STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

NORTHERN ILLINOIS GAS COMPANY	)	
d/b/a NICOR GAS COMPANY	)	
	)	Docket No. 10-0562
Application pursuant to Section 8-104 and	)	
Section 9-201 of the Illinois Public Utilities	)	
Act for consent to and approval of an Energy	)	
Efficiency Plan and approval of Rider 30,	)	
Energy Efficiency Plan Cost Recovery and	)	
Related changes to Nicor Gas' tariffs	)	

BRIEF ON EXCEPTIONS OF NICOR GAS COMPANY

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BRIEF ON EXCEPTIONS
OF NICOR GAS COMPANY

Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the "Commission"), 83 Ill. Adm. Code 200.830, and the Administrative Law Judge's ("ALJ") established briefing schedule, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or the "Company") respectfully submits its Brief on Exceptions to the Proposed Order dated January 14, 2011 ("Proposed Order").

I. Introduction

Nicor Gas supports the energy efficiency goals and the policies established in recently enacted Section 8-104 of the Public Utilities Act (the "Act"). 220 ILCS 5/8-104. To that end, the Company prepared a comprehensive and thoughtful three-year energy efficiency plan ("EEP" or "Plan") that complies with the requirements of Section 8-104, while balancing the interests of all customers and Nicor Gas. As this is the first of several Nicor Gas EEPs contemplated under the Act, the Company's EEP meets the statutory therm reduction goals, while limiting the EEP costs that are allowed to be recovered from customers. The Commission should approve Nicor Gas' EEP as proposed.

The Proposed Order, however, contains a number of erroneous conclusions which conflict with Section 8-104 and the General Assembly's expressed legislative intent for this Section. Moreover, the Proposed Order improperly imposes conditions on Nicor Gas's EEP similar to the conditions the Commission recently imposed on the Ameren Illinois Utilities' ("Ameren") and Commonwealth Edison Company's ("ComEd") energy efficiency proposals despite the fact that Nicor Gas only provides gas distribution service and its EEP is governed under an entirely different statutory provision that is applicable only to gas utilities. The Proposed Order's improper conclusions include, at a minimum:

- Contrary to Section 8-104, the Proposed Order improperly inflates the Company's therm reduction goals by 42% by requiring Nicor Gas to include the gas usage of transportation customers – customer usage not contemplated under the Act.
- The Proposed Order also improperly inflates the Company's spending cap for the first three years of the program by adopting the Commission Staff's ("Staff") arbitrary proposal to increase the Company's computation by 20%. In contrast, Nicor Gas demonstrated that it could achieve the statutory therm reduction goals using *less* money during this period. To place the impact of the Proposed Order's conclusion on this issue in perspective, adopting Staff's proposal results in a rate increase to customers of approximately $168 million over the next three years, which is approximately 20% *higher* than the increase in distribution revenues requested by the Company in its last rate case.
- Contrary to the Act, the Proposed Order improperly imposes the Illinois Attorney General's Office's ("AG") proposed net-to-gross ("NTG") framework on the basis of "recent Commission adoption" of the framework in the ComEd and Ameren energy efficiency dockets. There is no statutory basis for this conclusion. Nicor Gas should not be held to an electric utility NTG framework as to which it had no input in debating or creating. There is not a gas utility Stakeholder Advisory Group ("SAG") in Illinois, and there is no evidence in the record regarding the relevance of any discussions that occurred among the electric utilities and other electric SAG members to this case.

Nicor Gas does not seek to argue each and every finding and conclusion contained in the Proposed Order with which it reasonably disagrees.[1] Instead, Nicor Gas confines its arguments to three issues that deserve the primary focus of the Commission in its preparation of the Final Order. Specifically, this Brief addresses the Proposed Order's recommendations to: (a) include gas purchased by transportation carriers in its calculations of gas savings goals; (b) increase Nicor Gas' spending cap by 20%; and (c) adopt the NTG framework established in the electric utilities SAG. Because the legal standard and evidentiary record with respect to Nicor Gas' proposed 2011-2014 EEP do not support the Proposed Order's findings addressed herein, the Commission should issue a Final Order accepting Nicor Gas' proposed amendments.

