Exhibit A

1 BEFORE THE
ILLINOIS COMMERCE COMMISSION
2

3)
IN THE MATTER OF:)
4)
ILLINOIS COMMERCE COMMISSION)
5 On Its Own Motion)
vs.)
6 NORTHERN ILLINOIS GAS)
COMPANY) No. 01-0705
7 Reconciliation of revenues) No. 02-0067
collected under gas) No. 02-0725
8 adjustment charges with) (Consolidated)
actual costs prudently)
9 incurred.)
ILLINOIS COMMERCE COMMISSION)
10 On Its Own Motion)
vs.)
11 NORTHERN ILLINOIS GAS)
COMPANY d/b/a NICOR Gas)
12 Company)
Proceeding to review Rider)
13 4, Gas cost pursuant to)
Section 9-244(c) of the)
14 Public Utilities Act.)
)
15 ILLINOIS COMMERCE COMMISSION)
On Its Own Motion)
16 vs.)
NORTHERN ILLINOIS GAS)
17 COMPANY d/b/a Nicor Gas)
Company)
18 Reconciliation of Revenues)
collected under gas)
19 adjustment charges with)
actual costs prudently)
20 incurred.)

21
Chicago, Illinois
22 April 8, 2004

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1 Met pursuant to notice at 10:00 a.m.

2 BEFORE:

3 MS. LESLIE HAYNES and
MR. DOLAN, Administrative Law Judges.
4
APPEARANCES:
5
SONNENSCHEIN, NATH & ROSENTHAL, LLP, by
6 MR. JOHN E. ROONEY and
MR. THOMAS ANDREOLI
7 233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606
8 Appearing for Nicor Gas;

9 MAYER, BROWN, ROWE & MAW, by
MR. HUGH R. McCOMBS,
10 MR. BRADLEY J. ANDREOZZI and
MR. MICHAEL K. FORDE,
11 190 South LaSalle Street
Chicago, Illinois 60603
12 Appearing for Nicor Gas;

13 MR. MARK KAMINSKI and
MS. JANICE DALE
14 100 West Randolph
Chicago, Illinois 60601
15 Appearing for People of the State of
Illinois;
16
MR. MARK PERA,
17 MS. MARIE SPICUZZA,
MS. LEIJUANA DOSS
18 20 North Clark
Chicago, Illinois
19 -and-
MR. ALLAN GOLDENBERG,
20 69 West Washington, Suite 700
Chicago, Illinois 60602
21 Appearing for Cook County State's
Attorney's Office;
22

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1 APPEARANCES: (Continued)

2 MR. RICHARD C. BALOUGH
656 West Randolph Street, 500W
3 Chicago, Illinois
-and-
4 MR. ROBERT KELTER
208 South LaSalle, Suite 1760
5 Chicago Illinois 60604
Appearing for Citizens Utility Board;
6
MR. JOHN REICHART and
7 MS. JAN VON QUALEN,
160 North LaSalle Street
8 Chicago, Illinois
Appearing for Staff of ICC.
9

10 SULLIVAN REPORTING COMPANY, by
Kathleen Maloney, CSR
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1 JUDGE HAYNES: Pursuant to the direction of the
2 Illinois Commerce Commission, we now call Dockets
3 01-0705, 02-0067, 02-0725. These are consolidated
4 dockets. Illinois Commerce Commission on its own
5 motion versus Northern Illinois Gas Company.
6 May I have the appearances for the record
7 please.
8 MR. ROONEY: Your Honor, on behalf of Northern
9 Illinois Gas Company d/b/a Nicor Gas Company, John
10 Rooney and Tom Andreoli of the firm Sonnenschein,
11 Nath & Rosenthal, 233 South Wacker Drive, Suite
12 8000, Chicago, Illinois 60606.
13 MR. McCOMBS: In addition, Hugh McCombs, Brad
14 Andreozzi and Michael Forde for Mayer, Brown, Rowe &
15 Maw, 190 South LaSalle Street, Chicago, Illinois
16 60603.
17 MR. KELTER: On behalf of Citizens Utility Board,
18 Robert Kelter and Richard Balough, 208 South
19 LaSalle, Suite 1760, Chicago 60604.
20 MR. PERA: Cook County State's Attorney's Office,
21 Mark Pera, Marie Spicuzza and Leijuana Doss, 20
22 North Clark, Chicago, Illinois 60602.

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1 MR. REICHART: On behalf of Staff of the Illinois
2 Commerce Commission, John Reichart and Janice
3 Von Qualen, 160 North LaSalle, Chicago, Illinois
4 60601.
5 MR. KAMINSKI: From the Illinois Attorney
6 General's Office, Mark Kaminski and Janice Dale, 100
7 West Randolph Street, Chicago, Illinois 60601 on
8 behalf of the People of State of Illinois.
9 JUDGE HAYNES: Are there any further
10 appearances?
11 Let the record reflect there are none.
12 There are numerous motions before us
13 today, and I believe we were just going to take them
14 one by one, and Judge Dolan and myself don't think
15 that argument is necessary on the motions that have
16 been responded to and replied to and just the
17 motions that haven't been completely argued we will
18 listen to today.
19 And so is there any preliminary matters
20 before we get to the motions?
21 MR. KELTER: One preliminary matter. If I
22 understood you correctly, I believe that you would

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1 find that the motions regarding the exclusion of
2 Mr. Strobel and Mr. Mattson have been fully
3 litigated, but there was something in the response
4 that Nicor filed a couple days ago on those motions
5 that I wanted to respond to.
6 JUDGE DOLAN: Well, when we get to that motion,
7 we'll address it.
8 We plan on addressing all the motions.
9 So hopefully we have them all. There's a few that
10 we may have missed along the way, but I think we do
11 have everything.
12 All right. We are not going to really go
13 in any order. We are just going to try to get
14 through them all. We tried to get through
15 everything we could. We may have missed something
16 along the way, and if we did, we apologize, but,
17 obviously, as you are all aware, there was a lot of
18 documentation that came in recently.
19 First off, the first one I have is the
20 motion to strike portions of Jerome Mierzwa's
21 testimony.
22 MR. PERA: Did you want to hear argument on that,

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1 or you looked at it and are just prepared to rule?
2 I am just confused as to where we are at
3 here.
4 JUDGE DOLAN: I guess, you know, what we did is
5 we kind of went through each objection individually.
6 I don't know if -- it depends how long a
7 day we want to have here today.
8 If you want to give a short --
9 JUDGE HAYNES: Is there some reason that you
10 didn't respond within the time frame?
11 MR. ROONEY: Yeah.
12 MR. ANDREOLI: Yeah.
13 MR. PERA: That's true for all of us.
14 MR. ANDREOLI: We agreed in advance because these
15 were simple objections to testimony that we would --
16 and we didn't respond the other way -- we agreed
17 ahead of time that, in the ordinary course of --
18 similar to a civil case, we would list the
19 objection, make the objection.
20 And that's what these represent, and it's
21 both ways.
22 They've done -- there's a Cook County

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1 motion to strike various of our witnesses' testimony
2 that has the same convention.
3 From our perspective, to the extent your
4 Honors have a question about any one of these
5 particular objections, we'd be happen to answer it,
6 otherwise we have no interest in belaboring the
7 issue.
8 MR. ROONEY: There was a phone call that was had.
9 I think Judge Dolan, yourself, Mr. Pera and
10 Ms. Von Qualen where we said for the motions to
11 strike that what we'd do is list them and provide a
12 brief -- what our objection was, and then to the
13 extent, then we can wait, reserve our argument for
14 those we got here today.
15 So that's how we were operating. For
16 example, I believe for purposes of the Mierzwa,
17 Efron --
18 MR. PERA: Leonard, Fisher. There's a ton of
19 them.
20 MR. ROONEY: Right.
21 JUDGE HAYNES: I was unaware of this agreement.
22 JUDGE DOLAN: I guess Leslie wasn't there that

Exhibit A

1 day.

2 Bringing up the Cook County motion to

3 strike the testimony of their various witnesses,

4 since you brought that up, we noticed that you guys

5 didn't file a response, Nicor did not file a

6 response to that motion.

7 MR. PERA: Pursuant to our agreement.

8 JUDGE DOLAN: Okay. But --

9 MR. ANDREOLI: At least from our perspective,

10 your Honor, with respect to these -- the particular

11 Cook County motion to strike with the four

12 witnesses -- I think there's four in there, Mark,

13 and with respect to the motions to strike the

14 separate ones Nicor filed for Zuraski, Everson,

15 Maple, Mierzwa and Efron, to the extent your Honors

16 are able to rule simply based on the objections

17 stated, terrific.

18 If you have any questions, we can answer

19 them, but we will argue that one by one, if you

20 like, but if your Honors don't want us to do that,

21 we don't have to.

22 MR. PERA: We can give you a general statement.

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1 I mean, but I don't -- we did not anticipate -- we
2 thought this hearing was going to take hours, if we
3 were going to go through the testimony and argue
4 each specific objection.
5 JUDGE HAYNES: As far as Mierzwa goes, you don't
6 want to give a response to each line-by-line
7 objection.
8 MR. BALOUGH: That was not our understanding. We
9 can certainly talk about it generally and have cases
10 on that if you want us to file.
11 My understanding was we weren't supposed
12 to file anything.
13 If you want us to file any statements or
14 case law, we certainly can.
15 MR. PERA: Maybe this is a way to shortcircuit
16 it. If you are inclined to strike any portions of
17 Mierzwa's testimony, we want to respond.
18 JUDGE HAYNES: I guess that would be one way.
19 MR. PERA: And I am sure Nicor does too if you
20 are inclined to go along with our motion to strike
21 Leonard's testimony, I am sure they want to have an
22 opportunity to make a record, and I don't have a

Exhibit A

1 problem with that.

2 But if you are inclined to believe -- and

3 I don't know what you believe -- that the expert

4 witness testimony will go to the weight and then --

5 JUDGE HAYNES: We have gone through and looked at

6 line by line which ones we thought should be

7 stricken and which shouldn't.

8 So if we based on just the objection

9 think it should be stricken we'll give you an

10 opportunity to respond.

11 Acceptable?

12 MR. ANDREOLI: Yeah.

13 JUDGE DOLAN: As indicated, we are going to start

14 off with Mierzwa.

15 The very first objection we are granting

16 that one, that that testimony should be stricken.

17 MS. HAYNES: So that's Exhibit 1.0, Lines 64 to

18 65 and 460 to 481.

19 MR. PERA: Your Honors, our response to that is

20 we think this is legitimate opinion testimony that

21 he has the expertise to offer in regard to how Nicor

22 conducted itself in the implementation of the

Exhibit A

1 program and what he believes the ICC's
2 responsibility is.
3 JUDGE DOLAN: For what it's worth, I don't really
4 feel that it's appropriate testimony per se.
5 I wouldn't give it much weight one way or
6 the other, but I don't think it's necessary
7 testimony.
8 MR. ANDREOLI: Nothing further.
9 MR. PERA: So 460 through 473 your ruling is out
10 as well as 64 and 65?
11 JUDGE DOLAN: 460 through 481.
12 MR. KELTER: 460 through 481?
13 MR. ANDREOLI: It's a list.
14 JUDGE HAYNES: In the amended motion, it's
15 Objection No. 1, and it's Line 64 to 65 and 460 to
16 481.
17 JUDGE DOLAN: Now the second objection, the 492
18 through 497, again, I granted that one to strike
19 that testimony.
20 MR. PERA: Our response would be the same. This
21 is an opinion that he has that, notwithstanding the
22 mountain of documents, the parties did the best they

Exhibit A

1 could to determine where there were difficulties,
2 but he is leaving open the possibility that there
3 are others that are unknown.
4 JUDGE DOLAN: How do you get over the speculation
5 he is speculating there, Mark?
6 MR. PERA: It's difficult.
7 MR. KELTER: I would like to respond to that,
8 though. In the years we've been doing these cases,
9 this is the kind of statement that witnesses have
10 made in every proceeding. So I think we are sort of
11 establishing new territory here for what's
12 acceptable and not acceptable here.
13 JUDGE DOLAN: Again, Rob, how do you get over he
14 is speculating here? There's no assurances that all
15 the documents were given.
16 MR. KELTER: Expert witnesses speculate all the
17 time.
18 JUDGE DOLAN: And most of the time their
19 speculation gets stricken because you don't
20 speculate. You have to formulate.
21 JUDGE HAYNES: The third one is denied. And so
22 Lines 573 to 575 and 807 to 809 will remain in the

Exhibit A

1 testimony.

2 MR. PERA: 573 to 579, and I am sorry?

3 JUDGE HAYNES: And 807 to 809.

4 And we are unclear if Nicor is also

5 moving to strike Appendix A, Tab 1.

6 MR. ANDREOLI: Yes, your Honor.

7 JUDGE HAYNES: That's also denied.

8 MR. ANDREOLI: Yes, your Honor.

9 JUDGE DOLAN: For 94, 799 through 803, we felt

10 that Line 799 and 800 were okay, but we felt that

11 the rest of it should be stricken, the last

12 sentence.

