

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AGL Resources, Inc., Nicor Inc., and)
Northern Illinois Gas Company)
d/b/a Nicor Gas Company)
Application for Approval of a Reorganization) Docket No. 11-0046
pursuant to Section 7-204 of the)
Public Utilities Act.)

OPERATING AGREEMENT REPLY BRIEF
OF STAFF OF THE ILLINOIS COMMERCE COMMISSION

JANIS E. VON QUALEN
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
(217) 785-3402
jvonqual@icc.illinois.gov

JENNIFER L. LIN
MEGAN C. McNEILL
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
jlin@icc.illinois.gov
mmcneill@icc.illinois.gov

*Counsel for the Staff of the
Illinois Commerce Commission*

July 12, 2011

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 2

 A. GLCG is not properly priced. 4

 1. Nicor Services’ advantages yield above-market rates..... 4

 2. GLCG is not offered in a competitive market. 6

 3. Nicor Services does not face competition from Nicor Gas..... 7

 4. GCLC is not priced similarly to Peoples’ Pipeline Protection Plan. 8

 5. Staff did not ignore GLCG costs..... 9

 B. GLCG is not legitimately necessary. 11

 1. The self-insurance costs are very low relative to the price of GLCG..... 11

 2. Ratepayers are being misled about the value of this product..... 11

 3. Nicor Gas already provides the same services to all its customers. 12

 4. Nicor Gas does not provide accurate information to its ratepayers about available
 services. 13

 5. Scripts are not clear or accurate..... 14

 C. Past practices may be reconsidered by the Commission..... 18

 D. Joint Applicants mischaracterize Staff’s position..... 19

III. CONCLUSION..... 20

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AGL Resources, Inc., Nicor Inc., and)
Northern Illinois Gas Company)
d/b/a Nicor Gas Company)
Application for Approval of a Reorganization) Docket No. 11-0046
pursuant to Section 7-204 of the)
Public Utilities Act.)

OPERATING AGREEMENT REPLY BRIEF
OF STAFF OF THE ILLINOIS COMMERCE COMMISSION

NOW COMES Staff (“Staff”) of the Illinois Commerce Commission (“Commission”), by and through its undersigned counsel, pursuant to Section 200.800 of the Commission’s Rules of Practice (83 Ill. Adm. Code 200.800), and respectfully submits its Reply Brief in the instant proceeding.

I. INTRODUCTION

The only remaining issue regarding the Operating Agreement (“OA”) is whether the OA should allow the solicitation of utility ratepayers by Nicor Gas and its affiliates for unregulated products. Ratepayers are currently solicited to purchase affiliate products through the use of utility resources. Staff recommends that solicitation of affiliate products should not be allowed in the OA and should be prohibited consistent with Staff’s proposed Section 2.2(e) in Joint Applicants’ Exhibit 7.1.

In this docket, the issue has centered around Gas Line Comfort Guard (“GLCG”), which is an example of an affiliate product for which ratepayers are solicited through Nicor Gas. It is naturally tied to gas delivery services. GLCG is the initial affiliate product solicited in Nicor Gas’ and its affiliate’s call centers. (Staff Ex. 2.0, Att. E, pp. 1-

4) Given the information that Staff has uncovered regarding GLCG, Staff believes that it is not in the public interest for Nicor Gas to participate in the solicitation of GLCG.

II. ARGUMENT

Staff recommends that the Joint Applicants be disallowed from including solicitation for affiliate products within the OA because the solicitation and provision of services by the utility for an affiliated interest's product is not in the public interest. As discussed in Staff's Initial Brief (pp. 4-5), the PUA requires an inquiry as to whether a transaction between a utility and its affiliated interests is in the public interest before such a transaction may be approved by the Commission.

The Joint Applicants err when they state that the Commission's jurisdiction regarding whether a transaction is in the public interest "extends only to utilities' products because utilities are monopolies for which there is no competitive market." (JA IB, p. 14-15) Joint Applicants rely upon *Peoples Energy Corp. v. Illinois Commerce Commission*, 142 Ill. App. 3d 917, 923 (1st Dist. 1986) for this principle. In *Peoples*, the Commission attempted to assert jurisdiction over the reorganization of Peoples Energy Corporation, the parent company of Peoples Gas Light and Coke. The court found that the proposed reorganization was not a *transaction* involving a public utility, and thus, the Commission did not have jurisdiction over the reorganization. (*Id.*, p. 926, emphasis added) However, the facts before the Commission in *Peoples* are distinguishable from the OA issues which are before the Commission in this proceeding. The OA issue within this proceeding does not arise out of the reorganization of a holding company. In contrast to the *Peoples* case, the interactions being considered for the OA issue are

transactions between Nicor Gas and Nicor Services, i.e., transactions between a utility and its affiliate.

