STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a Nicor Gas Company Proposed general increase in rates, and revisions to other terms and conditions of service	))))))	 Docket No. 08-0363 On Rehearing

STAFF'S MOTION TO RECONSIDER AND MOTION TO STRIKE

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August 13, 2009

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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NOW COME the Staff witnesses of the Illinois Commerce Commission ("Staff"), by and through their undersigned counsel, pursuant to Section 200.190 of the Illinois Commerce Commission's Rules of Practice (83 Ill. Adm. Code 200.190) and the ruling ("Ruling") of the Administrative Law Judges ("ALJs") of August 10, 2009, respectfully submit their Motion to Reconsider and Motion to Strike.

INTRODUCTION

On April 29, 2008, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or "Company") filed with the Illinois Commerce Commission ("Commission") revised tariff sheets in which it proposed a general increase in gas rates pursuant to Article IX of the Illinois Public Utilities Act ("Act" or "PUA"), 220 ILCS 5/9. On March 25, 2009, the Commission entered an Order ("Order") which decided, among other things, to include the balance of short-term debt in the Company's capital structure for ratemaking purposes. Accordingly, the Commission adopted a short-term debt balance of $255,640,082 in its Order. On April 24, 2009, the Company filed a Petition for Rehearing on this issue of short-term debt, which was granted by the Commission on May 13, 2009. On June 24, 2009, parties filed their Initial Briefs on

Rehearing and subsequently filed their Reply Briefs on Rehearing on July 15, 2009. On July 22, 2009, the Company filed a Motion to Strike ("Motion") asking the Commission to strike portions of Staff's Initial and Reply Briefs on Rehearing. On July 29, 2009, Staff filed its Response ("Response") to the Company's Motion. In its Ruling issued on August 10, 2009, the ALJs granted the Company's Motion with regard to Staff's correlation analyses and graphs and denied the Company's Motion with regard to Staff's last in first out ("LIFO") accounting treatment discussion.

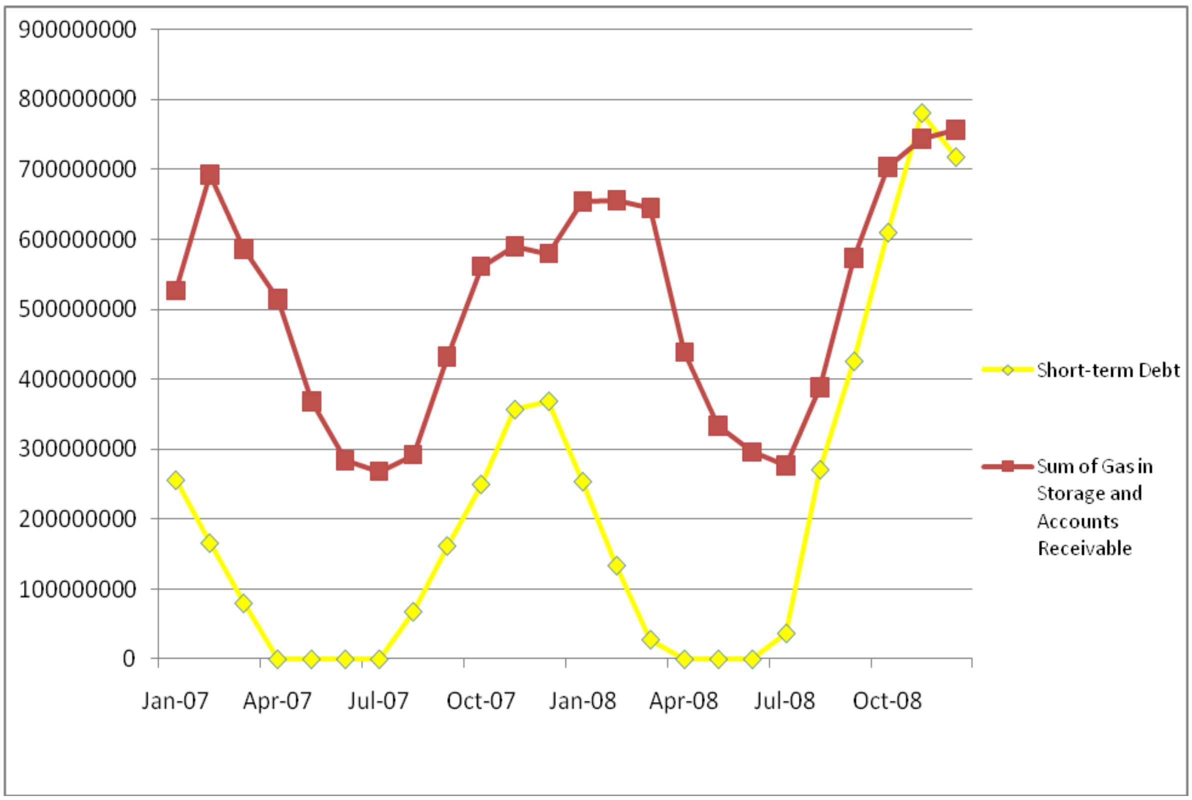
The Ruling with respect to the graphs appears to be based upon a misunderstanding of the graphs. Staff files this motion to clarify what the graphs are and to demonstrate that they are direct representations of facts in the record. While there is room for disagreement about whether it is proper to include Staff's correlation analysis in briefs, the charts which are entirely and directly based upon record evidence are properly included in Staff's Reply Brief on Rehearing.