13 Or we thought that it was appropriate to

14 stop at "risk", and then everything else should be

15 stricken.

16 MR. PERA: In this instance, he is agreeing with

17 one of Nicor's witnesses, and that's the basis of

18 the foundation for his testimony, is that Nicor's

19 ICC guy, Al Harms, testified that, in his opinion,

20 at least that's Mierzwa's interpretation of what he

21 testified to.

22 JUDGE DOLAN: Okay.

Exhibit A

1 MR. PERA: That the decision would have been
2 different here.
3 JUDGE DOLAN: I feel that -- not to interrupt
4 you, Mark --
5 MR. PERA: That's fine.
6 JUDGE DOLAN: I feel if he is going to put it
7 that way, he should have set a proper foundation.
8 As previously shown Witness Harms agrees with his
9 assessment. So he is not really telling us what
10 Harms had to say, where it came from. He's just
11 generally --
12 MR. PERA: But it was previously shown, though.
13 JUDGE DOLAN: In Mierzwa's testimony?
14 MR. ANDREOLI: I can shortcircuit this to the
15 extent that Mr. Harms' speculation about what the
16 Commission might or might not have done is equally
17 inadmissible.
18 That's the basis of our objection, that
19 he cannot base his opinion upon hearsay that in
20 itself is inadmissible in this context because
21 Mr. Harms could not possibly have any knowledge of
22 what the Commission might have done.

Exhibit A

1 MR. PERA: This really -- we are really not
2 getting to the heart of the matter that requires
3 some serious thought and consideration because one
4 of the key issues in this case is the parties'
5 belief that they hid their plan to access the low
6 cost LIFO layers in the implementation of the PBR
7 program and that if they hadn't -- and that it would
8 have made a difference to the Commission if the
9 Commission had known.
10 There has been testimony by Nicor
11 employees which will have to be brought in live on
12 that point.
13 We are talking about Al Harms now who was
14 the key guy for Nicor at the ICC, as I understood
15 it.
16 He clearly has knowledge based on his
17 experience and training and background here and in
18 his work here to formulate an opinion as to what the
19 Commission would have done or might have done in the
20 event that they had known about Nicor's plans and
21 that the whole reason why they did not disclose it
22 to the Commission was because that was Nicor's fear.

Exhibit A

1 So if you start gutting this testimony,
2 you are, in large measure, along the road of gutting
3 the case.
4 Now, you can take it and give it the
5 weight that it deserves as the triers of fact, but I
6 think it's inappropriate and reversible error to
7 eliminate it at this stage.
8 MR. ROONEY: And, your Honor, I would object. I
9 think it would be reversible error for the
10 Commission to base the decision on speculation.
11 What this particular piece of testimony
12 goes to is a statement made in a deposition that if
13 that statement -- if that question was asked in an
14 evidentiary hearing would have never been -- would
15 never have been allowed because it was calling for
16 an individual who is not -- we can claim whether or
17 not he was an expert -- but to speculate as to what
18 the Commission may or may not have done under a
19 complete unknown set of circumstances.
20 And so from our standpoint, it is nothing
21 other than relying on speculation that we don't
22 think, when we get to the evidentiary hearing, those

Exhibit A

1 same questions wouldn't be allowed.

2 MR. BALOUGH: Your Honors, I think the problem

3 is this is an expert witness, and the rules and

4 cases allow an expert witness to base his opinion on

5 facts, speculation, hearsay that may not otherwise

6 be admissible.

7 Rule 703 of the Federal Rules applies

8 specifically in Illinois. The Supreme Court so

9 adopted. Deposition testimony has been allowed in

10 through expert witnesses.

11 Your Honors, we have the case -- I have

12 the cases here that talk about the fact that an

13 expert witness is allowed to rely on testimony that

14 is given in a deposition that is otherwise hearsay

15 testimony and that they are even allowed to

16 introduce portions of that deposition testimony into

17 evidence.

18 If your Honors would like to look at

19 Wingo versus Rockford Memorial Hospital, for

20 example, that case so holds.

21 So it's very clear that an expert witness

22 is allowed to engage in -- that's the whole purpose

Exhibit A

1 of having an expert witness testify, is that he can
2 take these facts and look at them and use it for the
3 basis of his opinion, whether or not the underlying
4 deposition or piece of paper or whatever is
5 ultimately allowed into evidence.
6 The Courts clearly say it's not hearsay
7 because he's not relying on the truth of the matter
8 asserted. He's relying on the basis to form his
9 opinion and shows what he used to rely on to form
10 his opinion.
11 JUDGE DOLAN: But you also said that it had to be
12 based on facts.
13 I feel this statement is based on
14 speculation.
15 MR. BALOUGH: No. It can be based on -- your
16 Honors, if you would look also at --
17 JUDGE DOLAN: Mr. Balough, if you want her to
18 read back into the record, that's what you just
19 said, based it on the facts to formulate his
20 opinions.
21 MR. BALOUGH: All I am saying, if you look at
22 the case law -- and under the agreement we weren't

Exhibit A

1 allowed to cite case law -- if you look at the case
2 law, it's very clear that expert witnesses are given
3 wide latitude. They are allowed to rely on
4 otherwise inadmissible testimony and statements in
5 forming their opinion and giving their opinion, and
6 what you are doing here is basically ignoring the
7 Federal Rules that were specifically adopted by the
8 Illinois Supreme Court.
9 JUDGE DOLAN: Okay. Well, if you want to reserve
10 that one, that's fine, but we are going to move on
11 because I still think it's speculation as to what
12 the Commission would have done or not done.
13 MR. ANDREOLI: With respect to confirmation, the
14 portion that is stricken would be after the word
15 "risk" on 800 through the word "assessment" on Line
16 803?
17 MR. PERA: But I understand it's reserved now.
18 JUDGE HAYNES: Do you want to reserve it? We are
19 ruling that it is stricken.
20 MR. PERA: How -- what does reserve mean?
21 JUDGE DOLAN: If you want to appeal it down the
22 line.

Exhibit A

1 MR. PERA: Well, that would be --

2 MR. BALOUGH: Also as to anything that's

3 stricken, we would also make an offer of proof as to

4 it being stricken.

5 JUDGE DOLAN: That's fine.

6 No. 5, we are denying that one because he

7 is just basing his opinion on what the appendix

8 said.

9 MR. PERA: It would be helpful if your Honor

10 could give the line numbers.

11 JUDGE DOLAN: It's direct testimony, Line 956

12 through 958. Again, he is mentioning Appendix A Tab

13 4.

14 No. 6 which indicates Line 969 and 970,

15 again we are denying that one.

16 No. 7 which talks about Mierzwa's direct,

17 Lines 1118 through 1163, again we are denying that

18 one.

19 No. 8, Lines 1165 through 1182, we are

20 denying that motion or denying -- striking that

21 testimony.

22 On the next one, which deals with Lines

Exhibit A

1 1248 through 1270, we are striking the last sentence
2 of that testimony, and the remainder will be
3 admitted.
4 MR. PERA: Over objection so we don't have to
5 repeat the same thing over again. I don't have to
6 argue every --
7 JUDGE DOLAN: So everything we strike you are
8 going to file an automatic objection to?
9 MR. PERA: I just want to reserve my record, your
10 Honor.
11 JUDGE DOLAN: That's fine.
12 MR. ANDREOLI: Just to be clear, to the extent we
13 may have a disagreement with one or another ruling,
14 at this time, we are not going to take up time to
15 make a record.
16 In the event we wish to pursue it, we
17 will.
18 MR. PERA: Can we just all agree that everyone
19 has reserved their rights and not have to say, you
20 know, over objection or whatever?
21 JUDGE DOLAN: That's fine.
22 JUDGE HAYNES: That's fine.

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1 JUDGE DOLAN: And also on No. 9, Line 483 through
2 485, we are denying.
3 MR. PERA: I am sorry. What was the line
4 numbers?
5 JUDGE DOLAN: It's in the rebuttal testimony. I
6 am sorry. Lines 483 through 485.
7 The motion itself kind of jumps around.
8 So it's kind of tough for us too.
9 MR. ANDREOLI: I apologize, your Honor. It was
10 apples and apples we were trying to put together.
11 JUDGE DOLAN: I understand.
12 The next one, Mierzwa's direct, Line 1685
13 through 1694, and Mierzwa rebuttal 530 through 537,
14 we are granting striking that testimony. Again it's
15 speculation.
16 MR. PERA: The only comment I would have, your
17 Honor, is 1693 to 94 he references the exhibit. You
18 are not striking the exhibit, I hope.
19 JUDGE HAYNES: The exhibit reflects all the
20 adjustments he has made?
21 MR. PERA: Yes.
22 MR. ANDREOLI: Is that the general exhibit that

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1 goes to all the adjustments?

2 I apologize.

3 MR. PERA: I apologize too.

4 JUDGE HAYNES: We don't want to strike your

5 exhibit. So without looking, we'll stop the ruling

6 at Line 693 after the word "practices" and the rest

7 of 693 and 694 remain.

8 JUDGE DOLAN: The next one we have is Line --

9 Mierzwa direct Line 1765 through 1774. We are

10 denying striking that testimony.

11 No. 12, Mierzwa direct, 1794 through

12 1797, we are denying striking that testimony.

13 Next one, Mierzwa rebuttal, Lines 154

14 through 164, we are denying striking that testimony.

15 No. 14, Mierzwa rebuttal, Lines 215

16 through 219, we are granting striking that

17 testimony.

18 JUDGE HAYNES: Did you want to respond?

19 JUDGE DOLAN: And finally Mierzwa rebuttal, Lines

20 334 through 336, we are granting striking that

21 testimony.

22 And that concludes this motion.

Exhibit A

1 MR. KELTER: Could you hold on one second?
2 MR. PERA: 334 to 336 you are striking?
3 JUDGE HAYNES: Yes.
4 MR. PERA: Can I ask you the basis for that
5 because it's -- he is relying upon what Mr. Harms
6 stated.
7 JUDGE DOLAN: One, it's hearsay based on someone
8 else's testimony, and he doesn't lay a proper
9 foundation for it, but I think he is also, again,
10 speculating what the staff or the Commission would
11 have done.
12 MR. PERA: Is that with Mierzwa?
13 MR. ANDREOLI: Yes, sir.
14 MR. PERA: We are going to be -- this side is
15 going to be kind of jumping around a little bit
16 depending on what witness you are going to go
17 through so we kind of divided it up. So I just want
18 to let you know.
19 JUDGE DOLAN: So did we.
20 MR. KELTER: I am sorry.
21 Did you say who's next?
22 JUDGE HAYNES: I was about to.

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1 The next is Nicor's motion to strike
2 staff witness testimony concerning the two percent
3 storage factor.
4 MR. REICHART: I believe Ms. Von Qualen will be
5 speaking to that.
6 JUDGE HAYNES: Okay.
7 MR. PERA: This is the two percent issue?
8 JUDGE HAYNES: The two percent issue, and I don't
9 believe any argument is necessary because it's been
10 fully briefed.
11 Ms. Von Qualen, did you have a different
12 opinion?
13 MS. VON QUALEN: I believe our response responded
14 to all our arguments and the reply, but I will be
15 happy to go over them again.
16 JUDGE HAYNES: I don't think it's necessary.
17 Based on the briefs, it appears that the
18 two percent adjustment has -- is not related to the
19 GCPP, and for that reason, the '99 and 2000 PGAs, we
20 will not consider the two percent -- the effects of
21 the two percent adjustment on those PGAs because the
22 interim order indicated that those PGAs would only

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1 be looked at -- relooked at in this docket as far as
2 the GCPP effects the PGA.
3 And that ruling only applies to this
4 docket.
5 However, the '01 and '02 PGAs, those
6 dockets were consolidated with this docket, and no
7 Commission order has ever been issued and no
8 determination on the PGA has been made.
9 So the two percent adjustment, we will
10 consider that for the '01 and '02 PGA periods.
11 MR. ROONEY: Judge, so I am clear, the '01, '02
12 then that's a matter at issue --
13 JUDGE HAYNES: Correct.
14 MR. ROONEY: -- when we go to the hearings?
15 JUDGE HAYNES: Yes.
16 MS. VON QUALEN: I just have one question.
17 With you rule that the '99 and 2000 are
18 not related to the GCPP, did you take into
19 consideration the fact that this was new information
20 that had not been provided to staff until October of
21 '03 pursuant to the larger degree of discovery that
22 took place in this proceeding?

