STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a Nicor Gas Company	))	
Application pursuant to Section 9-201 and Section 19-140 of the Illinois Public Utilities Act for consent to and approval of Rider 31, On-Bill Financing Program and related changes to Nicor Gas' tariffs, and approval of the Energy Efficiency On-Bill Financing Program	)	Docket No. 10-0096

CORRECTED VERIFIED REPLY COMMENTS
OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois ("the People" or "AG"), by and through Lisa Madigan, Attorney General of the State of Illinois, hereby file these Reply Comments pursuant to the schedule established by the Administrative Law Judge ("ALJ") in this docket. These Reply Comments pertain to the Initial Comments filed by the Citizens Utility Board ("CUB") and the Initial Comments filed by the Staff of the Illinois Commerce Commission ("ICC Staff" or "Staff)" regarding Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or "Company") and its petition for approval of an On-Bill Financing Program ("OBF Program" or "Program").[1]

[1] Other utilities in Illinois filing on-bill financing programs include: NorthShore/Peoples Gas No. 10-0090; Commonwealth Edison Docket No. 10-0091, and AmerenCILCO/AmerenCIPS/AmerenIP Docket No. 10-0095.

INTRODUCTION

These Reply Comments will not address all issues raised by CUB and Staff but this does not indicate agreement with all of their conclusions.[2] The People rely on the comments and arguments made in the Peoples Revised Initial Comments[3] unless specifically stated otherwise herein. Generally, the People agree or have no objection to the Initial Comments made by CUB and Staff in their effort to have a meaningful Program that complies with the law.

REPLY COMMENTS

I. Reply to CUB's Initial Comments

CUB has worked hard throughout the workshop process to advance the General Assembly's purpose "to save energy through cost-effective energy efficiency measures" 220 ILCS 5/19-140(a) and 220 ILCS 5/16-111.7(a). In CUB's Initial Comments it is evident that its part in promoting conservation and energy efficiency through a meaningful Program is a consistent theme. Generally, the People believe that CUB's Initial Comments and recommendations would improve the Nicor Gas Program. In fact, the People share many of the concerns raised by CUB which include the following proposed program defects: 1) credit check methodology that limits participation and raises program costs or loan rates; and 2) gaps or lack of detail in the Program Design Document ("PDD"). Ultimately, however, the People at this time believe it is premature to support CUB's recommendation that the Program should continue during the pendency of evaluation. CUB Initial Comments at 7-8. The People believe there are many issues,

[2] CUB and Staff filed their Initial Comments in this proceeding on March 2, 2010 in compliance with the ALJ's schedule.
[3] The People filed its Initial Comments on March 2, 2010 and Revised Initial Comments on March 4, 2010.

including Program costs that must be worked out regarding the Nicor Gas Program. The People address some of the issues raised by CUB's Initial Comments below.

A. The Financial Institution Should Be Selected With Stakeholder Input Based on Clearly Defined Criteria

In their Initial Comments, CUB expressed concerns about the Request for Proposal ("RFP") financial institution ("FI") selection process. CUB Initial Comments at 5. CUB described the RFP lender selection process in its Initial Comments where Nicor Gas is:

> cooperating with other utilities[[4]] to conduct a joint Request for Proposal to find the financial institution that will serve as lender, provide financing to customers and serve as partner in several roles to implement the Program. Nicor Gas Ex. 1.2 at 3 Section 2. Nicor Gas Exhibit 1.2, 2.2. The Illinois Energy Association ["IEA"], of which all utilities are members [or associate members] is facilitating this cooperation and will issue the FI RFP and coordinate the FI RFP process on behalf of the utilities.[5] CUB Initial Comments at 2-3.

Of particular concern to CUB is the issue of veto power of the Illinois Energy Association in the lender selection process. CUB Initial Comments at 3. Therefore, "CUB proposes that the stakeholders who participated in the OBF workshops conducted by Staff become members of the proposed Evaluation Committee." *Id.* at 3. In particular, CUB proposes the Commission name CUB, the People and ICC Staff to be included as members of the RFP Evaluation Committee. *Id.* The Peoples would be willing to join the RFP evaluation Committee, but believe that in order to make a meaningful contribution to the

[4] Other utilities in Illinois filing on-bill financing programs means: NorthShore/Peoples Gas No. 10-0090; Commonwealth Edison Docket No. 10-0091, and AmerenCILCO/AmerenCIPS/AmerenIP Docket No. 10-0095.
[5] See IEA website at: http://www.ilenergyassn.org/mbrcompanies/index.asp

evaluation process, the AG and CUB should be voting members of the Evaluation Committee and not just advisors.