The determination of whether the OA should allow for solicitation of affiliate products through the utility comes squarely within the Section 7-101(3) (220 ILCS 5/7-101(3)) public interest inquiry. At issue is the use of utility resources in furtherance of an affiliate product. A determination must be made as to whether it is in the public interest for Nicor Gas to submit its ratepayers to solicitation on behalf of GLCG and other affiliate products. Staff's recommendation to disallow the solicitation is based upon the considerations guiding the Commission Order in Illinois American Water Company ("IAWC"), Docket No. 02-0517. In IAWC, the Commission stated, "the relationship between affiliates merits greater scrutiny than relationships between unaffiliated entities due to the higher risk of improper behavior." (Order, Docket No. 02-0517, September 16, 2003, p. 11) The Commission's scrutiny included an inquiry into whether the service was "properly priced or is even legitimately necessary." (*Id.*, p. 16)

In the IAWC Order, the Commission set forth some guiding principles regarding the solicitation of ratepayers on behalf of affiliates. The Joint Applicants dispute both the applicability of those principles to this case and the appropriateness of that standard overall.

Staff's analysis considers whether the service is properly priced or legitimately necessary, consistent with the Commission's analysis in 02-0517. If the product is not properly priced or legitimately necessary, then it is not in the public interest for the Commission to allow utility resources to support the affiliate product.

A. GLCG is not properly priced.

The Joint Applicants argue that “Mr. Sackett completely ignores the evidence on pricing of similar products offered in the marketplace, which shows that GLCG is priced similarly to those products.” (JA IB, p. 29) However, the evidence the Joint Applicants rely upon for this proposition, a chart (Nicor Gas Ex. 4.2) which purports to reflect the costs of gas line warranty plans nationwide, demonstrates that GLCG is the highest priced gas line warranty product offered in Illinois. About the only thing that can be seen from Nicor Gas’ analysis is that the products are priced above actuarial costs.

1. Nicor Services’ advantages yield above-market rates.

The Joint Applicants argue that the Commission should not involve itself in the pricing of affiliate products like GLCG. (JA IB, p. 30) This argument is beside the point; Staff is not suggesting that the Commission set the price for an affiliate product. The product is not regulated; customers have a choice whether or not to utilize the product. In essence, the Joint Applicants argue free markets declare the winners and discipline the price. However, to the extent the regulated Nicor Gas participates in or facilitates the solicitation of its customers for the product, it is implicitly endorsing the product. GLCG can be viewed as a warranty product that is marketed by or through the utility for its affiliate as a complement to utility service. The affiliate is able to exercise pricing power due to this relationship with the utility and as such, to charge a premium for this product. Compare this to Air Jordans. Mr. Jordan’s endorsement allowed Nike to charge a lot more for a shoe than it would have otherwise. This is acceptable in the free market but not in the realm of a regulated utility.

Nicor Services can charge such a high risk premium because Nicor Gas lends its endorsement and solicitation channels which give Nicor Services an advantage. This advantage results in higher prices for ratepayers who are persuaded to buy GLCG. The advantages of the Nicor Gas connection allow Nicor Services to have a high market share and also enable Nicor Services to charge a higher price. The Nicor Gas endorsement, combined with a perception that the only way to get Nicor Gas-provided repairs is through GLCG, could convince customers that the product is properly priced and necessary. Nicor Gas witness O'Connor admits that customers are more likely to buy GLCG than other competitive products because of the connection and positive experience with Nicor Gas. (Tr., pp. 232-234, May 23, 2011) Nicor Gas' endorsement of GLCG is critical because ratepayers understand that its rates are regulated. The high price is accepted because Nicor Gas endorses this product by virtue of it being the only gas line warranty product that Nicor Gas offers its customers. It follows that Nicor Services is able to charge a premium for this product as a result.