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1 JUDGE HAYNES: I understand that, and I think the
2 Commission is always free to reconsider prior
3 decisions, but this docket, 02-0067, pertains to the
4 Nicor's PBR, and any other issues that may have been
5 discovered related to the PGA in those older dockets
6 is not at issue in this PBR proceeding.
7 MR. ROONEY: Your Honors, I completely understand
8 your ruling, but I need to correct the record --
9 JUDGE HAYNES: Okay.
10 MR. ROONEY: -- with regard to what staff counsel
11 stated.
12 There may be a new piece of information
13 that Mr. Nepper found, but I want to make it clear
14 in the affidavit we found the two percent issue is
15 in no way new, and I understand staff has a
16 different position, but that is diametrically
17 opposed to the evidence that we presented.
18 JUDGE HAYNES: And whether it's --
19 MR. ROONEY: We'll go to that hearing --
20 JUDGE HAYNES: Even if it was new, we still would
21 not consider it so that's a separate issue that
22 could be addressed if the Commission chose to reopen

Exhibit A

1 those dockets for a different purpose to look at the
2 two percent adjustment.
3 MR. ROONEY: Thank you, your Honor.
4 JUDGE DOLAN: Next we were going to take motions
5 to strike portions of Richard Zuraski's testimony.
6 Staff, you didn't file a response to
7 this. Are you going to respond?
8 MR. REICHART: I think we could follow the same
9 procedure. We were under the same agreement. So to
10 the extent that you are inclined to strike any part
11 of Mr. Zuraski's testimony, we'd like an opportunity
12 to respond, yes.
13 JUDGE DOLAN: In the directed motion, there were
14 only three objections.
15 First is Zuraski's direct Lines 1068
16 through 1086, and we were going to agree to strike
17 that testimony as hearsay.
18 JUDGE HAYNES: Did you want to respond?
19 MR. REICHART: Yes, your Honor. This information
20 came from a report that was provided in the work
21 papers of Mr. Lazare and the Lazare team that came
22 as a result of the request for the background

Exhibit A

1 information used in formulating the Lazare report.
2 We think that Mr. Zuraski is entitled to
3 rely on, not only the Lazare report, but the
4 background work papers and use that information to
5 formulate his opinions about Ms. Algreen.
6 JUDGE DOLAN: How do you get around later Steve
7 Botton told Algreen he spoke with someone in
8 accounting who told him? So we have problems with
9 the way it's worded.
10 MR. REICHART: Could we refile and correct that?
11 MR. ROONEY: We would object to that to the
12 extent that they included this whole section and I
13 won't belabor the point. We do believe it's
14 hearsay. The entire document that's relied upon
15 here is not Ms. Algreen's statement. It's not
16 Mr. Lazare's statement. It's not Mr. Zuraski's
17 statement.
18 It's taken by someone else who took notes
19 about what he thought Ms. Algreen said. It's rank
20 speculation.
21 MR. REICHART: It did form the basis for the
22 Lazare report. Regarding the hearsay concern, I

Exhibit A

1 would ask the judges to consider Administrative Code
2 Section 200-610 which basically states that -- or
3 supports the Commission's liberal policy on the
4 admissible evidence and testimony and also says that
5 evidence that would otherwise not be admissible in
6 Illinois State Courts may, in fact, be admissible if
7 it is the type that is commonly relied on by
8 reasonably prudent individuals.
9 Again, I think this is the type of work
10 paper response to a DR that a staff witness could
11 reasonably rely upon and should be admitted for that
12 reason.
13 JUDGE DOLAN: Based on that, we are in agreement
14 that we think that this should be stricken.
15 MR. REICHART: And that would be the Lines 1068
16 through 1086, correct?
17 JUDGE DOLAN: Right.
18 MR. REICHART: Could I just have the same
19 understandings with regard to we'd like to reserve
20 the right to take this up on appeal if we decide to
21 do that?
22 JUDGE DOLAN: That's fine. I think all the

Exhibit A

1 parties here have that same. So we don't have to
2 keep addressing it.
3 Next we have Zuraski Lines 23 through 26
4 and --
5 MS. VON QUALEN: Excuse me, your Honor. Will you
6 please address Footnote No. 31, whether it
7 is stricken?
8 JUDGE DOLAN: Ms. Von Qualen, is that testimony
9 information contained anywhere else? Because that's
10 where double hearsay that they are basing that
11 footnote on.
12 MS. VON QUALEN: If you give me a minute please.
13 I believe we have that somewhere else in our
14 testimony.
15 JUDGE DOLAN: All right. Then we will strike the
16 footnote then.
17 Next in Zuraski's rebuttal Lines 23
18 through 26, for what it's worth, we are denying
19 striking that.
20 And then for Zuraski rebuttal Lines 35
21 through 48 we are granting striking that testimony.
22 MR. REICHART: Your Honor, if I could respond

Exhibit A

1 again, I think in Lines 35 through 48, Mr. Zuraski
2 is, in fact, indicating what he relied on and the
3 basis for his opinions why he thinks that the
4 information he used was, in fact, reliable.
5 I think it is relevant in terms of
6 informing the Commission, again, the basis for some
7 of his opinions and certainly don't think that it in
8 any way prejudices any parties.
9 Again, it's something that the judges in
10 their discretion can accord the appropriate weight.
11 JUDGE HAYNES: Throughout his testimony, doesn't
12 the witness direct the judges to what he is relying
13 on and basing that particular opinion on? And so,
14 therefore, this isn't really saying what his opinion
15 is based on but --
16 JUDGE DOLAN: Just a general statement.
17 JUDGE HAYNES: -- just a general statement.
18 MR. REICHART: But I think it does go to his
19 opinion about the reliability of the information
20 upon -- which was presented and which he chose to
21 base his opinion on.
22 So in some sense, I think it serves to

Exhibit A

1 bolster or support his opinion by providing
2 background or explanation as to why he relied on
3 particular information, why he thinks that
4 information is reliable.
5 MR. ROONEY: Your Honor, I think the part you
6 just denied our motion on reflects the fact that he
7 relied in part on the deposition testimony. That
8 will remain as part of his testimony, and I think
9 that instructs the Commission as to what he relied
10 upon.
11 JUDGE DOLAN: Again, I think that can be brought
12 in through other means. It's ultimately up to the
13 Commission to decide the reliability of any witness
14 or testimony. So we are going to grant their motion
15 to strike that testimony. And that one is
16 completed.
17 JUDGE HAYNES: Next we'll take Cook County and
18 CUB's joint motion to strike Nicor testimony as it
19 pertains to witness Feingold, F-e-i-n-g-o-l-d.
20 This motion is denied. The testimony
21 concerns an issue in dispute and contains a proper
22 expert opinion regarding how the Commission should

Exhibit A

1 treat the various proposals in this proceeding.
2 MR. PERA: So the entire motion Feingold is in
3 lock, stock and barrel, so to speak, or the general
4 motion?
5 Because we went through his testimony
6 line by line.
7 JUDGE HAYNES: If I understood your motion
8 correctly, though, it was all based on
9 Mr. Feingold's testimony regarding retroactive
10 rate-making, and that's it.
11 Are all the line references to that?
12 MR. ANDREOLI: That's correct.
13 JUDGE HAYNES: That's correct?
14 MR. PERA: That's correct.
15 JUDGE HAYNES: So as far as that testimony
16 contains retroactive rate-making or his opinion
17 about it, the motion is denied.
18 JUDGE DOLAN: The next motion that we are going
19 to go to is motion to exclude Beth Hohisel,
20 H-o-h-i-s-e-l.
21 And that motion we are going to deny
22 excluding her as a witness.

Exhibit A

1 Do you need an explanation?

2 MR. ANDREOLI: No, thank you.

3 MR. ROONEY: No thanks. We are ready to roll.

4 JUDGE DOLAN: For what she's worth.

5 MR. KELTER: Hey.

6 MR. PERA: You'll be dazzled by her testimony.

7 JUDGE DOLAN: Okay. I can hardly wait.

8 JUDGE HAYNES: Next we'll do the request for

9 subpoena of Carl McDermott.

10 Did CUB have a reply to Nicor's response?

11 MR. KELTER: Well, your Honor, it was our

12 understanding that Mr. McDermott is -- his working

13 for Nicor ended at the end of the first phase of the

14 proceeding so that was what we were basing our

15 request to subpoena him on.

16 Nicor I think is arguing that even --

17 well, I'm not sure what -- if they are arguing that

18 he should still be considered as somebody whose

19 under contract to Nicor, I am not sure, but we don't

20 believe that's the case. So that was why we

21 subpoenaed him.

22 JUDGE HAYNES: I was unclear as well.

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1 MR. ROONEY: Your Honor, as you indicated earlier
2 in the previous ruling, this case involves 02-0267.
3 Dr. McDermott was our witness in the case
4 preceding the reopening of the case. So he's our
5 witness for purposes of this case, and we extend --
6 it's our -- it's fact that he's our witness. We'll
7 be more -- and he was not cross-examined before the
8 case was reopened.
9 We are sitting here today saying that he
10 is still a witness of the Company in this
11 proceeding. Although he didn't file prefiled
12 testimony in this phase, he is still a witness of
13 ours.
14 We are pursuant to our filing saying that
15 we will bring him, if CUB wants to cross-examine him
16 or any of the other parties want to cross-examine
17 him, on the testimony he provided previously. And
18 so -- but we don't believe -- he's not an adverse
19 witness in the classic sense and in the sense under
20 the rules. He's our witness.
21 JUDGE HAYNES: So perhaps the issue is not
22 whether or not he will appear but how extensive the

Exhibit A

1 cross will be?

2 MR. ROONEY: From our perspective, we have said

3 in our pleading we will make him available to

4 testify subject to the examination on the testimony

5 that he provided in this case.

6 JUDGE HAYNES: Mr. Kelter?

7 MR. KELTER: You know, I don't have anything

8 additional to add to what I stated before except

9 that, when I asked Nicor about this many, many

10 months ago, they said they had no intention of

11 calling Mr. McDermott in the case of this proceeding

12 and they were no longer using him as a witness.

13 So their argument I think should be

14 rejected.

15 MR. ROONEY: I'm not quite sure how you reject

16 the fact that we have an open docket, Dr. McDermott

17 was and is our witness in this proceeding, and the

18 evidence that was adduced in trial in this

19 proceeding prior to the reopening is still evidence

20 everyone can point to in this case.

21 MR. KELTER: Let me just try and clarify

22 something here.

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1 I think the issue is to what parameters
2 we are going to be able to cross him, and I am not
3 sure that we even have to decide that today.
4 I am happy to decide that when he's on
5 the stand at the hearing.
6 JUDGE HAYNES: Okay. I agree.
7 And so as far as -- so the record is
8 clear, Mr. McDermott will appear for
9 cross-examination.
10 At that time we'll determine the extent
11 of the cross.
12 MR. ROONEY: Fair enough. Thanks, your Honor.
13 MR. KELTER: Thanks.
14 JUDGE HAYNES: Next we'll take the motion to
15 exclude former Commissioners as witnesses.
16 MR. PERA: Before you -- I would just like to say
17 something in general because I can't remember with
18 the slew of motions that Nicor filed that only CUB
19 sponsored and I don't know if this is one of them,
20 but Nicor made the point in saying nobody else was
21 joining in CUB on this motion and that motion, and I
22 just want to say to the ALJs I don't want to

Exhibit A

1 characterize my reaction as offended, but they don't
2 really know what is my state of mind or my office's
3 state of mind. It's totally irrelevant whether or
4 not someone joins in on a particular motion or not,
5 and I think the implication is because my office did
6 not join in on it that the motion somehow is without
7 merit, and I don't know whether this is one of them
8 or not. I just want to get it on the record.
9 JUDGE HAYNES: I believe it might have been, and
10 it did not influence our decision who joined in on
11 the motion, however, the motion to exclude the
12 former Commissioners is granted.
13 So the CUB's request for subpoenas are
14 similarly denied, and we believe that calling former
15 Commissioners as witnesses would improperly upset
16 the administrative process because CUB seeks to
17 question Commissioners on their decision-making
18 mental processes.
19 MR. BALOUGH: Your Honor, I might say in reply I
20 think that is an unfair characterization of what we
21 were going to cross-examine them on.
22 We were going to cross-examine them on an

Exhibit A

1 issue of whether or not they had information in
2 front of them, not what their decision-making
3 process was.
4 Part of this hearing goes to what --
5 whether or not and what we feel the Commission was
6 denied information that it should have, whether
7 there was misrepresentations made to the earlier
8 Commissions and, in doing so, an issue has arisen
9 and even in their testimony they talk about the fact
10 of what information the Commissioners may or may not
11 have had in front of them, and that is the extent to
12 which we were going to cross-examine them on.
13 We are not going to cross-examine them to
14 ask what their vote would be or what they did in
15 their deliberations, but rather it goes more and is
16 characterized more in the nature of, say, if a Court
17 were conducting a contempt hearing to gather facts
18 as to what representations were made before the
19 Court.
20 JUDGE HAYNES: And anything that the
21 Commissioners would have considered is part of the
22 record in prior proceedings.

Exhibit A

1 The request is denied. And, of course,
2 you are free to take this one to the Commissioners.
3 MR. KELTER: Can you give us one second to confer
4 here?
5 JUDGE HAYNES: Sure.
6 MR. KELTER: All right. We are done conferring.
7 I don't have -- we don't have anything further to
8 add.
9 JUDGE DOLAN: Next we are going to do the motion
10 to exclude Rose Gorman as a potential witness.
11 In reviewing this, based on the fact
12 she's a long time Nicor employee and is still
13 employed part-time by a Nicor affiliate, we do feel
14 that there is a potential for her to play an
15 adversary role. So we are denying that motion, and
16 we are going to allow her to be brought in as an
17 adverse witness.
18 And also on that one, we are granting
19 staff's subpoena that we just received today
20 concerning that witness.
21 MR. REICHART: Judge regarding that, just a quick
22 question?