II. Argument

A. Exception No. 1 – The Final Order Should Accept Nicor Gas' Determination of Therm Savings Goals and Specifically Reject the Inclusion of a Value for Commodity Delivered to Transportation Customers

The Proposed Order's direction to Nicor Gas "to include gas purchased by transportation carriers in its calculations of gas savings goals" is contrary to the statutory language and legislative intent of Section 8-104 of the Act, 220 ILCS 5/8-104. Proposed Order at 15. Under the Proposed Order's approach, Nicor Gas would be required to meet a therm reduction goal that is 42% higher than contemplated in the statute. In arriving at this erroneous conclusion, the Proposed Order fails to recognize that there will be a negative impact on Nicor Gas and its customers if the therm reduction goals are increased 42% beyond what is contemplated in Section 8-104. Quick Reb., Nicor Gas Ex. 7.0, 13:286-14:298; Nicor Gas Init. Br. at 15-16.

[1] Section II.D. to this Brief on Exceptions identifies the additional conclusions contained in the Proposed Order as to which Nicor Gas takes exception. All suggested replacement language for the Proposed Order can be found in Attachment A to this brief.

The Proposed Order's error on the calculation of the therm savings goal is easily remedied by excluding the transportation customer therms from the calculation of the therm savings goals. For the reasons discussed in Nicor Gas' Initial Brief and the reasons set forth below, the Commission should amend the Proposed Order's conclusion on this issue, as set forth in Attachment A. In addition, the Final Order should recognize that customers described in Section 8-104(m) of the Act (220 ILCS 5/8-104(m)), which are to be excluded for purposes of Section 8-104(c), may include more customers than those previously identified by the Illinois Department of Commerce and Economic Opportunity (the "DCEO").[2] The Final Order should direct Nicor Gas to collaborate with DCEO in advance of Nicor Gas' compliance filing to identify and confirm the list of exempt customers under Section 8-104(m), which will thereby be excluded from the calculation under Section 8-104(c).

1. The Statutory Language and Legislative Intent

Section 8-104(c) of the Act establishes a list of natural gas savings goals for natural gas utilities, explaining that "[n]atural gas utilities shall implement cost-effective energy efficiency measures to meet at least the following natural gas savings requirements, which shall be based upon the total amount of gas delivered to retail customers, other than the customers described in subsection (m) of this Section." 220 ILCS 5/8-104(c) (emphasis added). The legislative intent relating to the term "retail customers" as used in Section 8-104 can be determined from the following legislative discussion:

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[2] Subsection (m) exempts from subsections (a) through (k) of Section 8-104 all "customers of a natural gas utility that have a North American Industry Classification System code number that is 22111 or any such code number beginning with the digits 31, 32, or 33 and (i) annual usage in the aggregate of 4 million therms or more within the service territory of the affected gas utility or with aggregate usage of 8 million therms or more in this State and complying with the provisions of item (l) of this subsection (m); or (ii) using natural gas as feedstock and meeting the usage requirements described in item (i) of this subsection (m), to the extent such annual feedstock usage is greater than 60% of the customer's total annual usage of natural gas." 220 ILCS 5/8-104(m).

> Reitz: "That's correct. On the gas efficiency provisions, I'd like to make sure that all of us understand how the charges to customers will be calculated. There are some customers such as merchant electric generators who purchase all or part of their gas at wholesale and then transport that gas over to the distribution systems of the local gas utility. When the utility is calculating the charge to customers, will the utility include the cost of gas that is purchased by the user at wholesale?"
>
> Flider: "No."
>
> Reitz: "Stated differently, does the legislation intend to cover for the purpose of assessing charges, service revenues and retail gas commodity purchases, but exclude wholesale gas purchases?"
>
> Flider: "Yes."
>
> Reitz: "So, what is excluded is the wholesale commodity cost, the utilities cost for transportation for that wholesale commodity is included, right?"
>
> Flier: "That's correct, yes."
>
> Reitz: "And you were talking about excluding only wholesale commodity purchases, retail gas purchases for public utilities and certified alternative gas suppliers are included, right?"
>
> Flider: "Yes."