Dr. Ros acknowledges that competitors, without the single-billing convenience that GLCG offers, could reduce their price to compete. (Nicor Gas Ex. 7.0, p. 34) In effect, this is an acknowledgment that Nicor Services can charge more for GLCG than other competitors. In addition to billing being an advantage for Nicor Services, Staff witness Sackett has noted that Nicor Services has three significant advantages: single-billing, instant repairs, and head of the line mover calls solicitation. (Staff Ex. 4.0, pp. 56-57) They all result in higher prices.

Additionally, Staff has asserted that the costs of these inputs would be higher for competitors than the cost to Nicor Services for the inputs provided by Nicor Gas. (Staff IB, p. 25) Therefore, the competitors that Nicor Services faces for GLCG must operate

with higher costs and charge lower prices. Both of these combine to show that GLCG is not priced at the competitive level.

The Commission must give consideration to the price of the affiliate product because if it does not, it will facilitate ratepayers being solicited for over-priced affiliate products.

2. GLCG is not offered in a competitive market.

The Joint Applicants claim that “Nicor Gas customers are not subsidizing the affiliate products attacked by Mr. Sackett through distribution rates.” (JA IB, p. 16) Cross subsidizing distribution rates is not the only way that ratepayers can be harmed. (See Staff Ex. 2.0, pp. 9-11) The end result is that ratepayers are harmed if the price for GLCG is too high and they are misled about the value of the product. Nicor Services is able to charge \$4.95 per month for GLCG precisely because the ratepayer has no idea what the value of GLCG is. Given the misleading information provided (Staff Ex. 2.0, p. 21) and other critical information being withheld by Nicor Gas (Staff Ex. 4.0, p. 52), the customer has a *false* idea of what the value is.

The Joint Applicants disagree with Staff’s conclusion that there is no competitive market for GLCG. They mention similar warranty products being offered by Santanna and Manchester as potential competitors and use them to argue that the relevant market is broader than Staff’s market. (JA IB, p. 32) Even though Manchester and IGS have withdrawn their testimony and have no remaining issues in this case, this does not eliminate the fact that Staff has demonstrated that Nicor Gas has historically resisted any attempts by competitors to solicit for similar products in Nicor Gas territory or to include similar products on consolidated bills. (Staff Ex. 4.0, pp. 34-36) This resistance

has forced competitors out of the market and has allowed Nicor Services' GLCG to thrive with no competition.

3. Nicor Services does not face competition from Nicor Gas.

Nicor Gas witness Dr. Ros opines that the mention of other contractors in rebuttal scripts shows that Nicor Services is concerned with customers who are self insuring and with competition from HVAC and others that customers consider using to conduct those repairs:

Nicor Services' marketing strategy identifies self-insurance as a competitive alternative to its GLCG and other warranty products. Nicor Services' rebuttal scripts identify self-insurance as an option. (Sackett Dir., Staff Ex. 2.0, Att. F). Nicor Services anticipates four responses¹ from potential customers, one of which is: "I can do it myself/have someone else who can do it for me." This is evidence that Nicor Services views self-insurance as competition. (Nicor Gas Ex. 7.0, p. 10)

While Dr. Ros has asserted that Nicor Gas is a competitor to Nicor Services (Nicor Gas Ex. 4.0, pp. 27-28), none of these rebuttal scripts provide a response to customers saying that they can request Nicor Gas to perform the repairs. (See Staff Ex. 2.0 Att. F, pp. 1-2) The script makes it clear that the customer would be relying on an outside repair service:

That's great that you are already thinking ahead like that. You know, what a lot of people really like about this program is that if they do have a gas leak emergency at some odd hour of the day or night, they won't have to try to make the repair themselves or call an independent contractor to come out and do the work. All they'll have to do is make just one call to the utility, day or night, even on weekends and holidays. *A certified, Nicor technician will then come out* within an hour and often *make the repair on the spot*, up to \$600 per incident--typically at no additional cost to them. Since gas leaks have the potential to be catastrophic, some people, Mr/Ms [] simply feel more secure knowing that a Nicor technician, with

¹ Those responses are, "I don't need it/Not interested"; "I Need to Talk to My Spouse/I need to think about it"; "I can do it myself/ I have someone else who can do it for me"; "It costs too much/I can't afford it/I live on a fixed income"; and "I rent/My landlord takes care of that." (Staff Ex. 2.0 Att. F, pp.1-2)

specialized training and equipment will be performing the work. Bearing in mind that the cost of this coverage is less than 20 cents a day, does that sound reasonable to you?"
(Staff Ex. 2.0 Att. F, p. 2)

If the mention of other providers is evidence that Nicor Services views self-insurance as competition, then the failure to mention Nicor Gas-provided repair services is also evidence that Nicor Services does not view Nicor Gas' repair services as competition.

