

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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<b>Illinois Commerce Commission</b>	:	
<b>On Its Own Motion</b>	:	
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<b>Revision of 83 Ill. Adm. Code 280</b>	:	<b>06-0703</b>

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**INITIAL BRIEF OF STAFF**  
**OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission’s (“ICC” or the “Commission”) Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the above-captioned proceeding.

**I. Introduction**

On October 31, 2006, the Illinois Commerce Commission (“ICC” or “Commission”) initiated a rulemaking proceeding to revise 83 Ill. Adm. Code 280 (“Part 280”). Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, hearings were held by a duly authorized Administrative Law Judge (“ALJ”) at the Commission offices in Chicago, Illinois. Evidentiary hearings were held on May 25, June 7, 8, and 9, 2011 in the Chicago offices. Appearances were entered by counsel on behalf of the The People of the State of Illinois (the “AG”), by Lisa Madigan, Attorney General of the State of Illinois, the Citizens Utility Board (“CUB”), The City of

Chicago (“City”),<sup>1</sup> Low Income Utility Advocacy Project (“LIRC”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”), Illinois-American Water Company (“IAWC”), Ameren Illinois Company (“AIC”), AARP, the Retail Gas Supplier (“RGS”), Dynegy, Mt. Carmel Utility Company (“MCPU”), Peoples Gas Light and Coke Company and North Shore Gas Company (“PGL/NSG”), Commonwealth Edison Company (“ComEd”), MidAmerican Energy Company (“MEC”) and Staff of the Illinois Commerce Commission (“Staff”). Staff has not attached an updated version of its propose rule to this Initial Brief, however, Staff intends to attach its proposed rule to its Reply Brief.

## **II. Section 280.05 Policy**

### **A. Staff’s Position**

Staff agrees with GCI that the new rule should include a policy section to outline the goals of the rule and underscore the fact that the rule shall take precedence over conflicting tariffs that have not been approved by the Commission as a waiver or exemption. Staff initially supported word for word the revision offered by GCI in its direct testimony. (Staff Exhibit 2.0, Page 3, Lines 47-52.) Staff was then persuaded by Nicor Gas Company’s rebuttal to include a limited number of revisions to the section so that the language would be more precise about the scope of the rule and also reduce utility concerns with the use of the word “essential” as a label for utility service while allowing the rule to still retain this important word. (Staff Exhibit 3.0, Page 5, Lines 107-115.)

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<sup>1</sup> Collectively, the AG, CUB, and the City are referred to as Government and Consumer Intervenors (“GCI”).

**B. Consumer Advocates - GCI**

In direct testimony GCI offered the edits that Staff incorporated into its rebuttal round draft rule. (GCI Exhibit 2.0, Page 5, Lines 112-113). Staff still agrees with GCI's suggested addition, with the exception of two of the minor edits offered by Nicor Gas Company mentioned above. Staff also agrees with GCI's surrebuttal analysis of utility objections to the word "essential." (GCI Exhibit 5.0, Pages 7-8, Lines 157-167.) Similarly, Staff concurs with GCI's assertions regarding the need for the revised Part 280 to take precedence over conflicting tariffs and that previous waivers to the existing Part 280 cannot remain effective once the new rule is active. (GCI Exhibit 5.0, Pages 8-9, Lines 168-190.)

**C. Utilities****1. ComEd & MEC**

ComEd questions the need to state that the rule shall take precedence over tariffs. (ComEd Ex. 2.0, Page 2, Line 30.) Staff observes that the rule is typically the only document that consumers may have available to them, and it is Staff's intent to not only underscore the hierarchy of rule over tariff, but also to make this fact clear and accessible to consumers (Tr., June 8, 2011, pp. 786-787, Lines 11-22 and Lines 1-6.) ComEd also expressed concern that the use of the word "essential" as a label for utility service might be misconstrued to mean that utilities could no longer perform disconnections as a collection tool. (ComEd Ex. 2.0, Pages 2-3, Lines 40-68.) Staff simply disagrees. The word is meant to convey the vital nature of the service, not transform it into a free entitlement (Staff Exhibit 3.0, Pages 4-5, Lines 91-94.) MEC raises a concern that Staff's proposed section is overly broad. (MEC Ex. 2.0, Page 3,

Lines 41-46; MEC Ex. 2.0, Page 3, Lines 38-55.) ComEd also states that the policy declaration in this section is too broad for Part 280 and might be more appropriate as an intro to the entire Title 83 of the Illinois Administrative Code, (“Title 83”) rather than just this code part (ComEd Ex. 3.0, Page 2, Lines 40-42.) Staff disagrees with both MEC and ComEd and believes the policy section is necessary for reasons stated above. In addition, the Commission initiated this proceeding for the revision of Part 280. Whether there should be a policy section included in the introduction to Title 83 is outside the scope of this proceeding.