B. The Gross Receipts Tax Should Not Apply to On-Bill Financing Programs

As CUB noted in their Initial Comments, the Nicor Gas PDD does not directly address the application of the "gross receipts tax" to measures. Nicor Gas response to CUB data request 2.02 CUB Initial Brief at 4. Nicor Gas, however, stated it was required to collect the gross receipts tax, citing Section 1 of the Gas Revenue Tax Act. *Id.*

As CUB noted in their Initial Comments, while Section 1 of the Gas Revenue Tax Act defines "gross receipts" and includes "cash, services and property of every kinds of nature" in that definition, the equipment or "property" is not being provided by the utility. As CUB notes, the customer is the owner of the equipment, and the financial relationship is between the customer and the financial institution that provides the loan.[6] There simply is no basis in fact or law that supports the Nicor Gas perspective on this issue.

In contrast, most of the other utilities have not applied the subject tax to measures in their respective programs[7]. As CUB opines, "By subjecting measures funded through the OBF Program to the Gas Revenue Tax Act, Petitioners [Nicor Gas] inappropriately raise the cost of the measure. CUB recommends the Petitioners [Nicor Gas] exclude any 'gross receipts' tax from the cost of the measure." The People agree with CUB that the

[6] Regarding the participant and lender relationship the On-Bill Financing statute states, "A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved between the participant and lender." 220 ILCS 5/19-140(c)(5).

[7] North Shore and Peoples Gas, however take a similar position to Nicor Gas regarding gross receipts tax being applied to a measure in its program. NorthShore/Peoples Gas No. 10-0090.

"gross receipts" tax should not be included in the Program or added to the cost of the measure.

C. Instead of Credit Checks, Customer Bill Payment History Should Be Used in Determining Eligibility

Nicor Gas intends to finalize underwriting criteria for residential customers with the selected FI. Nicor Gas Exhibit 1.3 at 6 and 15; CUB Initial Comments at 6. Examples of potential underwriting criteria include confirmation of income, minimum FICO credit score, and debt-to-income ratio. *Id.* Although there is a lack of detail in exactly how credit checks will be implemented by the FI, CUB is concerned that the credit check practice "will add unnecessary costs to the Program." CUB Initial Comments at 6. Additionally, CUB is concerned that people that could benefit from energy efficiency measures could be denied access to the program because they have less than ideal credit scores. Even though it was demonstrated at the workshop process that individuals with poor credit scores often still pay their utility bills. *Id.* Thus CUB recommends that the Commission should rule that the use of utility bill payment history is a prudent way to evaluate credit worthiness of prospective borrowers. *Id*.

In their Revised Initial Comments, The People raised many of the same concerns that CUB articulated regarding the Nicor Gas credit check methodology described in its Program. The People recommended that:

> the Commission should require the Petitioner to apply a tiered credit check approach that: 1) limits the requirement to prior bill payment history for measures under a $1,000; and 2) applies a specific formula or methodology that does not inflate the interest rate or cause additional costs to be socialized to rate payers for measures greater than $1,000. The specific credit check methodology should be stated clearly in the Program Design Document, as well as the RFP, Nicor Gas Exhibit 1.3. AG Revised Initial Brief at 8.

However, if the Commission chose CUB's recommendation to use only bill payment history as a means of doing a customer credit check, the People would not object.

D. Reconnection Amounts Should Include Only Those Loan Payments Missed Since Disconnection and Not the Entire Loan Balance

As CUB noted in their Initial Comments, in the event of non-payment by a customer of loan amounts due, the utility may terminate service, under existing collection procedures. Nicor Gas Exhibit 1.0 at 8 citing 220 ILCS 5/19-140(c)(5). To resolve this issue, "CUB recommends the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan." *Id.* The People believe that CUB's addition regarding amounts owed to the utility to enable reconnection is reasonable and adds an important consumer protection element to the Program. Therefore, the People support this recommendation.