To the extent that references to correlation coefficients and the use of graphs has been disallowed in Staff's briefs on Rehearing, Staff moves that references to correlation coefficients and the use of graphs should also be stricken from Nicor Gas' briefs.

MOTION TO RECONSIDER

Nicor Gas' pleadings and the Ruling do not differentiate between Staff's calculation and use of correlation coefficients and the graphs presented in Appendix B to Staff's Reply Brief on Rehearing. The graphs map the monthly balances and corresponding data that were stipulated to in the record. The graphs are independent of the correlation coefficient. The graphs depict data, provided by the Company and stipulated into evidence. Below each graph is a list of the sources relied upon. All of the sources are within the evidentiary record in this matter. The graphs are entirely and directly based upon record evidence. The graphs simply display the amounts, provided by Nicor Gas for Other Current Liabilities (Rehearing Ex. 5), Gas in Storage (Rehearing Ex. 2), Accounts Receivable (Staff Group Cross Ex. 1 JF 4.04), Accounts Payable and Accrued Liabilities (Rehearing Ex. 5), and etc.

As an example of this unmanipulated evidence, as previously discussed in Staff's Response, Graph 7 (see below) contained in Appendix B of Staff's Reply Brief on Rehearing charts the monthly balances of short-term debt and the sum of gas in storage and accounts receivable.



Sources:	Second Errata to Staff IB on Rehearing, p. 2.					
	Short-term Debt - Rehearing Ex. 7					
	Gas in storage - Rehearing Ex. 2; Accounts Receivable - Staff Group Cross Ex. 1 - JF 4.04					

On this graph, the first yellow data point represents the January 2007 short-term debt balance of $256,000.000; this figure comes directly from Rehearing Ex. 7, which was provided by the Company. The first red data point represents the sum ($526,696,467) of the January 2007 gas in storage balance ($14,917,467) and the January 2007 accounts receivable balance ($511,779,000). The gas in storage balance comes directly from Rehearing Ex. 2, and the accounts receivable balance comes directly from Staff Group Cross Ex. 1- JF 4.04, all of which were provided by the Company.

The factual foundation for all of the graphs is contained within the evidentiary record. The information was provided by the Company, itself. No party or Staff has questioned the accuracy of the data. There can be no need for the Company to cross-examine Staff about information it, itself, provided.

Unlike the calculation of a correlation coefficient, simple addition is the only computation involved for any of the numbers. As another example, in Graph 1, one of the lines, Current Liabilities, comes directly from Rehearing Exhibit 5; the second line is the sum of Gas in Storage from Rehearing Exhibit 2 plus Accounts Receivable from Staff Group Cross Exhibit 1- JF 4.04. An average layperson could perform that addition and plot the numbers on a graph. All of the graphs attached to Staff's Reply Brief on Rehearing simply present the data from the record evidence in a format that illustrates a pattern.

Staff respectfully requests that the ALJs reconsider and disallow Nicor Gas' Motion as it relates to the graphs attached to Staff's Reply Brief on Rehearing as Appendix B.

MOTION TO STRIKE

The correlation analysis used by the Company in its Reply Brief on Rehearing should be stricken.[1] Based upon the Ruling that the calculation of a correlation coefficient could not be performed by an average layperson, Staff objects to Nicor Gas' calculation, reliance on, and interpretation of a correlation coefficient in the absence of evidentiary support. Staff has attached hereto a red-lined version of the Company's Reply Brief on Rehearing.

First, the Company presents its own correlation analysis in its Reply Brief on Rehearing. (See Co. RB on Rehearing, pp. 3 and 14) Nicor Gas goes even further and provides in its brief, unsupported by testimony, its own interpretation of what constitutes a "meaningful" correlation. (*Id*., p. 3) The record does not contain any testimony on a "meaningful" correlation. While objecting and arguing that Staff has presented a correlation coefficient analysis based on evidence outside the record, the Company has done the same thing by averring, "Generally, a correlation of less than 0.80 is not considered meaningful." (Co. RB on Rehearing, p. 3) This conclusion is not based on any document or testimony in the record and is not subject to cross-examination. As such, this statement should be stricken.

The Company goes even further by claiming, "On the other hand, if one were to use Staff's own correlation analysis—but included actual seasonal non-rate base storage gas—the result is a highly correlated 0.91, supporting the conclusion that short-term debt is financing non-rate base assets." (*Id*.) No citations are provided because

[1] Staff notes that Exhibits 2 and 3 of the Company's Motion to Strike are not offered as evidence and should not be relied upon.

the monthly balances of “non-rate base storage gas” are not in the record. This 0.91 correlation coefficient is also unsupported by the record and should also be stricken.

Figure 1 in the Company’s Reply Brief on Rehearing should also be stricken. The graph in Figure 1 has no basis in testimony and is comprised of data not supported by the record. In the event the ALJs do not reconsider and reverse their ruling as to the Graphs in Appendix B of Staff’s Reply Brief on Rehearing, Figure 1 additionally suffers from the same defects as attributed to the graphs.

CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the ALJs’ Ruling striking portions of Staff’s Reply Brief on Rehearing be reconsidered and reversed and that the Commission grant Staff’s Motion to Strike, striking portions of pages 3, 5, 14, of Nicor Gas’ Reply Brief on Rehearing.

August 13, 2009

Respectfully submitted,

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	Docket No. 08-0363
Proposed general increase in rates, and	)	
revisions to other terms and conditions	)	
of service	)	

REPLY BRIEF ON REHEARING
OF NICOR GAS COMPANY

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REPLY BRIEF ON REHEARING
OF NICOR GAS COMPANY

Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or the "Company"), by its attorneys, submits its Reply Brief on Rehearing pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (the "Commission"), 83 Ill. Admin. Code § 200.800, and other applicable law, and in accordance with the schedule established by the Administrative Law Judges on June 1, 2009.

I.
Introduction

There is a key difference between Nicor Gas' and Staff's rehearing briefs. Nicor Gas actually addresses the issue presented.[1] In its rehearing brief, the Company provides a review of Commission precedent on the short-term debt issue. Nicor Gas Reh'g Br. at 6-13. It examines the relevant evidence in this proceeding. *Id*. at 4-17. And Nicor Gas offers the Commission a reasonable estimate of an amount of short-term debt to impute into the capital structure on rehearing. *Id*. at 17-18. That estimate, $62.6 million, is the amount of the Company's cash

[1] *See* Notice of Commission Action (May 13, 2009), granting Nicor Gas' Petition for Rehearing to consider "whether the entire amount of short-term debt should be included in [the Company's] capital structure for ratemaking purposes." *See also* Identification of Issue on Rehearing (June 4, 2009), framing the issue as follows: "Whether an amount of short-term debt, other than the entire average balance of short-term debt (and greater than $0), should be included in Nicor Gas' test year capital structure?"

working capital ("CWC) asset, which was included in rate base for the first time in this proceeding. CWC indisputably is the ***only*** basis upon which to distinguish this case from Nicor Gas' last four rate cases, in which the Commission consistently excluded short-term debt entirely from the Company's capital structure.[2]

Staff takes a different path. On rehearing, Staff continues to press the same hypothetical capital structure that Staff proposed in the earlier phase of this case. Staff Init. Reh'g Br. at 2-6. As articulated by Staff at oral argument, if the Commission determines to impute any short-term debt into Nicor Gas' capital structure, then it must include all the Company's short-term debt "***by default.***" *See* Tr., Mar. 17, 2009 at 20:16-18 (emphasis provided). Staff's all-or-nothing proposal is riddled with error.

- Staff would impute an eye-popping $255 million in short term debt into the Nicor Gas' capital structure, or more than 18% of total capitalization. Both in sheer size and percentage share, the amount of short-term in the Company' capital structure would exceed that for any other major Illinois utility.[3] Staff's proposal is not only wildly excessive in relation to other utilities but also in relation to Nicor Gas' own history. The Company continues to use short term debt the same way today as it has in the past, and the Commission has ruled four times over three decades that Nicor Gas' capital structure does not contain any short term debt.

- There is no legal support for Staff's argument that short-term debt is "treated the same" as long-term sources of financing in the determination of a utility's capital structure. Staff Init. Reh'g Br. at 3. On the contrary, the Commission has recognized that short-term debt is "a difficult issue on which to rule," *Central Illinois Light Co.*, Docket No. 01-0637 *et al.* (consol)., Order at 68 (Mar. 28, 2002) ("2001 CILCO Rate Case"), and must be decided "depending on the

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[2] *Nicor Gas Co.*, Docket No. 04-0779, Order at 72 (Sep. 20, 2005) ("2004 Rate Case"); *Nicor Gas Co.,* Docket No. 95-0219, Order at 37 (Apr. 3, 1996) ("1995 Rate Case"); *Nicor Gas Co.*, Docket No. 87-0032, Order at 26 (Jan. 20, 1988) ("1987 Rate Case"); *Nicor Gas Co.*, Docket No. 81-0609, Order at 14 (Jul. 1, 1982) ("1981 Rate Case"). For the Commission's convenience, Nicor Gas uses the same defined references and terms in this Reply Brief on Rehearing, as employed in its Initial Brief, Reply Brief, Brief on Exceptions, Petition for Rehearing, and Brief on Rehearing.

[3] *See*, *e.g*., *Ameren Illinois Utilities*, Docket No. 07-0585 *et al.* (consol.), Order at 165, 218-19 (Sep. 28, 2008); *Commonwealth Edison Co*., Docket No. 07-0566, Order at 77, 99 (Sep. 10, 2008); *North Shore Gas Co. & The Peoples Gas Light & Coke Co.*, Docket Nos. 07-0241/07-0242 (consol.), Order at 73, 100 (Feb. 5, 2008) ("2007 Peoples Rate Case").

specifics of the record in each case." 2004 Rate Case, Order at 69. The key criterion is "the *purpose* of the short-term debt." *Id*. at 71 (original emphasis). Unsurprisingly, Staff's rehearing brief does not contain a single reference to any prior Commission decision.

