

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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CHIEF CLERK'S OFFICE

Citizens Utility Board)	
)	00-0620
Request for an investigation into the current)	
structure of the Nicor Customers Select Pilot)	
Program and the Proposed Changes filed)	
August 10, 2000, Meet the Public Interest)	
Standards and Other Requirements Set Forth)	
in the Public Utilities Act. 220 ILCS 5/4-101;)	
220 ILCS 5/8-101; 220 ILCS 8-102.)	
)	
Northern Illinois Gas Company)	
d/b/a Nicor Gas Company)	(cons.)
)	
Proposed changes to Riders 15 and 16)	00-0621
and related provisions.)	
(Tariffs filed on August 11, 2000))	
)	

INITIAL BRIEF OF NORTHERN ILLINOIS GAS COMPANY
[NON-PROPRIETARY VERSION]

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I. Overview of the Nicor Customer Select Pilot Program

A. Background.

Since 1986, unbundled transportation service has been available to the large commercial and industrial customers of Northern Illinois Gas Company (“Nicor Gas” or “Company”). Over the years, Nicor Gas has continually refined its tariffs to enable more customers to take advantage of its transportation services. By 1996, approximately 20,000 commercial and industrial customers transported their own gas supplies over the Company’s distribution system, constituting approximately 40 percent of its annual throughput.

Recognizing the success of unbundled transportation service for large commercial and industrial customers, Nicor Gas developed the Customer Select Pilot Program (“Customer Select” or “Program”), with the Commission’s encouragement, not only to make voluntary unbundled transportation service available to small industrial and commercial customers, but also to allow residential customers to choose their own qualified Suppliers (“Suppliers”). While Customer Select was originally limited to commercial and industrial customers, the Program was designed with an eye toward eventual expansion to residential customers. In 1997, the Commission approved Customer Select to be effective for three years.

The first customer open enrollment period was from January through March 1998, and customers first began receiving service under Rider 15, Customer Select Pilot Program, in May 1998. In the first year of the Program, Nicor Gas limited enrollment to 20,000 commercial and industrial customers that did not already transport their own gas. Even though the duration of the original enrollment period in the first year was twelve weeks, the 20,000 customer limit was met in only six weeks. Nicor Gas Ex. D, p. 7 (Harms Direct). In the second year, Nicor Gas expanded Rider 15 to allow participation by 60,000 commercial and industrial customers. In

addition, customers that transported their own gas supplies under Rider 25, Firm Transportation Service, and who had a maximum daily contract quantity of 100 therms or less, were allowed to switch to Customer Select. *Id*; Nicor Gas Ex. AEH-8. Nicor Gas also opened Customer Select to approximately 80,000 residential customers in selected communities, and approximately 17,000 of them chose to enroll in the Program. Nicor Gas Ex. AEH-8. In the third year, Nicor Gas further expanded the Program to all industrial and commercial customers, regardless of whether they transported gas under other Nicor Gas tariffs. In addition, the Company expanded the Program's availability to over 260,000 residential customers. Approximately 57,000 residential customers were enrolled at the close of the sign-up period for the third year. Nicor Gas Ex. AEH-8.

Due to the success of Customer Select, Nicor Gas seeks to further expand the Program to all residential customers and to make the Program permanent. On August 11, 2000, Nicor Gas filed with the Commission revisions to Riders 15 and 16 and other related tariffs governing Customer Select. On September 20, 2000, the Commission entered a Suspension Order suspending Nicor Gas' filing and initiating the instant proceeding. Notwithstanding the Commission's suspension of the filing, the Commission found that

the issues in the proceeding we begin today might not be resolved in time to ensure the seamless availability of Riders 15 and 16 to those already served under these riders. We thus encourage Nicor to request extension beyond April 30, 2001, of the availability of Riders 15 and 16 to those to whom such riders are currently available in order to preserve service to these customers and suppliers while this proceeding continues.

Suspension Order, p. 2. In compliance with the Suspension Order, Nicor Gas filed a Petition with the Commission seeking an extension of Riders 15 and 16 for those customers eligible for

Customer Select during the third year to April 30, 2002. The Commission approved Nicor Gas' Petition on November 1, 2000.¹

B. Rider 15, Customer Select Pilot Program.

As stated above, Rider 15 embodies Customer Select and, since 1997, Nicor Gas has successively expanded Rider 15 so that more and more customers have been able to take advantage of unbundled transportation service and Supplier choice.

Other provisions of Rider 15 have not changed since implementation of the Customer Select Program. These features of Rider 15 include: 1) charges for Customer Select that are the same as the customer's normal rate without gas supply costs; 2) direct customer billing by Nicor Gas for its services; 3) the ability of Suppliers to enroll customers in Customer Select electronically, provided that the Supplier warrants that it has an agreement with the customer; 4) the ability of customers to terminate service under Customer Select by notifying Nicor Gas; 5) the ability of Suppliers to return customers to Nicor Gas' sales service by May 1 of each year so long as the Supplier notifies the customer and the Company by March 1 of that year; and 6) the ability of Suppliers to return customers to Nicor Gas' sales service upon 15 days' notice when the customer is at least 60 days in arrears with the Supplier. Nicor Gas Ex. D, pp. 8-9 (Harms Direct).

Nicor Gas does, however, propose to make several changes to Rider 15 as a part of expanding Customer Select and making it a permanent program. *First*, the Company proposes to expand Rider 15 so that all customers will receive the benefit of Supplier choice. Nicor Gas also proposes to facilitate Supplier choice by replacing the fixed enrollment period with an open

¹ The following parties intervened in this proceeding: the Citizens Utility Board ("CUB"), the State's Attorney of Cook County, and the Illinois Attorney General (collectively "GCI"); The Peoples Gas Light and Coke Company; Illinois Power Company, and the National Energy Marketers Association ("NEMA").

enrollment period so that customers can enroll in the Program at any time of the year, and change Suppliers once each billing cycle. *Second*, under the current provisions in Rider 15 limiting Customer Select to certain residential customers, if a customer moves to another location within the Company's service territory, the customer is automatically terminated from the Program. However, under the proposed expansion of Rider 15, residential customers would be able to remain in the Program when they move to a new location within the Company's service territory, subject to the customer's contract with its Supplier. *Third*, Nicor Gas proposes to limit the customer's liability to pay for charges billed to the Supplier if the Supplier fails to pay Nicor Gas. Nicor Gas Ex. F, p. 13 (Harms Surrebuttal); Tr. 117. Under the current Rider 15 provisions, customers are required to pay *all* charges billed by the Company to the Supplier in the event the Supplier does not pay. *Fourth*, to alleviate any misunderstandings concerning enrollment or termination, Nicor Gas proposes that the Supplier notify the customer of both enrollment and termination of service. *Fifth*, the Company seeks to modify the current provision in Rider 15 that requires that the customer only notify Nicor Gas of termination of service under Customer Select. Instead, Nicor Gas proposes that, if the customer wishes to terminate, he must notify the Supplier who will, in turn, notify the Company. *Sixth*, Nicor Gas proposes to share with Suppliers the proceeds received from third parties such as the Low Income Home Energy Assistance Program ("LIHEAP") for the customer's benefit. Such money would first be applied to any Company arrears, and then to any arrears of the Supplier. Nicor Gas Ex. D, pp. 9-11 (Harms Direct).

C. Rider 16, Supplier Aggregation Service.

Rider 16, Supplier Aggregation Service, sets forth the provisions governing Suppliers who serve customers under Rider 15. The provisions of Rider 16 have been modified over the term of Customer Select to parallel modifications in Rider 15. As discussed further below, Nicor

Gas proposes additional changes to Rider 16 in this proceeding. The following describes the important features of Rider 16.

1. Standards of Conduct.

The Commission does not have direct jurisdiction over Suppliers. Although the General Assembly has given the Commission jurisdiction to regulate Alternative Retail Electric Suppliers (“ARES”) in the electric industry, similar legislation does not exist with respect to gas supply marketers. For this reason, Rider 16 contains a Standards of Conduct section applicable to Suppliers serving customers under Customer Select. These Standards of Conduct require Suppliers, among other things, to establish customer complaint procedures, abide by certain marketing restrictions and provide customers with sufficient notice of termination of commodity services. Nicor Gas Ex. AEH-4, pp. 10-12. While Rider 16 enables a customer to complain to the Commission if a Supplier does not follow the provisions set forth in the Standards of Conduct, it does not provide the Commission with direct jurisdiction over Suppliers. Rather, if the Commission finds that a Supplier has violated the Standards of Conduct, it can direct Nicor Gas to drop the Supplier from the Customer Select Program.

2. Recovery of Costs through Supplier Charges.

For the first three years of Customer Select, Nicor Gas incurred approximately \$3.1 million in expenses. These costs included costs related to customer education in the form of Supplier meetings, communications collateral for eligible customers and press releases, and expenses related to the training and staffing of customer service representatives to manage the influx of customer calls seeking information about Customer Select. Incremental costs were also incurred as a result of the need to develop new billing methods and procedures to segregate customers participating in the Program from those not participating in the Program in order to

ensure proper billing. These costs do not include Nicor Gas' investments in new equipment or a return on those capital costs. Nicor Gas Ex. D, p. 20 (Harms Direct).