State of Illinois, 96th G.A., House of Rep., 63rd Legis. Day, Tr. at 181-82 (May 28, 2009); available at http://www.ilga.gov/house/transcripts/htrans96/09600063.pdf; Nicor Gas Init. Br. at 13-14. Although this discussion relates to the budget limitation of Section 8-104, which is addressed below, the legislators' understanding and use of the terms retail and wholesale defines their intent within the entire statutory scheme.

2. Nicor Gas' Evidence Demonstrates That Its Proposal Meets the Statutory Therm Reduction Goals.

Nicor Gas presented evidence demonstrating that its determination of the therm goals over the three-year reporting period is in compliance with Section 8-104(c) of the Act. In particular, Nicor Gas demonstrated that its projected therm goals in the initial three year plan proposed for 2011-2014 exceed Section 8-104's requirements of 0.2%, 0.4% and 0.6% of energy savings. Jerozal Dir., Nicor Gas Ex. 1.0R, 12:257-60; Section 8-104(c); Nicor Gas Init. Br. at 8-9. Specifically, Nicor Gas presented evidence that the combined energy savings produced by Nicor Gas-operated programs and DCEO-operated programs are expected to be 6.1 million therms in the first year, 12.2 million therms in the second year, and 18.4 million therms in the third year. Jerozal Dir., Nicor Gas Ex. 1.0R, 12:260-13:264; Nicor Gas Ex. 1.6; Nicor Gas Init. Br. at 8. These therm goals were based upon the 2009 total amount of gas delivered to retail customers, 301.3 Bcf, according to Section 8-104(c). Jerozal Dir., Nicor Gas Ex. 1.0R, 13:266-67; Nicor Gas Ex. 1.6; Nicor Gas Init. Br. at 8.

3. Nicor Gas' Calculation of Therm Savings Complies with Section 8-104(c)

Consistent with Section 8-104 and its legislative history, Nicor Gas has defined retail customers to include those customers for whom Nicor Gas purchases and delivers natural gas commodity to, plus those residential and small commercial customers who use Alternative Retail Gas Suppliers to obtain their gas supply. Quick Reb., Nicor Gas Ex. 7.0, 4:75-78; Nicor Gas Init. Br. at 13. Retail customers do not include large customers that purchase their own gas supply on the open market or use the services of third-parties to do so. Quick Reb., Nicor Gas Ex. 7.0, 4:78-79; Nicor Gas Init. Br. at 13. Nicor Gas considers these wholesale customers. Quick Reb., Nicor Gas Ex. 7.0, 4:79-80; Nicor Gas Init. Br. at 13. Nicor Gas' definition also is consistent with the common understanding of the term retail customer. Quick Reb., Nicor Gas Ex. 7.0, 5:108-13; Nicor Gas Init. Br. at 14. Webster's Third International Dictionary (1986 edition, page 1938) defines retail as, "the sale of commodities or goods in small quantities to ultimate consumers." Thus, the exclusion of large customers who purchase their own gas supplies would be consistent with this definition. Quick Reb., Nicor Gas Ex. 7.0, 5:112-13; Nicor Gas Init. Br. at 14.

The Proposed Order's direction to Nicor Gas "to include gas purchased by transportation carriers in its calculations of gas savings goals" is contrary to the statutory language and legislative intent. Proposed Order at 15. In particular, referring to the legislative discussion quoted above, and recognizing that the conversation is with regard to the budget limitation, the legislators' understanding and use of the terms retail and wholesale defines their intent within the statute, which parallels Nicor Gas' understanding of the term retail.

Moreover, under the approach adopted by the Proposed Order, Nicor Gas would be required to meet a goal that is 42% higher than contemplated in the statute. The Proposed Order fails to recognize that there will be a negative impact on Nicor Gas and its customers if the therm reduction goals are increased by 42%. Quick Reb., Nicor Gas Ex. 7.0, 13:286-14:298; Nicor Gas Init. Br. at 16. For Nicor Gas, the first challenge would be to develop and implement energy efficiency plans to address the 42% increase to the goal. Quick Reb., Nicor Gas Ex. 7.0, 13:288-89; Nicor Gas Init. Br. at 16. Second, this increase in therm reduction goals will exacerbate the Company's inability to recover Commission-approved costs for providing distribution service. Quick Reb., Nicor Gas Ex. 7.0, 13:289-92; Nicor Gas Init. Br. at 16. Given the Commission's decision to exclude recovery of such costs through Rider 30 (which the Company may address in the future), the 42% increase in therm reduction goals will have a direct, negative financial impact to the Company, which is contrary to the intent of Section 8-104. Quick Reb., Nicor Gas Ex. 7.0, 13:292-95; Nicor Gas Init. Br. at 16. The financial implications for Nicor Gas will ultimately be borne by its ratepayers because an increase in the therm goals will hasten the day when Nicor Gas will need to file for rate relief in order to recover its prudent and reasonable cost of providing gas distribution service. Quick Reb., Nicor Gas Ex. 7.0, 13:296-14:298; Nicor Gas Init. Br. at 16.