4. GCLC is not priced similarly to Peoples' Pipeline Protection Plan.

The Joint Applicants compare the Pipeline Protection Plan ("PPP") offered by Peoples Gas and North Shore to GLCG. PPP is a similar product that is supported by a utility using the same three inputs – solicitation, billing and repairs.

One example is Peoples Gas' PPP, which appears to have pricing consistent with the GLCG. Peoples Gas' PPP is currently priced at \$2.95 per month and covers up to \$300 in repair costs. GLCG covers up to \$600 in repairs per occurrence and is priced at \$4.95 per month. In other words, GLCG provides twice the coverage at less than twice the price. (JA IB, p. 29, citations omitted)

Mr. Sackett showed that the actuarial cost of GLCG product with a \$600 maximum ("twice the coverage") is only one cent higher annually (\$1.52 versus \$1.51) than one with a \$300 maximum and that "increasing the maximum coverage does not increase the other costs, *most of which are independent of the level of maximum coverage.*" (Staff Ex. 4.0, pp. 40-42) Therefore, Dr. Ros' claim of double the coverage at less than double the price is misleading as shown below.

Despite both Nicor Gas witnesses testifying that PPP is similarly priced, the record in this case shows that it is not. PPP was first offered in 2004 and only costs \$2.95 per month. The price of GLCG increased from \$2.50 to \$3.95 in 2004 and \$4.95 in 2007. (Staff Ex. 4.0, p. 38) Now, PPP costs 40% less than GLCG and its actuarial cost is one cent less annually per customer. If revenues increase by 40% and costs increase by less than 1%, then what has increased is the margin.

Additionally, the record in this case shows that PPP is marketed with an express admission of LDC-provided repairs. (Staff Group Cross Ex. 1, p. 29) This is a significant difference because Nicor Gas does not inform its ratepayers as detailed below; this may explain why PPP is cheaper.

5. Staff did not ignore GLCG costs.

The Joint Applicants complain that Mr. Sackett ignored certain costs in his estimates of the profitability of GLCG. (JA IB, pp. 27-29) Mr. Sackett addressed all of the costs mentioned by the Joint Applicants in his rebuttal testimony. (Staff Ex. 4.0, p. 63) The Joint Applicants failed to acknowledge this response or refute it. In fact, they never responded with their own version of correct estimates of those costs and profitability.

The Joint Applicants overstate the list of services that Nicor Services provides for itself. "For example, Mr. Sackett chooses to discount as irrelevant information the numerous critical services actually provided by Nicor Services to support GLCG." (JA IB, p. 27) The only evidence of the existence of these critical services is the testimony of one witness who erroneously testified that the utility did not perform inspection services (see Nicor Gas Ex. 5.0, p. 22). More importantly, there is absolutely no

evidence of a single dollar in costs for any of these services to offset the millions of dollars in revenues that Nicor Services has extracted from ratepayers through GLCG. Indeed, the Joint Applicants failed to provide this cost information for the record. Mr. Sackett's analysis considered all evidence proved regarding the costs directly attributable to GLCG. The Joint Applicants have not provided any estimate of the level of costs or the profits on GLCG. (Tr., p. 202, May 23, 2011)

The costs for the services that Nicor Services provides in relation to GLCG are insignificant, when compared with the overall revenues. The personnel and significant capital invested in Nicor Services also support 76 other products in Illinois and elsewhere. (Staff Ex. 4.0, p. 63) The costs to operate Nicor Services' other products and services have little bearing or relevance to the price of GLCG, especially since Nicor Gas performed 98% of the repairs associated with GLCG. (Staff Ex. 2.0, p. 17)

