BEFORE THE
ILLINOIS COMMERCE COMMISSION

North Shore Gas Company and	)	
The Peoples Gas Light	)	
And Coke Company	)	Docket No. 09-0166
	)	Docket No. 09-0167
Proposed General Increase	)	
In Rates for Gas Service	)	

INITIAL BRIEF OF
THE RETAIL GAS SUPPLIERS

COMPRISED OF

DOMINION RETAIL, INC.
INTERSTATE GAS SUPPLY OF ILLINOIS, INC.
NICOR ADVANCED ENERGY, L.L.C.

September 29, 2009

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INTRODUCTION

Dominion Retail, Inc., Interstate Gas Supply of Illinois, Inc., and Nicor Advanced Energy, L.L.C., collectively the "Retail Gas Suppliers" or "RGS"[1] are all participants in the "Choices for You" (CFY") program of Peoples Light Gas and Coke Co. and North Shore Gas Co. ("PGLC/NSG" or "the Companies"). The CFY program extends the benefits of competition to small commercial and residential customers by allowing CFY Suppliers such as the members of RGS to provide alternative gas service to this group of customers that was bypassed by the traditional transportation gas services.

RGS offers a simple way to think of the RGS issues: the terms and conditions of CFY services should be such that there is no built-in disadvantage to customers who choose to purchase the commodity of natural gas from CFY suppliers rather than from the utility. That is, the rules should foster a level playing field between CFY suppliers and PGSC/NSG when they compete for small commercial and residential customers. A level playing field will serve to benefit all customers; the absence of a level playing field will result in cross-subsidies and false price signals.

These concepts of fair treatment and equal access are basic requirements for fostering and developing a vibrant competitive market that benefits Illinois customers, consistent with the Public Utilities Act ("Act") and the policies of the Illinois Commerce Commission ("Commission"). It is beyond dispute that Illinois law and the Commission's policy for over a decade have encouraged the development of competitive energy markets to benefit Illinois consumers, including commercial and residential

[1] Each of the members of RGS intervened individually in the instant proceeding. The opinions herein do not necessarily represent the positions of any particular member of RGS.

customers. Numerous Commission decisions – including the Commission's Final Order in the last PGLC/NSG rate case – and Commission reports – including the Commission's most recent Annual Report on the Development of Natural Gas Markets in Illinois – explicitly demonstrate the Commission's adherence to pro-competitive policies and the Commission's advocacy in favor of the expansion of competitive markets to protect and enhance consumer interests.[2] These policies are supported by uncontradicted testimony of RGS witness Mr. Crist.[3] Indeed, even the Companies' witnesses professed to support the basic building blocks of a competitive market, such as avoiding cross-subsidization..[4]

To operationalize these policies, the charges to be paid by CFY customers and suppliers and the terms of crucial items such as delivery tolerance and access to and control of commodity assets should not favor one type of customer over the other. Additionally, given the fact that CFY customers have relatively low usage and revenues,

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[2] The Commission has "consistently advocate[d] the position that competitive forces, where viable, best protect consumers' interests." (Annual Report on the Development of Natural Gas Markets in Illinois, July 2007, at 5, available at http://www.icc.illinois.gov/reports/Results.aspx?t=4.) Accordingly, the Commission has determined that "Small volume transportation programs for small commercial and residential customers are an important component of the Illinois retail natural gas markets." (*Id.* at 6.) Thus, the Commission has opposed actions that would have an "incrementally adverse impact on supply competition" as "inconsistent with our policy of expanding customer choice." (Feb. 5, 2008 Order at 304, *North Shore Gas Company/The Peoples Gas Light and Coke Company, Proposed General Increase in Natural Gas Rates*, ICC Docket No. 07-0241/0242c.)

[3] *See, e.g.,* RGS Ex. 1.0 at32:728-30 ("The changes I am advocating will advance competition both in the near term and in the long run – to the benefit of Illinois consumers.").

[4] For example, Companies' witness Ms. Grace recognized this fact directly and without equivocation:

> Q. Would you agree that Choices For You customers should not be cross subsidizing customers who take traditional utility service?
>
> A. I agree.

(Tr. at 224:7-10.)

it is important that administration of the program be customer-friendly and efficient in order to reduce the costs of transferring customers' service from one company to another.

Unfortunately, at present, in the PGLC/NSG territories, the terms and conditions are anticompetitive, policies of the Companies frustrate customer choice, and the administrative costs associated with the CFY program are artificially inflated. As shown by Mr. Crist:

- Despite the fact that CFY customers pay essentially the same fee for storage and upstream firm transportation assets that is paid by sales customers of PGLS/NSG, the CFY suppliers have less access to and control over those assets than PGLS/NSG. This means that CFY customers are being treated inequitably – specifically, they are unfairly being treated differently than sales customers.
- Despite the fact that all small commercial and residential customers are eligible to take service under the CFY program, only CFY customers pay certain administrative costs of the company. Again, this means that CFY customers unfairly are being treated differently.
- Finally, despite the fact that PGLS/NSG should not care whether customers switch to CFY suppliers or remain with the companies for their gas supply (as was recognized by several witnesses), numerous policies of PGLS/NSG relating to their Single Billing Option ("SBO"), signup and customer transfer, create unnecessary costs that ultimately discourage customers from choosing CFY. Again, this amounts to unfair, different treatment for CFY customers.

As a result of these program deficiencies, only three percent (3%) of eligible customers are taking service under the CFY program. For a program that has been in place for several years, this is a dismal figure and it compares quite disfavorably to the level of switching under other choice programs such as the Nicor choice program. During the course of the instant proceeding, RGS has presented substantial record evidence that each of the items identified in this brief have contributed to this poor result, denying small commercial and residential customers the benefits of competition, and inhibiting the development of the type of robust competitive market envisioned by the Act and Commission policy. Unfortunately, on many of the details, the Companies failed to even engage in the discussion of the issue. The Commission should not reward such gamesmanship.

In the instant proceeding, RGS sponsored the testimony of James L. Crist, who made several recommendations designed to improve the CFY program in a manner that conforms with the Commission's pro-competitive policy. Mr. Crist has been in private consulting practice and in the employ of natural gas utilities for the past 32 years, primarily focusing on competitive issues. He has experience in several states fostering the transition to competitive retail markets. He is familiar with the natural gas industry and market in Illinois, having testified before this Commission in the most recent Nicor Gas base rate proceedings (ICC Docket Nos. 04-0779 and 08-0363), in the WPS/Peoples Energy merger case (ICC Docket No. 06-0540) and last rate case of PGLC/NSG (ICC Dockets Nos. 07-0241 and 07-0242). Notably, Mr. Crist's recommendations in the last Nicor Gas rate case (ICC Docket No. 08-0363) were incorporated into a Memorandum of Understanding ("MOU") between Nicor and the alternative gas suppliers that was presented to the Commission without objection from any party and with active support from the Commission's Staff. The Commission unanimously endorsed implementation of the pro-competitive measures outlined in the MOU, which were incorporated into the relevant Nicor tariffs and customer choice program policies and remain in place today.

RGS thus recommends several changes to the Companies' CFY program that address many anticompetitive provisions in the current design of CFY. These changes would give CFY suppliers the fair opportunity to compete in the Illinois market for the benefit of small commercial and residential customers, would minimize customer confusion, and would enhance customer experience with the program.

Although the Companies oppose virtually all the recommendations made by RGS, it is important to recognize that the recommendations are neither a radical departure from practices in other utility territories in Illinois nor from past Commission decisions. On the contrary, the RGS position in the instant proceeding largely mirrors the position taken in the last Nicor rate case that was agreed to by the utility, supported by Staff and adopted by the Commission. As a result, these proposed changes are already in place today and operating well in the Nicor service territory or are standard business practices in other deregulated markets where competition is thriving.[5]

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[5] While the Companies may argue otherwise, their own witnesses volunteered that reviewing the methodology's used by other Illinois utilities, including natural gas utilities, is an appropriate approach to determining the approach that the Companies themselves should undertake to issues involved in the instant proceeding. (*See, e.g.,* Ms. Hoffman Malueg, Tr. at 43:11-18.)
Q. And what in that order made you think that it was just a suggestion and not a requirement?
A. It wasn't just the final order in and of itself, **I looked at what other companies were doing, in the State of Illinois, other gas utilities** and it didn't seem like other gas utilities in Illinois were being required to classify Account 904 in such a manner.
Tr. at 125:14-19:

XIII. TRANSPORTATION ISSUES

D. Small Volume Transportation Program (Choices for You[SM] or "CFY")

1. Allocation of and Access to Company-owned Assets

The basic position of RGS is simple and fair: because the Companies' charges to CFY customers for assets are essentially the same as the charges the Companies assign to their own customers, CFY customers should receive a similar allocation of, and have similar access to, those assets. The simplest way to assure this is to allow the upstream and on-system assets to follow the customer through capacity release programs, wherein a prorata share of each asset is released on a recallable basis to the customer's CFY supplier equal to what the customer so that the sum of the assets released equals the total that for which the customer is paying (as will be discussed later, 93% of a peak day from a variety of on-system and upstream assets). Alternatively, additional flexibility can be provided to the CFY supplier with respect to the deliveries, similar to what occurs in the Nicor program, to provide CFY customers something comparable to asset release and assignment.