B. Exception No. 2 – The Final Order Should Approve Nicor Gas' Calculation of the Budget Limit

The Proposed Order erroneously increases Nicor Gas' budget limit on its EEP by adopting Staff's arbitrary 20% increase under the 2% rate cap. Proposed Order at 15. The Proposed Order's error on the budget limit should be corrected by approving Nicor Gas' calculation of the budget limit. For the reasons discussed in Nicor Gas' Initial Brief and the reasons set forth below, the Commission should amend the Proposed Order's conclusion on this issue, as set forth in Attachment A. In addition, the Final Order should recognize that customers described in Section 8-104(m), which are exempt from the requirements of Section 8-104, may include more customers than those previously identified by the DCEO. The Final Order should direct Nicor Gas to collaborate with DCEO in advance of Nicor Gas' compliance filing to identify and confirm the list of exempt customers under Section 8-104(m), which will thereby be excluded from the calculation under Section 8-104(d).

1. The Statutory Language and Legislative Intent

Section 8-104(d) establishes a limitation of costs to be expended on the EEP states:

> Notwithstanding the requirements of subsection (c) of this Section, a natural gas utility shall limit the amount of energy efficiency implemented in any 3-year reporting period . . . by an amount necessary to **limit** the estimated average increase in the amounts

> paid by retail customers in connection with natural gas service to no more than 2% in the applicable 3-year reporting period.

220 ILCS 5/8-104(d) (emphasis added). Nothing within Section 8-104 requires a gas utility to collect from customers every penny up to the 2% cap limit and spend such sums on energy efficiency programs. Similar to the therm savings goal, the legislative intent relating to "retail customers" as used in Section 8-104 is evidenced in the legislative discussion quoted above.

2. Nicor Gas' Sufficient Evidence

The budget limit is a cap on how much Nicor Gas may spend to achieve the statutory goals of Section 8-104, as well a mechanism to limit the rate impact to Nicor Gas' customers. Jerozal Reb., Nicor Gas Ex. 5.0, 4:81-82; Quick Reb., Nicor Gas Ex. 7.0, 11:233-34; Nicor Gas Init. Br. at 9. The evidence demonstrated that Nicor Gas estimates the first 3-year reporting period two percent (2%) rate cap to be $141 million. Quick Dir., Nicor Gas Ex. 3.0R, 5:105-07; Nicor Gas Ex. 3.2; Nicor Gas Init. Br. at 9. While Nicor Gas proposed to spend less than the statutory limit in its three-year plan, its EEP is designed to strike an important balance between spending an adequate amount of money to meet the statutory requirement and minimizing the rate increase impact to its customers. Jerozal Reb., Nicor Gas Ex. 5.0, 4:93-95; Nicor Gas Init. Br. at 9-10. The statutory goals as stipulated in Section 8-104(c) ramp up over time, indicating the Act's intent to grow the volume of savings over time, rather than reach maximum potential immediately and spend every dollar available. Jerozal Reb., Nicor Gas Ex. 5.0, 4:96-98; Nicor Gas Init. Br. at 10. In sum, the evidence demonstrated that the Company's budget considers the expenditures necessary to meet the statutory goals while balancing the interest of ratepayers who bear the burden to fund these programs. Jerozal Reb., Nicor Gas Ex. 5.0, 6:128-130; Nicor Gas Init. Br. at 10.