## **2. Nicor Gas Company:**

As mentioned above, Staff supports two of Nicor Gas Company’s changes to the draft rule Policy section: first, the addition of “under reasonable terms and conditions” to the beginning sentence of the section, and second, the replacement of “within the scope of this part” with language that more fully describes what that scope actually is. (Nicor Gas Ex. 3.0, Page 5, Lines 106-110.) Nicor Gas expresses concern that existing waivers under the current rule should not be made void by the enactment of the new rule. (Nicor Gas Ex.3.0, Page 7, Lines 144-162) Staff disagrees. Staff believes that the revised Part 280 is “forward looking” (Staff Ex. 3.0, Page 7, Lines 147-149) and when finally approved it may differ in substantial ways from the existing rule. Even subtle differences from the current Part 280 could have dramatic effects upon waivers that were tailored to the language of the current rule. Therefore, it will be critical that any potential waivers to the rule be considered by the Commission on a forward basis and not retained simply as waivers to the current rule once it has been replaced.

### 3. RGS

RGS seeks to insert language in the Policy section of the proposed Part 280 that would state one of rule's purposes is to encourage competition (RGS Ex.2.0, Page10, Lines11-13.) Staff believes that this moves beyond the scope of the docket. (Staff Ex. 3.0, Page 3, Lines 50-54). Staff notes that both MEC (MEC Ex. 3.0, Page 2, Lines 29-30) and GCI (GCI Ex. 5.0, Page 24, Lines 533-536) appear to agree with Staff.

### III. Section 280.10 Exemptions

#### A. Staff's Position

Staff has not modified its original draft language for this section. This section contains the requirements that a utility must fulfill in order to achieve a waiver or exemption to the rule. (Staff Ex. 1.0, Page 5; Staff Ex. 2.0, Pages 3-4; Staff Ex. 3.0, Page 7.) Staff proposes the following language for Section 280.10, Exemptions:

Any entity may file a petition requesting modification of or exemption from any Section of this Part that applies to the entity. Upon showing that the modification or exemption is economically and technically sound and will not compromise the service obligations of the entity or result in net harm to consumers overall, the Illinois Commerce Commission (Commission) may grant the modification or exemption. A petition for exemption or modification shall be filed pursuant to 83 Ill. Adm. Code 200 and shall include specific reasons and facts in support of the requested exemption or modification.

#### B. GCI

The Consumer Advocates recommend that additional language be added to Staff proposed language as denoted by underline:

Any entity may file a petition, on an individual utility basis, requesting modification of or exemption from any Section of this Part that applies to the entity. Upon showing that the modification or exemption is economically and technically sound and will not compromise the service obligations of the entity or result in net harm to consumers overall, the Illinois Commerce Commission (Commission) may grant the modification

or exemption. A petition for exemption or modification shall be filed pursuant to 83 Ill. Adm. Code 200 and shall include specific reasons and facts in support of the requested exemption or modification, explaining why the utility is unable to comply with these rules. Any approved alternative approach to a specific provision in this rule shall be documented, evaluated, reported to, and approved by, the Commission annually. No amendments or changes to this rule shall be made except through a formal rulemaking proceeding.

GCI Ex. 5.1.

Staff disagrees with GCI's proposal. Under Staff's proposed language, specific facts and reasoning would inherently be required of a utility to minimally meet the Section 280.10 standard. A utility simply could not meet the requirements of Staff's proposed Section 280.10 without explaining exactly why it was seeking a waiver. Moreover, GCI fails to explain how procedurally an approved exception would be brought to the Commission for subsequent approval annually. The Commission has vast experience in determining the public interest and should not be handcuffed by an unexplained timeline requirement. Thus, Staff does not support the GCI proposed additional language because it is not needed.