Through either option, customer would have more equitable access to assets for which they pay. It is clear that under the Companies' existing tariffs that neither is the case under the current program. Although asset assignment on a recallable basis would be a more direct way of achieving equity, for purposes of this brief, the will focus be on revisions to the Companies' program that are more consistent with the Nicor program,

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Q. Mr. Schott, do you think that it is appropriate for the Commission – is it your recommendation that the Commission look to the **water companies' approach** with regards to Rider ICR?
A. Yes.
(Emphasis added.)

since it was recently approved in the Nicor rate case proceeding and appears to be working well.

The Companies use a combination of on-system and up-stream assets to meet the design or peak day needs of its system. These assets include on-system storage (Manlove Field), storage purchased from pipelines, and firm transportation purchased from pipelines. Collectively, these will be referred to in this brief as “assets.”

The way in which the Companies allocate their assets clearly disadvantages customers who choose to purchase the commodity of natural gas from CFY suppliers rather than from the utility. When a customer elects to purchase its commodity from a CFY supplier, the Companies do not reduce the upstream and on-system assets it holds; rather, they continue to hold those assets and continue to charge the CFY customers for those assets. However, in this process, the Companies do not release the assets to the CFY customer or the CFY customer’s supplier, and do not provide the customer with usage rights that are at all equivalent to the charges that the CFY customer continues to incure for these upstream and on-system assets.

This is one of the primary ways in which the Companies have created an uneven playing field between CFY suppliers and PGSC/NSG when they compete for small commercial and residential customers. Unfortunately, the Companies have been unwilling to even examine the way in which its program prevents more customers from receiving the benefits of competition. As a result, RGS respectfully requests that the Commission order the Companies to revise their CFY programs.

Accordingly, RGS proposes that in order to provide non-discriminatory service, the Companies should:

a. Allow CFY Suppliers to have daily injection and withdrawal rights that are commensurate with the rights and flexibility provided by the assets allocated to CFY customers through various charges.

b. Allow CFY Suppliers to have monthly targets for injections and withdrawals that are commensurate with the Companies' operations;

c. Allow CFY Suppliers to manage daily deliveries to a target provided by the Companies with +/- daily tolerance and impose appropriate penalties for CFY Suppliers not hitting delivery target range. The daily target should be the Company's best estimate of the customer usage for that particular supplier on that given day.

d. Reduce punitive month end tolerance penalties that are not cost-based.

(*See* Mr. Crist, RGS Ex. 1.0 at 7:146-8:162.)

To be clear, the most straightforward way for a CFY customer to be ensured that it is getting the appropriate level of assets consistent with the assets for which it is being charged, both upstream and on system, is to have the asset follow the customer on a per therm basis. This would ensure that all customers pay for what they get and get what they pay for with respect to the assets. Having said this, RGS is sensitive to the Companies' concerns regarding releasing assets, and has created the approach above as a reasonable method of reducing the impact of inequitable access to assets.

a. Equal access to upstream and storage assets is critical to fostering a competitive market that benefits customers

The proper allocation of assets is central to the ability of CFY customers to receive the benefits of the assets for which the CFY customers are paying. With respect to the upstream assets, if CFY customers are not provided access, then their supplier has to go out onto the market and contract for replacement assets to be able to serve the customers throughout the season, and on a peak day. This creates redundant assets on the system, and for the CFY customer requires them to pay for assets significantly in excess of 100% of a peak day.

Mr. Crist testified that the benefits associated with the use of natural gas storage facilities can be separated into three general categories. (*See* RGS Ex. 1.0 at 9:189-99.) First, storage provides a seasonal hedge by allowing suppliers to inject gas into storage during the injection season (roughly April through October), when spot prices are typically low, and withdraw gas from storage during the withdrawal season (roughly November through March), when spot prices are typically high. Second, storage facilities allow suppliers to hedge daily price volatility in natural gas markets and meet day-to-day fluctuations in demand. Third, storage can reduce the need for more expensive pipeline capacity during periods of peak demand. Mr. Dobson, the Companies' principal witness on customer assets issues, agreed with Mr. Crist's characterization of these benefits. (*See* Tr. at 345:13-346:21.)

Each of these benefits associated with storage and upstream assets, if properly fostered through pro-competitive rules, allows CFY Suppliers to provide more competitive services to consumers. (*See* Mr. Crist, RGS Ex. 1.0 at 9:199-201.) Again, Mr. Dobson, the Companies' witness who is in charge of their gas supply agreed that this characterization -- “Storage does provide benefits, yes. . . .I know the utilities do try to gain those benefits through their portfolio.” (Tr. 347:3, 8-9.) Of course, limiting CFY supplers’ access to the storage assets limits the benefits available to CFY customers.

Mr. Crist explained that there are two types of storage assets relied upon by the Companies, the costs of which are recovered from all customers: on-system storage facilities and off-system leased storage services. (*See* RGS Ex. 1.0 at 9:202-10:216.) On-system storage (at Manlove Field) is owned by the Companies and directly connected to the Companies’ distribution system. The costs of on-system storage are recovered equally from all residential and commercial customers through base rate delivery charges. Off-system storage is connected to the interstate pipelines that serve the Companies’ distribution system. Off-system storage is leased by the Companies through contracts with third-parties. The Companies may also have contracts with interstate pipelines for firm transportation. The costs of off-system storage and firm transportation are recovered from residential and commercial customers whether they are on sales service, via the Non-Commodity Gas Charge (“NCG Charge”), or on CFY, via the Aggregation Balancing Gas Charge (“ABG Charge”). Both of these charges provide for the pass-through of interstate pipeline transportation costs as well as leased storage costs. (*See id*.) In other words, through a combination of base delivery charges and the ABG Charge, the Companies charge CFY customers the *same amount* for assets (on-system storage, upstream storage and upstream firm capacity) as they charge their own sales customers. There are also upstream capacity assets that help to round out the Companies’ asset supply picture as it relates to a peak day, which also need to be considered in solving the inequity picture.

If the upstream assets and storage assets are not going to be directly assigned to the CFY supplier, which again is the most direct solution to the inequity issue, then either a more robust use of storage needs to be put in place (which is the primary focus of this brief), or the CFY ABG Charge needs to be significantly adjusted downward to take into consideration the absence of access to those assets.

b. The Companies improperly limit CFY customers' allocation of and access to the assets that CFY customers pay for

If CFY customers pay the same amount for assets as sales customers, CFY customers should receive the same allocation of, and access to, those assets as the sales customers. Again, this is a non-controversial notion that the Companies' witnesses did not contest. The evidence shows, however, that access to the storage is more limited for CFY customers, and the rights to storage are not allocated equally. CFY customers have a lesser allocation of the daily and monthly injection and withdrawal rights compared to the sales customers. As a result of the misallocation, PGLC uses Company-owned assets to satisfy 93% of its sales customers' peak day demand, while CFY suppliers only can satisfy 71% of their customers' peak day demands with Company-owned assets.

The most important impediment to CFY customers taking advantage of on-system and upstream storage and upstream firm transportation are the Companies' injection and withdrawal restrictions. Compared to the flexibility given to PGLC/NSG, CFY Suppliers have limited options in varying the amount of gas withdrawn from and injected into storage. Under the Companies' rules, the amount of storage capacity withdrawn from and injected into storage on a daily and monthly basis by each CFY supplier is a fixed number that is administratively determined by the Companies with a limited consideration of actual weather. (*See* Mr. Crist, RGS Ex. 1.0 at 11:242-12:259.) Under those rules, monthly storage capacity levels vary by month and storage withdrawals vary somewhat with heating degree days based on the output of an administratively determined algorithm. With little injection or withdrawal flexibility, CFY suppliers have limited ability to hedge daily price volatility, provide seasonal hedging, and meet day-to-day fluctuations in demand – that is, they have limited ability to take advantage of the benefits that even Mr. Dobson agreed are conferred by access to storage assets. Instead, the CFY suppliers must supplement the need for additional pipeline capacity during periods of peak demand. This lack of flexibility and need for additional pipeline capacity artificially inflates the cost of gas provided by CFY suppliers and creates an uneven playing field for CFY suppliers seeking to compete with the Companies' regulated sales service. (*See id.* at 11:242-15:325.)