The Joint Applicants argue that "[r]atepayers benefit under the current arrangement" because the revenue from solicitation allegedly offsets utility costs and reduces utility fixed costs. (JA IB, p. 17) Ratepayers do not benefit *on net* (Staff Ex. 2.0, pp. 10-11) and there is no evidence provided by Nicor Gas that shows anything to the contrary. Additionally, while the Joint Applicants maintain that "the staffing level at the call center is no more than what is needed to support the operation of the utility," (JA IB, p. 17), the Joint Applicants cannot convincingly assert that when the call center is busy, no solicitation occurs. There is no evidence to support this on the record i.e., the scripts do not reflect an instruction to forego the GLCP solicitation if the call center is busy. Also, the personal incentives granted to each Nicor Gas call center representative for each sale (see Staff Ex. 2.0, pp. 23-24) encourages them to solicit.

B. GLCG is not legitimately necessary.

1. The self-insurance costs are very low relative to the price of GLCG.

The unrefuted actuarial cost of GLCG is \$1.52 per year. (Staff Ex. 4.0, p. 33) Therefore, a customer only needs to save \$1.52 per year to finance self-insurance; that is the cost of self-insurance. There are no transaction costs because the customer is placing a single gas leak call to the utility. Dr. Ros describes the customer saving up ahead of time, setting aside money to self-insure. "There are many more customers who protect their utility lines by self-insuring: saving each year in a rainy-day fund to take account of household repairs, including utility lines." (Nicor Gas Ex. 7.0, p. 3) The customers would have to set aside \$1.52 annually to finance an equivalent level of Nicor Gas' repair services. The alternative provided by Nicor Services costs \$59.40 annually to have Nicor Services absorb the risk. In a comparison between the costs to self-insure or to insure through GLCG, it does not matter whether the difference between the \$1.52 and \$59.40 annual cost goes to profits, management, product cross-subsidization or national expansion costs. The relevant comparison that ratepayers have to make here is between those two numbers. Unfortunately, ratepayers have no idea that the service is worth \$1.52 per year.

2. Ratepayers are being misled about the value of this product.

If Nicor Services incurs costs for billing, solicitation, product development, pricing, construct and maintain information systems, develop customer terms and conditions, sales channel development, post sales activities, third-party contractor management, billing, remittance, credit / collection, Department of Insurance and

consumer protection compliance, risk profile / assessment, legal and national expansion that are sufficient to merit the price of \$59.40 per year, then customers are better off with self-insurance. Certainly, the customer choosing to self-insure will not incur any of these costs. If it really costs Nicor Services this much to protect customers against these risks, then the economic decision would be for customers to set aside \$1.52 per year (\$0.13 per month) to offset the costs that they may incur over time for these repairs. Instead, Nicor Gas or its agent recommends that the ratepayers should buy the \$4.95 per-month product. The customer's first month's payment could be put in the bank and offset the actuarial risk for three years. One year of GLCG (\$59.40) is enough to protect a customer for 39 years of self-insurance protection. It is never in the best interests of ratepayers to be solicited for an insurance product with this much overhead.

The Joint Applicants rely upon a model, delivered in surrebuttal testimony, for the proposition that "Nicor Gas has provided empirical evidence that self-insurance competes with GLCG in the estimated demand model for GLCG submitted into evidence as Nicor Gas Ex. 7.1." (JA IB, p. 31) However, there is no evidence on the record that this connection reduces the price of GLCG at all and certainly not to the competitive level. Also, as Staff has established time and again, self insurance cannot really compete when customers have no knowledge that the services are available through Nicor Gas and that it is the most efficient competitor to Nicor Services.

3. Nicor Gas already provides the same services to all its customers.

Nicor Gas witness Dr. Ros states in testimony that one of the primary competitors that GLCG faces are the repairs and inspections that Nicor Gas provides. (Nicor Gas Ex. 4.0, p. 27) The Joint Applicants' Initial Brief does not mention that Nicor

Gas provides such services or if ratepayers are even aware of these services. Staff believes that this is because the evidence on utility repairs is strongly adverse to the Joint Applicants. Despite the Joint Applicants not addressing these services, Staff clearly stated in its Initial Brief that the Commission should consider this essential point. (Staff IB, pp. 19-23)

4. Nicor Gas does not provide accurate information to its ratepayers about available services.

Even though Nicor Gas already provides the repair services offered through GLCG to its customers, it does not make this information readily available to them. The Commission should mandate that the utility notify and inform its ratepayers about its repair and inspection services. Nicor Gas educates its ratepayers about many of its services, but not these. This failure to inform makes GLCG appear more valuable and certainly makes it appear that Nicor Gas is supporting Nicor Services' provision of unregulated services. When Staff raised the issue that the scripts used in the call centers did not clearly transition between utility business and affiliate business, Nicor Gas changed the scripts in both its and IBT's call centers. (Tr., pp. 309-10, May 23, 2011) Nevertheless, the scripts still continued to ignore Nicor Gas' ability to provide repairs services directly.