3. Nicor Gas' Budget Limit Complies with Section 8-104(d) and Limits the Financial Impact to Ratepayers

As described above, consistent with Section 8-104 and its legislative history, Nicor Gas has defined retail customers to include those customers for whom Nicor Gas purchases and delivers natural gas commodity to, plus those residential and small commercial customers who use Alternative Retail Gas Suppliers to obtain their gas supply. Quick Reb., Nicor Gas Ex. 7.0, 4:75-78; Nicor Gas Init. Br. at 13. No party disagreed with Nicor Gas' method for determining the budget limitation.

However, the Proposed Order needlessly directs the Company to increase the proposed budget limit by 20%. Proposed Order at 15. This finding also will increase the amount of money that Nicor Gas customers will pay to fund the Company's EEP because, pursuant to Section 8-104, customers will be paying for Nicor Gas' EEP. 220 ILCS 5/8-104(e). This increase represents a rate increase of approximately $168 million to Nicor Gas' customers over the next three years, while Nicor Gas' proposed budget (which is well under the nearly $141 million spending cap) represents a $105.4 million rate increase to customers over the next three years. To place these figures in perspective, in Nicor Gas' 2008 Rate Case, Docket No. 08-0363, the Company sought an increase in distribution revenues of approximately $141 million. Thus, the Proposed Order adopts an increase that is approximately 20% *higher* than the increase in distribution revenues requested by the Company in its last rate case.

Moreover, the Proposed Order's adoption of Staff's 20% upward adjustment to the EEP budget limit (Zuraski Dir., Staff Ex. 2.0, 7:134-9:182), is inappropriate for several reasons. Quick Reb., Nicor Gas Ex. 7.0, 7:148-8:169; Nicor Gas Init. Br. at 11. First, the 20% adjustment was supported by a faulty premise that the base of forecasted revenues should be for 2011 to 2014, instead of the 2009 revenues used by Nicor Gas. Zuraski Dir., Staff Ex. 2.0, 7:136-43;

Nicor Gas Init. Br. at 11. Importantly, Nicor Gas' use of its 2009 actual revenues to develop a budget to reduce 2009 usage is consistent with the Act. Quick Reb., Nicor Gas Ex. 7.0, 7:149-54; Nicor Gas Init. Br. at 11. Section 8-104(c) of the Act requires that gas utilities implement energy efficiency programs to reduce consumption as compared to 2009 usage. 220 ILCS 5/8-104(c). Second, the 20% adjustment represents an arbitrary adjustment, whereas Nicor Gas' number is based on actual revenues received. Quick Reb., Nicor Gas Ex. 7.0, 7:155-56; Nicor Gas Init. Br. at 11. While 2009 was about 9% colder than normal—and weather is an important factor—it is not the most important factor impacting Nicor Gas' revenue. Quick Reb., Nicor Gas Ex. 7.0, 7:156-58; Nicor Gas Init. Br. at 11. Moreover, the colder than normal weather in 2009 also inflates Nicor Gas' spending cap. Quick Reb., Nicor Gas Ex. 7.0, 7:158-59; Nicor Gas Init. Br. at 11.

Finally, Nicor Gas provided evidence demonstrating that 70% to 80% of its revenues can be attributed to the sale and price of the natural gas commodity itself. Quick Reb., Nicor Gas Ex. 7.0, 7:160-61; Nicor Gas Init. Br. at 11. The significant variability of gas prices, however, makes it extremely difficult to accurately forecast the amount of revenue the Company will collect. Quick Reb., Nicor Gas Ex. 7.0, 7:161-63; Nicor Gas Init. Br. at 11. For example, in the first nine-month period for 2008, 2009, and 2010, Nicor Gas' operating revenues varied from $2.33 billion in 2008, to $1.53 billion in 2009, to $1.60 billion in 2010. Quick Reb., Nicor Gas Ex. 7.0, 8:164-66; Nicor Gas Init. Br. at 11. Consequently, the Proposed Order's conclusion to increase the Company's proposed budget limit by 20% is arbitrary and without a sound basis as it relies upon a forecast of Nicor Gas' total revenues and any such forecast of future revenues is highly speculative. Quick Reb., Nicor Gas Ex. 7.0, 8:166-67; Nicor Gas Init. Br. at 11. Thus, the Commission should reverse the Proposed Order's determination to increase the budget limit by 20% because Nicor Gas' position, which relies on actual 2009 experience for determining the budget limit, even though weather was colder than normal, is a better approach and is consistent with the Act. Quick Reb., Nicor Gas Ex. 7.0, 8:167-69; Nicor Gas Init. Br. at 11.