Exhibit A

1 Will you or will the judges be issuing
2 the subpoenas, or would you like us to?
3 JUDGE HAYNES: I think how it works is the
4 Clerk's Office -- now that we've granted it, the
5 Clerk's Office -- the Chief Clerk signs off on it
6 and signs it back to you, and you serve them.
7 At least that's how it works for parties.
8 I don't know if staff is different.
9 Maybe the Clerk's Office will serve it
10 for you as well.
11 MR. REICHART: Okay. Thank you.
12 JUDGE HAYNES: Next we'll take the motion to
13 strike portions of the testimony of Mary Everson,
14 E-v-e-r-s-o-n.
15 And I have a question. Should I direct
16 it to Ms. Von Qualen or Mr. Reichart.
17 MR. REICHART: To me.
18 JUDGE HAYNES: To you?
19 MR. REICHART: Yes.
20 JUDGE HAYNES: Does Docket 95-0219 that she
21 references -- that's not a PBR proceeding, correct?
22 MR. REICHART: That's correct.

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1 JUDGE HAYNES: Then I also was curious on Line 40
2 if this really was confidential.
3 MR. REICHART: No, it is not.
4 JUDGE HAYNES: This motion is granted. It's not
5 relevant to the issues in this proceeding.
6 MR. PERA: Can I just ask what Lines we are
7 talking about? Is it 318 to 362?
8 MR. ROONEY: Correct.
9 JUDGE HAYNES: Yes.
10 MR. PERA: Thank you.
11 MR. REICHART: Judge, may I respond?
12 JUDGE HAYNES: Yes.
13 MR. REICHART: We do think it is relevant. We
14 feel it is within the scope of the second interim
15 order which stated, Commission will consider for
16 final resolution in this proceeding all issues
17 relating to the operation of the program Nicor Gas
18 implemented under the tariffs filed in accordance
19 with the Commission's order entered November 23rd,
20 1999.
21 We do feel, as Ms. Everson explains, the
22 issue concerning incentive compensation that she

Exhibit A

1 discusses is, in fact, incentive compensation that
2 is directly related to the operation of the PBR.
3 We think it's worth noting that there was
4 incentive compensation provided to certain Nicor
5 employees based on the results of the PBR.
6 Because the operation of the PBR and
7 actions taken under the PBR are in question in this
8 docket, we do think it's relevant -- we think it
9 should be included in the testimony here.
10 We don't necessarily -- or we disagree
11 with the Company's argument that an opinion
12 witness's testimony has to be directly associated
13 the particular adjustment.
14 MR. ROONEY: Your Honors, just to respond
15 briefly, first of all, that entire discussion has
16 nothing to do about a flow-through in this case.
17 The dollars, everything issued, has
18 nothing to do with any dollars that flow through
19 PBR, the GCPP program and also through the PGA.
20 Second of all, really the incentive
21 information is not new information. That was
22 provided prereopening in a DR response to staff, and

Exhibit A

1 we concur with the ruling.

2 JUDGE HAYNES: I think the witness herself admits

3 that it's not relevant when she recommends that the

4 issue be fairly examined in the Company's next rate

5 case.

6 MR. REICHART: Right, but, Judge, to the extent

7 that it is an issue related to PBR, certainly it can

8 be something that may be -- in terms of a specific

9 adjustment being proposed that may be provided in

10 the context of a future proceeding, but given that

11 the operations taken by the Company under the PBR

12 and motivations, potential motivations, for

13 operations or activities taken under the PBR is in

14 question in this case and this relates to that, we

15 do think it is relevant and it's -- the witness is

16 justified in speaking to it.

17 JUDGE HAYNES: Okay. Our motion stands, and --

18 our ruling stands, and the motion is granted.

19 MR. PERA: Can I ask something though?

20 JUDGE HAYNES: Yes.

21 MR. PERA: Because we are going to be bringing in

22 a lot -- potentially bringing in a lot of adverse

Exhibit A

1 witnesses of Nicor who were part of this incentive
2 plan, and I want to make sure at hearing I don't
3 violate your order.
4 Are you saying when we have, for example,
5 George Barens on the stand who we know had the
6 incentive compensation plan directly tied to the
7 performance of PBR that we cannot ask him if he had
8 a compensation plan?
9 JUDGE HAYNES: I don't think that -- I didn't
10 mean to be that broad, only that she appears to be
11 recommending that in a rate case, in a future rate
12 case, the Commission should look at Nicor's PBR
13 activities and perhaps reduce or eliminate the
14 incentive compensation program, but whether or not a
15 witness received incentive compensation based on
16 their PBR-related activity is a different issue.
17 MR. PERA: And the only reason I brought it up,
18 your Honor, is because the objection that Nicor
19 raised, and I just want -- because they run the
20 gamut, and I wasn't sure -- I just wanted to make
21 sure that that is not foreclosed to us.
22 MR. ROONEY: Likewise we are reserving our right

Exhibit A

1 when we get to hearing to raise an objection on
2 those issues so we can go over it at that time.
3 MR. PERA: So I guess we are resolved. Thank
4 you.
5 JUDGE DOLAN: Next we are going to do the
6 motion -- AG's motion to remove the confidential
7 designation from deposition transcripts.
8 Mr. Rooney, before we get started, I note
9 in the AG's response along with the letter that you
10 had indicated that there was going to be some review
11 of the deposition testimony and removal of
12 confidential portions of it.
13 MR. ROONEY: We, in fact -- that was our
14 conversation between myself and CUB counsel, your
15 Honor, and as our response that we filed with your
16 judges indicated I did respond to Mr. Kelter in a
17 letter of August of last year that reflected our
18 consideration of the issue and our belief that the
19 entire depositions should remain confidential at
20 that time consistent with prior rulings of the
21 judges.
22 So from our standpoint, we responded

Exhibit A

1 fully in August to the conversation I had with
2 Mr. Kelter regarding that topic.
3 JUDGE DOLAN: All right.
4 Mr. Kaminski, can you give me a
5 compelling reason why we should release -- all I see
6 is that you want it done and the rules don't call
7 for it all remaining confidential, but I don't see
8 any indication what need there is to release it to
9 the public.
10 MR. KAMINSKI: Our concern is that the
11 depositions -- first of all, as I indicated in our
12 response -- our reply to their response, Mr. Rooney
13 specifically stated that they would address what was
14 confidential and what wasn't in this document, and I
15 would also note that the materials that are actually
16 quoted in this reply are considered confidential
17 under Nicor's current position.
18 I believe that even the most forgiving
19 look at this doesn't show where any of this language
20 should be considered confidential, and they have had
21 over eight months with which to come before the
22 Commission and request a confidential protection,

Exhibit A

1 and they have not done so.

2 MR. ROONEY: Your Honor, I guess my only

3 observation, two-fold, one is we had the existing

4 agreement in place at the outset of this case.

5 Second, we identified to all the parties

6 going into the depositions that we were going to

7 deem them to be confidential.

8 Third, while Mr. Kaminski speaks of eight

9 months, realize the first time he ever brought this

10 to my attention was in a correspondence of March 5,

11 and we responded promptly pursuant to the deadline

12 set forth in his letter.

13 So from our standpoint, we are acting

14 entirely within the confines of, A, the proprietary

15 agreement we set forth; B, the fact that we

16 identified these documents and such going into the

17 deps; and, C, the fact that the ALJ has established

18 a protocol with regard to the application of a

19 proprietary agreement when, as I note, Judge Haynes

20 probably painfully remembers going through the

21 confidentiality issues back in the fall of '02.

22 So there's a protocol in place for this.

Exhibit A

1 And that would be my rebuttal to Mr. Kaminski's
2 comments.
3 MR. KELTER: Can I respond, your Honor?
4 MR. ROONEY: I would object to the extent that
5 CUB is not a party to this motion, but I will leave
6 it for the record.
7 JUDGE DOLAN: For what it's worth.
8 MR. KELTER: I take exception to Mr. Rooney's
9 statement that there was an understanding going into
10 the depositions that they would be kept
11 confidential. I think the exchange that Mr. Rooney
12 and I had at the beginning of two of the depositions
13 that were cited by Mr. Kaminski reflected that that
14 is not the case.
15 On both occasions I specifically
16 attempted to make it clear that we only considered
17 the depositions confidential for the time being so
18 that while the depositions were going on, we weren't
19 going back and forth during the course of the
20 deposition about what's confidential and what's not.
21 Our understanding was that after the
22 depositions were taken that the Company would go

Exhibit A

1 back through them and tell us which parts they
2 thought were confidential and then we would either
3 agree or disagree.
4 We, CUB, never entered into this with an
5 understanding that the entire deposition would be
6 confidential, and I think, you know, the exchange
7 between Mr. Rooney and myself reflects that, and if
8 you don't have it in front of you or don't recall
9 it, I have it in front of me and can read it for the
10 record.
11 MR. ROONEY: I guess the only thing I would
12 observe, your Honor, is I responded directly to
13 Mr. Kelter in August of last year, and after that
14 point in time, there was no formal raising of the
15 issue in a correspondence to me until Mr. Kaminski
16 raised it to me in his correspondence of March 5.
17 MR. KELTER: We didn't want to file a duplicative
18 motion otherwise we would have filed a motion. I
19 certainly made it clear to Mr. Rooney that that is
20 not a response and that at some point we were going
21 to take this up with the Commission.
22 MR. ROONEY: That's fine. I don't disagree with

Exhibit A

1 that.

2 MR. KAMINSKI: Another important point to note

3 here is that, as part of our original motion, is

4 that this dealt with -- the subject matter of the

5 depositions dealt with the same subject matter and

6 facts as were addressed in the Lazare report, and

7 that was seen fit to be published by Nicor, and to

8 have a -- to be able to say that that -- their

9 version of the conclusions from those facts is not

10 confidential yet the depositions regarding the exact

11 same facts and issues is confidential is

12 inappropriate.

13 MR. ROONEY: My only observation, there, your

14 Honors, is, first of all, the depositions went way

15 beyond the Lazare report.

16 It also addressed documents that were and

17 remain confidential.

18 There were discussions in those

19 depositions that involved personnel matters.

20 So at the end of the day, and as our

21 response indicated, I would disagree with the

22 Attorney General's characterization and reliance on

Exhibit A

1 what the Lazare report did eight months before these
2 depositions took place.
3 MR. KAMINSKI: My response to that would be, if
4 there were these specific areas that were outside of
5 the scope of the Lazare report represented by
6 Mr. Rooney, why wasn't a redaction made?
7 MR. ROONEY: Your Honor, as our response
8 indicated, we made an offer to counsel just last
9 month that for purposes of evidentiary hearings -- I
10 think that's an important point here because part of
11 our objection goes to the fact that discovery is a
12 private matter, and we've cited the case law
13 associated with that.
14 We made a direct offer to counsel for
15 Attorney General's Office that we -- once we found
16 out which deponents were going to go forward that we
17 would provide them with a redacted copy of
18 transcripts for the purposes of hearing that if they
19 got into those areas for impeachment, that would be
20 fine.
21 Our concern, quite honestly, is
22 several-fold, but one is that there is a lot of

Exhibit A

1 information there that is entirely irrelevant to
2 this case, and we don't necessarily believe that a
3 lot of that should be part of the public record or
4 presented elsewhere other than at this hearing.
5 To the extent that it's going to be part
6 of the hearing, we made an offer that goes right to
7 the -- right to what the AG has requested, namely,
8 once we find out which deponents are going to be
9 called as witnesses, we will provide these parties
10 with a redacted transcript so, when they conducted
11 their cross-examination or adverse examination of
12 this witnessness -- which, by the way, the Attorney
13 General hasn't identified any of the deponents as
14 adverse witnesses, which is a point that shouldn't
15 be lost in this discussion -- that to the extent
16 they want to examine our witnesses and potentially
17 use the depositions for purposes of impeachment,
18 they will know what we believe is confidential and
19 they will know what we believe is not confidential
20 for purposes of an evidentiary hearing.
21 MS. DALE: I believe Mr. Rooney has indicated
22 that much of the information that came out during

Exhibit A

1 the depositions he believes is irrelevant, but
2 that's completely different from saying that it
3 should be kept confidential, and I think it's
4 important to keep that in mind.
5 It's relevant -- you can make those
6 objections during the hearing, but we are talking
7 about whether or not they should be kept
8 confidential, and whether or not the Company has
9 made a proper showing, which they indicated they
10 were going to do after the depositions were taken,
11 that the material within the depositions required
12 protective treatment.
13 MR. ROONEY: I think Ms. Dale maybe misunderstood
14 what I am saying.
15 For purposes of the issues in this case,
16 there are a lot of matters that are not necessarily
17 within the scope of the dep in our opinion, and just
18 to make those public so they can be subject to being
19 tried in another forum, that's not what we believe
20 those depositions were taken for and certainly not
21 the manner in which Nicor voluntarily offered up
22 these 13 deponents to facilitate depositions when

Exhibit A

1 they starting late last June.