Revenues for the first three years of the Customer Select Program were approximately \$3.2 million. Nicor Gas Ex. D, p. 20 (Harms Direct); Nicor Gas Ex. AEH-7. Thus, the Company's expenses have been almost equally offset by revenues collected under the Program.² However, Nicor Gas has invested an additional \$ 2.1 million in capital that has not been recovered. *Id.* at 20-21 (Harms Direct), Nicor Gas Ex. AEH-7.

Expansion of the Customer Select Program to all customers will undoubtedly cause Nicor Gas to incur substantially more implementation, maintenance and capital costs. In fact, for the first year of the expanded Customer Select Program, Nicor Gas estimates its additional incremental expenses will be approximately \$3.7 million and that its additional capital investment will be \$6.7 million. *Id.* at 22. Rider 16 maintains the existing Supplier charges designed to offset the ongoing costs of the Customer Select Program.

Supplier Application Charge: A one-time Supplier application charge of \$2,000 is used to recover the various costs associated with adding a Supplier to the Customer Select Program such as financial reviews, training and necessary technology programming. The Company does not propose any changes to this charge.

Monthly Group Charge: Rider 16 also contains a monthly charge of \$200 per group.³ The Monthly Group Charge is used to recoup costs incurred by Nicor Gas to serve a group of

² The fact that Nicor Gas' expenses have been almost equally offset by its revenues under Customer Select objectively demonstrates that the various Supplier charges under Customer Select (to which Staff and GCI object) have been set at an appropriate level. As discussed further below, Nicor Gas does not propose to change these charges in this proceeding.

³ All Suppliers have combined their customers into one group, so each Supplier currently has a total monthly charge of \$200.

customers such as calculating, reviewing and issuing a group bill, responding to Supplier billing questions and forecasting, generating and processing daily and monthly nominations and group payments. The Company does not propose any changes to this charge.

Group Additions Charge: Rider 16 also contains a \$10 switching charge that applies to Suppliers whenever they add a new customer that has switched from another Supplier.⁴ This charge helps Nicor Gas recover costs related to customer calls inquiring about the change in Suppliers, processing change requests and dealing with disputes between Suppliers or between Suppliers and Customers. The Company does not propose any changes to this charge.

Account Charge: Rider 16 contains an Account Charge assessed to Suppliers which recovers costs associated with implementation and administration of Customer Select that are not recovered under the other Supplier charges. The Account Charge has been reduced from \$3 per customer account in the first year of the Program to \$2 per customer account in the second year and \$1 per customer account in the third year. The Company does not propose a change to this \$1 charge.

In addition to the charges that recover the costs of implementing and administering Customer Select, Rider 16 assesses charges related to gas costs and transportation services incurred to serve Customer Select customers.

Month-End Cash Out: The month-end cash out applies to the difference between the amount of gas delivered by the Supplier to Nicor Gas and the amount used by the Supplier's customers, or group, net of storage activity. In the third year of Customer Select, the Company modified this provision so that there is no charge to the Supplier if the amount of any imbalance (positive or negative) is less than two times the estimated maximum daily contract quantity of

⁴ Nicor Gas' sales customers switching to Customer Select do not incur this charge.

the Supplier's customers. Any amount over or under two times the estimated maximum daily contract quantity of the Supplier's customers is priced at 100 percent of the Monthly Market Price, defined as the "Daily Midpoint" for each day in *Gas Daily*. This price is intended to be a market neutral price. Nicor Gas Ex. A, p. 6 (Gilmore Direct). Nicor Gas proposes to expand the month-end delivery range the Supplier must fall within, thereby further expanding Suppliers' delivery flexibility and avoiding the cash-out charge in many more instances, from two times to three times the estimated maximum daily contract quantity of the Supplier's customers.

Transition Surcharge and Storage Service Cost Recovery Charge: The Transition Surcharge ("TS") and Storage Service Cost Recovery Charge ("SSCRC") are gas supply costs incurred by Nicor Gas in operating its system. The TS and SSCRC are charged on a per-therm-of-use basis and are assessed on Suppliers in the same manner as they are on the Company's sales customers. The Company proposes no change in application of these charges.

Aggregator Balancing Service Charge: The Aggregator Balancing Service Charge ("ABSC") also represents a cost incurred by Nicor Gas in operating its system and is charged on a per-therm-of-use basis. While the ABSC recovers firm pipeline costs, it excludes firm transportation costs, for which the Supplier is directly responsible under its Firm Capacity Requirement. See Nicor Gas Ex. A, p. 12 (Gilmore Direct). Thus, the ABSC applies only to Customer Select Pilot Program customers, unlike the TS and SSCRC. If, however, the Supplier does not obtain the required firm transportation service and firm supply, then the Company charges the Supplier a Firm Delivery Charge equal to the non-commodity gas cost that would be assessed on the Supplier based on its customers' monthly use for the period November through

March.⁵ As explained in the Direct Testimony of Leonard Gilmore, Nicor Gas proposes to continue to recover costs associated with firm long-term services purchased to operate and balance the system through the ABSC. This includes the cost of firm storage services, peaking services and transportation services used to operate and balance the system by redistributing gas supply among Nicor Gas' citygate receipt points. Nicor Gas Ex. A, p.11 (Gilmore Direct). In addition, Nicor Gas proposes to recover through the ABSC a portion of the costs of purchasing gas supply to maintain system integrity during severe weather conditions when such costs are incurred during a period in which an Operational Flow Order ("OFO") is in effect. *Id.* at 12.

Non-Performance Charges: Under Rider 16, a Supplier could also be charged if it does not deliver its Required Daily Delivery.⁶ The amount of the charge depends upon whether the under-delivery occurs on a Critical or non-Critical Day. For each therm of under-delivery on a Critical Day, the Company would assess on the Supplier a Critical Day Non-Performance charge of \$6 per-therm, plus Nicor Gas' supply cost or the market price, whichever is higher. If, however, the Supplier makes an over-delivery on a Critical Day,⁷ the Company would purchase

⁵ If the Supplier fails to obtain the required firm transportation service and firm supply by April 1, the Supplier would be removed from the Program for non-compliance.

⁶ A Required Daily Delivery is the volume of gas required to be delivered each day by the Supplier for its customers in order to ensure that there is sufficient gas supply and that Suppliers utilize storage capacity in the same manner as Nicor Gas. Nicor Gas Ex. A, p. 2 (Gilmore Direct).

⁷ A "Critical Day" is defined in the Company's tariff as:

a day which may be declared by the Company whenever any of the following five conditions occurs or is anticipated to occur: (a) when the Company experiences failure of transmission, distribution, gas storage or gas manufacturing facilities; (b) when transmission system pressures or other unusual conditions jeopardize the operation of the Company's system; (c) when the Company's transmission, storage, and supply resources are being used at or near their maximum rated deliverability; (d) when any of the Company's transporters or suppliers call the equivalent of a Critical Day; or (e) when the Company is unable to fulfill its firm

the excess gas at 100 percent of the low price of gas identified in *Gas Daily*. On a non-Critical Day, for each therm of under-delivery, the Company would assess a Required Daily Delivery Non-Performance charge by selling gas to the Supplier at 110 percent of the reported high market price. In the event of an over-delivery on a non-Critical Day, the Company would purchase the extra gas at 90 percent of the reported low market price. Nicor Gas Ex. D, p. 18 (Harms Direct).

OFO Non-Performance Charge: The OFO charge would be a new charge under Customer Select and would be applied only during those times when Nicor Gas has declared an OFO.⁸ If a Supplier does not comply with an OFO, Nicor Gas would either sell gas to the Supplier or buy gas from the Supplier, depending upon the Supplier's delivery position in relation to the OFO requirements. Nicor Gas Ex. D, p. 18 (Harms Direct). For each therm of under-delivery of the Required Daily Delivery Range, gas supply would be sold to the Supplier at 200 percent of the high price of gas reported in *Gas Daily* for Chicago citygate deliveries for each day of non-performance. Tr. 112-13. For each therm of over-delivery, the Company would purchase gas supply at 50 percent of the low gas price reported for Chicago citygate deliveries.

Month-End Required Delivery Non-Performance Charge: The Month-End Required Delivery Non-Performance Charge would also be a new charge under Customer Select. As noted in the discussion above concerning the Month-End Cash Out, Nicor Gas is proposing

contractual obligations or otherwise when necessary to maintain the overall operational integrity of all or a portion of the Company's system.

Ill.C.C. No. 16 - Gas, 4th Revised Sheet No. 47.