C. Exception No. 3 – The Final Order Should Approve Nicor Gas' Net-to-Gross Ratios Presented in This Proceeding, as well as Nicor Gas' Request to Deem the Ratios for the Three Plan Years

The Proposed Order errs in adopting the AG-proposed NTG framework. Proposed Order at 30. For the reasons discussed in Nicor Gas' Initial Brief and the reasons set forth below, the Commission should find that Nicor Gas' NTG ratios are substantiated and approve Nicor Gas' request to deem them for the three plan years.

The evidence in this case clearly supports Nicor Gas' NTG ratios. The Company used information from a variety of sources to develop reasonable NTG ratios. *See* Nicor Gas Ex. 2.3; Nicor Gas Init. Br. at 22. The primary source was the baselines established in the Market Potential Study, including the current market saturation and penetration rates from the study to estimate free-ridership. Lawless Dir., Nicor Gas Ex. 2.0, 18:385-87; Nicor Gas Init. Br. at 22-23. In addition, program evaluation studies from other utility programs were compared to the MPS result and adjustments were made where appropriate. Lawless Dir., Nicor Gas Ex. 2.0, 18:387-89; Nicor Gas Init. Br. at 22-23.

The Proposed Order errs in its adoption of the AG-proposed NTG framework on the basis of "recent Commission adoption" of the framework in the ComEd and Ameren energy efficiency dockets. Proposed Order at 30. In the docket evaluating ComEd's electric energy efficiency plan, Docket No. 10-0570, the Commission accepted a stipulation, *i.e.*, a settlement, among the parties, who agreed to the AG-proposed NTG framework with two major exceptions. Docket No. 10-0570, Final Order at 49 (Dec. 21, 2010). The Commission specifically found that the settlement, including the exceptions to the framework, was supported by the record in *that* case. *Id*. at 47. Indeed, as noted in the Order in the Ameren gas and electric efficiency plan docket, "it is inappropriate to impose terms of a settlement in another proceeding on Ameren in this proceeding". Docket No. 10-0568, Final Order at 70 (Dec. 21, 2010). In the Ameren proceeding, the Commission's Order describes a version of the AG's proposed NTG framework, but based on the record in that case, adopted Ameren's proposal for updating NTG ratios where NTG values remain constant for the three years of Plan 2. *Id*. at 72-73.

Simply put, Nicor Gas should not be held to an electric utility NTG framework for which it had no input in debating or creating. There is not a gas utility SAG in Illinois, and there is no evidence in the record regarding the relevance of any discussions that occurred among the electric utilities and other electric SAG members to this case.[3] The Company is willing to work with other utilities and external stakeholders to develop guidelines such as those in the electric SAG framework, but believes that will take time and significant discussion. Lawless Reb., Nicor Gas Ex. 6.0, 10:211-12. *Id.*, 10:216-11:219; Nicor Gas Init. Br. at 23. Nicor Gas' proposal is based upon the best information available at the time it was created, and should be evaluated on its own merits.

The Proposed Order's adoption of the AG-proposed NTG framework constitutes reversible error as it is contrary to Section 8-104. First, Section 8-104 clearly puts the responsibility of the evaluation process on utilities (and the Illinois Department of Commerce and Economic Opportunity) with the Commission as the regulatory body. In contrast, the AG-proposed NTG framework recognizes SAG as a primary driver of the evaluation process. Lawless Reb., Nicor Gas Ex. 6.0, 10:208-11. This creates undue risk on the utilities that their

[3] The AG-proposed framework was never even agreed to by all parties in the electric SAG. Mosenthal Dir., AG Ex. 1.0, 21:7-9; AG Ex. 1.3; Nicor Gas Init. Br. at 23.

energy efficiency plans will fail to meet statutory goals for reasons beyond their control. Additionally, the SAG framework allows for retroactive application of NTG values which is at odds with the "looking forward" perspective in the statute. Lawless Reb., Nicor Gas Ex. 6.0, 11:220-22; Nicor Gas Init. Br. at 23. Specifically, the AG-proposed NTG framework calls for the subjective retroactive application of NTG for "existing and new programs not yet evaluated, and previously evaluated programs undergoing significant changes-either in program design or delivery, or changes in the market itself." AG Exhibit 1.3 at 2. In contrast, the law clearly requires for adjustments "on a going forward basis". 220 ILCS 5/8-104(f)(8).