- Staff now acknowledges that the Commission would be justified in "reducing the balance of short-term debt included in the capital structure" based upon "a demonstration that short-term debt is financing assets that are not included in the utility's rate base." Staff Init. Reh'g Br. at 3. But Staff fails to acknowledge or even address its direct admission at oral argument that Nicor Gas does indeed use short-term debt for this very purpose. Tr., Mar. 17, 2009, 39:2-6. In fact, the undisputed evidence demonstrates that Nicor Gas continues to uses short-term to fund the seasonal cash requirements of its gas operations, just as it has in the past, and that these requirements on any given day include hundreds of millions of dollars in non-rate base items.

- ~~Staff attempts to support its short-term debt proposal on rehearing with yet another version of its ever-changing correlation analysis. Staff presented its correlation analysis in two different forms earlier in this case, filed two errata on the version submitted on rehearing, and the Commission rejected still another iteration in the 2004 Rate Case. The version of the correlation analysis presented on rehearing is flawed for several reasons. In particular, it improperly mixes up forecast with actual data to create a meaningless hodge-podge. When actual data is used for all parts of the calculation, Staff's claimed correlation goes from 0.71 down to 0.55. Moreover, contrary to Staff's unsupported claim, a 0.71 correlation is not "strong." Anything less than a 0.80 correlation generally is **_not_** considered meaningful. Thus, methodological flaws aside, Staff's correlation claim is just wrong.~~

The capital structure Nicor Gas originally proposed in this proceeding had its roots in the evidence and precedent. It appropriately included Nicor Gas' test-year balances for common equity, preferred stock and long-term debt. No one disputes that these sources of long-term financing should be considered in the determination of the Company's cost of capital. And it excluded short-term debt. The Commission historically has declined to include short-term debt in the capital structure absent a "clear" showing that it is a "permanent financing component of a utility's rate base." 1987 Rate Case, Order at 26.

The Company's proposed capital structure also was consistent with Nicor Gas' actual use of short-term debt now and in the past. Nicor Gas uses short-term debt "to finance the temporary, seasonal cash requirements of the Company, and ***not*** to finance its rate base assets." Ruschau Reb., Nicor Gas Ex. 24.0, 8:181-82 (emphasis provided). As a matter of prudent financial management, the Company continues to match long-term financing and long-term investments. *Id*. at 20:433-36. The Commission was not wrong four-times over in the 1981, 1987, 1995 and 2004 Rate Cases to exclude short-term debt from Nicor Gas' capital structure.[4] And there is no evidence that Nicor Gas somehow has transformed its prudent financial management practices such that short-term debt suddenly has become a source of rate base financing.

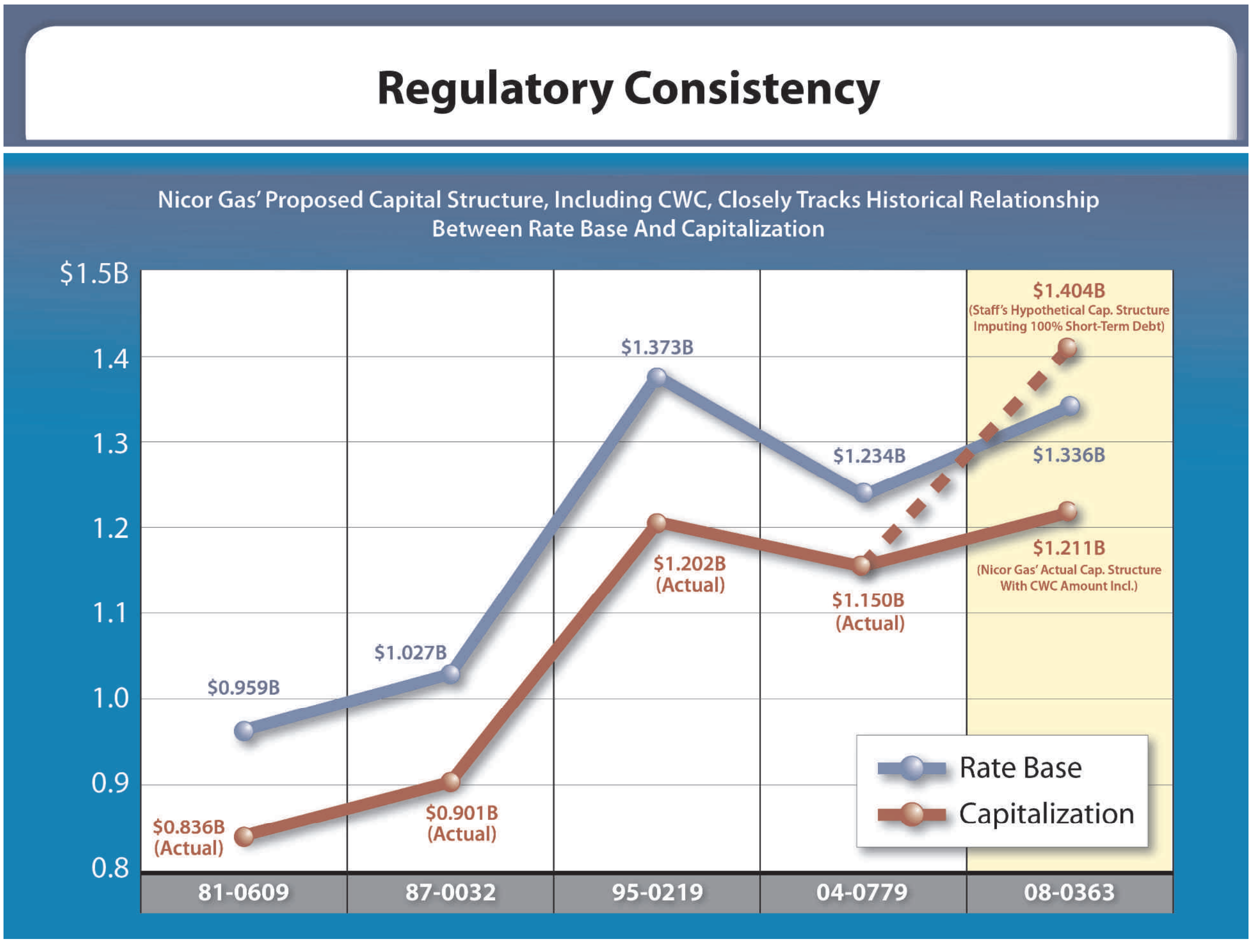
Nicor Gas respectfully believes that the determination to impute short-term debt into its capital structure in this proceeding was contrary to the facts and the law. It also singles out Nicor Gas for unequal treatment. Based on Staff's recommendation, the Commission excluded short-term debt from the capital structure in the 2007 Peoples Rate Case, even though the utilities involved indisputably make use of short-term debt to fund the cash requirements of their gas operations in the same manner as Nicor Gas.[5] In particular, the determination to require Nicor Gas to "clearly and unequivocally" support its proposed capital structure is error. Order at 49. Nicor Gas must support its rates by no more than a preponderance of the evidence. In Nicor Gas' view, the evidence reasonably does not support the conclusion that short-term debt is funding CWC. But, if the ***only difference*** is CWC, then the logical and consistent result is to