## **C. Utilities**

### **1. ComEd**

ComEd is concerned with the potentially insurmountable barrier that the "will not harm" clause might create if taken to the extreme point of view that no consumer can be harmed in any way by a petitioned waiver to the rule. (ComEd Ex 1.0, Page 4, Line 67.) Due to this alleged "problem," ComEd proposed that a "just and reasonable" standard replace the "will not harm standard." (ComEd Ex. 3.0, pp. 4-5, lines 83-92.) However, Staff views the harm clause as a general provision that the Commission will consider over a utility's customer base overall. (Staff Ex. 3.0, Page 7, Lines 153-158) (Tr., June

8, 2011, Pages 788-790.) In essence, the “will not harm” phrase is a substitute, designed with a layperson reading the rule in mind, for the phrase the “public interest.” The Commission has vast experience determining the overall public interest and its determination under Staff’s proposed Section 280.10 will be essentially the same, if not identical. ComEd Mr. Walls testified:

If the rule is interpreted as requiring a showing that the proposed waiver will not result in a *net* harm to consumers *overall* (i.e., the benefits to consumers exceed the “costs” to consumers), then my concern is satisfied.

(ComEd Ex. 3.0, pp. 4-5, lines 83-85.)

In surrebuttal testimony, Staff agreed with Mr. Walls that this was Staff’s interpretation of its proposed language. (Staff Ex. 3.0, Page 7, Lines 151-158.) Therefore, it appears that ComEd’s concerns may be satisfied.

Finally, Staff opposes any inclusion of a “just and reasonable” standard as that would effectively nullify the Commission’s conclusions in this rulemaking, which are made under a just and reasonable standard.

#### **IV. Section 280.15 Compliance (Nicor Gas Proposed Draft Language)**

##### **A. Staff’s Position**

Staff did not sponsor or agree to this proposed section. It provides for 2 years from the effective date of the rule for utilities to come into compliance with the full provisions of the rule. Several utilities support this addition, and consumer advocates do not. While Staff agrees that it may take some time to implement some of the changes and additional requirements of the draft rule, Staff lacks IT expertise and is uncertain as to how long that timeline should be. Staff warns that it would not agree to any timeline that would allow a utility to implement those portions of the draft rule that

benefit the utility first, while waiting longer to implement the provisions that would benefit consumers. (Tr., June 8, 2011, Page 791, Lines 11-22.)

## **V. Section 280.20 Definitions**

Much of Staff's original draft language in this section was met with no controversy, and remains unaltered in the most recent version sponsored by Staff in its surrebuttal testimony. Further, many smaller subsequent changes to this section during the rounds of testimony were not contested, and so those will also not be covered here. Following are the definitions for which parties suggested edits but where some dispute may remain or Staff otherwise believes it would be useful to explain its final position:

### **A. "Applicant"**

#### **1. Staff's Position**

Staff has accepted GCI's suggestion to add the phrase, "and who is not a customer" to the end of the first sentence in the definition. (Staff Ex. 2.0, Page 5, Line 90-92.) Staff does not agree to any further changes of Staff's proposed definition.

#### **2. GCI**

As mentioned above, GCI wishes to add, "and who is not a customer" to the end of the first sentence of the definition. (GCI Ex. 1.0, Page 38, Lines 1018-1035). Staff agrees with this change. GCI also seeks the deletion of the final sentence in the definition, "Successful applicants immediately become customers." (Id.) Staff rejects this suggestion, believing that the sentence provides guidance on timing that may be critical to a consumer's rights and ability to establish active service to a premises. (Staff Ex. 2.0, Page 5, Lines 94-102.)

**B. “Credit scoring system”****1. Staff’s Position**

Staff supports the retention of the current rule’s Commission approved credit scoring policy for risk assessment when determining if a deposit is warranted for applicants other than low income customers. Staff added a description requirement to its proposed rule that such policies be backed by tariff for utilities who choose to use a credit scoring system. (Staff Ex. 2.0, Pages 29-30, Lines 669-672.)

**2. AARP and GCI**

Both AARP and GCI seek the elimination of credit scoring from the proposed rule, and therefore the deletion of the definition (AARP Direct Testimony of Scott T. Musser, Page 5, Lines 17-18.) (GCI Exhibit 2.0, Page 7, Lines 186-187.) As noted above, Staff believes the system provides for a fair way to assess the risk of potential non-payment by new applicants so long as the method used is fully described.

**C. “Customer”****1. Staff’s Position**

Staff has not agreed to modify its original version of this definition.

**2. Utilities****a. MEC**

MEC seeks to add language to the customer definition which would first reference the application process by “Section 280.30” and then describe how the definition also encompasses customers who transfer service to one location from another within 30 days. (MEC Ex. 2.0, Page 4, Lines 69-70; MEC Ex. 2.1, Page 5.) While Staff does not disagree that MEC’s suggested edit provides continuity with the

later definition of “Transfer of service,” there remains an unresolved dispute within that definition over the length of time that a transferring customer retains “customer” status. Most utilities and Staff agree that the timeline should be 14 days, while MEC and consumer advocates favor the 30 days timeline (see “Transfer of Service” below).