This Commission already has acknowledged that excessive restrictions on injection and withdrawal of storage for the CFY program should be removed. In ICC Docket 01-0470, the Commission rejected the Companies' proposal to impose excessive storage withdrawal requirements on the predecessor to CFY, Rider SVT, stating:

> The Commission finds the Company's proposal problematic because it requires that suppliers withdraw or inject the same amount of gas on each day of a given month and, therefore, deprives SVT Suppliers of the ability to hedge daily price volatility, meet day-to-day demand fluctuations and supplement needs for additional pipeline capacity during peak demand periods through storage use.

(Docket 01-0740 (March 5, 2002) Order at 100-101, quoted at RGS Ex. 1.0 at 14:305-12.) The Commission then directed the parties to conduct workshops in order to provide CFY suppliers with greater flexibility over the use of allocated storage capacity. At the conclusion of the workshops, Peoples filed the tariffs that are the basis for the existing CFY program. After several years of operating under these rules, however, it has become clear that CFY customers are being deprived of the access to storage and flexibility that they should be provided.

Mr. Crist provided an example of how excessive restrictions create an imbalanced playing field between CFY suppliers and the Companies. (*See* RGS. Ex. 1.0 at 15:338-16:355.) When low price gas is available in the spot market, CFY Suppliers may be unable to purchase that gas to meet its customers' daily needs because the storage injection and withdrawal schedule imposed by the Companies may require that storage assets be withdrawn on that day. The Companies, however, can react to such market changes and, within the confines of the geological withdrawal limitations of their storage assets, modify their withdrawals for their own customers to allow themselves to purchase inexpensive spot market gas. (*See id.*) As noted above, Mr. Dobson agreed that utilities use their storage portfolios to obtain such daily benefits of storage, as well as seasonal and peak day benefits from storage. (Tr. 347:3, 8-9.)

Mr. Crist testified that most utilities that host successful Choice programs allow access to storage and flexibility similar to that being proposed by RGS. These would include, in addition to Nicor in Illinois, East Ohio Gas and Columbia of Ohio, Atlanta Gas Light (which has all of its residential customers participating in Choice), Dominion Peoples, Niagara Mohawk, and National Fuel. (RGS Ex. 1.0 at17:379-87.)[6]

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[6] The Companies did not cross-examine or otherwise challenge Mr. Crist's testimony on this point. Indeed, it is quite clear that the Companies have made no effort to examine the successful choice programs existing in Illinois (*e.g.*, Nicor) or in other states. For example, both Companies' witness Ms. Grace and Mr. Dobson seemed to scoff at the idea of investigating the Nicor program (*See* Tr. at 222:20-223:17; 386:19-389:5.) The

c. The Companies failed to even evaluate the RGS proposal to have the CFY program mirror Nicor's customer choice program

In order to ensure a set of rules and regulations for access to storage gas that are workable and fair to both the utilities' sales customers and to CFY customers, Mr. Crist proposed that the Companies adopt the plan being used by Nicor Gas. Those rules were negotiated by the parties in Nicor's last rate case, ICC Docket No. 08-0363, endorsed by Staff, and approved by the Commission in its final order in that docket. Mr. Crist attached a copy of Nicor Rider 16, which sets out the conditions for Nicor's "Customer Select" program, which is its version of the Companies' CFY program. The key elements of those rules are as follows:

1. seasonal storage capacity that reflects the cost allocation of both on-system and off-system storage assets;

2. daily withdrawal and injection capability that reflects the combined flexibility of both on-system and off-system storage assets;

3. daily delivery flexibility expressed by the current +/- 10%;

4. monthly storage withdrawal and injection targets that must be met under threat of penalty; and

5. a month-end tolerance of +/- 5% that is enforced by a reasonable penalty.

(RGS Ex. 1.0 at 18:394-403.)

One would think that the response of the Companies' to the RGS proposal would be to review the Nicor program and determine which aspects of that program could be

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oddness of that position is highlighted by the fact that other witnesses for the Companies openly admitted that they looked to practices of other Illinois utilities (even utilities providing water rather than natural gas service) as a guide for appropriate PGLC/NSG practice. (*See, e.g.,* Ms. Hoffman-Malueg, Tr. at 43:11-18; 125:14-19.)

used to improve their own. At the very least, one would expect the Companies to review the Nicor program in order explain to the Commission why they disagree with some or all of its elements. The Companies did no such thing. The Companies demonstrated a shocking lack of interest in even considering changes to the CFY program and simply said "No." In fact, Mr. Dobson, the witness designated to respond to Mr. Crist's recommendation, did not even bother to read Nicor's tariff or the Commission order approving that tariff. (*See* Tr. at 388:3-4.)

Instead of legitimately addressing RGS's recommendation that the CFY program adopt the storage usage elements of the Nicor program, the Companies employed a strategy of obfuscation and intentional ignorance. In his rebuttal testimony, rather than analyzing the components of the Nicor program, Mr. Dobson argued that the Companies are different from Nicor because Nicor has several storage fields and Peoples Gas only has one and North Shore none. (*See* Mr. Dobson, NS-PGL Ex. RD 1.0, p. 27.) He never explained, however, the relevance of the number of storage fields owned by a gas utility to the allocation of storage among sales and CFY customers nor did he present any data on the size of the storage field capacity which would be necessary to support the point he failed to make.

Then, in his Surrebuttal Testimony, Mr. Dobson completely abandoned any pretense of trying to address the specific rules and regulations in the Nicor Customer Select program or differentiating the Companies from Nicor and instead, simply pretended that Mr. Crist did not make a specific proposal:

> While Mr. Crist says he proposes an alternative, he does not even provide an outline, let alone a proposal with sufficient details, on how to accomplish it. All this alternative seeks is more – but more of what is not clear.

(Mr. Dobson, NS-PGL Ex. RD 2.0 at 15.)

Of course, Mr. Crist did present a specific proposal, but Mr. Dobson kept himself deliberately ignorant of Mr. Crist's proposal by failing to read the Nicor tariff attached to Mr. Crist's direct testimony or, as he admitted in his Rebuttal Testimony, familiarizing himself with the Nicor Customer Select program.[7]

The Companies' cavalier attitude was also evidence in their response to Mr. Crist's calculations of the amount of assets available to CFY customers and sales customers. In his rebuttal testimony, Mr. Crist testified the Companies control delivery assets designed to provide 103% of a peak day in deliverability for their sales customers yet only provide enough assets to CFY customers to provide 71% of their peak day needs. This disparity exists even though both groups of customers are paying the same amount to the Companies for the use of those assets. (*See* Mr. Crist, RGS Ex. 2.0 Rev at 7:141-8:182.) The source of the calculations was provided as an exhibit to Mr. Crist's testimony, RGS Ex. 2.1. A graphical representation of the calculations was provided as RGS Ex. 2.2Rev. The workpaper supporting those calculations was provided to the Companies the day after the filing of that rebuttal testimony, as provided for in the case scheduling order.

The Companies apparently decided that rather than examine this significant comparison of assets provided to sales and CFY customers, they would simply provide

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[7] Q. Do you know how Nicor's gas supply personnel manage and support service under Nicor's Rider 16, which Mr. Crist included with his testimony?
A. No.
Q. Do you know how Nicor coordinates service under its Rider 16 with its other transportation programs?
A. No.
(Nicor Ex. 1.0 (Mr. Dobson), p. 27.)

broad criticism with no analysis. First, the Companies conducted no discovery of Mr. Crist's calculations. (*See* Mr. Dobson, Tr. at 362:15-21.) Next, Mr. Dobson decided that it was not even worth his time to look at Mr. Crist's workpaper that had been provided to the Companies. (*See* Tr. at 353:14-17.)[8] Then, after his complete lack of examination of Mr. Crist's analysis, Mr. Dobson simply claimed in his Surrebuttal Testimony: "Mr. Crist provides no analysis to support his claim and includes only a graphic representation of what assets he believes are available to sales customers and to CFY customers." (NS-PGL Ex. RD 2.0 at 15.)