Nicor Gas has provided a sound basis for its proposed NTG ratios and its request to deem them for the three plan years. The Proposed Order's adoption of the AG-proposed NTG framework is not supported by the record evidence and is contrary to law. The Proposed Order should be changed to adopt the proposal of the Company.

D. Other

In addition to the arguments set forth above, Nicor Gas takes exception to various other conclusions and statements set forth in the Proposed Order. These conclusions and statements require amendments to the Proposed Order that are reflected in Attachment A and summarized below:

- The Commission should amend the Proposed Order to strike the directive to Nicor Gas to provide language in the contracts of the evaluation, measurement and verification ("EM&V") vendors requiring "at least one impact evaluation of all programs to be completed no later than 60 days prior to October 1, 2013." Proposed Order at 29. If the Commission orders Nicor Gas to commit to an evaluation timeline on behalf of its independent evaluator that may ultimately prove unworkable, then the limited EM&V funding would have been spent on an evaluation that may not be credible and useful. Even the AG recognized in this proceeding that "limited EM&V funds should be allocated where and when they are most useful." Mosenthal Dir., AG Ex. 1.0, 23:10-11.

- The Commission should amend the proposed Order to strike the requirement that Nicor participate in the development of a statewide Technical Resource Manual ("TRM").

Proposed Order at 30. Section 8-104 does not require the development of a TRM. Further, as articulated above, this proceeding is distinguishable from the energy efficiency proceedings involving Ameren and ComEd in which the Commission ordered that Ameren and ComEd work together to develop a statewide TRM. Moreover, the process and cost to develop a single agreed-upon standard for all measures across the state will be a significant and costly endeavor. Jerozal Reb., Nicor Gas Ex. 5.0, 3:55-57. Differences among utilities may result in artificially forcing a generic compromised methodology at the expense of the unique and most appropriate methodology for Nicor Gas and its customers. *Id.*, 3:57-59. Accordingly, if the Commission concludes that a TRM is appropriate, it should order Nicor Gas to develop a company-specific TRM, as opposed to a statewide TRM.

- The Commission should amend the Proposed Order to strike unnecessary detailed program design specifications for Nicor Gas' business custom collaboration with ComEd. Proposed Order at 44. For example, not all custom business programs will necessarily involve building assessments. In addition, a single point of contact may not be workable between Nicor Gas and ComEd as the two companies may very well have different structures for their business customer support staff. In all events, Nicor Gas presented evidence in the form of its proposed EEP demonstrating that it has always intended to collaborate and coordinate with ComEd with respect to this issue. *See* Nicor Gas Ex. 1.1, Section 1.2.3, at 17-20.

- The Commission should amend the Proposed Order to clarify that the DCEO should adjust its calculations pursuant to Section 8-104 in accordance with the findings and conclusions applicable to Nicor Gas. In particular, the DCEO will need to meet its statutorily mandated percentage of an increased budget limitation, if one is finally ordered by the Commission.

Nicor Gas also incorporates by reference herein the arguments in its Initial Brief to support the revisions to the Proposed Order set forth in Attachment A as to these issues.

III. Conclusion

WHEREFORE, for each of the reasons set forth herein and within its Initial Brief, Nicor Gas Company respectfully requests that the Commission revise the Proposed Order consistent with the replacement language set forth in Attachment A.

Dated: February 2, 2011

Respectfully submitted,

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

By: /s/ John E. Rooney

John E. Rooney
Anne W. Mitchell
Rooney Rippie & Ratnaswamy LLP
350 West Hubbard Street, Suite 430
Chicago, Illinois 60654
(312) 447-2800
john.rooney@r3law.com
anne.mitchell@r3law.com

CERTIFICATE OF SERVICE

I, John E. Rooney, certify that I caused a copy of the Brief on Exceptions of Nicor Gas Company to be served upon the service list in Docket No. 10-0562 via email on February 2, 2011.

/s/ John E. Rooney
John E. Rooney