2 MS. DALE: There is no intention to introduce

3 these issues or the material in these depositions in

4 another forum.

5 MR. KAMINSKI: The arguments here seem to assume

6 that the burden is upon the People to say that these

7 documents should be public. That's not the case.

8 The burden is upon Nicor to show that

9 these documents should be confidential.

10 MR. BALOUGH: And to that the protocol has been

11 established by virtue of the review of the documents

12 in this case.

13 MR. KAMINSKI: And the documents have been

14 identified.

15 MR. KELTER: And we strongly disagree with the

16 way you are characterizing the protocol for this

17 process.

18 MR. ROONEY: Understood.

19 JUDGE DOLAN: All right. We are going to deny

20 the AG's motion to remove the confidential

21 designation.

22 If there are certain portions, as

Exhibit A

1 indicated, if you call witnesses and you need
2 portions redacted or changed, then we will rule on
3 them at that point, but we are not going to just
4 blanketly agree to remove the confidential
5 designation from all the deposition transcripts.
6 MR. KAMINSKI: Your Honor, regarding those
7 specific portions that are cited, referred to and
8 quoted in the various testimonies of staff and
9 Mierzwa, those are going to be entered into the
10 record, and we would request -- is your ruling
11 denying the motion including those as well?
12 JUDGE DOLAN: Your witness didn't use any of
13 them, right, Mr. Kaminski?
14 MR. KAMINSKI: That's correct.
15 JUDGE DOLAN: Your motion -- so your motion is
16 denied.
17 Just to go on with one other point,
18 tomorrow morning at 10:00 o'clock if -- we have not
19 heard from Mr. Schneck in the shareholders case, and
20 the subpoena is returnable tomorrow at 10:00 a.m.,
21 and we plan on having a hearing. If he's not here,
22 we are going to ask for a contempt order to be

Exhibit A

1 issued.

2 MR. KELTER: I didn't hear. You said if he's not

3 hearing at 10:00 a.m.?

4 JUDGE DOLAN: If he is not here, does not provide

5 us with the information, we are going to ask that a

6 contempt order be issued.

7 MR. PERA: Do you have service?

8 JUDGE DOLAN: Yes.

9 MR. PERA: And you have not heard from him?

10 MR. McCOMBS: They have service. I represent the

11 Company in the case. He has mentioned it to me,

12 that he received the subpoena.

13 JUDGE DOLAN: We have the green card back from

14 him also.

15 MR. ANDREOLI: Just to confirm, that will be a

16 hearing, a formal public hearing in this docket?

17 JUDGE DOLAN: I think it's going to be necessary

18 to make a record on it.

19 MR. ANDREOLI: I understand.

20 MR. PERA: I am not assuming he is going to show

21 up. Let's assume he's going to show up. I have no

22 role in this to my knowledge.

Exhibit A

1 MR. ANDREOLI: I was wondering if I was going to
2 show up.
3 MR. PERA: I have to pack my office at 69 West
4 Washington. So if I'm in a pair of Khakis and a
5 golf shirt, I don't want the judges to be offended.
6 JUDGE HAYNES: The subpoena gave him an
7 opportunity to respond in writing or to show up. So
8 if we get a response in writing, that will be put on
9 the record in this proceeding, and then we won't
10 have a hearing.
11 MR. ANDREOLI: To the extent there's not going to
12 be a hearing, your Honor, should we -- should we
13 show up at 10:00?
14 JUDGE DOLAN: Well, if we receive something
15 today, obviously, we'll send out a notice to all the
16 parties.
17 Just as of yesterday we have not heard
18 anything from them. So we are assuming we are going
19 to have to proceed tomorrow at 10:00 a.m.
20 MR. ROONEY: Thank you.
21 MR. KELTER: If you get something at 9:30, why
22 don't we designate one person for you to call, and

Exhibit A

1 then we'll agree to contact each other?.

2 JUDGE DOLAN: That's fine. Is there any --

3 MR. ROONEY: I will be the calling tree. That's

4 fine.

5 JUDGE DOLAN: Okay. Is everyone okay with us

6 contacting Mr. Rooney under that circumstance?

7 MR. PERA: Yes.

8 JUDGE DOLAN: Okay.

9 JUDGE HAYNES: Next we'll take the motion to

10 strike portions of the testimony of Mark Maple.

11 The first objection is Maple direct Lines

12 62 to 68, 84 to 88, 89 to 92 and 103 to 109. That's

13 denied.

14 The second objection is to Lines 119 to

15 332 and Attachments A through C. That's also

16 denied.

17 And just so the record is clear, however,

18 we are not ruling on the admissibility of the

19 deposition quotations. That still is to be

20 determined.

21 The third objection was Maple direct

22 Attachment D. That's denied.

Exhibit A

1 MR. ANDREOLI: Just for purposes of the record,
2 we had previously filed an errata and deleted that.
3 That's not at issue before you today.
4 JUDGE HAYNES: Okay.
5 The fourth objection is for Lines 364 to
6 367 and Line 371.
7 Lines 364 to 367 will be stricken.
8 Speculation. 371 is denied.
9 MR. REICHART: Can I just ask for a
10 clarification? There are two sentences between Line
11 364 and 367. I understand the first sentence your
12 ruling would be consistent with the previous
13 discussion you had regarding Mr. Mierzwa's
14 testimony, however, the second sentence I would ask
15 you to reconsider the ruling that that calls for
16 speculation.
17 It's the sentence saying "given that the
18 information was purposely withheld, I believe the
19 Commission should reconsider its decision having the
20 benefit of all relevant information."
21 JUDGE HAYNES: Okay. I will limit it to Lines
22 364 and 365.

Exhibit A

1 MR. ANDREOLI: If I can -- for purposes of the
2 record, it's important to note Mr. Maple has no
3 knowledge whatsoever and can have no knowledge
4 whatsoever of the Company's state of mind.
5 His testimony purports to be based upon
6 firsthand knowledge of the Company's state of mind.
7 It's incompetent testimony. It's inadmissible, and
8 your prior ruling with respect to the two sentences
9 in our opinion was correct. It should stand.
10 JUDGE HAYNES: We'll just strike Lines 364 and
11 365.
12 Next objection is for Lines 413 to 414.
13 That is stricken.
14 Next objection is for Lines 419 to 421,
15 and it's partially stricken.
16 From the words "knowing on" on Line 420
17 to the end of that sentence point on Line 421,
18 "however Nicor resumed negotiations sometime after
19 the HEPO issues" remains in the record.
20 MR. KELTER: The "knowing on" remains in the
21 record?
22 JUDGE HAYNES: No. "Knowing on" is stricken.

Exhibit A

1 Next is Lines 449 to 450, and that's
2 stricken.
3 Next is Lines 511 through 519.
4 The testimony will be stricken from Lines
5 515 to 519. She's speculating -- he.
6 MR. REICHART: Can I have a moment, Judge?
7 JUDGE HAYNES: Sure.
8 MR. REICHART: Judge, I would ask you to
9 reconsider the ruling.
10 I believe Mr. Maple is entitled to
11 provide his interpretation of the document. He is
12 obviously a witness who will be appearing at hearing
13 and be subject to cross-examination on his
14 interpretation of the meaning of the writing on the
15 document.
16 I think we will freely admit that it's
17 his interpretation of what those phrases mean.
18 JUDGE HAYNES: Did you want to respond?
19 MR. ANDREOLI: Briefly in reply, your Honor, your
20 ruling in our opinion is not only correct but
21 absolutely essential for a record that can be relied
22 upon in this proceeding.

Exhibit A

1 The testimony given is wholly without any
2 foundation, purely speculative. Thank you.
3 JUDGE HAYNES: Those lines will be stricken.
4 Mr. Pera, did you want to respond?
5 MR. PERA: They keep talking about foundation.
6 This is a business record. It's subject to --
7 there's a business record exception to the hearsay
8 rule. This witness doesn't have to lay a
9 foundation.
10 It's Nicor's document, and if he's not
11 quoting it correctly or there is a different
12 interpretation or he's interpreted it wrong, they
13 can either bring in the author of the record or they
14 can cross-examine the witness.
15 To me it isn't more fundamental of an
16 evidentiary issue that has a ramification to me as
17 we go forward.
18 JUDGE DOLAN: Are you looking at the particular
19 document in question?
20 MR. PERA: If I am looking at it?
21 I don't think it's necessary for the
22 expert to have the document in question in order to

Exhibit A

1 reference it in his testimony.
2 JUDGE DOLAN: This document, he's referring to
3 handwritten notes on the side of the document.
4 That's not a document that's prepared in the
5 ordinary course of business.
6 MR. PERA: How do you know that? It is a
7 handwritten notation made by an employee of Nicor.
8 MR. ANDREOLI: I think that's the question
9 precisely among the witness.
10 MR. PERA: How can say it's not a business
11 record? Because it's a handwritten note, that takes
12 if out of the realm of a business record?
13 JUDGE HAYNES: We are not striking the
14 attachment. We are merely striking the witness's
15 speculation as to what the words handwritten on the
16 side of the paper mean.
17 MR. PERA: I appreciate you hearing me out.
18 MR. REICHART: So the attachment is not stricken?
19 JUDGE HAYNES: We are not striking the
20 attachment.
21 MR. REICHART: Okay.
22 JUDGE HAYNES: Just Lines 515 to 519.

Exhibit A

1 Next, Lines 708 to 731. That's denied.
2 That also included Attachment I which is also
3 denied.
4 Next are Lines 732 to 821. That's
5 denied.
6 Next, 822 to 924, that's denied.
7 The next objection is to Maple's rebuttal
8 testimony, Lines 23 to 32. That's denied.
9 Lines 44 to 53, that's stricken.
10 MR. REICHART: Can I have a moment, your Honor?
11 JUDGE HAYNES: Sure. This is consistent with
12 the ruling on Zuraski's testimony.
13 MR. REICHART: Thank you.
14 JUDGE HAYNES: Lines 102 to 103, that sentence
15 will be stricken.
16 MR. REICHART: Judge, I believe that's -- that's
17 the judge -- it's the witness's opinion about the
18 activities of Nicor.
19 JUDGE HAYNES: We believe the statement is
20 overbroad and the witness cannot know the Company's
21 state of mind. That's stricken.
22 122 to 123 remains -- that's not

Exhibit A

1 stricken.

2 MR. PERA: I am sorry. Denied? That was denied.

3 JUDGE HAYNES: Correct.

4 126 to 148 is -- and 149 to 179 are also

5 denied.

6 208 to 209 denied. Actually the rest is

7 denied. But for the record that's Line 215 to 232

8 and 342 to 351.

9 We are going to take a five-minute break.

10 (Recess taken.)

11 JUDGE HAYNES: Okay. Let's go back on the

12 record.

13 Next we are going to take the motion to

14 exclude Steven Mattson.

15 MR. KELTER: I had indicated earlier that I had

16 something that I wanted to say in response to

17 Nicor's response.

18 JUDGE HAYNES: On Mattson?

19 MR. KELTER: Yes.

20 JUDGE HAYNES: Okay.

21 MR. KELTER: And that is this is the -- I get

22 confused about the replies and responses. I am

Exhibit A

1 referring to the reply brief of NIcor in support of
2 motion to exclude Steven J. Mattson as a witness in
3 this proceeding, and I am looking at Page 7 of that
4 document.
5 And I believe the discussion here is the
6 relationship between Nicor, Inc., and NIcor in that
7 the privilege extends from NIcor to Nicor, Inc.,
8 because the two companies are really one, and what I
9 would like to point to is two statements made by
10 Mr. Andreoli back on August 14th, 2003, that are in
11 the transcript, and they are both pretty short so I
12 would like to read them.
13 I am looking at Page 320 of the
14 transcript, Line 5. He says, Mr. Lazare was hired
15 as a member of Sidley & Austin to perform work in
16 his capacity as an attorney to the special committee
17 of board of directors of Nicor, Inc. Mr. Lazare
18 performed in that function and conducted an
19 investigation primarily of the GCPP as it was
20 operated by NIcor in an independent capacity. I am
21 sure that you can appreciate that his independence
22 from NIcor was important for the purposes of the

Exhibit A

1 investigation.

2 And then I would direct you to Page 374

3 where Mr. Andreoli emphasizes that he says,

4 regarding Mr. Lazare, he said with respect to his --

5 he's not appearing here in his capacity as our

6 attorney. That's on Line 11.

7 And then at Line 18 he says there is a

8 distinction between Nicor and Nicor, Inc. The

9 Commission does recognize and must recognize that

10 corporate distinction.

11 And then he says, we will make an effort

12 to get drafts.

13 He's referring to some other documents,

14 but he doesn't even know if he can get those from

15 Mr. Lazare because of this distinction between

16 Nicor, Inc., and Nicor Gas.

17 So I think there's a contradiction here

18 as to how they are portraying Mr. Lazare that's

19 critical to the question of whether turning over

20 documents to him and the KPMG team waives the

21 privilege.

