

Rebuttal Testimony

of

David Rearden

Policy Program

Energy Division

Illinois Commerce Commission

Application for Approval of a Reorganization pursuant to
Section 7-204 of the Public Utilities Act

AGL Resources Inc., Nicor Inc., and
Northern Illinois Gas Company d/b/a Nicor Gas Company

Docket No. 11-0046

June 23, 2011

1 **Introduction**

2 **Q. Please state your name, job title and business address.**

3 **A.** My name is David Rearden and I am a Senior Economist on the Staff (“Staff”) of
4 the Illinois Commerce Commission (“Commission”) in the Policy Program. My
5 business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

6 **Q. Did you file direct testimony in this case?**

7 **A.** Yes. My direct testimony is contained in Staff Ex. 10.0.

8 **Q. What is the purpose of your rebuttal testimony?**

9 **A.** I reply to the rebuttal testimony of Joint Applicants witnesses Linginfelter and
10 O’Connor (Joint Applicants Ex. 8.0 and 10.0, respectively).

11 **Section 7-204(b)(6)**

12 **Q. What was your conclusion with respect to Section 7-204(b)(6)?**

13 **A.** Under Section 7-204(b)(6) of the Public Utilities Act (“Act”), the Commission must
14 find that “the proposed reorganization is not likely to have a significant adverse
15 effect on competition in those markets over which the Commission has
16 jurisdiction.” In my direct testimony, I agreed with the Joint Applicants that the
17 relevant markets for this condition are the small volume market and the
18 traditional transportation market, which tends to be for larger customers. I also
19 concluded that there was no competitive harm from the merger in the small
20 volume market, but I lacked the data to reach the same conclusion for the
21 traditional transportation market. I received the data request responses after my
22 direct testimony had been filed.

23 **Q. How did the Joint Applicants respond in their rebuttal testimony?**

24 **A.** Joint Applicants witness O'Connor states that his review of the traditional
25 transportation market data leads him to conclude that the reorganization does not
26 adversely impact that market. (Joint Applicants Ex. 8.0, p. 3)

27 **Q. Do you agree?**

28 **A.** Yes. The data is market nominations by supplier for 2010. (Joint Applicants
29 response to Staff DR DTR 2.2, Exhibit 1) The traditional transportation market is
30 not concentrated as defined by the *Horizontal Merger Guidelines*.¹ And the
31 merger does not increase concentration to the degree that those guidelines
32 would suggest further investigation. Thus, I agree with the Joint Applicants that
33 the merger does not have a significant adverse impact on competition for the
34 markets over which the Commission has jurisdiction.

35 **Section 7-204A(a)(5)**

36 **Q. What did you recommend with respect to the four existing agreements?**

37 **A.** The Joint Applicants filed four existing agreements between Sequent and Nicor
38 Gas' affiliates under Section 7-204A(a)(5) of the Act. I recommended that the
39 Commission approve them. (See Staff Ex., p. 7.)

40 **Q. Did you make another recommendation under this part of the Act?**

41 **A.** Yes. I recommended that the Commission specifically prohibit Nicor from
42 granting Sequent the right of last refusal for spot market purchases. I reasoned

¹ The guidelines can found at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>.

43 that this right discouraged unaffiliated suppliers and might ultimately lead to
44 higher prices for spot market gas.

45 **Q. How did the Joint Applicants respond?**

46 **A.** Joint Applicants witness Linginfelter noted that I cited an audit report from New
47 Jersey concerning Elizabethtown Gas (the Liberty Audit).² He pointed out that the
48 Liberty Audit found that the prices for gas purchases made pursuant to the right
49 of last refusal were “about the same” as those purchased from non-affiliated
50 suppliers under comparable circumstances. He further reported that the New
51 Jersey Board of Public Utilities subsequently approved a renewed Asset
52 Management Agreement (“AMA”) between Elizabethtown and Sequent that
53 included the right to bid last.

54 **Q. How do you reply?**

55 **A.** The renewed AMA that included the right of last refusal also included terms that
56 covered all purchases. The New Jersey Board of Public Utilities approved the
57 contract that included the right for Sequent to bid last. The contract governed all
58 purchases, not just spot market transactions. I continue to maintain that granting
59 the right to bid last is unwise, since it is likely to discourage unaffiliated bidders
60 even when spot market purchases are made pursuant to an AMA. I continue to
61 recommend that the Commission specifically prohibit Nicor from granting
62 Sequent the right of last refusal for spot market purchases.