[4] In this respect, Staff's proposal is a giant step backward for regulatory consistency. "All parties should agree that Commission action brings certainty to a situation and settles expectations. This is another way of saying that unless there are clear and distinguishable reasons for deciding a case differently, the Commission will follow in line with precedent." 2007 Peoples Rate Case, Order at 16.

[5] *See also Commonwealth Edison Co.*, Docket No. 05-0597, Order at 115, 125, 130 (Jul. 26, 2006) ("Staff and [ComEd] agree that short-term debt should not be included in the capital structure").

limit the amount of short-term debt imputed into the Company's capital structure to the amount of the CWC asset, or $62.6 million.

~~Figure 1~~



Finally, the Citizens Utility Board ("CUB") and the Illinois Attorney General's Office (the "AG") each filed rehearing briefs. Neither party submitted analysis on the short-term debt issue during the earlier phase of this proceeding. On the contrary, CUB and the AG in direct testimony agreed with Nicor Gas' proposed capital structure, which excluded short-term debt entirely. They later flip-flopped, and adopted Staff's proposed capital structure, although they could not articulate a reason why, other than to reduce Nicor Gas' approved cost of capital. As CUB counsel acknowledged at oral argument: "You know, I don't have anything to add to the debate, other than to say that CUB supports the arguments made by [Staff]." Tr., Mar. 17, 2009, 48:7-9. The AG waived oral argument on the short-term debt issue. Their rehearing briefs add nothing to the debate on rehearing.

II.
<u>Staff's Legal Argument</u>

Staff's legal argument on rehearing consists of two equally flawed parts. First, Staff incorrectly asserts that "short-term debt is treated the same as long-term debt, preferred stock and common equity" in the determination of a utility's capital structure, even though the Commission consistently has recognized that short-term debt should be treated differently from these sources of long-term financing. Staff Init. Reh'g Br. at 3. Second, Staff concludes that the Commission must impute Nicor Gas' entire test year short-term debt balance into the capital structure with the Company's actual sources of long-term financing—in defiance of the evidence. *Id*. at 3-4. Nicor Gas addresses both of Staff's arguments below.[6]

A. The Commission Does Not Treat Short-Term Debt "The Same" As Sources Of Long-Term Financing

Because cash is fungible, Staff argues that the Commission treats short-term debt "the ***same*** as long-term debt, preferred stock and common equity" in its determination of the capital

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[6] Staff also argues that Nicor Gas has "mislabeled" Staff's proposed capital structure as "hypothetical and imputed." Staff Init. Reh'g Br. at 2. Staff's proposed capital structure is indisputably hypothetical. Staff cannot trace sources and use of funds, anymore than the Commission can. Similarly, Staff argues that "the balance of short-term debt included in Staff's proposed capital structure and approved in the Order is the Company's test year average outstanding balance of short-term debt, but the Company wants to *impute* some other balance into its capital structure." Staff Init. Reh'g Br. at 2 (original emphasis). This is a classic strawman argument. There has never been any dispute as to the amount of short-term debt reflected in the Company's rate case filing. The issue always has been whether the Commission should break with long-standing precedent and impute ***any*** short-term debt into Nicor Gas' actual capital structure and, if so, in what amount?

structure. Staff Init. Reh'g Br. at 3 (emphasis provided). According to Staff, if the Commission determines to impute any short-term debt into a utility's capital structure, it must presume that short-term debt is financing rate base "in the ***exact same proportion*** of capital that short-term debt composes." *Id*. (emphasis provided). Staff provides no legal support for this unreasonable position in its rehearing brief, and there is none.