22 JUDGE DOLAN: We are talking about Mr. Mattson

Exhibit A

1 right now.

2 MR. KELTER: That's right, and they turned over

3 the interview that they did with Mr. Mattson to

4 Mr. Lazare and the Nicor investigators, and that's

5 where we are arguing that they waived their

6 privileges.

7 JUDGE HAYNES: But it was Mr. Lazare's interview

8 with Mr. Mattson.

9 MR. KELTER: That's right. I am sorry.

10 They turned over Mr. Mattson to allow him

11 to give the interview to Mr. Lazare.

12 JUDGE DOLAN: Are you aware that Mr. Mattson had

13 an appearance in this proceeding for Nicor Gas?

14 MR. KELTER: Had made an appearance?

15 JUDGE DOLAN: He filed an appearance and also

16 filed a withdrawal that's dated January 7th of 2004.

17 MR. ROONEY: He was part of the PGAs that were

18 consolidated with this proceeding. That's correct,

19 your Honor.

20 MR. KELTER: I am not sure -- I'm not sure when

21 he filed an appearance, but I am not sure what the

22 point would be.

Exhibit A

1 JUDGE DOLAN: Obviously if he is an attorney, if
2 he was an attorney of record in this case, you can't
3 call an attorney to testify against a former client.
4 MR. KELTER: But Mr. Mattson waived that
5 attorney-client privilege by giving the interview to
6 Mr. Lazare.
7 JUDGE DOLAN: It's not Mr. Mattson's privilege to
8 waive. It's Nicor's privilege to waive. The client
9 has to waive attorney/client privilege, not the
10 attorney.
11 MR. KELTER: And Mr. -- and did not -- did Nicor
12 not make Mr. Mattson available?
13 JUDGE HAYNES: Nicor, did you want to respond to
14 Mr. Kelter's arguments?
15 MR. ANDREOLI: No, your Honor.
16 MR. KELTER: Your Honor, I would also point out
17 that Nicor turned over that document to CUB
18 that's --
19 JUDGE HAYNES: You are referring to the memo
20 summarizes the interview?
21 MR. KELTER: Yes.
22 MR. ANDREOLI: Your Honor, just as a factual

Exhibit A

1 matter, that is not an accurate statement. The
2 document was provided directly from Sidley to the
3 parties in this case including Nicor Gas at the same
4 time.
5 MR. KELTER: Then that contradicts the statement
6 on Line 7 about the connection between Nicor, Inc.,
7 and Nicor Gas.
8 They seem to want it both ways. They are
9 two separate companies when that's to their
10 advantage, and they are one company when that's to
11 their advantage.
12 MR. ANDREOLI: I don't believe that's an accurate
13 characterization, but we'll rest on the briefs, your
14 Honor.
15 Thank you.
16 JUDGE HAYNES: We don't find that Nicor
17 necessarily waived their privilege by allowing the
18 interview of Mr. Lazare, and even if the privilege
19 was waived, the scope of that waiver is unknown and
20 an examination of Mr. Matson would raise endless
21 objections, and most importantly CUB has shown no
22 compelling reason why Mr. Mattson's testimony is

Exhibit A

1 required, and for that reason, we'll deny the
2 request for subpoena of former outside counsel of
3 Nicor's.
4 Next we'll do the motion to exclude Russ
5 Strobel.
6 MR. KELTER: Your Honor, without repeating that
7 argument, I think the same argument about the
8 distinction between Nicor and Nicor, Inc., would
9 apply.
10 JUDGE DOLAN: Mr. Kelter, how did you come in
11 contact with the report from KPMG? Did you send
12 requests to them for information?
13 MR. KELTER: We requested that information from
14 Nicor.
15 MR. ROONEY: Your Honor, just to be clear, I
16 think it was consistent with a ruling that came from
17 the bench. Both Sidley and KPMG produced directly
18 to the parties, including ourselves, that
19 information.
20 The Company had not seen that information
21 prior to its simultaneous production of all parties.
22 MR. KELTER: Yeah, but they voluntarily -- Nicor

Exhibit A

1 voluntarily turned that over to Sidley and the KPMG
2 people, and they turned it over to us and to Nicor.
3 MR. ANDREOLI: Just to be clear, because what
4 Mr. Kelter just said is factually incorrect and is
5 contrary to unrebutted sworn statements which have
6 been made in prior briefings with respect to
7 Mr. Strobel's memorandum, that document was not
8 given to KPMG. They were not authorized to have
9 that document. We have demonstrated that that
10 document was sequestered as an attorney/client
11 privileged document. The fact that they obtained it
12 was inadvertent.
13 We have briefed on two prior occasions
14 that specific question, and that specific issue
15 Mr. Kelter has in writing argued the points. The
16 privilege status of that document has been
17 sustained.
18 For that document to continue to appear
19 in public filings is wholly contrary to the
20 substantive law of privilege in Illinois and
21 directly contrary consistent with your ruling of
22 last Friday to your prior ruling.

Exhibit A

1 I would note that outside of that
2 document there has been no specific showing
3 whatsoever of any factual matter or factual
4 consequence upon which Mr. Strobel, who is the
5 Company's general counsel for the majority of this
6 period of time, could provide any testimony of any
7 use whatsoever.
8 MR. KELTER: Your Honors, the document was turned
9 over to Mr. Lazare. Mr. Lazare is an expert witness
10 for the Company in this case. He's not acting in a
11 capacity as an attorney.
12 The transcript is full of statements by
13 Nicor that he is acting as an investigator in this
14 proceeding, not as their attorney, and I don't
15 understand how somebody can possibly be a witness in
16 this case and be an attorney in the case.
17 MR. ANDREOLI: I am referring, your Honor, to
18 Mr. MacNamara's sworn affidavit filed in August of
19 last year which discussed the memorandum in question
20 and provided a factual predicate for sustaining the
21 privilege of that document, stating that KPMG and
22 Mr. Lazare at no time were authorized or permitted

Exhibit A

1 to have that document, obtained it inadvertently.
2 We subsequently provided Mr. Strobel's
3 sworn affidavit providing the factual predicate that
4 that document is a confidential attorney/client
5 communication dealing with his provision of legal
6 services to his client, Nicor Gas, which were
7 intended at all times to remain in confidence.
8 They have not demonstrated a waiver of
9 the privilege with respect to that document. The
10 privilege has been sustained.
11 This is now the third, fourth time we've
12 gone over the privilege status of this document.
13 The result should be the same as it was on each
14 prior occasion.
15 MR. KELTER: Can I respond to that?
16 JUDGE DOLAN: Sure.
17 MR. KELTER: Well, as you know, this issue has
18 come up before because we never knew that that
19 document was considered by anybody before or we
20 would have made the waiver argument as we are making
21 it today.
22 I don't see any evidence that the Company

Exhibit A

1 ever made any effort to get that document back from
2 Mr. Lazare.
3 The bottom line is that Mr. Lazare saw
4 the document and considered it as part of his
5 thought processes in the formulation of his expert
6 testimony, and it was turned over to us.
7 Nicor -- they want to take no
8 responsibility for Mr. Lazare turning over that
9 document to us, but on the one hand, again, he is
10 working for Nicor. On the other hand, he's not.
11 I mean, they turned the document over to
12 us. They turned it over to Mr. Lazare. I don't
13 understand how there's any argument here that they
14 haven't waived privilege.
15 MR. ANDREOLI: We have provided sworn evidence
16 that the document was not turned over. Mr. Kelter's
17 comments notwithstanding, that is the fact of the
18 matter.
19 I am looking at Attachment 2 to our
20 Verified Emergency Motion of last week which
21 attaches Mr. Kelter's written argument as to this
22 document identified by privilege log, by date, by

Exhibit A

1 name, by persons who got it. And he's asserting a
2 waiver argument which was not accepted by your
3 Honors then and certainly should not be accepted by
4 your Honors now.
5 MR. KELTER: The privilege log did not ever
6 disclose that it was given to sombody outside
7 already. It was given to Mr. Lazare. The privilege
8 log couldn't have disclosed it because that's not
9 what the motion to compel was about.
10 MR. ANDREOLI: Nothing further, your Honors.
11 JUDGE DOLAN: All right. We are going to grant
12 Nicor's motion to exclude Mr. Strobel as a witness.
13 MR. KELTER: Can we request a written ruling on
14 that?
15 JUDGE DOLAN: It will be in the transcript.
16 MR. KELTER: I mean, beyond that, that explains
17 your -- the basis for your decision.
18 JUDGE DOLAN: I think we gave you one last Friday
19 with that ruling.
20 MR. KELTER: Well, I believe that was a
21 one-sentence ruling.
22 JUDGE DOLAN: About the privileged document, that

Exhibit A

1 it's a privileged and confidential matter and had
2 not been removed just because you obtained a copy of
3 it?
4 MR. KELTER: Or because it was given -- what
5 about the fact that it was given to Mr. Lazare and
6 that he used it as a basis in his report?
7 JUDGE HAYNES: We are denying the motion to
8 bring Mr. --
9 JUDGE DOLAN: Are you planning on filing an
10 interlocutory appeal?
11 MR. KELTER: Well, we are considering it.
12 JUDGE HAYNES: We are denying the motion as it
13 pertains to Mr. Strobel's testimony because he was
14 an attorney during the period in question for Nicor.
15 MR. ANDREOLI: Just to clarify the record, you
16 are granting the motion but --
17 JUDGE HAYNES: Yes. Granting the motion to
18 exclude.
19 JUDGE HAYNES: Next motion to strike portions of
20 the testimony of David Efron. We are denying all
21 three objections, but so that the record is clear,
22 Efron direct Page 12 Lines 20 through Page 14, Line

Exhibit A

1 7, Efron direct Page 15 Lines 6 to 21 and his
2 rebuttal Page 20 Line 7 to 10.
3 Those objections are denied, and that
4 testimony will remain.
5 And we believe the last remaining motion
6 is Cook County's, and we are unprepared to rule at
7 this time, however, we would like to hear argument
8 on the motion. And we will issue a ruling shortly
9 in writing.
10 MR. PERA: I wouldn't take that as a --
11 JUDGE HAYNES: We can put it down for the
12 lengthiness of that motion.
13 MR. PERA: I won't try to repeat.
14 We have several motions pending, but the
15 one I want to focus on first is the motion to bar
16 Lazare as an expert witness in this case, and we
17 bring this motion on a number of bases, your Honor.
18 First of all, there has been absolutely
19 no showing in the -- in Mr. Lazare's direct
20 testimony, because that's how this has to be looked
21 at, as though he was on the stand offering direct
22 testimony -- there has been absolutely no foundation

Exhibit A

1 laid for his rendering an opinion in this case.
2 There's been no foundation laid that he
3 is an expert in this case. There was no foundation
4 laid in regard to his education, his experience or
5 his training that would lead one to conclude that he
6 is an expert in gas issues, utility issues, Illinois
7 Commerce Commission issues or any other issue that
8 is germane to this case.
9 And by way of indirect proof of that,
10 take a look when you get -- when you deliberate on
11 this to what Nicor submitted in regard to Feingold.
12 They have no less than four full pages of
13 testimony on Russell Feingold's direct that lay out
14 the foundation under which he renders an opinion.
15 For Scott Lazare, they have ten Lines.
16 He graduated from Overland college in 1972. He
17 graduated from Northwestern Law School in 1975. So
18 what?
19 How does that lay a foundation that he is
20 an expert in gas issues?
21 They then -- and what they are relying on
22 is the fact that somehow or another you are going to

Exhibit A

1 take judicial notice that because he was a former US
2 District Attorney that somehow that gives him the
3 impromtor (phonetic) of being an expert in gas
4 cases.
5 Everything that he did is in reliance
6 upon somebody else, everything.
7 He had no independent basis that's been
8 shown in this record upon which he could evaluate
9 the information that was being funneled to him by
10 other sources.
11 You talk about hearsay on hearsay on
12 hearsay, you talk about somebody, as you referenced
13 in regard to Maple, cannot know the Company's state
14 of mind as a reason to strike portions of Maple's
15 testimony. This testimony is replete with it.
16 There has just been absolutely no showing
17 for Scott Lazare to render any opinions in this
18 case, and I don't care that he was a US Attorney.
19 If this was a case about the
20 investigation that Nicor conducted and Lazare was
21 taking a look at the investigation that Nicor did
22 into its activities, then that may be one thing, but

Exhibit A

1 that isn't this situation.

2 So it's -- I know it's a very difficult

3 thing to do, and I know we presumably all hold Scott

4 Lazare in very high esteem, but you have to look at

5 this very critically.

6 And if it was anybody other than Scott

7 Lazare, we wouldn't be having this discussion as to

8 whether or not they have laid a foundation for

9 the -- for his testimony being admitted.

10 So it shouldn't -- I think it would be

11 improper for you to throw the ball back onto me then

12 to cross him, to lay the foundation for Nicor for

13 why his testimony should be admitted.