⁸ As further discussed below, an OFO requires Suppliers to schedule their gas deliveries so as to prevent or alleviate operational problems related to system imbalances in the amount of gas supply relative to system demand and storage requirements. Nicor Gas Ex. A, p. 8 (Gilmore Direct).

additional flexibility with respect to a Supplier's daily delivery requirements. Nevertheless, it is still essential for Suppliers to fall within an acceptable range of deliveries by the end of the month. Accordingly, the Company proposes to charge Suppliers on a per-therm basis for gas that falls outside of the month-end delivery range.

3. Operational Flow Orders.

As noted above, as part of the Customer Select Program and Rider 16, Nicor Gas proposes the use of OFOs to resolve system operational problems. Operational problems can occur when too much or too little gas is delivered to the distribution system relative to system demand and storage requirements, and when gas is delivered to the system at receipt points such that the allocation of gas supply among Nicor Gas interstate pipeline interconnection does not balance with gas demand requirements on the system. Nicor Gas Ex. A, p. 8 (Gilmore Direct).

Prior to the issuance of an OFO, Nicor Gas would request that Suppliers take voluntary actions to help prevent system operational problems. If, however, voluntary actions by the Suppliers do not adequately address the operational problem, Nicor Gas would require that Suppliers take certain actions. For example, if Nicor Gas issues an OFO, it could direct Suppliers to deliver more or less gas supply than what would normally have been calculated as the Required Daily Delivery, or restrict or eliminate the Required Daily Delivery Range. Through the OFO, Nicor Gas would also be able to limit the volume of gas supply received at certain receipt points so that volumes are instead nominated to the points requiring supply. Nicor Gas would attempt to issue the OFO to Suppliers as far in advance of the affected gas day as possible but, in all instances, the Company would declare the OFO at least two hours prior to the Gas Industry Standards Board's deadlines for each nomination cycle. Nicor Gas Ex. A, pp. 7-8 (Gilmore Direct).

Moreover, if Nicor Gas determines that issuance of an OFO is necessary, it would provide the Commission with a report detailing the cause of the system operational problem and the factors necessitating issuance of the OFO. Nicor Gas would also report to the Commission the nature of the OFO, the action taken by the Company and the costs associated with those actions. These reporting requirements would ensure that Suppliers, customers and the Commission Staff would be in a position to review the Company's actions so as to have a clear understanding of Nicor Gas' decision to issue an OFO. *Id.* at p. 12. Therefore, the Company's decisions regarding OFOs will be made in the open, negating concerns that OFOs may be imposed unreasonably.

4. Firm Capacity Requirement.

Nicor Gas also proposes that Suppliers be required to hold a level of firm pipeline capacity at least equal to 32 percent of the estimated maximum daily contract quantity of the Supplier's customer group. This firm capacity requirement is what the Company holds for sales customers and is necessary to maintain system reliability as unbundling further evolves. That is, as Nicor Gas' sales service declines in volume, the Company will be less able to depend upon its own sales purchases to maintain system reliability. Because Nicor Gas is the distribution system operator, it has a duty to protect the interests of not only Nicor Gas' sales customers, but also the customers of Suppliers utilizing the distribution system. Imposing a firm pipeline capacity requirement on Suppliers is essential to achieve this objective.

II. Customer Select Should Be Expanded to All Customers of Nicor Gas Company

A. Expanding Customer Select Would Provide All Customers with Supplier Choice and the Resulting Benefits.

The Commission should grant Nicor Gas' proposal because expanding Customer Select would provide all customers with the ability to choose their Suppliers, which would facilitate gas

sales service unbundling and foster competition. Increased competition, in turn, will lead to development of new technology, new services and the potential for lower costs for customers.

GCI witness Mr. Mierzwa testified, however, that Customer Select does not provide customers with any “meaningful” choice. In support of his position, Mr. Mierzwa quotes the National Regulatory Research Institute:

But customer choice is not a worthwhile end in and of itself unless the choice is meaningful. Meaningful customer choice maximizes consumer welfare; that is, consumers are better off either because they value the services they are receiving more highly than services that they received before, or because they are receiving the services that they received before at a lower price, or both.

GCI Ex. 2.0, pp. 10-11 (Mierzwa Direct) (quoting *Market Analyses of Public Utilities: The Now and Future Role of State Commissions*, Robert E. Burns, *et al.*, July 1999). However, contrary to Mr. Mierzwa’s suggestion that Customer Select has not provided customers with “meaningful” choice, empirical “real-world” evidence from Customer Select demonstrates that customers do indeed value the services that they receive under Customer Select *and* that they have experienced lower prices.

First, Nicor Gas witness Mr. Harms testified that Nicor Gas’ surveys show that, for customers participating in Customer Select, 90 percent of those surveyed would participate in the Program again. Nicor Gas Ex. D, p. 5 (Harms Direct); Nicor Gas Ex. E, p. 26 (Harms Rebuttal) This fact is certainly inconsistent with the notion that customers participating in Customer Select do *not* “value the services they are receiving more highly than services that they received before.”

Moreover, GCI has made much of the fact that CUB has received some customer complaints concerning Customer Select; CUB witness Martin Cohen attached 87 alleged complaints as exhibits to his testimony and Illinois Attorney General witness Patrick Hurley attached 3 such alleged complaints. However, of these alleged complaints, Mr. Harms testified

that 43 of the "complaints" are, in fact, not complaints at all, but rather requests for information about Customer Select. While 36 of the items could be construed as complaints -- albeit, unproven complaints -- this number must be viewed in the context of the entire Customer Select Pilot Program. Over 114,000 customers participate in Customer Select and, by the end of 2000, Nicor Gas had issued approximately 1.7 million bills over the three year period. In the first year of the program, approximately 150,000 customers were solicited to sign up for the Program. In the second year, 260,000 customers were eligible to participate. In the third and fourth year of the Program, 440,000 customers were eligible. Thus, if one assumes two contacts per customer, there were approximately 2.5 million customer contacts. Out of these 2.5 million contacts, GCI has been able to produce only 36 purported complaints. Nicor Gas Ex. F, p. 19 (Harms Surrebuttal). This means that, based on the evidence presented by GCI, only .00144 percent of the customer contacts associated with Customer Select resulted in an alleged customer complaint. Further, Staff witness Mr. Iannello testified that, overall, the Commission has received few complaints concerning Customer Select. ICC Staff Ex. 3.0, p. 25 (Iannello Rebuttal). Viewed in the context of the entire Customer Select Pilot Program, the number of complaints produced by GCI simply does not demonstrate that customers do not value the services they receive under Customer Select. While Nicor Gas, of course, would prefer that there be zero complaints, the extremely small number of complaints shows that the Company has, indeed, designed a good Program. Nicor Gas Ex. F, p. 19 (Harms Surrebuttal).

Second, GCI witness Mr. Mierzwa also claims that customers have not received savings under Customer Select. Specifically, Mr. Mierzwa testified that:

A survey conducted by Nicor indicates that some customers have saved money. However, Nicor has been unable to identify which customers saved money, and particularly whether customers selecting Nicor Energy have saved money. If savings have been achieved, those savings have largely occurred by chance.

Savings would have been achieved because customers entered into fixed price arrangements at a time when natural gas prices were significantly lower than [sic] current prices.

GCI Ex. 2.0, p. 11 (Mierzwa Direct). The evidence in this case, however, demonstrates that Mr. Mierzwa's contention is objectively wrong. For example, Nicor Energy's response to the Illinois Attorney General's Data Request No. 2 demonstrates that [REDACTED] residential customers chose a fixed rate option of 26.5 cents per-therm offered by Nicor Energy, and that:

Even though the 26.5 cent per therm lock in price was never achieved, all residential customers on this rate have realized savings on an aggregate basis relative to Nicor Gas' standard residential rate.

Hearing Examiners' Ex.1 (Nicor Energy Response to DR-2) (Emphasis added). In addition, in response to the Illinois Attorney General's request for the "number of customers participating in Customer Select that chose a variable rate contract," Nicor Energy stated:

Nicor Energy offers residential customers [REDACTED] different active residential Customer Select rates. The amount of customers that chose these rates totals [REDACTED]. It should be noted that *every one of the customers on an aggregate basis has realized savings versus the corresponding utility residential rate.*

Hearing Examiners' Ex.1 (Nicor Energy Response to DR-5) (Emphasis added). This evidence objectively rebuts Mr. Mierzwa's claim that any savings realized by customers under Customer Select were "by chance" or because customers entered into a fixed 26.5 cents per-therm contract with Nicor Energy at a time when gas prices were lower than current prices. Indeed, the 26.5 cent per-therm rate was *never* achieved because market prices never reached a level where the "lock in" could become operative; yet [REDACTED] Nicor Energy residential customers experienced lower prices than those offered by Nicor Gas. Moreover, [REDACTED] Nicor Energy residential customers who chose a variable rate experienced lower prices than those offered by Nicor Gas. Thus, the evidence shows that [REDACTED] of residential customers experienced cost savings as a result of Supplier choice under Customer Select.