Even more disturbingly, during the hearing, it was revealed that Mr. Dobson had created a workpaper supporting his Surrebuttal Testimony that had not been provided to the parties, as required by the case management order in this proceeding. (Tr. at 363:15-365:6.) In his Surrebuttal Testimony, Mr. Dobson criticized Mr. Crist's comparison of assets available to sales and CFY customers by arguing that the amount of gas available to sales customers should be adjusted down by removing needle peaking assets and commodity purchases made at the city-gate. (NS-PGL Ex. RD 2.0 at 15.) His testimony provided no figures showing how that would affect the 103% of peak that Mr. Crist had testified was available to sales customers. During the hearing, referring to a workpaper he had not provided to RGS, he suddenly was able to precisely calculate the effect of his

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[8] When asked by the Administrative Law Judge Moran why he did not review the workpaper, the following astonishing exchange took place:

> JUDGE MORAN: Why did you not get them?
> THE WITNESS: I don't believe I ever asked for them and they were never handed to me. If I had needed them to go through and redo things, I would have asked for them.

(Mr. Dobson, Tr. at 353:13-17.)

adjustment – it would reduce the gas available to sales customers from 103% of peak to 77 % of peak.

d. Even with the Companies' modification, it is clear that <u>storage assets are not made equally available</u>

Because the companies had withheld this workpaper from RGS the Administrative Law Judges decided to allow RGS to review that workpaper and have Mr. Crist address the calculations when he took the stand. Mr. Crist did so and testified that Mr. Dobson was incorrect in large part even in his previously undisclosed analysis. (Mr. Crist, Tr. at 551:5-12; 554:14-555:6.) Having now reviewed Mr. Dobson's workpaper, Mr. Crist agreed that it is appropriate to remove the purchases made at city gate from the amount available to sales customers because those purchases are paid for only by those customers. (Tr. at 553:22-554:12.) However, he cogently testified that it is not appropriate to remove the needle peaking assets from the gas available to sales customers. (Tr. at 552:2-554:6.) Mr. Crist showed that Mr. Dobson was essentially quibbling over the fact that the amount of gas that Mr. Crist had shown was available from Manlove Field included peaking facilities. In other words, Mr. Crist's Exhibit 2.2 Rev, which shows that Manlove Field represents 53.57% of the assets available to sales customers should be broken down into a smaller Manlove Field segment and a new peaking facility segment – that still total 53.57% of peak needs. (*See generally* Tr. at 550-51.)

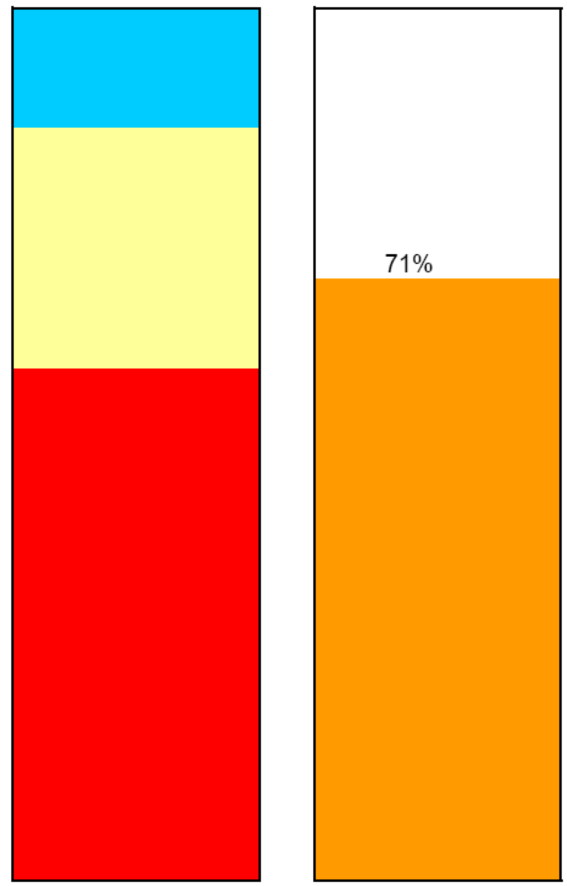
Using the previously undisclosed Dobson workpaper, Mr. Crist was able to calculate that the effect of removing city gate purchases from the gas available to sales customers reduces their supply to approximately 93% of peak. (*See* Tr. at 556:15-18.) Nothing in the Dobson analysis affected the amount of gas assets available to CFY customers – 71% of peak. (*Id.*) Thus, while the discrepancy is not as large as Mr. Crist had calculated in his Rebuttal Testimony – as depicted on RGS Ex. 2.2REV – the point he made stands unrebutted – CFY customers, who pay the same amount as sales customers for on-system storage and upstream assets, receive far less that sales customers – sales customers are provided enough assets to meet 93% of peak while CFY customers are only provided enough to meet 71% of peak. (*Id.*)

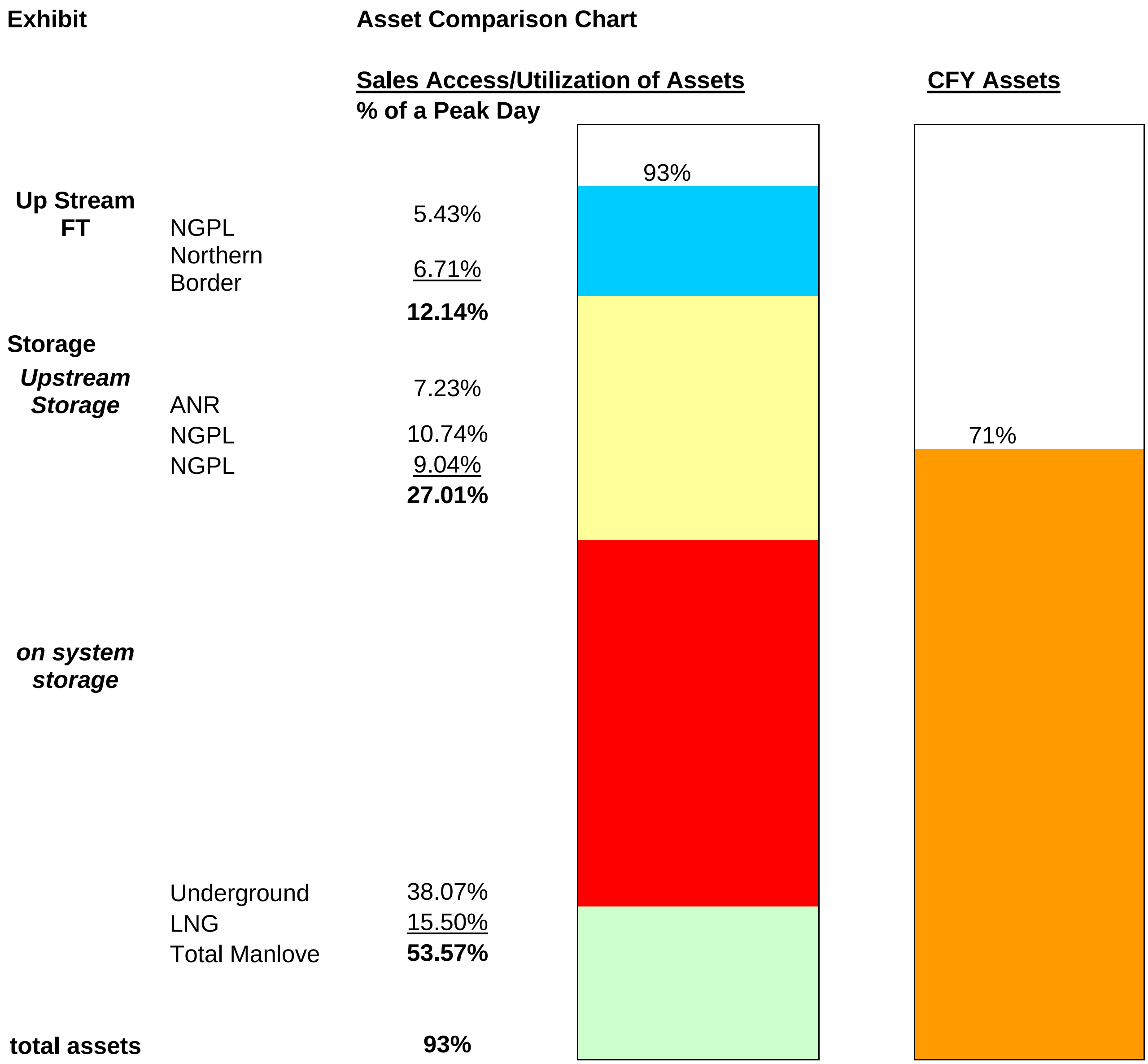
So that the record is clear, RGS includes below RGS Ex. 2.2REV – Mr. Crist's original chart – and a revised version of that chart incorporating the modification advocated by Mr. Dobson and accepted by Mr. Crist to reflect the removal of city gate purchases and division of on-system storage into Manlove Field and peaking units:

