (i) Nicor bills these customers at the end of the month and therefore has the data needed to calculate the SWF on October 31<sup>st</sup> but not on November 15<sup>th</sup> and (ii) that Nicor is required by tariff to notify daily balanced customers, shortly after November 1<sup>st</sup> of their new SWF factor. (Mudra, Nicor Ex. 29.0 at 46-47). However these rationalizations are red herrings. In the first place, Nicor has daily meter readings for all of Rate 76 and 77 customers (*see*, Mudra, Nicor Ex. 14.2 at 66), and so it would be a simple matter to restrict IIEC's proposal to only daily metered customers. In the second place, if there were a critical day called between November 1 and November 15, Nicor could utilize the SWF based on the previous year's maximum storage.

IIEC notes that Staff agreed with Nicor's first objection to IIEC's proposal. IIEC says Staff accepts Nicor's argument that it cannot calculate the maximum storage inventory for many transportation customers on anything other than a monthly basis because these customers do not have daily meters. (Staff Br. at 121). IIEC has suggested that if this is truly the problem, its proposal

could be limited to those transportation customers who do have daily meters. (IIEC Br. at 28). Limiting the right to have the SWF calculated between October 15 and November 15 of each year to customers with daily meters would resolve Staff's concerns.

IIEC says Staff has also suggested that the proposal to allow trading of storage balances will help users to achieve the 90% minimum storage balance requirement on November 1 of each year. (Staff Br. at 121, 124-125). IIEC says it appreciates Staff's suggestion, but wishes to point out that the storage balance trading proposal referenced by the Staff and agreed to by Nicor and Vanguard Energy Services ("VES"), apparently only applies to smaller transportation customers. (Staff Br. at 125). IIEC notes Staff does propose to modify this storage balance trading proposal to make it applicable to larger transportation customers, but the Commission's adoption of Staff's modification of the Nicor/VES proposal is not certain. If the trading service does not apply to large transportation customers, then IIEC's proposal to have the SWF for daily metered customers calculated between October 15 and November 15, should be adopted.

Furthermore, IIEC says it is unclear that even if Staff's modification of the proposal to allow certain transportation customers to trade storage imbalances only one time per year (*see, Id.*) is adopted, it may not be a practical solution for transportation customers. IIEC argues that offering transportation customers the right to trade storage imbalances one time a year does not necessarily provide transportation customers with the flexibility they may need. IIEC states for example, if a customer is required for other reasons to use its one-time per year right to trade imbalances for any other reason, the trading option will not be available to assist him in meeting the minimum storage balance requirements on November 1 of each year. Furthermore, according to IIEC such a customer might be required to forego the use of this annual right in order to save it for calculation of the SWF

and then find its use was not necessary for the determination of the SWF. IIEC says therefore, even if Staff's proposal to modify the storage balance trading proposal agreed to by VES and Nicor is adopted by the Commission, the Commission should still adopt IIEC's proposal for determining the SWF for daily meter transportation customers between October 15 and November 15 of each year.

IIEC says its proposal to relax the requirement that the transportation customers reach their absolute maximum storage capacity on exactly November 1 each year and allow daily metered transportation customers to establish their SWF between October 15 and November 15 each year should be adopted.

Respectfully submitted,

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