Consequently, the evidence clearly demonstrates that customers participating in Customer Select are, in fact, provided with “meaningful” choice, as Mr. Mierzwa and the National Regulatory Research Institute have defined that term. Ninety percent of participating customers value the services they receive under Customer Select more highly than services that they received before, and [REDACTED] of customers have received service under Customer Select at lower prices than they would have received from Nicor Gas.

Third, Nicor Gas’ customer surveys show that 60 percent of the residential customers currently eligible for Customer Select but not participating believe that they have benefited from the ability to choose their own supplier. Nicor Ex. D, p. 5 (Harms Direct). Thus, customers do, in fact, benefit from being able to choose their Suppliers, as Suppliers are able to offer different services than a utility such as Nicor Gas. For example, Suppliers can offer different pricing and billing options, payment terms, incentives and package options with other goods and services. Through Customer Select, the customer will benefit by being able to choose a Supplier that provides the services that are the most valuable to that particular customer. Nicor Gas Ex. D, p. 4 (Harms Direct). The customer’s ability to choose among Suppliers that provide the most valuable services will, in turn, foster development of new services and technology.

Fourth, Nicor Gas has a clear incentive to design Customer Select to benefit its customers. GCI however, advances the theory that Nicor Gas has designed Customer Select to benefit Nicor Energy, which presumably would allow Nicor Energy to reap unregulated profits to the benefit of Nicor Inc.’s shareholders. GCI Ex. 3.0, pp. 2-4 (Cohen Direct). This theory is baseless for several reasons. First, Nicor Energy is a joint venture between Dynergy and Nicor Inc. This means that Nicor Inc. does not receive a dollar-for-dollar benefit from revenues generated by Nicor Energy. Nicor Gas Ex. F, p. 11, 14 (Harms Surrebutal). Second, Nicor Gas

does not earn its revenue from the sale of gas commodity under Customer Select; rather, the *Company earns its revenues by distributing the gas commodity sold by the Supplier. Thus, the more gas used by customers, the more revenue is generated for Nicor Gas. If Nicor Energy or any other Supplier raises gas prices, it is only common sense that customers will use less gas, resulting in less revenue for Nicor Gas, which, in turn, would hardly be beneficial to Nicor Inc.'s shareholders. Finally, as a practical matter, Suppliers simply cannot increase prices to reap unjustified profits because they cannot charge customers more than what customers believe to be the value of the Supplier's services. This is clear because the customer has the option of returning to Nicor Gas' sales service under which Nicor Gas provides gas at cost. Accordingly, it is obvious, and indeed Staff witness Iannello concedes (Tr. 220), that Nicor Gas has every incentive to design a competitive program for natural gas supply that benefits customers.*

*Fifth, Customer Select is purely voluntary in that customers can elect to receive their gas supply from a Supplier, or they can choose to remain with Nicor Gas sales service. In this respect, Customer Select should not be analogized to gas supply deregulation programs that require customers to leave utility sales service and choose or be assigned to a Supplier. For example, GCI witness Barbara Alexander testified that recent developments in other states show that expansion of gas supply competition programs could subject customers to unreasonable risks. GCI Ex. 4.0, p. 10 (Alexander Rebuttal). In support of this position, Ms. Alexander references deregulation programs in other states and a *Wall Street Journal* article that details the myriad of problems experienced by customers as a result of deregulation of gas sales service in Georgia. It is important to note, however, that the deregulation program in Georgia*

forced all residential customers to choose a marketer, rather than giving them an option to remain a customer of AGL's 144-year old Atlanta Gas Light Co. unit. The result: widespread dismay. A survey last year by Xenergy, Inc., a

Burlington, Mass., consulting firm, showed 46% of Georgia's gas customers wish deregulation never happened.

GCI Ex. 4.2 (Attachment to Alexander Rebuttal). By contrast, Customer Select does not *force* any customer to choose a Supplier; customers may choose to remain with Nicor Gas, or may return to Nicor Gas if they are dissatisfied with their Supplier. Moreover, as noted above, customer surveys show that 90 percent of the surveyed customers participating in Customer Select were satisfied and would participate again.

B. Expanding Customer Select Would Benefit Suppliers.

The Commission should also approve Nicor Gas' proposal because expanding Customer Select to all customers would benefit Suppliers. Customer Select is designed to provide Suppliers with the ability to economically serve small customers by allowing them to group many small customers together in order to make a single gas supply nomination for the entire group. In this way, the Supplier can serve more customers by establishing a single group and can achieve economies of scale with respect to certain functions such as advertising and marketing. Tr. 114-15.

Expanding Customer Select to all customers would also help to reduce certain Supplier charges. It has been Nicor Gas' experience that the Company has been able to reduce certain charges in the first three years of Customer Select as more and more customers participated. For example, Nicor Gas was able to reduce the Supplier Account Charge from \$3 in the first year of Customer Select, to \$2 in the second year, to \$1 in the third year. Nicor Gas Ex. D, pp. 15-16 (Harms Direct). Similarly, Mr. Harms testified that, if Customer Select is expanded to include all of Nicor Gas' 2 million customers, he anticipates that the average customer acquisition cost to a Supplier would be reduced. Nicor Gas Ex. F, pp. 10-11 (Harms Surrebuttal); Tr. 114-15.

Finally, it is important to note that no individual Suppliers participating in Customer Select intervened or actively participated in this proceeding.⁹ This suggests that Suppliers are generally satisfied with Nicor Gas' activities and proposals under Customer Select. Indeed, if Suppliers were truly disadvantaged by Customer Select, or if they opposed Nicor Gas' proposals concerning OFOs and/or other Supplier charges, it is only logical that they would have actively participated in this proceeding in opposition to the Company's proposals.

C. Expanding Customer Select Would Enhance the Provisions of the Current Customer Select Pilot Program.

Finally, expansion of Customer Select to all Nicor Gas customers would further enhance the existing provisions of Customer Select. As discussed above, one of Nicor Gas' proposed changes to Rider 15 is to allow a customer, subject to the terms of the contract with its Supplier, to continue to participate in Customer Select if that customer moves to a new location within Nicor Gas' service territory. Under the current provisions of Rider 15, if a customer moves, that customer is terminated from the Program. Limiting Customer Select to only certain residential customers would not only deprive customers of Supplier choice, but would prevent Nicor Gas from making necessary modifications to Customer Select to further benefit customers.

III. Tariff Changes

The Company's proposed tariff sheets to implement expansion of Customer Select are attached to the testimony of Albert Harms as Nicor Gas Ex. AEH-4. Nicor Gas urges the Commission to approve these tariff sheets as filed, subject to four changes described below.

A. Tariff Changes Agreed to By Nicor Gas.

⁹ NEMA, a non-profit trade association representing wholesale and resale marketers, intervened in this proceeding and filed generic "rebuttal" testimony and policy statements that did not respond to Nicor Gas' testimony. On February 20, 2001, the Hearing Examiners granted Nicor Gas' Motion to Strike NEMA's "rebuttal" testimony from the record as improper rebuttal.

During this proceeding, Nicor Gas proposed one tariff change and agreed to three changes proposed by other parties. Specifically, the Company agreed to, or does not oppose, the following four tariff changes.

1. Rider 15.

a. **“Charges.”** On Ill.C.C. No. 16, 4th Revised Sheet No. 75.1, Nicor Gas is willing to remove the second paragraph of the tariff provision entitled “Charges”. This paragraph, as originally proposed, would have imposed on customers the responsibility to pay for gas supply-related costs originally billed to a Supplier but for which the Supplier had not paid. Nicor Gas is willing to delete the entire second paragraph, beginning with the words, “In the event full payment for services rendered to the Supplier...”:

The rates for service hereunder shall be those of the Customer’s companion rate, excluding Rider 6, Gas Supply Cost.

~~In the event full payment for services rendered to the Supplier, as provided under Rider 16, is not received from the Supplier, each Customer served by the Supplier shall be billed directly for any gas related costs originally billed to the Supplier for such service received at each Customer’s service location for the applicable billing period(s), to the extent that such charges are not recovered from the Supplier’s deposit, letter of credit or parental guarantee.~~

With removal of this tariff provision, Nicor Gas will, of course, be more diligent in tracking Suppliers’ payments and gas deliveries even more closely, and may remove Suppliers for failure to pay bills earlier than if the originally proposed tariff provision were in place. Nicor Gas Ex. F, p. 13 (Harms Surrebuttal).

2. Rider 16.

a. **“Group Additions Charge” wording.** Nicor Gas agrees with Mr. Iannello’s proposed word changes to the “Group Additions Charge” in Rider 16. ICC Staff Ex. 1.0, p. 17 (Iannello Direct); Nicor Gas Ex. E, p. 12 (Harms Rebuttal). Specifically, on Ill.C.C.

No. 16, 4th Revised Sheet No. 75.3, the Company agrees to add the following underlined words in the section entitled “Charges”, section (c), “Group Additions”:

. . . . For Transportation Customers that are removed from a previously established non-Customer Select Group, the Fee for Group Changes as specified in the Terms and Conditions of this Tariff, Sheet No. 51, shall also apply....

b. “Standard of Conduct” Additions. Nicor Gas also agrees to two changes in the “Standards of Conduct” section of Rider 16.