RGS Exhibit 2.2 Rev **Asset Comparison Chart**

		Sales Access/Utilization of Assets 103% of a Peak
Up Stream FT	NGPL	5.43%
	Northern Border	6.71%
	City gate delivery	10.29%
		22.43%
Storage		
Upstream Storage	ANR	7.23%
	NGPL	10.74%
	NGPL	9.04%
		27.01%
on system storage	Manlove	53.57%
		53.57%
total assets		**103%**

CFY Assets





These charts demonstrate that *even with* the modification advocated by Mr. Dobson, CFY suppliers face a considerable disadvantage because in order to overcome the deficiency in the allocation of assets, CFY suppliers must contract for, and pay for, additional deliverability assets. That is a cost burden that Peoples Gas has created, to the detriment of CFY suppliers. (*See* Mr. Crist, Tr. at 556:5-11.)

The failure of the Companies to provide Mr. Dobson's workpaper should be of concern to the Commission. This incident highlights yet another disturbing example of the attitude of the Companies toward reasonable suggestions for improvements to the CFY program. Rather than seriously consider RGS's proposals and examine the reasons behind those proposals, the Companies knee jerk response was to simply say no without even attempting to find out, for example, if Mr. Crist had made an accurate comparison of storage available to sales and CFY customers.

Indeed, Mr. Dobson, who was the Companies' witness responsible for addressing the upstream and storage assets issues raised by Mr. Crist, seemed hardly able to contain disdain for any suggestions for improvement of the CFY program. When Mr. Crist recommended that the Companies implement changes to CFY that would be modeled on the Customer Choice program of Nicor, Mr. Dobson did not even bother to read the Nicor tariff attached to Mr. Crist's direct testimony. (Tr. at 388:3-4.) When Mr. Crist showed how CFY customers receive less access to storage than sales customers, even though they pay the exact same amount for that storage, Mr. Dobson did not bother to review Mr. Crist's workpapers. (Tr. at 353:6-17.)

The statement of Mr. Dobson responding to a question about why he had not asked for the workpapers supporting RGS Ex. 2.1 and 2.2 speaks volumes about the Companies' attitude toward changes to the CFY program:

> I generally try to review what people say and see if I can understand what they're trying to say. The exhibit itself was self apparent on where the numbers came from -- with respect to both the column under Sales Access Utilization of Assets and how the bar was created, I did not deem it -- I'd never looked at how the CFY assets column was calculated. I expected it to be explained to me and it was never explained to me in the testimony.

(Tr. at 354:1-9.)

Mr. Dobson admitted that the Companies have not made any significant changes in how they operate the CFY program (NS-PGL Ex. RD-1.0 at 26) and, absent a clear directive from the Commission, they obviously have no intention of even thinking about doing so now.

e. **Conclusion: The Commission should order the Companies to revise their CFY programs to provide a fair allocation of and access to the Company-owned <u>storage assets for which CFY customers pay</u>**

RGS has demonstrated that CFY customers are not receiving the access to and control of onsystem and upstream assets that is available to sales customers. Given that the Companies' rates are set so that CFY customers pay the same as sales customers for those assets, their rights should be the same. The Commission should therefore adopt the proposal of RGS and direct the Companies to revise their program to incorporate the key elements of the Nicor Customer Select program identified by Mr. Crist. Such rules would level the playing field and would also provide some benefit to the Companies by shifting the risk and responsibility of managing asset deliveries and storage operations to CFY Suppliers.

At the very least, the Companies should be directed to increase the asset allocation so that CFY customers receive the same assets as sales customers. As noted above, sales customers currently have access to assets that equal 93% of peak needs, whereas CFY customers only have access to assets that equal 71% of peak needs. The Companies should increase the allocation to CFY customers so that it is equal to the allocation to sales customers.

The least favored solution recommended by RGS is that the Companies reduce the amount paid by CFY customers for assets to reflect the fact that they have less rights and access to assets than sales customers. That reduction is set out in the next section of this brief.

2. Revise the Aggregation Balancing Gas Charge

As noted above, CFY customers pay for on-system storage and upstream assets through a combination of base delivery rates and the Aggregation Balancing Gas Charge ("ABG Charge"). As the Commission is aware, base rates are paid equally by sales and CFY customers; the ABG Charge, however, is paid solely by CFY customers. Thus, if the Commission decides not to modify the rules and regulations for access to storage in the manner proposed above, it should direct the Companies to reduce the AGB Charge to reflect the reduced amount of assets provided to CYF customers in comparison to the assets afforded to sales customers.

Mr. Crist described the rationale for such a reduction:

> Of course, it is only fair that if Choices For You customers are not being given the benefits of upstream and on-system storage assets, those customers should not have to pay the ABGC charge. To make them pay it, without the concomitant benefits, means that those Choice For You customers are simply cross-subsidizing non-Choices For You customers.

(RGS Ex. 1.0 at 19:424-428.)

Again, just to be clear, RGS would much prefer that the Commission direct the Companies to modify their storage and injection rules in a manner consistent with the rules being used by Nicor. Such rules would give CFY providers the opportunity to save their customers money with careful management of their gas supplies. If, however, the Commission allows the Companies to continue to restrict the ability of CFY providers to manage their customers' gas, then the Commission should lower the CFY charges to reflect that lack of flexibility.

3. Allocation of Administrative Costs and Related Charges

Given the fact that CFY customers are, by definition, smaller volume customers, any unjustified "per customer" charges, regardless of how small they may sound, can act as a significant artificial barrier, denying these customers the benefits of competition.

The Companies currently impose upon CFY suppliers an "administrative" charge for each CFY customer. (*See* Mr. Crist, RGS Ex. 1.0 at 19:434-20:442.) This administrative charge, which is included in the Rider AGG Aggregation Charge and the LDC Billing Option charge, is billed to CFY suppliers that elect to continue having the Companies issue a bill for the delivery charges and the CFY suppliers' gas supply charges.

There are two distinct issues relating to the Companies' administrative charges. First, it is inappropriate to impose these administrative charges only upon CFY customers and their suppliers. That is, the administrative costs associated with making customer choice available and operational should be spread among all customers who are eligible for the CFY program by including those costs in the base rates of the Rate 1 and Rate 2 customers. The administrative costs associated with many other programs – including Nicor's choice program and the energy efficiency programs of both the Companies and Nicor – similarly are recovered from all eligible customers. Second, regardless of who is required to pay these charges, the Companies have not even attempted to justify the level of this charge in the instant proceeding.

a. **The Administrative and LDC Billing Option <u>costs should be recovered from all eligible customers</u>**

Administrative costs associated with bringing the benefits of competition to all small commercial and residential customers should be recovered from all small commercial and residential customers. That is, CFY administrative costs should be recovered via the Companies' base rates for those customer classes that are eligible for CFY service (Rate 1 and Rate 2). Such a recovery mechanism would be consistent with cost-causation principles, and would mirror the way in which Nicor recovers its customer choice administrative costs, and the way in which Nicor and the Companies recover the costs associated with administering their energy efficiency programs. This also would have the pro-competitive beneficial effect of removing one more cost hurdle that a customer currently faces when determining whether or not to choose supplier for the commodity of natural gas. So, again, the playing field will be leveled, allowing for accurate and fair price signals so that customers can make informed choices in a competitive market that is equitable to all suppliers.

The Companies' response was provided by Ms. Grace, who testified: "Including such costs in base rates would result in sales customers paying for costs caused by transportation customers." (NS-PGL Ex. VG-2.0 at 64.) In actuality, it is the Companies' position that violates the cost-causation principles that the Commission and the Companies have recognized in similar circumstances.