14 They had an opportunity to establish a

15 foundation. They had an opportunity to offer

16 testimony regarding his education, training and

17 experience that would lead one to believe that he's

18 an expert in this issue, and they didn't do it, and

19 they don't get another bite of the apple through my

20 cross-examination.

21 MR. ANDREOLI: Do you want to -- are you going to

22 offer argument on Mr. Fisher and Mr. Leonard an

Exhibit A

1 Mr. Feingold? Do you also.

2 JUDGE HAYNES: Let's do them witness by witness.

3 MR. ANDREOLI: Thank you, your Honor.

4 Your Honor, an expert witness may testify

5 in Illinois if that expert has specialized knowledge

6 of a particular subject area and the expert's

7 testimony will assist the trier of fact in his

8 evaluation of the evidence.

9 An expert may testify as to the ultimate

10 issue in the case. The expert's testimony sets

11 forth a foundation of a factual matter and analysis

12 that will allow the expert to arrive at a conclusion

13 as to the ultimate issue in the case.

14 Illinois is permissive with the respect

15 to allowance of expert testimony for better or for

16 worse.

17 Mr. Lazare's direct testimony sets forth

18 on the first page of testimony, in addition to what

19 Mr. Pera referenced, that after his former legal

20 education, he served in the US Attorney's Office and

21 in private practice and that he has, in fact,

22 served -- and it's not a matter of judicial

Exhibit A

1 notice -- his testimony is admitted or part of the
2 record as the United States Attorney for the
3 Northern District of Illinois, specifically states
4 that in that capacity Mr. Lazare handled and
5 supervised civil litigation, criminal investigations
6 and prosecutions involving white collar fraud,
7 public corruption, narcotics and a variety of other
8 subject areas. He eventually left the Attorney
9 General's Office, entered a private practice.
10 As I have stated before -- Mr. Kelter
11 read some of this into the record in a prior
12 hearing -- Mr. Lazare is offering his testimony as
13 to his investigation of various matters relating to
14 the GCPP. He was engaged to perform his
15 investigation by Nicor Inc., the special board --
16 the special committee for the board of Nicor Inc.
17 (Change or reporters.)
18
19
20
21
22

Exhibit A

1 (Change of reporter)
2 He detailed the extensive investigations that he
3 provided and he testified as to the facts, as well
4 as the findings and conclusions, of his
5 investigation. I hazard to say that there is or
6 there are a few persons more qualified than
7 Mr. Lazare to perform an investigation of a
8 corporation and its activities, to find or to
9 identify facts, and to make findings and conclusions
10 related to that investigation.
11 I would note on the other side of the
12 coin that we have testimony in this case from
13 Mr. Merswa (phonetic) and a variety of other
14 witnesses that reach, to my mind, shocking and
15 unsupported conclusions on the issue in particular
16 of concealment and/or deceit.
17 Mr. Lazare also offers opinion
18 testimony on this subject matter, and if it were the
19 case that Mr. Lazare, who has decades of experience
20 in this area in the investigation of these types of
21 matters, based specifically on what he stated in his
22 direct testimony as the foundation for what he's

Exhibit A

1 offering and it is equally true that the other

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Exhibit A

1 testimony presented in this matter by persons far
2 less qualified should be stricken.
3 This is just a way of saying Mr. Lazare
4 is wholly and completely qualified. He has detailed
5 the investigations that he has performed. He has
6 detailed the analysis that came out of that
7 investigation. He has provided his opinions. This
8 is proper expert testimony under Illinois law and
9 should be allowed.
10 MR. PERA: I'll be very brief. I want to pick up
11 on something that Tom said. He said these types of
12 matters. There is absolutely no showing that Scott
13 Lazare has any knowledge of gas utility issues, the
14 Illinois Commerce Commission, or anything else
15 that's directly related to this case. Can he
16 conduct a fact investigation? Of course, but that
17 doesn't transform him into an expert witness for the
18 Commission on the issues involved in this case on
19 the basis of what's been submitted.
20 If NICOR blew it in terms of laying a
21 foundation, that's their problem. If NICOR thought
22 that all they had to say was we better put Scott

Exhibit A

1 Lazare on and then we will pass muster, and it
2 doesn't, because it doesn't, that's their problem,
3 but you have to take as critical an eye on this as
4 you did on the other witnesses.
5 There is just no showing, your Honors,
6 that he has any idea of what virtual storage
7 accounting is or that his background or experience
8 by way of example lends itself to know anything
9 about virtual storage.
10 If NICOR had an issue about the
11 foundation that was laid for the admissibility of
12 the testimony of the other experts, then they should
13 have raised it, but -- and they raised everything
14 else under the sun, which is their right, but they
15 didn't raise that because there isn't an issue as to
16 Mr. Merswa's qualifications to render an opinion.
17 They may not like the opinion, but he's qualified.
18 Mr. Ephrain (phonetic) is qualified. The staff
19 witnesses are qualified. I'll stipulate that
20 Mr. Feingold (phonetic) is qualified. There's no
21 showing that Mr. Lazare is qualified, period, and he
22 has to be stricken or barred. They can't redo it,

Exhibit A

1 so --

2 MR. ANDREOLI: Your Honor, at Line 12 of

3 Mr. Lazare's direct testimony he indicates his

4 extensive experience involving white collar fraud.

5 Mr. Merswa states in his testimony repeatedly that

6 the company has engaged in a fraud. If it is

7 Mr. Pera's position that Mr. Lazare is less

8 competent than Mr. Merswa to provide testimony to

9 this subject area, I find that to be a position with

10 little merit.

11 MR. PERA: They had an issue about that, your

12 Honors, that the time has come and gone to raise it.

13 COMMISSIONER DOLAN: All right. We'll take that

14 under advisement, so you want to move on to

15 Mr. Fisher.

16 MR. PERA: Sure. I'm not sure, your Honors, how

17 you want to proceed. There isn't a lot with

18 Mr. Fisher. If you want to look at it and follow

19 along or, you know, I don't like to make an argument

20 in a vacuum. I don't mean this to be --

21 COMMISSIONER HAYNES: We'll follow along.

22 MR. PERA: Well, okay, because I was going

Exhibit A

1 to say if you want to take a look at it -- you've
2 obviously spent a whole lot of time on the other
3 witnesses I think in general, and the attorneys
4 appreciate it, in the substance of your rulings --
5 if you want to look at it and do it later or get it
6 over with now --
7 COMMISSIONER HAYNES: We'll look at it, but we'll
8 rule later.
9 MR. PERA: Okay. I'm sorry. I think a lot of
10 the objections speak for themselves though. I guess
11 I'd answer the Questions 43 and 44, there's no
12 foundation was laid for Mr. Fisher's opinion, the
13 same objection regarding lack of foundation with
14 regard to Lines 81 and 84.
15 MR. ROONEY: If you want a response on that, your
16 Honors, in terms of foundation, Mr. Fisher is the
17 chairman, CEO of NICOR, Inc., as well as NICOR Gas.
18 At the time in question, as parties obviously know,
19 Mr. Fisher was present at particular meetings where
20 decisions were made that directly relate to
21 TCGB(sic).
22 MR. PERA: That may well be, your Honors. It's

Exhibit A

1 the same problem with Lazare. They don't lay a
2 foundation. There's no foundation laid, you know,
3 and you have to have a foundation laid, and they
4 didn't lay one, and it's the same thing with Lines
5 41 to 84. It talks about -- it's a similar
6 argument. They don't lay a foundation for the basis
7 for his opinion. I don't understand it.
8 MR. ROONEY: I guess the interesting thing we
9 have here is that what Mr. Fisher's responding to is
10 the speculation, in my view, of certain staff
11 intervenor witnesses of what they think transpired
12 and here you have an actual individual who's at the
13 event in question and providing direct personal
14 knowledge about information and different decision
15 points during the course of the process, so I think
16 it's directly relevant and goes directly to the fact
17 that he was the chairman/CEO of the company. He was
18 at the meeting in question when decisions were made.
19 MR. PERA: Just moving on then on the hearsay
20 lack of foundation issues, on Page 3, Lines 49 to
21 53, talks about "I also understood." It's
22 apparently hearsay and there's no foundation.

Exhibit A

1 Who did he understand it from? What
2 was the context? Who told him? He doesn't get the
3 benefit that an expert gets in terms of relying on
4 hearsay.
5 MR. ROONEY: Which line is that, Mark?
6 MR. PERA: That was Lines 49 and 53. "I also
7 understood that the gas supply personnel" on 51, "It
8 was my understanding and expectation." There's no
9 foundation. You just can't -- these guys can't just
10 walk in and say anything. They're fact witnesses.
11 MR. ROONEY: Mr. Fisher that is his
12 understanding. If Mr. Pera wants to probe him as to
13 how he came to that understanding, that's certainly
14 his opportunity during examination, but the fact of
15 the matter that he's the CEO and chairman of the
16 company and it's his understanding how the company
17 would act. At the time he was one of -- the senior
18 officers. He was the senior officer and one of the
19 seniors of the group that made the decision to go
20 forward with the program.
21 MR. PERA: All right. Moving on to 65 through
22 68, he talks about a meeting that took place on

Exhibit A

1 November 29, 1999, not once does he say he was
2 present at this meeting, not once. He doesn't put
3 himself there. We don't know if he was there, but
4 he talks about what transpired there. There is no
5 foundation laid.
6 It was attended by a variety of senior
7 management and rates and gas supply personnel. Tell
8 me where it says I was there. Where? There's no
9 foundation.
10 MR. ROONEY: I believe in the November 29th
11 meeting that Mr. Pera's referencing, again, there's
12 other information established about who was at the
13 meeting when it was taking place. If you want to
14 probe Mr. Fisher on his memory at that point in time
15 and whether he was there --
16 MR. PERA: That's not our obligation here. We
17 don't have to cross-examine him to make his case.
18 MR. ROONEY: He's testifying first-hand
19 knowledge. He's not testifying as other witnesses
20 are about trying to put strands of DNA together to
21 come up with what they believed happened.
22 Mr. Fisher's testifying as to what

Exhibit A

1 actually, in his mind, happened as a member of the
2 company, not only a member of the company, the
3 leader of the company and senior officer involved in
4 the discussions that related to TGCB (sic).
5 MR. PERA: Your Honors, he's talking in substance
6 about what transpired in a meeting and there is
7 showing that he was there. It was not our
8 responsibility to cross-examine their witnesses,
9 just like with Lazare, to help them lay the
10 foundation for the introduction of their testimony.
11 MR. ROONEY: The testimony states it was attended
12 by a variety of different senior management. Again,
13 I submit there is no one more senior than Mr. Fisher
14 at the company at the time in question.
15 MR. PERA: Then why didn't they say he was there?
16 MR. ANDREOLI: Quibbling.
17 MR. PERA: Quibbling?
18 COMMISSIONER HAYNES: Let's move on to the next
19 objection.
20 MR. PERA: Quibbling, speculation.
21 Page 3, Lines 53 to 55, he says -- he's
22 talking about the LIFO layers -- "While I do not

Exhibit A

1 recall specific conversations with employees during
2 which I communicated this view, I believe that it is
3 likely that I would have done so." That's
4 speculation. There is lack of foundation.
5 MR. ANDREOLI: Mr. Fisher knows what his state of
6 mind was at the time. He'll testify to the best of
7 his recollection given the opportunity to do so.
8 MR. PERA: So if Mr. Fisher can testify to state
9 of mind, but other witnesses aren't allowed to --
10 MR. ROONEY they're testifying to someone's
11 else's state of mind. See, I think that's the
12 distinction.
13 MR. PERA: Your Honors, please. While I do not
14 recall what happened, I think this is what happened.
15 I don't know.
16 MR. ANDREOLI: It's rather famous testimony along
17 those lines.
18 MR. PERA: Oh, my gosh. Page 3, Lines 57 through
19 59 we believe that's a legal conclusion. The
20 company always believed that the LIFO layers are
21 the property of the company. This ownership
22 includes the unrealized value. Apparently it goes

Exhibit A

1 to state of mind. Objection. This ownership
2 includes the unrealized value. There is a
3 difference between the book value and market value
4 of both LIFO layers.
5 MR. ROONEY: Your Honors, again, I don't think
6 Mr. Fisher's saying that absolutely positively it
7 was our legal asset under the law. He said that it
8 was the company's belief that it was their asset.
9 It was a state of mind.
10 MR. PERA: Okay. We are on the letter.
11 MR. ROONEY: Direct and surrebuttal.
12 MR. PERA: Okay. Page 3 -- I'll keep this brief.
13 I couldn't restrain myself with regard to
14 Mr. Fisher.
15 On Page 3, Line 61 through 65. We
16 think it's all hearsay. Particularly, I ask you to
17 focus on 61, 62, and 63. In all of my discussions
18 with the PBR (sic) group the liquidation of the LIFO
19 gas layers were never even mentioned.
20 It's our belief that's hearsay.
21 Discussions with who? There's a lack of foundation.
22 Who did he talk to? When did he talk to them? Who