(1) First, Nicor Gas agrees with Mr. Iannello’s proposed addition to the “Standards of Conduct” Section. Specifically, at the top of Ill. C.C. No. 16, 4th Revised Sheet No. 75.9.1, the underlined sentence should be added:

Failure to comply with the Standards of Conduct is a basis for removal as a qualified Supplier under Customer Select. Any party alleging improper enforcement of the Standards of Conduct may file a complaint with the Illinois Commerce Commission pursuant to Section 10-108 of the Illinois Public Utilities Act.

ICC Staff Ex. 1.0, p. 19 (Iannello Direct); Nicor Gas Ex. E, p. 14 (Harms Rebuttal).

(2) Second, Nicor Gas proposes that a new item be added to the “Standards of Conduct” section of Ill.C.C. No. 16, 2nd Revised Sheet No. 75.8 through 75.9.1. The new standard would allow the Company to disqualify a Supplier if the Supplier is found by the Commission or a court to have breached a contract with a customer, or the Commission could impose a reparation obligation, to be administered by the Company. The new provision would read:

(p) in the event a Supplier is found by the Illinois Commerce Commission or court of law to be in breach of a contract with a customer, the Commission may impose an appropriate reparation, to be administered by the Company.

Nicor Gas Ex. E, p. 14 (Harms Rebuttal).

3. Other Actions In Conjunction with Expansion of Customer Select.

GCI witness Alexander advocated additional efforts to educate customers on how to choose a gas supplier, and Staff witness Iannello proposed workshops to address consumer education issues. GCI Ex. 1.0, pp. 16-17 (Alexander Direct); ICC Staff Ex. 3.0, p.18 (Iannello Rebuttal). The Company supports customer education, and agreed to host a workshop on developing educational material at the conclusion of this proceeding. Nicor Gas Ex. F, p. 17 (Harms Surrebuttal). As Mr. Harms testified, however, Nicor Gas is willing to develop educational materials only to the extent that its costs are budgeted and, therefore, can be recovered. *Id.* at 17.

B. All Other Tariff Changes Proposed In this Proceeding Should Be Rejected.

During this proceeding, Staff and GCI proposed numerous other changes to Riders 15 and 16, as well as to other Company tariffs, which Nicor Gas strongly opposes. While the Company reserves the right to respond in its Reply Brief to specific arguments that may be made by other parties, this brief presents an overview of the major disputed tariff issues.

1. Other Proposed Changes to Rider 15 Should be Rejected.

Three issues were raised by Staff and GCI that relate to matters contained in Rider 15: designation of a Supplier as a customer's agent for billing, allocation of payments from third parties (e.g., LIHEAP), and notification of a change in Supplier. As discussed below, no change in these tariff provisions is warranted.

a. Single Billing by Suppliers Should not be Permitted.

Rider 15 provides that customers receiving service under the Rider "shall not be allowed to designate their Supplier as the bill recipient for bills rendered by the Company." Nicor Gas Ex. AEH-4, p. 3 of 12. Similarly, Rider 16 includes, as one of the Standards of Conduct for Suppliers, that the Supplier shall "refrain from changing or causing to be changed, the Customer's mailing address to a location accessible to the Supplier". Nicor Gas Ex. AEH-4, p.

11 of 12. Staff's witness, Dr. Schlaf, recommended that Nicor Gas permit Suppliers to issue a single bill to Customer Select customers – including residential customers – that would include both the Supplier's charges and the Company's transportation charges. ICC Staff Ex. 5.0, pp. 2–26 (Schlaf Rebuttal).

Nicor Gas opposes this proposal for numerous reasons. *First*, Nicor Gas must comply with Parts 500 and 280 of the Commission's rules. However, since the Commission has no direct jurisdiction over Suppliers, neither Nicor Gas nor the Commission can ensure that bills rendered by Suppliers will comply with the requirements of Parts 500 and 280, including, for example, payment arrangements, disconnection policies, deposits, and bill formats. Nicor Gas Ex. E, p. 15 (Harms Rebuttal); Nicor Gas Ex. F, p. 26 (Harms Surrebuttal); GCI Ex. 4.0, pp. 11–16 (Alexander Rebuttal). As GCI witness Alexander pointed out, single billing by Suppliers raises numerous other consumer protection issues, including whether the Commission can enforce allocation principles regarding partial payments, how to ensure seamless customer service response, and what recourse customers, Nicor Gas, and the Commission would have in the event that Suppliers fail to issue timely bills, or issue erroneous bills. GCI Ex. 4.0, pp. 11–16 (Alexander Rebuttal).

Second, if it does not bill its customers, Nicor Gas would lose contact with them to a significant degree. This is not a competitive issue but a matter of public safety. Customers must be reminded repeatedly of the phone number to call in an emergency or in case of a suspected gas leak, and all emergency calls must go directly to Nicor Gas. Billing by the Company reinforces this message, while single billing by Suppliers could lead to confusion on safety matters. For this reason alone, single billing by Suppliers should not be implemented until

customers better understand the deregulated marketplace. Nicor Gas Ex. E, p. 16 (Harms Rebuttal); Nicor Gas Ex. F, p. 26 (Harms Surrebuttal).

In addition, single billing by Suppliers would increase the Company's credit risk, because one Supplier would be responsible for thousands of customer bills. As a result, the Company would need to consider increasing Supplier deposits. Nicor Gas Ex. E, p. 15 (Harms Rebuttal); Nicor Gas Ex. F, pp. 26, 28 (Harms Surrebuttal). It would also make tracking and crediting payments to customer accounts more difficult, particularly if a Supplier makes partial payments that must be allocated to individual accounts. Nicor Gas Ex. E, p. 15 (Harms Rebuttal).

While Dr. Schlaf uses electric deregulation as a model for his proposal for single billing by Suppliers, it is important to recognize that not one electric supplier has yet issued a bill for electric service to a single residential customer. Nicor Gas Ex. F, p. 21 (Harms Surrebuttal). Consequently, it is far too early in the process of residential electric deregulation to hold it up as a single billing model for gas deregulation to residential or small commercial customers.

The Commission should, instead, adopt the same approach here as it did in The Peoples Gas Light & Coke Company's ("Peoples Gas") small volume customer transportation program. In that case, the issue of single billing by gas suppliers was heavily contested, and ultimately rejected by the Commission.

The Commission finds the arguments of [Peoples] and Nicor Gas to be compelling. There is no credible evidence that the Pilot participants prefer single billing. The Commission is very concerned about the information that will be provided to small-volume customers, as compared to customers taking transportation under the Company's pre-Pilot transportation programs who tend to be more sophisticated utility customers. The Commission also agrees that Peoples has a right to bill its customers if it so chooses. Peoples bill would provide valuable cost data to the Pilot participant. We will not deter [Peoples] from billing its customers. We recognize that this is a Pilot and so the issuance of a "Do Not Pay" bill by [Peoples] would add unnecessarily to the costs of the Pilot, and could confuse Pilot customers.

The Peoples Gas Light & Coke Co., Docket No. 97-0297, 1998 Ill. PUC LEXIS 685, *23-24.

b. The Company's Proposed Allocation of Funds Received from Third Parties Should Not be Altered.

Rider 15 provides that monies contributed by a third party, such as LIHEAP, for the benefit of a customer will be used first to pay amounts owned to the Company and then to the Supplier. Nicor Gas Ex. AEH-4, p. 4 of 12. Specifically, the Company has proposed that funds be used first to pay the Company's arrears, then the Supplier's arrears, next the Company's current charges, and finally the Supplier's current charges. ICC Staff Ex. 1.4 (Iannello Direct); Nicor Gas Ex. E, p. 19 (Harms Rebuttal). Staff and GCI take opposite positions on the issue, with Mr. Iannello contending that funds should be allocated based on the age of the arrearage, and Ms. Alexander arguing that all funds should go to pay regulated charges, both overdue and current, before paying Supplier charges. ICC Staff Ex. 1.0, pp. 27-28 (Iannello Direct); GCI Ex. 1.0, pp. 29-30 (Alexander Direct).

The Commission should adopt the middle ground on this issue, as proposed by the Company. Nicor Gas' position recognizes both the interests of Suppliers in receiving some benefit from third party payments and of customers in avoiding penalties or disconnection resulting from nonpayment of regulated charges. Additionally, the Company's proposal is consistent with the electric utilities' handling of third party funds.

c. Suppliers Should be Responsible for Notification of Enrollment.