Nicor Gas is not willing to provide complete information so that a fully-informed consumer can make the determination as to whether GLCG is necessary. By failing to fully inform, Nicor Gas is interfering with the market and consumers by withholding clear and accurate information that is required for them to make efficient, informed, and rational decisions. (Staff IB, p. 19-22) The Joint Applicants complain that Staff seeks to substitute Mr. Sackett's judgment for "the judgment of the Illinois consumer." (JA IB, pp.

21) However, by withholding this information, Nicor Gas has substituted its judgment that those customers do not need this information to make a decision about purchasing GLCG.

5. Scripts are not clear or accurate.

Although the Joint Applicants argue that the scripts are clear and accurate (JA IB, pp. 22-23), and the scripts changed for the better after Staff filed its direct testimony in this case², the scripts do not have to be inaccurate to be misleading. The scripts remain misleading concerning the existence of repairs available directly from Nicor Gas. Because the scripts fail to mention that repairs can be performed by Nicor Gas techs during the same gas leaks service call, customers cannot know about the most efficient alternative to GLCG. Even Dr. Ros acknowledges that that a customer could infer from the information provided in scripts that the only way to get a Nicor Gas employee to check for potentially dangerous conditions or repair services inside the home would be to subscribe to Gas Line Comfort Guard. (Tr., p. 272, May 23, 2011) All five of the rebuttals listed in the scripts on the record push the customer to sign up for the product, despite the customers clearly saying they do not want GLCG.

Armed with this useless “accurate” information, Nicor Gas ratepayers are then pressured into making an immediate decision about a product that has been endorsed by their local gas utility. The result of this misleading information is that Nicor Gas ratepayers may be convinced that they have to make a quick decision about a product that they believe provides more incremental benefits than it does.

² Nicor Gas added transitions to reinforce the idea that GLCG was an affiliate product before customers agree to buy it.

The Joint Applicants state, “Mr. Sackett offered no evidence that he is qualified by reason of education, training or experience to opine on matters of consumer understanding or behavior. Accordingly, his opinions as to whether something is “threatening” or “manipulative” to customers of Nicor Gas are entitled to no credence.” (JA IB, p. 24) However, Nicor Gas witness O'Connor does not have any more special qualification or training than Mr. Sackett to assert that the scripts are not threatening or manipulative. Staff is more than happy to rely upon evidence on the record to support its contentions concerning interpretation of the scripts.

a. Nicor Gas Repairs

The record is very clear that Nicor Gas provides the same level of repairs and inspections for all customers regardless of whether the ratepayer is a GLCG customer or not. Only 0.04% of GLCG customers receive any service directly provided by Nicor Services, i.e., service not provided by Nicor Gas. When a customer does receive services from Nicor Services, the benefit is limited to Nicor Services scheduling a service call rather than the customer being required to call an HVAC technician or plumber. (See Staff IB, pp. 18-19) For the 0.04% of customers that receive the scheduling convenience provided by Nicor Services, their benefit should be compared with the \$1.52 actuarial cost versus \$59.40 that they pay for that convenience. It is unlikely that customers would sign up for GLCG if they knew that they paid \$57.88 per year for the convenience of not having to schedule their own in the 0.04% chance that they would not be able to get Nicor Gas to provide these services to them. Staff does not believe that, given this actuarial cost information, any customer would take GLCG. The failure to provide the information that Nicor Gas would provide the repair services

denies the customers the facts necessary to make a rational economic decision about GLCG.