The Commission treats short-term debt differently from other sources of financing because short-term debt is different.[7] "The Commission in the past has treated short-term debt in various ways, depending on the ***specifics*** of the record in each case." 2004 Rate Case, Order at 69 (emphasis provided). The Commission expressly has rejected Staff's theory, offered again on rehearing in this case, that short-term debt is ***presumed*** to be included in the capital structure. *Id*. at 70-71. Rather, the key criterion in the Commission's analysis is "the ***purpose*** of the short-term debt." *Id*. at 71 (original emphasis). Accordingly, consideration can and should be given to how alternative sources of financing actually are used by a utility, even if they cannot always be traced with mathematical precision.

Critically, the Commission has recognized that the short-term debt determination is not an all-or-nothing proposition. In the 2001 CILCO Rate Case, Staff pursued the same theory as in this proceeding, *i.e*., that the entirety of that utility's short-term debt was financing rate base assets. The Commission found Staff's assumption unsupportable, "***given the nature of short-term debt and the other purposes for which it is typically used***." 2001 CILCO Rate Case,

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[7] Short-term debt is a loan for which the scheduled repayment and the anticipated use for the money is expected to be 12 months or less, *e.g*., working capital lines of credit and short-term maturity commercial loans. *See* 2004 Rate Case, Order at 69.

Order at 68-69 (emphasis provided). The Commission recognized that while "CILCO does appear to be using short-term debt to finance long-term assets or other assets included in rate base," it simply could not be true that "all of the Company's short-term debt is being used in that manner." *Id*. at 69. So, the Commission instead adopted a "reasonable estimate" of the amount of short-term debt to include in CILCO's capital structure, which was less than one-half the average test year balance. *Id*.

Undoubtedly, the Commission's prior decisions on short-term debt are a mixed bag. Nicor Gas Reh'g Br. at 6-13. As the Commission reminded Staff at oral argument, there are "quite a few cases on both sides." Tr., Mar. 17, 2009, 47:4-9. In its rehearing brief, Nicor Gas provided a detailed review of Commission precedent on the short-term debt issue, including cases where the Commission excluded and included short-term debt. Nicor Gas Reh'g Br. at 6-13. The Commission consistently has excluded short-term debt entirely from Nicor Gas' capital structure in the past, based upon Nicor Gas' demonstrated use of short-term debt to fund the seasonal non-rate base requirements of its gas operations, which the evidence in this proceeding shows has not changed. What the Commission has never done is impute 100% of a utility's short-term debt into a utility's capital structure by default, as Staff urges here, especially where the evidence shows that the utility's uses short-term debt entirely or predominately for non-rate base purposes.

Taking Staff's all-or-nothing theory on the short-term debt issue to its logical extreme demonstrates why this inflexible approach to ratemaking cannot be correct. Staff admits that short-term debt cannot be traced to any particular rate-base asset due to the fungible nature of cash, yet it argues that the inability to trace funds means that short-term debt must be included in the capital structure *pro rata* with sources of long-term financing. Staff Init. Reh'g Br. at 3.

Under this unreasonable standard, every utility in Illinois would have short-term debt imputed into in its capital structure, since all utilities use short-term debt. But that is not supported in the Commission's decisions. In a close example, the Commission, based on Staff's recommendation, excluded short-term debt from the capital structure in the 2007 Peoples Rate Case, even though the utilities involved indisputably make use of short-term debt in a similar manner to Nicor Gas. 2007 Peoples Rate Case, Order at 73, 100.

The 2007 Peoples Rate Case is a particularly apt example, because a CWC component also was included in rate base for the first time in that proceeding. However, the question of imputing short-term debt into the capital structure never even arose and Staff never argued, as it does in this case, that the inclusion of a CWC asset in rate base somehow justifies imputing 100% of a utility's short-term debt into the capital structure.

Take another example: Assume for purposes of argument that Nicor Gas has an outstanding short-term debt balance of $600 million for only one day at the end of one month during its rate case test year and a zero short-term debt balance every other day of that year. Under Staff's hypothetical approach, the Commission would be required to add $50 million in short-term debt to the Company's capital structure—at whatever the going rate for short-term debt might be—regardless of the volatile nature of short-term debt and the possible confiscatory effect on Nicor Gas' overall rate or return. This result is unreasonable and cannot be correct. *See* 1987 Rate Case, Order at 26 ("The cost of short-term debt is volatile and should only be included in capital structure when it is clear that it is a permanent financing component of a utility's rate base.").

The Commission's essential function, on short-term debt or any other issue, is to determine rates that are just and reasonable for all stakeholders. 220 ILCS 5/9-201(c); *Bus. & Prof'l People for the Pub. Interest v. Ill. Commerce Comm'n*, 146 Ill. 2d 175, 208, 585 N.E.2d 1032, 1045 (1991). In this role, like the fact-finder in a jury case, the Commission "is not required to park [its] common sense at the courtroom door." *See People v. Greene*, 27 Ill. App. 3d 1080, 1089, 328 N.E.2d 176, 183 (1st Dist. 1975). Staff is urging the Commission to do just that.