It is entirely appropriate to spread the costs of the administration of the CFY program to all customers eligible to take service under that program. This principle is aptly demonstrated by the method that the Companies themselves use to recover the cost of their energy efficiency programs. Such costs are spread among *all customers eligible* to take advantage of those programs, regardless of whether they actually take that service. In fact, in their last rate cases, the Companies advocated strongly that the spreading of such administrative costs is entirely appropriate. Their argument was summarized in the Commission's final order in that docket:

> Staff considers the [Energy Efficiency Program] unfair, the Utilities note, because not everyone will necessarily participate. Staff Init. Br. at 203. In the Utilities view, however, this is a rather small argument. Many things work this way, including almost everything paid for by taxes. Taxes pay for roads that many citizens will never drive on, and fire fighters that most people, thankfully, may never call. Does this make taxes ―unfair? Surely Staff would not take the argument quite that far. Given all the positive effects of a well-designed energy efficiency program, the Utilities argue, it should not be considered so unfair as to be not worth undertaking as long as the benefits are equally available to all customers.

(ICC Dockets 07-0241/07-0242/Cons., Feb. 5, 2008 Order at 163-4.) The Commission agreed with the Companies' position: "The Commission rejects Staff�given arguments that the program is necessarily inequitable and inefficient. (*Id*. at 182.)

In the instant proceeding, Company witness Ms. Grace likewise endorsed the principle of spreading costs to all eligible customers. The discussion of this concept arose during a colloquy about how costs for call center functions should be spread among all eligible customers regardless of whether they actually use the call centers:

> Q. But it's appropriate for the Choices For You customers and the sales customers to pay the same charge for the Company offering its Call Center?
> A. And they do.
> Q. I'm sorry, so that's a yes?
> A. Yes, they do.
> Q. And that's appropriate?
> A. Yes.
> Q. And why is it appropriate for that cost to be spread out over all customers?
> A. Because the Call [C]enter services all customers.
> Q. All customers are eligible to call the Call Center?

A. And all suppliers are eligible to call Gas Transportation services and the costs are allocated among suppliers.

Q. **And because all customers are eligible to call the Call Center, it's consistent with the cost causation principles that all customers be charged for the Call Center, right?**

A. **Yes.**

(Ms. Grace, Tr. at 246:4-247:4.) (Emphasis added.) Precisely the same principle should apply to the allocation of the customer choice administrative fee. The Companies admit that all small commercial and residential customers are eligible for the CFY program and that all such eligible customers may benefit from the CFY. (Ms. Grace, Tr. at 228:21-229:11.) Accordingly, there is absolutely no reason to treat the administrative fees associated with the CFY program differently from the costs caused by the Energy Efficiency Program or by call center costs – all of those programs benefit all eligible customers, so all eligible customer should pay for them.

Similarly, Nicor recovers the administrative costs related to both its energy efficiency program and its choice program from all eligible customers. (*See* Mr. Crist, RGS. Ex. 1.0 at 21:481-85.) In its last rate case, Nicor Gas agreed to apply the administrative costs related to Choice programs to all eligible Choice customers, by including those costs in their base rates. With the support of Staff, the Commission entered an Order directing that Nicor's administrative costs associated with customer choice be recovered from all eligible customers. (*See* id.; *see also* Mr. Sackett, Tr. at 1050:20-1053:16.) In keeping with the Companies strategy of remaining ignorant of the Nicor rules and procedures, Ms. Grace confessed ignorance of how Nicor recovers its administrative costs, stating: "I'm not familiar with the Nicor program." (Tr. at 223:1.) When asked if she reviewed Nicor's tariff, she responded: "There was no reason to, no." (Tr. at 223:17.)

The Commission should be concerned with the Companies' willful insularity in both the issue of treatment of administrative costs and the access to storage gas discussed in the first section of this brief. While the Companies need not slavishly follow what Nicor does, there are advantages to examining how fellow utilities manage the same issues faced by the Companies. Commission Staff witness Sackett provided valuable advice in this regard:

> I think that the other programs that are out there, whether it be for gas utilities in the jurisdiction of the Commerce Commission or elsewhere in the country provide good models for different types of programs and different aspects of those programs to be considered and evaluated.

(Tr. at 1046:16-21.) He added that it is particularly appropriate to consider how Nicor approaches its Choice program because "Nicor is the largest gas utility in this state." (Tr. at 1047:2-3.) In Nicor's last rate proceeding, Mr. Sackett recommended approval of the joint proposal of RGS and Nicor, stating: "all eligible customers benefits from the choice to take service under CS [Customer Select], also, this is the Companies' position on the energy efficiency fee." (Tr. at 1052:6-10.)

While there may be certain differences between the Companies and Nicor, there is no significant difference in the matter of the administrative costs the utilities incur to operate their choice programs. There should be no difference in the recovery of those costs – they should be recovered from all customers eligible to participate in the program.

b. The Companies have failed to justify the level of their Administrative and LDC Billing Option Charges

Regardless of the question of from whom the customer choice administrative costs are recovered, the Companies have failed to justify the level of these charges. The nature of the costs being recovered by the Administrative and LDC Billing Option Charges are set out in NS/PGL Ex. VG-1.10. These costs are supposed to be the usual and customary functions involved in rendering a bill would be contract administration, billing, billing exception processing, billing adjustments, supplier support, customer inquiries, PEGASys billing & support, gas scheduling, supplier billing, telecommunication, general office expenses, postage, ongoing application maintenance, and minor information technology system enhancements.

However, that it is unclear which, if any of the charges that the Companies include in the CFY customers' LDC Billing Options Charge are recovering costs that are truly incremental, i.e. would not exist but for the presence of the CFY program. Mr. Crist noted that the Companies should be indifferent to whether a customer is one of its sales customers or a CFY customer. (*See* RGS Ex. 1.0 at 3:56-4:69.) On cross examination, Companies' witness Mr. McKendry candidly acknowledged this point.[9] In either event, the Companies would have to do the same billing tasks to render a monthly bill to the customer. Yet, under the current system, a customer that leaves sales service and

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Q. And Mr. Crist notes that because the Companies—the utility companies are required to pass the cost of gas on to customers through the PGA mechanism with no mark up, that Peoples and North Shore should be indifferent as to whether customers remain n the PGA service or purchase gas from an alternative supplier, correct?

A. I would agree.

(Mr. McKendry, Tr. at 267:20-268:5.)

becomes a CFY customer automatically must pay a new charge above and beyond the base rate that the customer already shares with sales customers.

A review of NS/PGL Ex. VG-1.10 supports Mr. Crist's analysis. The CFY customers appear to pay all of the same costs that the rest of the Rate 1 and Rate 2 small volume customers pay for such services as gas transportation, billing, and call center services, but are then required to pay an incremental amount of $1,317,557. CFY customers are not provided any deductions or offsets for the services related to the Companies' providing commodity services that CFY customers do not use. In fact, the Companies' witness Ms. Grace, who presented NS/PGL Ex. VG-1.10, confirmed that the only adjustments made to base rates are for gas costs and related bad debt of CFY customers. (NS-PGL Ex. VG-2.0 at 64.)

RGS propounded data requests that asked for more detail for the cost components of that $1,317,557 reflected on Exhibit 1.10 The Companies' response to every one of these data requests was the same: "requested information is not maintained in and cannot be retrieved in the requested level of detail." (*See* RGS Ex. 2.3, which contains the Companies' responses to these seven data requests). Based on those inadequate data responses, Mr. Crist concluded: "It seems the Companies have no support for the Administrative charges that are assessed to the CFY program." (RGS Ex. 2.0 Rev at 11:239-41.) Nothing at the evidentiary hearing changed this situation. On the contrary, Ms. Grace candidly admitted the Companies' lack of data to support their position. (*See* Tr. at 234:15-239:9.)

The response of the Companies was to duck its inadequate record keeping and simply state that "Costs supporting Rider AGG administrative charges are provided in 21 lines of detail in Peoples Gas Ex. VG-1.10, and 19 lines of detail in North Shore Ex. VG-1.10. NS-PGL Ex. VG-3.0 p. 36. That response misses the point made by Mr. Crist that the Companies have made no attempt to support the figures reflected in those 20/19 lines of detail.

In any event, as noted above, even if the Companies were able to prove that some of these administrative costs were truly incremental costs that would not exist had the Companies not created the CFY program, and even if there were no offsetting savings from the CFY customers leaving the Companies' sales service, such incremental costs should be shared by all customers eligible to take CFY service.