b. Ratepayer Safety

Nicor Gas has never offered to change its lack of notification about inspections. In fact, when Staff raised this point in its direct testimony (Staff Ex. 2.0, p. 52), Nicor Gas mistakenly denied that it provided inspection services. (Nicor Gas Ex. 2.0, p. 45) When correcting this discrepancy, Nicor Gas clarified that it *was* providing these services *but did not assert that it was informing its customers about them*. (Nicor Gas Ex. 5.0, p. 22) Staff raised the issue in rebuttal testimony and pointed to the safety considerations associated with this practice. (Staff Ex. 4.0, pp. 31-32, 52)

Joint Applicants never rebutted or refuted this charge. The Joint Applicants extol the safety services provided by Nicor Services under GLCG. Just because a warranty product may save someone's life does not justify overcharging all ratepayers for that service. However, the failure to inform customers of the repair services provided by Nicor Gas affects safety risk in a negative way to the same extent that the services provided by GLCG act to increase safety. If the GLCG services, 98% of which are performed by Nicor Gas, can be performed directly for the ratepayer, then those same services are just as important if they are performed directly for the ratepayer by Nicor Gas. Nicor Gas is neglecting ratepayers' safety if it does not notify its customers about those services, which may save lives.

Similarly, the Company has no intention of aggressively marketing its own inspection and repair services. This is not a matter of customer safety; it is a matter of

limiting the Company's exposure to potential liabilities for damages and injuries caused by customer-owned gas pipes and appliances.

Mr. Sackett impugns the Company's motives, contending that it does not provide its customers with adequate safety information because it wants to promote the GLCG business. This is simply untrue and makes no sense. If the Company's motives were to promote the GLCG business, it would be more effective if it refused to provide any separate inspection and repair services to customers at all.

(Nicor Gas Ex. 5.0, p. 24)

Of course, since the ratepayers are unaware of the provision of these services, Nicor Gas did not have to cease providing these services to its customers when it began to sell GLCG in 1999. All it had to do was fail to inform ratepayers about them. By telling all new ratepayers that Nicor Gas is only legally obligated to provide repairs to its own pipes, all new customers are mistakenly left with the perception that Nicor Gas in fact does not provide these repair and inspection services.

The fact that GLCG provides a valuable safety service for a significant premium (see JA IB, p. 33) does not in any way address Mr. Sackett's safety concerns. Similarly, the fact that Nicor Gas does not have a legal duty to (1) inspect for or repair gas leaks downstream of the gas meter; or (2) inspect for or replace uncoated brass appliance connectors does not address the concerns.

Nicor Gas' only response to this charge was that this was done to protect the utility from liability. (JA IB, pp. 35-36) It is difficult to imagine what increase in liability the Joint Applicants are referencing when the utility performs 98% of all the repairs and inspections.

C. Past practices may be reconsidered by the Commission.

The Joint Applicants make much of the fact that Nicor Gas has been soliciting for GLCG for more than a decade. In fact, they claim that Staff has full knowledge of what they were doing. (JA IB, pp. 2, 15) While Staff did have knowledge that Nicor Gas was soliciting on behalf of Nicor Services and GLCG, there is no evidence in the record that Staff had any knowledge of the *manner* in which Nicor Gas operated for over a decade. For example, Staff had no knowledge of the mover calls or any scripts. Even if Staff had had such knowledge, that knowledge would not be dispositive.

It is well understood that the Commission is not a judicial body and its orders do not have the effect of *res judicata*. The Commission, as a regulatory body, must have the authority to address each matter before it freely, even if it involves issues identical to a previous case. (*Mississippi River Fuel Corp. v. Ill. Comm. Comm'n*, 1 Ill.2d 509, 513 (1953)) However, the Commission looks to its prior order to provide guidance in addressing similar issues that come before it. As indicated by the Commission in the IAWC docket, the Commission “must be given the necessary latitude to evaluate and respond to proposed affiliate agreements.” (Order, Docket No. 02-0517, p. 11) While the proposed Operating Agreement has been in place for 10 years (JA IB, pp. 10, 11-12, 15) and the Commission has approved other affiliate agreements (*Id.*, pp. 11, 13, 18-19), this is not determinative of the inquiry in this matter. The Commission has never previously considered the facts and issues raised about GLCG that have been raised in this proceeding. In this docket, the Commission must base its decision upon the facts and argument before it now.