B. Staff's All-Or-Nothing Theory Conflicts Sharply With The Evidence

Staff asserts that the Commission must impute the Company's entire test year balance of short-term debt into the capital structure, because Nicor Gas purportedly "did not provide any analysis or data" to show that short-term debt is used to fund non-rate base assets. Staff Init. Reh'g Br. at 3. This argument misstates the record in this proceeding. The evidence shows that Nicor Gas indisputably uses short-term debt to fund the temporary and seasonal cash requirements of its gas operations, including hundreds of millions of dollars in non-rate base uses. Staff counsel admitted at oral argument that Nicor Gas uses short-term debt for purposes other than rate base investments. Tr., Mar. 17, 2009, 39:2-6.

That evidence sufficiently supports a limitation on the amount of short-term debt imputed into Nicor Gas' capital structure. It shows that Nicor Gas' proposed capital structure was identical to the actual capital structures approved in the Company's 1981, 1987, 1995 and 2004 Rate Cases. Ruschau Reb., Nicor Gas Ex. 24.0, 7:157-64. The Company's use of short-term debt has not changed in any respect since the 1981, 1987, 1995 and 2004 Rate Cases. *Id.* at 8:181-9:189. And Nicor Gas typically has no short-term debt outstanding for several months each year, including for three months during the 2009 test year. *Id.* at 9:200-11:227. Staff does not explain how a source of capital, that is not outstanding, is able to fund permanent rate base assets that require a source of funds. The evidence also shows definitively that Nicor Gas must be using short-term debt to fund non-rate base items during the 2009 test year. The Company's test year average cost of gas storage inventory is $432.8 million. The gas in storage ("GIS") component of rate base is $95.6 million. The gaping $337.2 million difference is financed entirely outside of rate base, with funding sources that include short-term debt. Ruschau Sur., Nicor Gas Ex. 43.0, 8:176-85.

As Nicor Gas witness Ruschau testified:

> The vast majority of the seasonal increase related to gas in storage is not reflected in the rate base storage asset, which is based on the Company's original cost of net injections using a last-in-first-out ("LIFO") accounting method. For example, for the 2009 test year, the gas in storage component of rate base is valued at $95.6 million, or $2.25/MMBtu. This amount, as represented by the 13-month average, is a permanent investment of the Company and is supported by long-term capital. In contrast, the estimated 13-month average of gas in storage for the 2009 test year based on estimated actual gas costs is $432.8 million, or $8.64 per MMBtu. ***The difference of $337.2 million is accounted for and financed outside of rate base, and the Company earns no return on this temporary seasonal investment in storage inventory***.

Id. (emphasis provided).

In its rehearing brief, Staff excludes any discussion of the evidence actually in the record relating to Nicor Gas' use of short-term debt. Instead, Staff limits its argument to the newest iteration of its ever-changing correlation analysis. Nicor Gas responds to that argument, which has no relevance to the issue presented on rehearing, below.

Like the Commission, Nicor Gas is "cognizant of current economic conditions confronting ratepayers," but that shared concern does not warrant adoption of a capital structure that includes the entire test year average balance of Nicor Gas' short-term debt. Staff argues that Nicor Gas' inclusion of the CWC asset in rate base for the first time in this proceeding distinguishes this case from precedent. Tr., Mar. 17, 2009, 25:9-12; Staff Reply Br. at 18. Nicor Gas disagrees with Staff on this point. But even accepting, for purposes of argument, that Nicor Gas uses short-term debt to fund its CWC requirements, the maximum amount of short-term debt the Commission should impute into the Company's capital structure, based on the evidence, is the CWC amount, or $62.6 million.

Figure 2: Nicor Gas' Rehearing Proposal

Actual Capital Structures	**Equity**	**Pref.**	**LT Debt**	**ST Debt**
Docket No. 81-0609	55.59%	2.06%	42.35%	00.00%
Docket No. 87-0032	59.18%	1.62%	39.20%	00.0%
Docket No. 95-0219	58.08%	0.88%	41.04%	00.0%
Docket No. 04-0779	56.37%	0.12%	43.51%	00.0%
Order (Prior to Reh'g)	46.42%	0.10%	35.27%	18.21%
Nicor Gas' Reh'g Proposal	**53.82%**	**0.11%**	**40.89%**	**5.17%**

IV.
<u>Staff's Correlation Analysis</u>

Staff devotes most of its rehearing brief to a new presentation of its ever-changing and erroneous correlation analysis. Staff Init. Reh'g Br. at 3-6. Staff offered the same analysis in various guises during the earlier phase of the case. Staff argues that its correlation analysis shows that the Company's use of short-term debt correlates "very highly" with certain seasonal rate base components. *Id*. at 4. But the Order did not rely on Staff's correlation analysis in reaching its short-term debt conclusion. And Staff's retooled presentation on rehearing does not offer any useful information for determining what amount of short-term debt should be included in Nicor Gas' capital structure. It is just more of the same from Staff in pursuit of its all-or-nothing approach to the short-term debt issue.