The section of Rider 15 entitled "Company/Supplier/Customer Contracts" provides that the Supplier will notify a customer of his enrollment in Customer Select. Nicor Ex. AEH-4, p. 3 of 12. A similar provision is also contained in Rider 16. Nicor Ex. AEH-4, p. 12 of 12. Dr. Schlaf testified that Nicor Gas should also send notification letters to customers. ICC Staff Ex.5.0, p. 32-33 (Schlaf Rebuttal). As Mr. Harms explained, the Company currently sends

notification to the customer the day after Nicor Gas receives enrollment information from the Supplier, and intends to continue to do so for the foreseeable future. However, the Company believes that Suppliers should be responsible for confirming the enrollment of their own customers, and the Customer Select tariffs should reflect this obligation.. Nicor Gas Ex. F, p. 29 (Harms Surrebuttal).

2. Other Proposed Changes to Rider 16 Should Be Rejected.

Staff and GCI propose changes to the Supplier fee structure, imposition of OFOs, use of system storage, and Standards of Conduct contained in Rider 16. As explained below, these objections are baseless and should be rejected.

a. The Company's Supplier Fee Structure is Cost-Based, is Not a Barrier to Entry, and Should Not Be Altered.

The Company proposes to continue the Supplier fee structure that is presently in place in the Customer Select Pilot Program. Nicor Gas Ex. D, p. 16 (Harms Direct). These fees are contained in the section entitled "Charges" in Rider 16. Nicor Gas Ex. AEH-4, p. 5 of 12. As noted above, the Company's Supplier fee structure is obviously and objectively cost-based, as it has generated revenues over the three years of the pilot program that have almost exactly offset the expenses incurred in implementing and operating the program. Nicor Gas Ex. D, pp. 19-20 (Harms Direct). Nevertheless, both Staff and GCI witnesses take issue with the Supplier charges.

GCI witness Mierzwa appears to contend that all Supplier charges should be eliminated as anticompetitive and unnecessary. GCI Ex. 2.0, pp. 12-14 (Mierzwa Direct); GCI Ex. 3.0, pp. 1-9 (Mierzwa Rebuttal). While Mr. Mierzwa claims to have discussed the Customer Select program with Suppliers (GCI Ex. 2.0, p. 5), it is noteworthy that no Customer Select Suppliers

and no prospective suppliers actively participated in this proceeding to protest the allegedly anticompetitive charges.

Moreover, the evidence squarely contradicts Mr. Mierzwa's claim. Twelve Suppliers have chosen to participate in the Customer Select Pilot Program, with the same or higher charges. Nicor Gas Ex. E, p. 13 (Harms Rebuttal); Nicor Gas Ex. D, pp. 15-16 (Harms Direct). Moreover, Nicor Gas has had similar administrative charges in effect for other transportation customers for over 12 years. During that time period, the share of transportation gas has risen to 50% of the Company's annual throughput – clearly an indication that the Company's charges are not hindering competition or discouraging suppliers and marketers from participating in Nicor Gas' service territory. Nicor Gas Ex. E, pp. 3, 21-22 (Harms Rebuttal).

Mr. Mierzwa also contends that the incremental costs of Customer Select may be offset by cost reductions resulting from the program. He claims, for example, that the savings in costs associated with maintaining gas in storage due to Customer Select would be approximately \$2.30 per month per residential customer, and would exceed the costs associated with the program. GCI Ex. 2.0, pp. 13-14 (Mierzwa Direct). As Mr. Harms explained, however, the carrying costs of storage inventory included in the Company's base rates is approximately \$0.26 per month. Moreover, because of several changes proposed for the Customer Select program, there is no way to predict accurately the level of gas inventory reductions, if any, that will result from Customer Select. Nicor Gas Ex. E, pp. 23-24 (Harms Rebuttal).

Furthermore, Mr. Mierzwa's offset theory constitutes impermissible single-issue ratemaking. The Company has experienced many changes in both costs and revenues since its last rate case in 1996. For example, the total cost of postage to bill customers has risen by an amount likely to equal or exceed any reductions in gas inventory carrying costs. Nicor Gas Ex.

E, pp. 24-25. Because “single issue ratemaking” – consideration of one component of a utility’s revenue requirement in isolation – risks overstating or understating the utility’s overall revenue requirement, the Illinois Supreme Court has clearly and repeatedly prohibited it. *Citizens Util. Bd. v. Commerce Comm’n*, 166 Ill. 2d 111, 136-37, 651 N.E.2d 1089, 1102 (1995); *Business and Prof. People for the Pub. Interest v. Commerce Comm’n*, 146 Ill. 2d 175, 244-45, 585 N.E.2d 1032, 1061-62 (1991); *Archer-Daniels-Midland Co. v. Commerce Comm’n*, 184 Ill. 2d 391, 401, 704 N.E.2d 387, 392 (1998). The Commission must therefore reject Mr. Mierzwa’s argument that all costs of Customer Select should be ignored because they are purportedly offset by savings.

Staff witness Sweatman does not entirely oppose Supplier charges, but advocates different charges than those proposed by the Company. A careful review of the extensive testimony on this issue, however, demonstrates that the Company’s proposed charges are just and reasonable.

Mr. Sweatman proposes that the one-time Supplier Application Charge be decreased from \$2,000, as proposed by the Company, to \$1,385, primarily on the ground that Mr. Sweatman subjectively believes that it should take only 8 man-hours to train new Suppliers. ICC Staff Ex. 2.0, p. 9 (Sweatman Direct). As explained in detail in Mr. Harms’ testimony, however, the Company’s actual experience over the three years of the pilot program is that a total of 24 man-hours, at a minimum, involving three different Company representatives, are needed to train employees of Suppliers on the various procedures, rules, and requirements related to information technology and electronic communications, program rules, tariffs, contracts, and enrollment, operational issues, supply and storage issues, nomination and forecasting processes, and customer billing, and account issues. Nicor Gas Ex. E, pp. 4 (Harms Rebuttal); Nicor Gas Ex. F,

pp. 3-4 (Harms Surrebuttal); Tr. 84. Accordingly, the Commission should not alter the Supplier Application Charge.

Nicor Gas' Rider 16 also contains a Monthly Group Charge to Suppliers, to recover the costs incurred in serving the group, such as calculating, reviewing and issuing the group bill, responding to Supplier billing questions, generating and processing daily nomination, forecasting monthly nominations, and processing payments. Nicor Gas Ex. D, p. 15. Based on his "presumption" that "the fewer customers involved, the less staff time would be needed to prepare and input the required information", Mr. Sweatman contends that the Monthly Group Charge of \$200 is discriminatory, and that smaller groups should be charged only \$100. ICC Staff Ex. 2.0, p. 18-19 (Sweatman Direct). As Mr. Harms explained, however, Mr. Sweatman's "presumption" is mistaken, as essentially the same amount of staff time is required -- based on the Company's actual experience -- regardless of the size of the group.¹⁰ Nicor Gas Ex. E, pp. 6-7 (Harms Rebuttal); Nicor Gas Ex. F, pp. 5-7 and Nicor Gas Surrebuttal Ex. AEH-1, AEH-2 (Harms Surrebuttal). Mr. Sweatman's proposed adjustment to the Monthly Group Charge should therefore be rejected.

Nicor Gas also proposes to continue to impose a Monthly Account Charge of \$1 per account. This charge recovers all remaining costs associated with implementation and administration of Customer Select that are not recovered by other charges. Nicor Gas Ex. D, pp. 15-16 (Harms Direct). Mr. Sweatman proposes, instead, that the Monthly Account Charge be reduced to \$0.88, disallowing recovery of \$435,000 in Customer Select costs that are not directly

¹⁰ Mr. Harms further testified that, if Mr. Sweatman's proposal were accepted, the Commission should restrict each Supplier to one group, to ensure that Suppliers do not pay below cost charges by creating multiple small groups subject to a lower fee. Moreover, if Customer Select is expanded to all customers and Suppliers are restricted to a single group, most or all Suppliers will have over 10,000 customers, making a two-tier charge irrelevant. Nicor Gas Ex. F, pp. 6-7 (Harms Surrebuttal).

assigned to a Customer Select charge, and \$658,600 in actual forecasted costs not otherwise recovered. ICC Staff Ex. 2.0, pp. 22-29 (Sweatman Direct); ICC Staff Ex. 4.0, pp. 5-6 (Sweatman Rebuttal); Nicor Gas Ex. F, pp. 8-9 (Harms Surrebuttal). These disallowances are improper and should be rejected.

The \$435,000 of “unassigned” costs consists entirely of costs that are incurred because of Customer Select. Specifically, these costs include communications and marketing costs for consumer education, community and governmental relations costs of addressing Customer Select issues with legislators and community groups, costs of an implementation team monitoring ongoing Customer Select requirements and resolving Supplier issues, auditing costs to review transportation and supply agreements required of Suppliers and to monitor Supplier compliance with tariffs, and finance costs to monitor Supplier credit issues, letters of credit and parental guarantees. ICC Staff Ex. 2.0, Attachment 4A (Sweatman Direct); Nicor Gas Ex. F, pp. 8-9 (Harms Surrebuttal). These costs are all properly recoverable, and including them in calculation of the Monthly Account Charge is consistent with generally accepted cost of service study methods. Nicor Gas Ex. F, p. 9 (Harms Surrebuttal).