63 **Sections 7-204(b)(2) and (3)**

² I attached the relevant pages of the Liberty Audit to my direct testimony. (Staff Ex. 10.0, Attachment A).

64 **Q. What did you recommend with respect to the Operating Agreement (“OA”)?**

65 **A.** I recommended that the Commission condition approval for the reorganization on
66 Sequent not being a signatory to the OA. That means that all transactions
67 between Sequent and Nicor (besides those provided under the four contracts
68 discussed under Section 7-204A(a)(5)) would be governed by a separate
69 agreement subject to separate Commission approval.

70 **Q. How did the Joint Applicants respond?**

71 **A.** Joint Applicants’ witness Linginfelter, while skeptical that it is necessary, agreed
72 to the condition. He states that, “the Joint Applicants are amenable to
73 withdrawing their request to include Sequent as a party to the OA at this time.”
74 (Joint Applicants Ex. 8.0, p. 13)

75 **Q. Did you make other recommendations?**

76 **A.** Yes. I stated that AMAs or other management services contracts are different
77 from the existing affiliate agreements and the Commission should scrutinize
78 those transactions more closely to protect rate payer interests. I recommended
79 that the Commission should require Nicor to demonstrate that an AMA will
80 decrease gas costs relative to the Local Distribution Company buying its own
81 gas. I also recommended that the Commission require Nicor Gas consult with
82 Staff when developing the form of its AMA and to submit any proposed AMA to
83 the Commission for approval to protect ratepayers from paying too much for gas.

84 **Q. How did the Joint Applicants respond?**

85 **A.** Joint Applicants' witness Linginfelter argued that discussion of AMAs was
86 premature. The reorganization, according to Linginfelter, does not concern
87 AMAs. He states, "Asset management is simply not a feature of the
88 Reorganization and should not be an issue in this case." (Joint Applicants Ex.
89 8.0, p.12)

90 **Q. Do you agree?**

91 **A.** No. Every utility affiliate of AGLR purchases all or almost all of its gas pursuant to
92 AMAs with its affiliate Sequent. It seems likely that AGLR will attempt to use
93 AMAs to buy gas for Nicor. As such, a reasonable approach for the Commission
94 is to consider how to best keep ratepayers from being charged too much for gas
95 in the event that AGLR proposes an AMA for Nicor. I believe that two ways to
96 accomplish that goal are to require Nicor to 1) demonstrate how an AMA can
97 reduce gas costs and 2) test the market for such services.

98 **Q. Did you discuss this issue with the Joint Applicants?**

99 **A.** Yes. Staff and Joint Applicants agreed to the following:

- 100 1) At least 60 days prior to the filing of any petition seeking approval of an asset
101 management agreement, Nicor Gas will meet with Commission Staff to
102 discuss an asset management proposal.
- 103 2) Nicor Gas will not execute an asset management agreement with any third-
104 party (affiliate or otherwise) prior to obtaining Commission approval of the
105 proposed agreement.
- 106 3) Staff reserves the right to adopt any position in future dockets that may
107 concern asset management agreements involving Nicor Gas, including but
108 not limited to any position advocating that Nicor Gas utilize a competitive
109 request-for-proposals process to choose a counterparty to such asset
110 management agreements.

111 **Q. Please list your uncontested recommendations.**

112 **A.** I recommend that the Commission find that the reorganization meets the
113 requirements of Section 7-244(b)(6). I recommend that the Commission approve
114 the existing contracts filed pursuant to 7-204A(a)(5). I recommend that Sequent
115 be excluded from the OA. Also, I recommend that the Joint Applicants consult
116 with Staff and receive Commission approval for an AMA before it goes into effect.

117 **Q. Please summarize the recommendations that you have made to which the**
118 **Joint Applicants have not agreed.**

119 **A.** The Joint Applicants do not agree that the reorganized entity be prevented from
120 granting the right of last refusal on spot gas purchases to Sequent. The Joint
121 Applicants did not agree that a Request for Proposal must be issued for an AMA,
122 though Staff and the Joint Applicants did agree to leave that decision for a later
123 time.

124 **Q. Does this conclude your rebuttal testimony?**

125 **A.** Yes.