Exhibit A

1 was it? It's just too loose for direct testimony.
2 There's no foundation.
3 MR. ROONEY: I guess our response would be he
4 provided input to the PBR. He testified precisely
5 his participation, and what he provided to that
6 group, and what that group discussed, his first-hand
7 knowledge about that event.
8 MR. PERA: You know what, I wouldn't mind even
9 cutting this short. I'll rest on what we have
10 submitted. I have confidence in you guys. I'm not
11 trying to be -- you guys looked through the other
12 stuff I thought with the appropriate amount of
13 diligence and I don't think you need to hear from
14 us.
15 COMMISSIONER DOLAN: We'll review it all and
16 we'll issue -- we'll issue a ruling similar to what
17 we did on the record for these.
18 MR. PERA: That's fine.
19 MR. ANDREOLI: Thanks, Mike.
20 MR. PERA: The only other issue I think that is
21 out there, your Honors, I'm not sure we are going to
22 argue today, is we filed a motion to compel

Exhibit A

1 yesterday and my only -- and data responses that we
2 got from NICOR and we don't have to argue it today,
3 but I would like to setup a framework where we get a
4 ruling before the 19th, and whether we rest on the
5 written submissions, because there's no time to do
6 an oral presentation, I'm okay with that, but it
7 goes to the issue -- just so you know the context,
8 we asked for information regarding what NICOR paid
9 their experts -- their testifying experts to proffer
10 testimony in this case, Feingold (phonetic), Moretti
11 -- not Moretti --
12 MR. ROONEY: Barren (sic).
13 MR. PERA: -- Barren (sic), Lazare, KPMG.
14 There's outside attorneys that NICOR hired that are
15 representing some of the adverse witnesses. We want
16 to know what they paid. NICOR's objected. They
17 just got the motion yesterday. I want to give you
18 the context.
19 MR. ROONEY: And to stay in the context, we
20 responded that, yes, they have been paid. We think
21 everything else -- and we go on from there. We want
22 to establish a quick briefing schedule for it, or

Exhibit A

1 howe ever you want to address it, your Honors,
2 we'll leave it entirely in your hands.
3 MR. ANDREOLI: Mark, you need a week. When did
4 you want it?
5 MR. PERA: Well, I think we need it before the
6 19th, so I would say a week from Friday if we
7 prevail, so, you know --
8 MR. ANDREOLI: We are happy to file a quick
9 response. In fact, I wonder --
10 COMMISSIONER HAYNES: When do you file that by?
11 MR. ANDREOLI: We could try Friday, but Monday
12 would be better.
13 COMMISSIONER HAYNES: So the 12th?
14 MR. ANDREOLI: Yes.
15 MR. PERA: If we respond, we'll respond by
16 Wednesday and we may not respond. We may just if
17 that's --
18 COMMISSIONER HAYNES: The 12th and 14th and we'll
19 issue a ruling by Friday, the 16th.
20 MR. PERA: Did you get a copy because I have an
21 extra copy here --
22 COMMISSIONER HAYNES: I have a copy.

Exhibit A

1 MR. PERA: -- if you want it?
2 COMMISSIONER DOLAN: They were e-mailed to us
3 this morning.
4 MR. PERA: I just didn't want to slow up the
5 process. I think that's it.
6 MR. KELTER: I have a question.
7 COMMISSIONER HAYNES: Okay.
8 MR. KELTER: The question relates to Mr. Stroebel
9 (phonetic) that probably it might relate to other
10 witnesses as well.
11 My understanding the way the law works
12 is, for instance, if Mr. Stroebel was excluded as a
13 witness, we would like an opportunity to make an
14 offer of proof for the record, and my question is we
15 would like to call Mr. Stroebel as a witness under
16 the guise of making an offer of proof.
17 MR. ROONEY: We are not prepared to respond to
18 that today. If they want to provide some authority
19 as to how he can call particularly Mr.Stroebel in
20 his capacity as an attorney with privileged
21 information and in his role as general counsel, if
22 they want to make a motion on that, I think we would

Exhibit A

1 like the opportunity to respond in kind.
2 MR. KELTER: That's not exactly how we would
3 frame the motion. The issue is we would be making
4 an offer of proof and how to go about doing that
5 once you rule that a witness has been excluded.
6 COMMISSIONER DOLAN: Mr. Kelter, you bring that
7 up for the first time. Why don't you, if you would,
8 put something in writing so they can have an
9 opportunity to respond to it and we'll rule that
10 way.
11 MR. KELTER: Okay.
12 MR. ANDREOLI: Thank you, your Honor.
13 COMMISSIONER HAYNES: I think there's also a
14 staff motion for subpoena that came in this morning.
15 MR. REICHART: That's right.
16 COMMISSIONER HAYNES: Is NICOR going to be
17 objecting to this?
18 MR. ROONEY: They directed their subpoenas to the
19 individuals. We're not making an objection to them.
20 I can't tell you whether those individuals may try
21 to object. NICOR is not.
22 MR. ANDREOLI: They're not employees, your Honor

Exhibit A

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2 COMMISSIONER DOLAN: Okay. Is there anything

3 else to be discussed today?

4 MR. ROONEY: Just from a -- maybe an

5 informational standpoint for the judges is that we

6 discussed among ourselves prior to the hearing this

7 morning and we are going to endeavor to work out a

8 schedule of events and witness scheduling and try to

9 get that to you by later next week, so, unless you

10 have something in mind, we are going to try to work

11 it out, so we'll get it to you so you know what our

12 proposal is for presentation over the following two

13 weeks.

14 COMMISSIONER HAYNES: That's fine.

15 MR. ROONEY: I'm sorry to burden you further.

16 Are we planning to be -- you know, we'll be in this

17 room or what room we might have?

18 COMMISSIONER HAYNES: I think that we'll have

19 this room unless there's Commission meetings.

20 MR. PERA: How do you normally, you know, conduct

21 a day? I mean, do you plan to start at 9 and work

22 till 5, or 5:30, or what?

Exhibit A

1 COMMISSIONER HAYNES: We normally start at 10,
2 but we definitely can start at 9 if this is going to
3 take two weeks or a possibility of it taking longer
4 than two weeks we should start at 9.
5 MR. PERA: Well, in light of some of your
6 rulings, it hasn't eliminated some of the witnesses.
7 We can talk about that.
8 COMMISSIONER HAYNES: We can start at 10 on
9 Monday and then from there then on go at 9.
10 MR. PERA: Then how late do you usually go?
11 COMMISSIONER HAYNES: That all depends.
12 MR. PERA: Okay. Because I have to schedule and
13 four kids running around, would you go past 6 as a
14 matter of course?
15 COMMISSIONER HAYNES: I did a couple of weeks
16 ago. So, yes, I suppose we could.
17 MR. PERA: Okay.
18 COMMISSIONER DOLAN: John, just to answer your
19 question, there's a pre-bench on Tuesday, on
20 Wednesday the 20th and 21st, and then there's the
21 regular open meeting on the 27th also. There is a
22 possibility that we won't have this room for those

Exhibit A

1 three days.

2 MR. ROONEY: Okay. Going back to in light of

3 your rulings you made today and in light of the

4 rulings you are going to hold until you get back to

5 them, would you like us to have prepared then

6 revised testimony based on what's in, what's out,

7 and then have separately a complete version for

8 offers of proof purposes? I'm just thinking right

9 now there's a lot of testimony in the record or that

10 could be in the record where there's going to be

11 different pieces stricken. I don't know how you

12 want to handle that, your Honors.

13 COMMISSIONER HAYNES: Well, maybe we'll have

14 clean copies filed after the hearings are done,

15 because a lot of testimony could still be -- has

16 potential to be stricken, and so for now we'll deal

17 with the full copies.

18 MR. ROONEY: Great. Thank you.

19 MR. KELTER: You know, John, I don't know if you

20 were getting to this at all, but some of us may be

21 bringing over large quantities of documents that may

22 be used as exhibits and all that was -- that's part

Exhibit A

1 of what you were getting to in terms of this room,
2 because I think we might want to discuss that a
3 little bit further so we all have the same
4 understanding.
5 MR. ROONEY: I guess in terms of quantity and
6 what we may be marching over here the 19th starting,
7 if there's a way that -- I don't know if you want
8 this on the record -- in terms of the judges can
9 maybe reserve this room, if not here, 808, or
10 something, so that rather than a caravan going back
11 and forth at the end of the day for all of us, it
12 might be helpful.
13 MR. KELTER: The other thing a lot of the
14 documents will be confidential documents, so we
15 should both be working under the same understanding
16 regarding how those would be treated; in other
17 words, can we leave the documents here overnight and
18 assume the doors are locked?
19 MR. ROONEY: I agree.
20 MR. KELTER: You know what I'm getting at.
21 COMMISSIONER HAYNES: We'll consider this and try
22 to work out something.

Exhibit A

1 COMMISSIONER DOLAN: We'll try to find a room
2 that maybe we can share.
3 COMMISSIONER HAYNES: This is the only one with
4 comfortable chairs.
5 MR. KELTER: Believe me, we would love to be in
6 here. I don't know if the Commission would consider
7 moving their benches to Springfield.
8 MR. ROONEY: Nice Springfield.
9 COMMISSIONER HAYNES: We will try to put it past
10 them.
11 MR. ROONEY: We'll pull rank.
12 MR. KELTER: Just don't say Rob Kelter said it.
13 COMMISSIONER HAYNES: We'll blame it on John
14 Rooney.
15 COMMISSIONER DOLAN: We'll say you recommended
16 it.
17 MR. PERA: You could say me. They don't know who
18 I am.
19 COMMISSIONER HAYNES: I don't know about that.
20 (Laughter.)
21 MR. KELTER: They do now.
22 COMMISSIONER HAYNES: Anything else on the

Exhibit A

1 record?

2 MR. ROONEY: Thank you very much appreciate, your

3 Honors. Thank you.

4 COMMISSIONER HAYNES: Thank you. We're continued

5 until the 19th at 10 a.m.

6 (Whereupon, this matter

7 is continued to

8 April 19, 2004 at

9 10 o'clock a.m.)

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Exhibit A

1 No. 01-0705, 02-0067

2 & 02-0725

3

4 State of Illinois
ILLINOIS COMMERCE COMMISSION
5 _____

6 (To be filed with the Chief Clerk)

7 MINUTES

8 Chicago, Illinois
April 8, 2004
9
Case No. 01-0705, 02-0067 & 02-0725
10
Subject: ILLINOIS COMMERCE COMMISSION - On Its Own
11 Motion vs. NORTHERN ILLINOIS GAS COMPANY

12 Reconciliation of revenues collected under
gas adjustment charges with actual costs
13 prudently incurred
---
14 ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
15 d/b/a NICOR GAS COMPANY

16 Proceeding to review Rider 4, gas cost,
prudent to Section 9-244(c) of the Public
17 Utilities Act
---
18 ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
19 d/b/a NICOR GAS COMPANY

20 Reconciliation of revenues collected under
gas adjustment charges with actual costs
21 prudently incurred

22

Exhibit A

1 HEARD BY: MS. LESLIE HAYNES and
MR. GLENNON DOLAN,
2 ADMINISTRATIVE LAW JUDGES

3 APPEARANCES AND ADDRESSES:

4 (SEE ATTACHED SHEETS)

5 DISPOSITION: Continued to April 12, 2004 at
10 o'clock a.m.
6
(None.)
7
REPORTED BY: SULLIVAN REPORTING COMPANY, by
8 Patricia Wesley

9 REMARKS: Orig to Commission
Pages (pgs)
10 Maloney /Wesley 22pgs

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Exhibit A

1 CERTIFICATE OF REPORTER

2 STATE OF ILLINOIS)
COUNTY OF COOK) SS:
3 CASE NUMBER: 01-0705, 02-0067 & 02-0725
TITLE: ILLINOIS COMMERCE COMMISSION - On Its Own
4 Motion vs. NORTHERN ILLINOIS GAS COMPANY

5 Reconciliation of revenues collected under
gas adjustment charges with actual costs
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11 ILLINOIS COMMERCE COMMISSION - On Its Own
Motion vs. NORTHERN ILLINOIS GAS COMPANY
12 d/b/a NICOR GAS COMPANY

13 Reconciliation of revenues collected under
gas adjustment charges with actual costs
14 prudently incurred

15
I, KATHLEEN MALONEY and PATRICIA WESLEY, do
16
hereby certify that we are court reporters
17
contracted by SULLIVAN REPORTING COMPANY of
18
Chicago, Illinois; that we reported in shorthand the
19
evidence taken and the proceedings had on the
20
hearing on the above-entitled case on the 8th
21
day of April A.D., 2004; that the foregoing pages
22
are a true and correct transcript of our shorthand

1 notes so taken as aforesaid, and contains all of the
2 proceedings directed by the Commission or other
3 person authorized by it to conduct the said hearing
4 to be stenographically reported, dated at
5 Chicago, Illinois, this 8th day of April, A.D.
6 2004.
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8 _____
Certified Shorthand Reporter
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10 _____
Certified Shorthand Reporter
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