D. Joint Applicants mischaracterize Staff's position.

The Joint Applicants attempt to characterize Staff's position as being motivated by "subjective dislike" and "personal[] dislike." (JA IB, p. 11) However, Staff's position is based upon the relationship between a regulated utility and its affiliates and the requirement that the Commission find that transactions between them be in the public interest. (220 ILCS 5/7-101(3)) The Joint Applicants focus primarily on the GLCG product itself and the argument that the product is not within the Commission's jurisdiction. By arguing that Staff opposes solicitation because it dislikes the product, the Joint Applicants attempt to have the Commission focus on the product itself and ignore the Joint Applicants' provision of solicitation services in furtherance of the product. The fact remains that the regulated entity provides services, via affiliated interest transactions, towards the provision of GLCG.

The Joint Applicants argue that Staff and AG/CUB want to "eliminate customer choice about a product they personally dislike." (JA IB, p. 11) First, this presumes that customers can freely choose from products competitive with GLCG. Staff and AG/CUB have demonstrated that this is not true, because Nicor Gas has historically prevented competitors from offering similar warranty products (Staff Ex. 4.0, pp. 42-46, 67) and has misled customers about the need for this product ()and the incremental benefits it provides (Staff IB. pp, 18-19). Second, Staff's position is focused on removing the regulated utility's promotion of the product, and does not ask the Commission to dictate whether or not the unregulated affiliate can offer the product.

The Joint Applicants misstate Staff's position when they argue that "Mr. Sackett wants the Commission to conclude that GLCG is not a worthwhile product for purchase

by consumers and hinder its sale despite the fact that the Commission's jurisdiction does not extend to the terms of the product being marketed." (JA IB, p. 14) While Staff has considerable doubts about the product and how it is marketed to suggest it provides a service not otherwise available, Staff is not requesting the Commission to assert jurisdiction over the affiliate. Staff is not requesting the Commission to order the affiliate to cease offering GLCG. Staff is only requesting the Commission to assert its authority over the public utility's transactions with its affiliate. Staff focused on solicitation of and provision of services by the utility for the product through a regulated affiliate and inquired whether allowing such solicitation is in the public interest. Mr. Sackett did not ask "the Commission to unlawfully extend its jurisdictional reach" (JA IB, p. 14) to GLCG. Again, Staff is asking the Commission to properly assert its jurisdiction over the Joint Applicants' provision of solicitation services in furtherance of an affiliate product

III. CONCLUSION

While Joint Applicants' Exhibit 7.1 and the Stipulation between the Joint Applicants and Staff will resolve issues surrounding billing and repair services offered by Nicor Gas in support of GLCG, this does not go far enough to protect ratepayers from the abuse of affiliated interest transactions. Solicitation should not be allowed in the OA and should be prohibited consistent with Staff's proposed Section 2.2(e) in Joint Applicants' Exhibit 7.1. GLCG is an example of how solicitation of an affiliate product by Nicor Gas and its affiliates can profit the utility and its affiliates at the expense of the ratepayers.

Throughout this case, Staff has shown that GLCG is an affiliate product which is not properly priced and not legitimately necessary. The evidence has demonstrated

that Nicor Gas performed 98% of the repairs and inspections on behalf of Nicor Services for GLCG, even though GLCG is an affiliate product. Furthermore, Nicor Gas marketed, promoted, and solicited GLCG on behalf of Nicor Services. Solicitation of such a product is not in the public interest.

As discussed above, the Joint Applicants attempt to confuse the Commission by arguing that Staff is trying to regulate an unregulated affiliate product in its desire to prohibit solicitation in the OA. They focus on the product itself and attempt to blur the issue by arguing that Staff is motivated to cease the offering of GLCG due to its subjective dislike of this product. There is no doubt that Staff does not like GLCG: it is overpriced and unnecessary. However, Staff is not asking the Commission to prohibit GLCG from being offered and sold by Nicor Services. Instead, Staff is asking that solicitation, promotion, and marketing of affiliate products, such as GLCG, by Nicor Gas and its affiliates be prohibited in the OA.

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations.

July 12, 2011

Respectfully submitted,

Jennifer L. Lin
Janis E. Von Qualen
Megan C. McNeill

Staff Counsel

JANIS E. VON QUALEN
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3402
jvonqual@icc.illinois.gov

JENNIFER L. LIN
MEGAN C. McNEILL
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle St., Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
jlin@icc.illinois.gov
mmcneill@icc.illinois.gov