STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company	**)**	
d/b/a Nicor Gas Company	**)**	**08-0363**
	)	
Proposed general increase in natural gas rates.	**)**	

REPLY BRIEF ON REHEARING OF

THE CITIZENS UTILITY BOARD

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Dated: July 15, 2009

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Pursuant to Section 200.800 of the Rules of Practice[1] of the Illinois Commerce Commission ("Commission" or "ICC") and the briefing schedule set by the Administrative Law Judges ("ALJs"), the CITIZENS UTILITY BOARD ("CUB") submits its Reply Brief on Rehearing in this proceeding, responding to arguments made by Northern Illinois Gas Company d/b/a Nicor Gas Company's ("Nicor," the "Company" or the "utility") in its Initial Brief on Rehearing.

In its Initial Brief on Rehearing, Nicor argues that the Commission should adopt a "middle course" between adopting the amount of short-term debt recommended by Staff – and accepted by the Commission in its final Order in this proceeding – and adopting Nicor's preferred result, which is that no short-term debt be included in its capital structure. Nicor Initial Brief on Rehearing at 5. Nicor devotes much of its Brief arguing the "legal standard" to be applied in this Rehearing, including a discussion of Staff's position in this and other dockets on the issue of short-term debt, and previous Commission orders on the topic. However, as the Commission (and presumably Nicor) are aware, Commission decisions are not *res judicata*, and therefore the Commission is not bound to follow past precedent. *See e.g., United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 22-23, 643 N.E.2d 719, 729 (1994); *see also*,

[1] 83 Ill. Adm. Code Part 200.

Citizens Util. Bd. v. Ill. Commerce Comm'n, 291 Ill. App. 3d 300, 307 (1st Dist. 1997) ("[D]ecisions of the Commission are not *res judicata* … [and] the Commission has the power to deal with each situation before it regardless of how it may have dealt previously with a similar or the same situation"). The Commission is, in fact, required to make its determinations based exclusively on the record before it. 220 ILCS 5/10-103. The evidence in this record clearly and unequivocally supports the conclusion reached in the Commission's Order that the methodology employed by Staff to quantify the proportion of short-term debt reflected in the capital structure should be accepted, and the conclusion to include a balance of $255,640,082 should be upheld.

Nicor proposes – as an alternative to excluding short-term debt entirely from its capital structure – that only the amount of short-term debt used to finance its cash working capital ("CWC") requirements should be included. Nicor Initial Brief on Rehearing at 5. Nicor argues that the evidence shows that the "Company's regulatory capitalization historically has ranged from 87% to 93% of rate base, and that limiting the amount of short-term debt imputed into the Company's capital structure to the amount of CWC ($62.6 million) would put the ratio of regulatory capitalization to rate base at 91%, or "squarely within the Company's historical regulatory capitalization."" Nicor Initial Brief on Rehearing at 5, 17. However, the fact that Nicor's regulatory capital structure has been between 7% and 13% less than rate base directly implies that capital not historically included in the regulatory capital structure has been used to finance rate base assets. The source of that capital is short-term debt. The evidence clearly shows that short-term debt is a permanent source of seasonal funds for Nicor Gas. Staff Ex. 18.0 at 9, LL. 178-191; see also Staff Initial Brief at 37-38, Staff Initial Brief on Rehearing at 4. Due to the fungible nature of capital, it is generally assumed that all assets, including assets in rate base, are financed in proportion to total capital. Thus, it is appropriate to include the entire balance of short-term debt as Staff recommends (and as the Commission accepted).

Nicor further argues that the Order's so-called hypothetical capital structure assumes that Nicor Gas finances nearly one-fifth of its more than $1.3 billion in rate base assets, in effect, with a credit card. Nicor Initial Brief on Rehearing at 17. This analogy is simply absurd. The evidence in this proceeding demonstrates that the cost of short-term debt was forecasted to fluctuate between 4.773% and 3.391%. Section 285.4020 Schedule D-2. During the same period the cost of long-term debt fluctuated from 6.70% to 6.80%. Section 285.4010 Schedule D-1. From a customer perspective, due to the relative costs, equity financing is more akin to a credit card than short-term debt. The Company wants to exclude short-term debt because doing so inflates its return, but Nicor nonetheless continues to finance its assets with short-term debt and pockets the benefit of the reduced cost of short-term debt for investors.

Through examining the evidence of Nicor's financing and seasonal cash flow needs, Staff witness Freetly concluded that short-term debt is a permanent source of seasonal funds for Nicor. Staff Ex. 18.0C at 7, LL. 132-133. "Short-term debt is added to the pool of funds available to the Company, which then enables the Company to fund its working capital requirements." *Id.* at 9, LL. 189-191. In stark contrast to Nicor's claims that the capital structure adopted by the Commission is "hypothetical," by excluding short-term debt from its capital structure, Nicor is actually requesting an authorized rate of return that exceeds its true cost of capital. *Id.* at 11, LL. 230-231. Nicor's desire to exclude most, if not all, of short-term debt – specifically an amount that does not appropriately reflect Nicor's use of short-term debt – is not supported by the evidence in this docket and should be rejected by the Commission.

CUB respectfully requests that the Commission uphold its determination on the inclusion of short-term debt in Nicor's capital structure, using the methodology employed by Staff, which is supported by substantial evidence. Nicor's pleas to include only a fraction of its short-term debt should be ignored by the Commission as unsupported by the record.

Respectfully submitted,

CITIZENS UTILITY BOARD

Dated: July 15, 2009

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