First and foremost, the Commission never has bought into Staff's correlation analysis in its determination on short-term debt. The Order does not rely upon it. *See* Order at 48-49. Instead, the Order focused on the inclusion of CWC in rate base in determining to include short-term debt for the first-time in Nicor Gas' capital structure in this proceeding. *Id*. The Commission did not buy it in the 2004 Rate Case, either. There, Staff sought to convince the Commission that changes to Nicor Gas' short-term debt balance correlated with changes in its rate base GIS asset. But, as Nicor Gas showed, the Commission previously had determined that the avoided carrying costs on the GIS asset should be based on the Company's ***long-term*** cost of capital. *See* 2004 Rate Case Order at 59-60 (discussing *In re Citizens Util. Bd.,* Docket Nos. 00-0620 *et al.* (consol.), Order on Reh'g at 14-18 (Jan. 3, 2002)). Staff's inconsistency was striking: Staff had argued in that proceeding that GIS is ***not*** financed with short-term debt. *Id.*

For its correlation analysis in this case, Staff initially compared monthly changes in Nicor Gas' outstanding test year short-term debt balances with changes in the Company's balance sheet working capital accounts. But the CWC component of rate base is not derived from the balance sheet working capital accounts used by Staff.[8] In briefing, Staff substituted the test year sum of GIS and customer accounts receivable. *See* Staff Init. Br. at 37-38. But that created new

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[8] CWC is derived from a lead-lag study, which is the method endorsed and accepted by the Commission. *See* Adams Dir., Nicor Gas Ex. 8.0, 3:59-4:70.

problems. First, Staff's updated correlation analysis was not supported in testimony.[9] Second, GIS is not funded with short-term debt. And, third, accounts receivable is not a reliable proxy for CWC. Accounts receivable is just one of many inputs into the lead-lag study the Company used to determine the CWC asset. *See* Nicor Gas Reply Br. at 39-41.

~~On rehearing, Staff modified its correlation analysis again, this time to address the 2007-2008 time period. But Staff's revised correlation analysis fares no better than earlier efforts. It is substantively wrong. On rehearing, Staff improperly compares actual short-term debt from 2007 and 2008 and a combination of actual~~ ***~~and~~*** ~~forecast GIS and accounts receivable data from 2007 and 2008 – even though actual data for GIS and accounts receivable from 2008 is available in the record. When the error is corrected and actual 2008 data is substituted for the forecast data used by Staff, the correlation drops from 0.71 to a meaningless 0.55. On the other hand, if one were to use Staff's own correlation analysis – but included actual seasonal~~ ***~~non-rate base~~*** ~~storage gas – the result is a highly correlated 0.91, supporting the conclusion that short-term debt is financing~~ ***~~non-rate base~~*** ~~assets.~~

~~Staff's correlation analysis on rehearing also is procedurally improper. Staff's argues that the 0.71 correlation produced by its newest presentation of the argument demonstrates a "strong relationship" between GIS and accounts receivable, implying that these uses are funded by short-term debt. But Staff's claim is not supported by testimony and has not been subject to cross-examination. Generally, a correlation of less than 0.80 is not considered meaningful.~~[10]

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[9] Nicor Gas renews its objection to Staff's use of non-record evidence in the modified correlation analysis contained in Staff's Initial Brief. *See* Nicor Gas Reply Br. at 41.

~~[10]~~ ~~*See*, *e.g.*, Final Rpt. of the Advisory Committee on Improvements to Financial Reporting to the U.S. SEC, at G-3 (August 1, 2008); AICPA Audit Guide: Auditing Derivative Instruments, Hedging Activities, and Investments in Securities, at 1-2 (May 1, 2008).~~

Finally, Staff argues that the oversize amount of short-term debt it proposes to impute into Nicor Gas' capital structure in this proceeding should not be a concern based upon an inexplicable calculation presented for the first-time on rehearing. Staff Init. Reh'g Br. at 5-6. At the close of its rehearing brief, Staff arbitrarily totals the revenue lag component of CWC and the Company's GIS asset. Staff then argues that since the total (more than $461 million) exceeds the average of the Company's short-term debt "no reduction in the balance of short-term debt included in the Order is justified." *Id*. at 6. The Commission should not credit this argument, which uses random and unrelated data and attempts to establish relationships and draw conclusions that have not been supported by testimony and make no logical sense.

V.
<u>CUB And The AG</u>

CUB and the AG submitted no analysis on the short-term debt issue during the earlier phase of this proceeding, and their rehearing briefs provide no new information. Each party merely asks the Commission to adopt Staff's position. CUB and the AG have not been entirely silent on the short-term debt issue, however. These parties had four months to analyze all aspects of the Company's request for rate relief before pre-filing direct testimony in this proceeding. Their witness, Mr. Effron, adopted the Company's proposed capital structure entirely in his direct testimony. Effron Dir., AG/CUB Ex. 1.1. On rebuttal, AG/CUB adopted Staff's proposed capital structure, including short-term debt, without any independent analysis, as a means to reduce their proposed revenue requirement. Effron Reb., AG/CUB Ex. 4.1C. The Order did not rely on CUB's and the AG's positions in its short-term debt conclusion, and these parties' results-oriented approach on rehearing deserves no credit.

VI.
Conclusion

For each of the reasons set forth in this Reply Brief on Rehearing, and as supported in Nicor Gas' Brief on Rehearing and the record evidence, Nicor Gas respectfully requests that the Commission enter an Order on Rehearing that reasonably limits the amount of short-term debt imputed into the Company's capital structure to be no more than the amount of cash working capital included in rate base.

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Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
D/B/A NICOR GAS COMPANY

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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I caused a copy of the Reply Brief on Rehearing of Nicor Gas Company to be served upon the service list in Docket No. 08-0363 by email on July 15, 2009.

/s/ John E. Rooney
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