E. The Role of Program Administrator Should Be Clarified

As CUB noted in their Initial Comments, Nicor Gas intends to hire a separate contractor to oversee a vendor network, though they note that the existing vendor network established for existing energy efficiency and demand response programs may be drawn upon and augmented for their Program. Nicor Gas Exhibit 1.2 at 7; CUB Initial Comments at 8.The People support the effort to seek qualified vendors to install measures at a reasonable fee. Accordingly, the People agree with CUB's conclusion on this matter that:

> Using existing contractor [or leveraging] networks as much as possible will lower overall program costs and lessen the burden of the Financial

> Institution ["FI"] to double-check [v]endor credentials. Before the [Nicor Gas] OBF Program is approved, the Commission should ask for and receive clarification on the role of any contractor hired to oversee the [v]endor network, along with information on associated costs." CUB Initial Comments at 8-9.

II. Reply to Staff's Initial Comments

Staff's lead in the workshop process and its Initial Comments seek to insure the Program is legally compliant in advancing the General Assembly's purpose "to save energy through cost-effective energy efficiency measures" 220 ILCS 5/19-140(a) and 220 ILCS 5/16-111.7(a). The People respond to some of the points raised in Staff's Initial Comments below.

A. Staff Data Reveals that the Nicor Gas Program Has Not Adequately Described a Process to Assure its Methods to Obtain a Security Are Financially Prudent With Respect to Certain Measures

As Staff noted in their Initial Comments, Staff's data request answer BCJ 1.07 provided a response from Nicor Gas regarding that, "[t]he Company indicates that when it is financially prudent to exercise this right, the Company will recover the equipment from the participant and sell it with the proceeds to reduce uncollectibles expense (Company response to ICC Data Request BCJ 1.07 Attachment A7)." Staff Initial Comments at 18-19.

The People believe Nicor Gas' recognition of the cost associated with perfecting a security interest is appropriate. For example Nicor Gas states that it will exercise its right to a security interest "pursuant to Section 10-1040(c)(6) when it is financially prudent to do so…" Nicor response to Staff DR BCJ1.07, Staff Verified Comments Attachment A7. Nicor Gas, however, should spell out when it intends to perfect its security interest, for

example for measures with a value greater than $5,000. Furthermore, the People believe that Nicor Gas and the other utilities should exclude the service and related costs associated with a security interest from the RFP.[8] In essence, Nicor Gas would be responsible for obtaining a security interest with the associated filings and not the lender. The statute states, "In addition, the electric utility shall retain a security interest in the measure or measures purchased under the program…" Section ILCS 5/19-140(c)(6). There is no requirement that the utility has to file or perfect a security interest or that the lender needs to be responsible for the filing of the security interest. Therefore the People expect to see Nicor Gas address in its Reply Comments, how it intends to keep costs reasonable for the Program and "when it is financially prudent to exercise this right." to perfect a security interest.

B. The People Support Staff's Call for the Dissemination of Consumer Information

In their comments, Staff proposed that certain consumer information needs to be disseminated to customers who take advantage of the OBF Program. Staff states in its Initial Comments:

> Customers who take advantage of the proposed OBF [P]rogram should be informed about how their participation may affect their bill when changes in utility service occur. In particular, customers will need to know how moving to another location both within and outside the utility's service territory will affect their bill. In addition, it is important that customers understand that their utility service may be subject to disconnection for non-payment of on-bill financing charges. Staff Initial Comments at 33.

[8] Nicor Gas witness Sharon Grove stated, "it only intends to reserve the right to retain a security interest in the installed measure, but does not propose to regularly enforce such a provision on a widespread basis." (Nicor Gas Ex 1.0 at 9).

Additionally, Staff recommends Nicor Gas develop such consumer information and describe how such information will be communicated to customers. *Id.* The People support Staff's recommendation as an important consumer protection issue. In fact, Staff believes such information should be included in materials used to market the Program. In addition, the People believe that if the Nicor Gas Program applies a gross receipts tax, this information needs to be timely communicated as well.

WHEREFORE, the People submit these Reply Comments for consideration in this docket.

Respectfully submitted,

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