The \$658,600 in “unrecovered” costs represents the projected cumulative revenue shortfall for Customer Select through 2005. Nicor Gas Ex. AEH-7 (Harms Direct); Tr. 97-98. Mr. Sweatman recommends disallowance of this amount on the ground that “it is not certain at the point whether a shortfall will actually accrue...” ICC Staff Ex. 2.0, p. 25 (Sweatman Direct). While it is true that forecasts are inherently less than certain, they are the best tool available, and the Commission routinely uses them. Nicor Ex. F, p. 9 (Harms Surrebuttal). Moreover, while the shortfall could conceivably be less than forecasted, it could also be greater. The Company, in order to recover the shortfall, intends to simply continue to impose the administrative fee past

2005. Any proposed change to the fee will require a longer period before complete recovery of costs. However, Nicor Gas' actual "break-even" charge based on the Company's cost and revenue estimates for the 5 year period is \$1.03, and Mr. Sweatman's proposed Monthly Account Charge of \$0.88 will, with certainty, result in a larger under-recovery of costs from Customer Select customers. Nicor Gas Ex. E, p. 9 (Harms Rebuttal); Nicor Gas Ex. AEH-2. His proposal should therefore be rejected.

Finally, the Company proposes to continue to impose the \$10 Group Additions Charge contained in Rider 16. This charge is applied whenever a group adds a customer that is switching from another Supplier's group, and is designed to recover costs associated with processing the change request, including any related inquiries and/or disputes. It is not imposed, however, when Nicor Gas sales customers move to Customer Select. Nicor Gas Ex. D, p. 15 (Harms Direct); Nicor Gas Ex. AEH-5. Staff agrees that the charge is cost-justified, but contends that it could be a barrier to entry, and therefore should be reduced or spread over all customers through a \$0.04 addition to the Monthly Account Charge. ICC Staff Ex. 1.0, pp. 14-16 (Iannello Direct); ICC Staff Ex. 2.0, pp. 29-34 (Sweatman Direct).

The Company's experience with its transportation programs in general, and specifically with Customer Select, flatly refutes Staff's "entry barrier" hypothesis. Customer-owned gas transported on Nicor Gas' system constitutes about half of the Company's throughput, and Customer Select has grown each year of the Pilot Program and continues to gain momentum. In fact, absolutely no empirical evidence was presented by Staff or any intervenor to establish that the \$10 Group Additions Charge or any other Supplier charge -- all of which have been in effect for three years -- has in any way deterred competition. Nicor Gas Ex. E, pp. 13-14 (Harms Rebuttal); Nicor Gas Rebuttal Ex. AEH-4.

For the reasons described above, Staff and GCI's proposals to change or eliminate the Supplier Application Charge, Monthly Group Charge, Monthly Account Charge, and Group Additions Charge in Rider 16 should be rejected, as each of these charges is amply justified by Nicor Gas' actual experience as expressed in the Company's testimony. Moreover, the same (or higher) level of each charge has been approved by the Commission for Peoples Gas' permanent small volume customer transportation program. Nicor Gas Ex. E, pp. 6, 8, 9, 12 (Harms Rebuttal). A consistent conclusion should be reached here.

b. OFOs for Customer Select Suppliers are Necessary and Reasonable.

As explained above and in the testimony of Mr. Gilmore, Nicor Gas proposes to add provisions to Riders 6 and 16 permitting it to 1) implement an operational flow order, or OFO, when necessary to prevent or ameliorate system operational problems and 2) allocate a portion of gas costs incurred during severe conditions to the ABSC, when such gas is purchased to balance or maintain system integrity, when an OFO is in effect. Nicor Gas Ex. A, p. 12 (Gilmore Direct). Before issuing an OFO, the Company would request that Suppliers take voluntary actions to prevent the potential problem; an OFO would be issued only if voluntary actions are not adequate. Nicor Gas Ex. A, p. 7 (Gilmore Direct).

In his testimony, Staff witness Iannello questions whether the Company really needs the ability to issue OFOs, and why OFOs should not apply to all shippers on the Nicor Gas system. In addition, he suggested that the Company could improperly use OFOs to reduce gas costs, ICC Staff Ex. 1.0, pp. 9-14 (Iannello Direct). These and other concerns expressed by Mr. Iannello regarding OFOs are baseless and should be rejected.

As Mr. Gilmore explained, the innovative Customer Select program balances the increased operational risks to Nicor Gas' distribution system associated with expanding customer choice, with providing Suppliers with flexibility in nominations as well as significant certainty in

their delivery volumes. In order to responsibly give Suppliers both the daily nomination flexibility of the Daily Required Delivery Range and the stability and predictability of the Required Daily Delivery volumes, the Company needs to have a means of adjusting deliveries if the operations of Customer Select threaten system operations. Nicor Gas Ex. B, p. 13 (Gilmore Rebuttal).

While operational problems caused by Customer Select deliveries could likely be corrected by the Company without OFOs, through the purchase of services or gas supplies, and recovery of the costs from sales customers, Nicor Gas does not believe that this solution would be fair to sales customers. This approach would also be inconsistent with unbundling and with the principle of allocation of costs to the cost-causers. Elimination of OFOs from Rider 16 and the related changes to Rider 6, while retaining the other nomination and operational aspects of Customer Select, would upset the balance of the proposal and deny the Company the tools it needs to manage its system in a best cost and equitable manner. *Id.*

First, contrary to Mr. Iannello's argument (ICC Staff Ex. 1.0, p. 10), it would not be appropriate for the Commission to impose OFOs on all transportation customers, or review the implementation of OFOs on all transportation customers within the context of separate, generic proceeding prior to approving OFOs for Customer Select Suppliers. As explained by Mr. Gilmore, Customer Select customers are, in fact, fundamentally different than other transportation customers. Nicor Gas Ex. B, p.6 (Gilmore Rebuttal). OFOs that require increases or decreases in the Required Daily Delivery of Customer Select Suppliers are tailored specifically to those Suppliers, who are only responsible for delivering a volume of gas within a broad range designated by the Company. Unlike other transportation customers, who are responsible for daily balancing of usage, storage and gas delivery, or are required to pay for full

backup gas service like sales service customers, Customer Select Suppliers and their customers are not subject to daily metering or daily balancing of usage against deliveries, and have a certain monthly imbalance “tolerances” through the delivery range established by the Company. Nicor Gas Ex. B, p. 6 (Gilmore Rebuttal).

Second, Nicor Gas has proposed a type of an OFO applicable to Customer Select that would limit the volume of gas that could be delivered to a specific delivery point. However, while not termed an OFO, Nicor Gas already has a generally applicable provision in its Terms and Conditions that provides the authority to limit the volume of gas supply it will confirm at pipeline interconnects when a system imbalance threatens system integrity

As a practical matter, Nicor Gas could not call a Customer Select OFO limiting volumes at a specific delivery point without also limiting deliveries by other transportation customers under the “Limitations on the Rendering of Gas Service” and the “Priority of Supply” provisions of the Company’s “Terms and Conditions” because any such OFO would be ineffective. Tr. 59. The Company’s citygate is very liquid, and volumes nominated and scheduled for delivery to Nicor Gas via interstate pipelines often change title prior to final confirmation. Consequently, if Nicor Gas issued an OFO limiting only Customer Select Suppliers, the likely result would simply be a change in title to the gas scheduled at the delivery points that the Company was trying to limit from one Supplier to another Supplier, without any reduction in physical volumes. Nicor Gas Ex. C, p. 6 (Gilmore Surrebuttal); Tr. 59.

Third, Mr. Iannello’s claims that the OFOs as proposed by the Company are inequitable, and thus should be considered within the “broader context of all customers rather than a piecemeal consideration of OFOs for Customer Select only” (ICC Staff Ex. 3.0, p.16) ignores the fact that the Commission has already approved the terms and conditions applicable to services

for non-Customer Select transportation and sales customers as just and reasonable. With respect to this proceeding, the Company is simply proposing to expand Customer Select to all residential customers, and modify Riders 15 and 16 in the manner described above. Nicor Gas does not propose to change any services with respect to non-Customer Select transportation and sales customers that have previously been approved as just and reasonable by this Commission. Thus, a broad review of Nicor Gas' services should not be a prerequisite to expand the availability of a new service option.

Finally, Mr. Iannello's concern that the Company could use OFOs to reduce gas costs relative to its Gas Cost Performance Program ("GCPP") benchmark is also misplaced. The Company has committed, in Rider 16, to provide the Commission with a report detailing every situation that requires the Company to issue an OFO. Staff, or any Supplier or customer who believes they have been harmed, can evaluate the propriety of the OFO. Therefore, Staff and all Suppliers will have full access to data on the impact of OFOs on Nicor Gas' GCPP. The Commission is required to initiate a review of the Company's GCPP in 2002. Since the Company now proposes to implement Customer Select in March, 2002, any concerns with the GCPP related to OFOs could be addressed in the Commission's GCPP review. Nicor Gas Ex. B, p.11 (Gilmore Rebuttal).