4. Rider SBO Issues

As a general rule, small commercial and residential customers understandably prefer less paperwork associated with their natural gas service. Many CFY customers also prefer to interact with their CFY supplier rather than PGLC/NSG, in part because the CFY supplier can offer a wider range of products and services, including non-gas commodity products and discounts for multiple purchases. As a result, many CFY customers prefer to receive a single bill from their CFY supplier that combines the CFY commodity charges, charges for other products or services, and the PGLC/NSG distribution charges.

The Companies allow for this type of CFY supplier billing under their "Supplier Bill Option" or "SBO" service. Unfortunately, the Companies' SBO operational rules create unnecessary problems for customers on the Companies' budget plan that have a debit balance, and all types of customers that have credit balances with the Companies.

In each instance, the Companies' rules unnecessarily and inappropriately prevent customers from being able to make choices regarding their billing options.

a. <u>Customers With A Debit Balance</u>

Due to a quirk in the Companies' systems, customers with debit balances under the Companies' budget plans effectively are precluded from taking service under the Supplier Billing Option.

Under the current rules, customers that are more than 60 days in arrears with the Companies are ineligible for the Supplier Billing Option. However, when a customer with a debit balance leaves the budget plan and transfers to a CFY provider, a "true up" amount is owed by the customer to the Companies, but the customer will not receive the Companies' "true up" until the second month after switching. Thus, if the customer wants to receive a single bill from its supplier, the customer will receive an SBO bill for their first month of service from the CFY supplier and in the next billing period the customer would be kicked off of SBO and would receive either a dual bill (from the CFY supplier and utility), or a single bill from the utility. Needless to say, this change in billing causes causes confusion and frustration for the customer who wanted to receive a single bill from its supplier, and causes issues for the CFY suppliers that have built their systems and products to support single billing instead of dual billing.

A straightforward solution to this problem would be to allow customers in arrears to be swerved under the SBO. Mr. Crist pointed out that having customers on SBO that are in arrears with the Companies would not inhibit the Companies' ability to collect what is owed them because the Companies still could follow their normal collections procedures. Additionally, the CFY suppliers would have an incentive to collect all of the

Companies' balance from their customers because payments that CFY suppliers receive from customers are first applied to the Companies' balances and then to the CFY suppliers' balances. (*See* Mr. Crist, RGS Ex. 2.0 Rev at 18:402-08.) Companies witness Mr. McKendry acknowledged this fact on cross-examination. (*See* Tr. at 308:22-309:10.) Thus, under the existing rules, if the CFY suppliers wish to be paid by the customers, the CFY supplier first must collect all balances owed to the Companies.

The Companies objected to Mr. Crist's recommendation. Mr. McKendry first argued that it is the CFY supplier that removes customers from budget billing, not the Companies. (NS-PGL Ex. JM-1.0, p. 15-16.) Of course, its is the customer's choice that the RGS proposal seeks to recognize – not that of the suppliers. The Companies' argument actually makes the point RGS is trying to make here – the Companies' rules prevent CFY suppliers from offering the Supplier Billing Option to customers that have a debit balance, which unnecessarily limits customers' ability to choose their own billing options.

Mr. McKendry also argued that if the Companies cannot bill SBO customers with debit balances, then they cannot use bill inserts to aid in collection of those balances. (NS-PGL Ex. JM-1.0, p. 16.) However, Mr. Crist pointed out that according to the plain language of Rider SBO, Page 3, Section D, paragraph (4), CFY suppliers are <u>required</u> to print "other information provided by the Company" on the customer's bill. The Companies may send up to three bill messages every month and the SFY suppliers print those messages. On cross-examination, Mr. McKendry again acknowledged this fact. (*See* Tr. at 312:20-313:2.)

Finally, Nicor again provides an example of how the concerns of the Companies are groundless. Unlike the Companies, Nicor allows customers in arrears to participate in its choice program and use that company's single bill option.

b. Customers With A Credit Balance

The Companies' rules also cause problems for customers that switch to CFY service with a credit balance that is in the hands of the Company. The Companies' current rules do not provide a mechanism to transfer this credit to the customer's CFY supplier, even in situations where the customer has requested the transfer in writing. This problem occurs most often with customers on budget plans that have built up a credit balance, but even other customers also may have deliberately or inadvertently built up a credit balance.

Instead of complying with the customers' requests to transfer the credit balance to the CFY suppliers, the Companies issue a refund check to those customers who have a credit balance and choose the Supplier Billing Option. This often causes customer confusion, and requiring the customer to deposit the utility's check and then write a personal check to the CFY supplier. This burdensome process requires manual intervention by the customer, the CFY supplier and the utility. Additionally, the customer may be incurring late fees and collections activity by the CFY supplier while waiting for these funds to be issued and cleared.

This rule also places CFY suppliers that offer single billing under Rider SBO at a competitive disadvantage because CFY suppliers that choose to bill on the utility bill do not have this issue. The Companies will automatically allocate any credit balances to CFY suppliers that bill on the utility bill. Thus, this failure to provide CFY suppliers using SBO with a customer's credit balance implicitly favors continued billing on the utility bill.

RGS proposes that customers' who request that credit balances be paid to their CFY supplier be honored. Mr. Crist recommended that the Companies adopt the same process used by Nicor Gas. Under that utility's program, within 5 days of receipt of a billing file from Nicor Gas, the Customer Select supplier can request a transfer of customer credit balances on the utility account for amounts owed to the alternative supplier. The CFY supplier is required to be in possession of fully executed authorization from the customer granting such permission to the CFY supplier. The utility then processes the request systematically, and transfers the credit balance for those customers. The process is automated, and the customers avoid the confusion and inconvenience of receiving a check from the utility and issuing a payment to the CFYsupplier.

The Companies objected to RGS's proposal. First, Mr. McKendry expressed concern that the Companies had no way of knowing if a customer's agency agreement with its CFY supplier contains explicit authorization to transfer credit balances. (NS-PGL Ex. JM-1.0, p. 17). As noted by Mr. Crist, however, the Companies do not ask for and CFY suppliers do not supply the Companies with copies of each and every customer agreement. (*See* RGS Ex. 2.0 Rev at 20:438-46.) Rather, the control over the CFY suppliers' activities is that they must adhere to the Companies' rules for providing Rider SBO service and to the terms it has agreed to with their customers. (*See id.*) He also noted that as a matter of general practice, CFY suppliers will provide the Companies with an affidavit with every request for a credit transfer that states they have an agency agreement with the customer to do so. (*See id.*)

Mr. McKendry also expressed skepticism that it was worth the Companies effort to automate the credit refund process if there were only a few such requests. (NG-PGL Ex. JM-1.0 p. 18.) In response, Mr. Crist stated that he was aware of one CFY supplier with 500 customers that had a credit balance. (RGS Ex. 2.0 Rev at 21:457-63.) On cross-examination, Mr. McKendry admitted that he knew about this issue before submitting his surrebuttal testimony and that he did not take issue with the information provided. (Tr. at 300:20-301:13.)

5. New Customer Issues

The Companies' signup process causes unnecessary delays and confusion with the customer regarding their enrollment into the CFY program. The customers are delayed from beginning service with the Alternative Supplier after they have made their decision because the Companies arbitrarily delay a customer's activation in the program to the first meter reading that occurs after a minimum period of 19 days following the customer's sign up date.

RGS agrees that implementation of Bill 171 will cause some delay because that bill provides customers with the right to rescind the agreement with their Alternative Supplier within 10 business days after receiving notice from the utility of a switch request.. Prior to the enactment of SB 171, the Companies had a process in place where a customer could be activated on the first meter read after an 8-day wait period. In order to be in compliance with Senate Bill 171, the 8-day period needed to be adjusted to delay activation until the 10 business day rescission period had lapsed, in case the customer decided to rescind. But the Companies have gone much further and extended the waiting period to 19 days.

Why did they do this? Apparently, they decided that the waiting period throughout the year should be based on the most extreme example they could find – a customer enrolls the day before a four day holiday – the Wednesday before Thanksgiving. (NS-PGL Ex. JM-1.0 at 19.) A more realistic and legally compliant waiting period would be based on the words in the statute - ten business days from the issuance by the utility of notice to the customer.