For the foregoing reasons, as well as the additional reasons explained in the rebuttal and surrebuttal testimony of Mr. Gilmore, the Company's proposed additions to Rider 6 and 16 addressing OFOs should be approved and Mr. Iannello's objections should be rejected.

3. Other Modifications to the Customer Select Program Should Be Rejected.

In addition to their objections to specific tariff provisions, Staff and GCI have raised several other objections to the Company's Customer Select program or implementation policies. These objections, like their tariff criticisms, should be rejected.

a. The Company's Policy on Disclosure of Credit Information is Appropriate.

GCI witness Alexander and Staff witness Schlaf both contend that Nicor Gas should not provide a customer's credit history to a Supplier. GCI Ex. 1.0, pp. 36-37 (Alexander Direct); ICC Staff Ex. 5.0, p. 31 (Schlaf Rebuttal). In fact, Nicor Gas does not provide this information routinely. However, if the Supplier has obtained authorization from the customer, the Company will provide the credit information for a fee. Nicor Gas Ex. F, p. 29 (Harms Surrebuttal). This policy is consistent with Ms. Alexander's assertion that Suppliers should use tools available in the competitive market to evaluate an applicant's credit. GCI Ex. 1.0, p. 37 (Alexander Direct). In fact, the Company's policy is more protective of customers than is the competitive market, as Nicor Gas will not provide credit information to a Supplier if the customer does not authorize it.

b. The Commission Should Reject Use of a Physical Letter Document For Switching Suppliers.

Nicor Gas permits customers to enroll in Customer Select and switch Suppliers by telephone, in person, or by internet. Staff witness Schlaf testified that these enrollment procedures are appropriate, and noted specifically that the procedures for telephonic enrollment in Rider 16 appear to be adequate. He contends, however, that a Letter of Agency or similar form should be used for written switching of Suppliers. ICC Staff Ex. 5.0, pp. 4, 28-29 (Schlaf Rebuttal). The Company believes that use of a Letter of Agency would make the switching process more cumbersome for Suppliers and would increase costs for both the Company and Suppliers over the current, paperless electronic sign-up process. Nicor Gas Ex. F, p. 22 (Harms Surrebuttal). Moreover, the additional expense is not warranted, as the evidence in this case does not indicate that the current switching process is deficient.

c. Customer Select Offers Suppliers Sufficient and Reasonable Amounts of Flexibility in Using Storage.

GCI witness Mierzwa contends that Customer Select Suppliers cannot utilize the flexibility of storage assigned to them to accommodate changes in their delivery quantities. GCI Ex. 2.0, p. 8 (Mierzwa Direct). In fact, under Rider 16, Suppliers are afforded a daily delivery range that may be as much as 15 percent, plus or minus (for a total range of 30 percent) of the Required Daily Delivery. As a practical matter, this 30 percent flexibility *is* storage, since Nicor Gas will use its storage capabilities to balance the system when Suppliers choose to exercise their delivery flexibility. Nicor Gas Ex. B, p. 2 (Gilmore Rebuttal). Further, storage flexibility is what enables the Company to provide Suppliers their Required Daily Delivery nominations more than 24 hours prior to the start of the gas day, and not change those nominations to reflect actual weather, forecasts of future weather, actual sendout and storage activity, and any number of other changes from what was planned when the nomination was communicated to Suppliers. Suppliers receive this benefit of predictability in Required Daily Delivery volumes precisely because Nicor Gas uses its storage assets to make up the difference between volumes delivered by Suppliers and Customer Select usage. *Id.*

d. Issues Related to Consumer Protection and Affiliate Transactions Are Generic Matters and Should Not be Addressed Here.

CUB and GCI witnesses Cohen, Alexander and Mierzwa raise various consumer protection issues such as customer education and the regulation of affiliate transactions. *See e.g.* GCI Ex. 1.0, pp. 39-46 (Alexander Direct); CUB Ex. 2.0, pp. 1-2 (Cohen Rebuttal); GCI Ex. 2.0, pp. 16-18 (Mierzwa Direct). These issues are largely beyond the scope of this proceeding. Whether affiliate regulations will be adopted for the natural gas industry is currently the subject of a rulemaking proceeding pending before the Commission in Docket No. 00-0586, in which both CUB and the Illinois Attorney General are actively participating. Accordingly, litigating

these issues in the context of the instant proceeding would be duplicative and would constitute a waste of the Commission's resources.

Furthermore, many of Ms. Alexander's recommendations essentially call for the Commission to impose additional customer protection and education regulations on the natural gas industry. Since resolution of such issues would in all likelihood affect all natural gas distributors and Suppliers within the State, Ms. Alexander's recommendations would more properly be the subject of a rulemaking, generic proceeding or legislative hearing. Indeed, even CUB concedes that Ms. Alexander's recommendations "are broad concerns that should be addressed in a generic manner by either the Commission, the legislature, or both." CUB Ex. 2.0, p. 1 (Cohen Rebuttal).

In addition, the Commission must comply with proper statutory procedures when considering generic standards such as those proposed by Ms. Alexander. Section 10-101 of the Public Utilities Act (220 ILCS 5/10-101) provides in relevant part:

Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to. (Emphasis added.)

Nowhere in the Commission's Suspension Order initiating this proceeding did the Commission indicate its decision to establish, within the context of this Docket, additional consumer protection and education regulations to be applied to the natural gas industry. For these reasons, issues concerning affiliate regulations and broad concerns related to customer protection and education should not be litigated in this proceeding.

- e. **The Commission Has Rejected GCI's Proposed Prohibition on Joint Use of a Name and Logo.**

While the Company believes that Docket No. 00-0586, the Commission's pending rulemaking proceeding regarding adoption of 83 Ill. Adm. Code 550, "Non-Discrimination in Affiliate Transactions for Gas Utilities", is the proper forum to address the affiliate issues raised by GCI, a brief discussion of GCI's objections to Nicor Energy's use of the Nicor logo is warranted here due to the volume of testimony on the subject.

GCI takes the position that Nicor Gas and Nicor Energy should not be permitted to use the same corporate name and logo because it could purportedly lead to customer confusion. See, e.g., GCI Ex.1.0. pp. 40, 43-46 (Alexander Direct). This precise argument was recently rejected, however, in the context of electric utilities and their affiliates. Section 450.25(b) of the Commission's rules, which governs electric utility affiliate transactions, specifically permits an electric utility affiliate that supplies retail electricity to use the corporate name and logo of its affiliated electric utility or electric utility holding company. 83 Ill. Adm. Code 450.25(b). In rejecting the same arguments that GCI advances here, the Commission found that not permitting joint use of a logo or corporate name would be misleading and would disserve customers who seek to do business (or not to do business) with a family of companies whose name and reputation they recognize. The People of Cook County, et al., Docket Nos. 98-0013 and 98-0035 (Consol.) (Sept. 14, 1998). The Commission's decision in these consolidated Dockets was affirmed by the Illinois Appellate Court for the Fifth District in *Illinois Power Co. et al. v. Illinois Commerce Commission*, (2000) 316 Ill.App.3d 254, 261; 736 N.E.2d 196, 202.

In fact, there is an important difference between customers being confused and customers intentionally selecting a utility affiliate as their competitive supplier of gas. While GCI suggests that Nicor Energy's market share in the Customer Select Pilot Program is attributable to customer confusion between Nicor Gas and Nicor Energy, the evidence demonstrates – to the

contrary – that customers intentionally selected Nicor Energy. GCI Ex. 1.0, p. 12, lines 10-11 (Alexander Direct). Moreover, GCI's concern over confusion is purely speculative, as Ms. Alexander conceded that she did not speak directly with any customers of Nicor Gas or Nicor Energy and was indirectly aware of only two complaints suggesting customer confusion out of 110,000 customers participating in Customer Select and an estimated 2.5 million contacts between Suppliers and eligible customers. Nicor Gas Cross Ex. 1 (Data Responses BRA 5, BRA 8); Nicor Gas Ex. F, p. 19 (Harms Surrebuttal). These are, the same two complaints of confusion attached to Mr. Hurley's rebuttal testimony. And Cook County did not report receiving any telephone calls suggestive of confusion over the joint use of a corporate name or logo by Nicor Gas and Nicor Energy. Nicor Gas Cross Ex. 1 (Data Response COOK 5). In short, the facts simply do not support GCI's claims of customer confusion over joint use of the Nicor name and logo.

IV. Conclusion

For the foregoing reasons, the Commission should approve Nicor Gas' Customer Select tariffs, effective March, 2002, subject only to the four modifications described in Section III. A. above.

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
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CERTIFICATE OF SERVICE

I, Stephen J. Mattson, hereby certify that I served the foregoing Initial Brief Of Northern Illinois Gas Company on the attached service list by U.S. mail, first class postage prepaid on March 23, 2001, and by electronic mail.

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