6. Customer Switching Issues

The Companies prohibit customers that are new to the service territory of the Companies from immediately receiving service under the CFY program. Instead, they require a customer to take sales service from them for one month before they be activated as a CFY customer. This causes confusion for customers who are establishing service at a new premise because they expect that service to begin when their gas account becomes active. (*See* Mr. Crist, RGS Ex. 1.0 at 29:653-62.) Instead, the customer receives a utility bill when they are expecting to receive a consolidated Alternative Supplier bill the first month. (*See id.*) The customer finally receives the Alternative Supplier single bill only in their second month of service. (*See id.*)

Mr. Crist testified that the Companies should follow their customers' direction and initiate service with the Alternative Supplier immediately upon request, and cease their practice of requiring a customer to take sales service for one month before they can activate in the CFY program. (*See id.*)

Mr. McKendry argued that the Companies should be able to prohibit new customers from participating in the CFY program. His first argument is that new customers may end up having gas turned on at a different time than originally planned and until that time, the Companies will not know when the customer will become active in the supplier's pool. (NS-PGL Ex. JM-1.0 at 21.) Mr. Crist characterized this argument as "akin to saying that it is just company policy." (RGS Ex. 2.0 Rev at 22:484.) At hearing, Mr. McKendry admitted that a customer would never receive a bill until an account went to "active" status. (Tr. at 275:13-19.) Thus, the Companies have implemented an anti-competitive policy to address a problem that does not actually exist.

Mr. McKendry's second argument is: "Activating customers' accounts immediately in supplier's pools is inconsistent with allowing customers a minimum of 10 business days from the Utilities' notice to rescind contracts with their suppliers." (NS-PGL Ex. JM-1.0 at 21.) SB 171's notice requirements and rescission restrictions, however, apply to switches from one supplier to another, not to a new customer.[10] On cross-examination, Mr. McKendry agreed with this point. (Tr. at 281:4-7.) Thus, the Companies are not required to wait 10 business days before placing new customers on the CFY program. They can do so immediately.

7. Administrative Improvements to Supplier Billing System and PEGASys System Improvements

Mr. Crist had several recommendations for administrative improvements to the CFY program. First, the Companies do not state an inventory volume or storage capacity

[10] Sec. 19-115g(6) - Within 2 business days after electronic receipt of a customer switch from the alternative gas supplier and confirmation of eligibility, the gas utility shall provide the customer written notice confirming the switch. The gas utility shall not switch the service until 10 business days after the date on the notice to the customer.

volume on the monthly bill. He testified that such knowledge is important for CFY suppliers so they can know precisely where they stand and are better equipped to properly manage the complex job of supply procurement. He stated that the Companies provide some limited information on the PEGASys, but that system but never really pick up on changes the Alternative Supplier makes to the daily nominations. Therefore it does not provide a complete picture. He therefore recommended that the Companies should provide this important information within PEGASys. He noted that Nicor provides that information as part of its Customer Select program. (RGS Ex. 1.0 at 30:689-31:696.)

Mr. McKendry responded that the Companies already provided that information on PEGASys and perhaps the problem is new suppliers or employees do not know where to look for it. (NS-PGL Ex. JM-1.0 at 21-22.) Mr. Crist responded that the requested data is not available in a useful manner. He testified in is Rebuttal Testimony that there are four components of storage data that Alternative Suppliers require to properly manage their business and where is such data currently available?

(1) the Storage Balance (which is available on PEGASys);

(2) the Storage Adjustment Cumulative (which is updated once a month and available on PEGASys);

(3) the Deposit Balance (which is on the bill); and

(4) the Carry Forward amounts (which also is on the bill). These are the four important storage data items that could be placed on the supplier bill and eliminate the manual hunting of data that suppliers must undertake to understand and manage their storage positions.

(RGS Ex. 2.0 Rev at 23:509-15.)

Rather than argue about whether the problem is that the Companies do not provide data or that CFY suppliers need more training, he suggested that the Companies and CFY suppliers meet and attempt to improve the provision of data by PEGASys. (RGS Ex. 2.0 Rev at 24:522-24.).

Finally, Mr. Crist noted that the Companies do not accurately and properly reflect the MDQ of small customers because they rounded MDQs to the nearest dekatherm. Smaller customers could end up with an MDQ rounded to zero. This was the single recommendation of Mr. Crist that was accepted by the Companies. Mr. McKendry agreed that the Companies will now round to the nearest therm. (NS-PGL Ex. JM-1.0 at 22-23). Mr. Crist and RGS agree with Mr. McKendry's proposal.

CONCLUSION

In order to advance the Commission's consistent policy favoring the expansion of the competitive market to benefit Illinois consumers, the playing field on which the Companies and the CFY suppliers conduct business must be level. This means that there should be no built-in disadvantage to customers who choose to purchase their natural gas from CFY suppliers and no built-in disadvantage to CFY suppliers who offer that service to consumers. Unfair treatment, cross-subsidies, and false price signals will hurt competition and will increase customer confusion. A level playing field will foster fair treatment and equal access to natural gas supply and the assets associated with efficiently managing that natural gas supply – this will benefit customers.

RGS advocates several proposals that will help establish a level playing field. RGS has modeled its proposals on mechanisms that are already in place and working well in the Nicor customer choice program. Those mechanisms were jointly proposed by RGS and Nicor in the last Nicor rate case (ICC Docket No. 08-0363) as part of a Memorandum of Understanding, were analyzed and supported by the Commission's Staff, were not objected to by any party to that proceeding, and were unanimously approved by the Commission. Those mechanisms are now standard operating procedure in the Nicor service territory – a territory in which the customer choice program is clearly more successful that in the PGLC/NSG service territories.

RGS presented substantial record evidence, through the expert testimony of Mr. Crist as well as the cross-examination of several of the Companies' witnesses, a Staff witness and a witness for the Attorney General. The evidence establishes that:

- CFY suppliers have substantially less access to and control over upstream assets and storage than PGLC/NSG, even though CFY customers pay the essentially same fee for those assets and storage as that paid by sales customers. In particular, on a peak day, PGLC uses Company-owned assets to supply 93% of its sales customers' demand, while CFY suppliers can only supply 71% of their customers' demand using Company-owned assets.
- Only CFY customers pay administrative fees, even though all small commercial and residential customers are eligible to take service under the CFY program.
- Numerous policies of PGLS/NSG relating to the SBO, customer sign up, and customer transfer frustrate customer choice and create unnecessary costs and burdens that discourage customers from choosing the CFY program.

The proposals that RGS has made are feasible, fair, and consistent with the standard cost causation principles that the Commission recognizes and that the

Companies purport to support. Given this, it is difficult to understand why the Companies oppose the proposals that RGS has made. Indeed, the Companies have admitted that they should be indifferent to whether customers purchase natural gas from a CFY supplier or from one of the Companies. (Tr. at 267:20-268:8.) Nonetheless, during the evidentiary hearings it was made clear that, for whatever reason, the Companies have decided to ignore the failings of the CFY program, and have resisted embracing the pro-competitive policy that the Commission has advocated for years.

Accordingly, in order to provide small commercial and residential customers in the Companies' service territories with the benefits associated with a properly designed competitive market, it is necessary for the Commission to order the implementation of the proposals that RGS has advocated in the instant proceeding – proposals that for the most part already have been adopted by the Commission and implemented in Nicor's service territory.

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Respectfully submitted,

Dominion Retail, Inc.

Stephen J. Moore

By: Stephen J. Moore

Stephen J. Moore
Thomas H. Rowland
Kevin D. Rhoda

Rowland & Moore LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60610
(312) 803-1000 (voice)
(312) 803-0953 (fax)
steve@telecomreg.com
tom@telecomreg.com
krhoda@telecomreg.com

Interstate Gas Supply of Illinois, Inc.

s/ Christopher J. Townsend

By: Christopher J. Townsend

Christopher J. Townsend
Christopher N. Skey
DLA Piper LLP (US)
203 N. LaSalle St., Ste. 1900
Chicago, IL 60601-1293
(312) 368-4039
christopher.townsend@dlapiper.com
christopher.skey@dlapiper.com

Nicor Advanced Energy LLC

s/ Koby Bailey

By: Koby Bailey, Regulatory Counsel

Prairie Point Energy, L.L.C.
d/b/a Nicor Advanced Energy LLC
2019 Corporate Lane, Ste. 159
Naperville, IL 60563
(630) 718-2744
kbailey@nicor.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Retail Gas Suppliers' Initial Brief has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 29th day of September, 2009, by electronic mail.

/s/_Stephen J. Moore___
Stephen J. Moore
Rowland & Moore LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60654
(312) 803-1000
steve@telecomreg.com

ONE OF THE ATTORNEY FOR RETAIL GAS SUPPLIERS