**D. “Delivery services”**

**1. Staff’s Position**

In response to testimony from several alternative energy suppliers, Staff, in its rebuttal round of testimony, included definitions for delivery services for both electricity and natural gas. These definitions were necessary, in Staff’s view, to settle a controversy over potential harm to suppliers within the partial payment allocation subsection of the draft rule’s Section 280.60 Payments. (Staff Ex. 2.0, Pages 14-15, Lines 306-336.) However, subsequent testimony from both suppliers and utilities persuaded Staff that it must simply eliminate the proposed subsection within the draft version of 280.60 Payments. (Staff Ex. 3.0, Page 10, Lines 221-230.) With this deletion, the need for definitions for delivery services in the rule is removed. Therefore, Staff has redlined through those definitions in its latest version of the draft rule.

**E. “Low income customer”**

**1. Staff’s Position**

Staff supports its original definition. (Staff Ex. 1.0, Page 6.; Staff Ex. 2.0, Pages 6-8.)

## **2. Utilities**

### **a. IAWC**

IAWC seeks to eliminate any reference of applicability to water and sewer utilities in the definition since those types of utilities have no past experience with the Low Income Home Energy Assistance Program (LIHEAP). (IAWC Ex. FLR-1.0, Pages 4-5, Lines 84-102.) Staff counters that the proposed rule does not require water and sewer utilities to initiate programs and/or contacts with LIHEAP. Rather, with water and sewer utilities, the proposed rule shifts the burden to the Low Income Customer to provide proof of LIHEAP qualification status to the utility. (Staff Ex. 2.0, Page 8, Lines 165-171.)

### **b. Nicor Gas**

Nicor Gas offers a series of what appear to be ministerial edits to the definition. (Nicor Gas Ex. 3.0, Pages 12-13, Lines 274-288.) While Staff does not quarrel with the suggested changes as they do not appear to alter the meaning of the original text, Staff is not persuaded that they are entirely necessary either.

## **F. “Medical certificate”**

### **1. Staff’s Position**

Staff did not include this definition in any of its draft versions of the rule. However, Staff is not opposed to its inclusion if the definition aligns properly with the requirements found in Staff’s draft rule Appendix B which describes the medical certificate for consumers.

## **2. Utilities**

### **a. MCPU**

MPCU asserts that because the definition for Medical Payment Arrangement in Staff's proposed rule contains the term "medical certificate," the rule should define what a medical certificate is. (Mt Carmel, Ex. 1.0, Page 5, Lines 68-81.) While Staff does not object in general terms to the inclusion of this definition in the draft rule, Staff observes that MCPU's original suggested edit contained language that would require the physician or board of health making the certification to divulge information to the utility about the patient's condition. Staff specifically removed that condition from the medical certificate requirements in the draft rule in deference to medical privacy laws. (Staff Ex. 2.0, Page 9, Lines 182-184.)

## **G. "Occupant"**

### **1. Staff's Position**

As reflected in its most recent version of the proposed rule, Staff accepts several suggested changes to this definition by GCI, with the exception of adding "applicant" as a person who cannot be classified as an occupant.

### **2. GCI**

GCI seeks the inclusion of an "applicant" as a person who cannot be considered an occupant under the proposed rule. (GCI Ex.1.2, Page 6.) Staff disagrees, asserting that a person who has applied for service but not yet had their application for service approved is still an occupant if they are occupying the premises while their application for service is being considered. GCI's inclusion of applicants in this definition would have the unintended consequence of excluding applicants from the protections (warning

letters prior to disconnection) that occupants will enjoy under the proposed rule. (Staff Ex. 2.0, Page 10, Lines 205, 218.)

## **H. “Supplier power and energy charges”**

### **1. Staff’s Position**

Staff inadvertently failed to remove this definition from its draft section. It corresponds with the same subsection in the proposed 280.60 Payment section as “Delivery services.” As with the definition of delivery services above, this definition is no longer needed in the proposed rule with the elimination of the subsection to which it corresponds. Staff does not intend for this definition to appear in its most recent version of the proposed rule. (Staff Ex. 3.0, Page 10, Lines 221-230.)

## **I. “Transfer of service”**

### **1. Staff’s Position**

There are two remaining points of conflict on this definition: the first regards how many days between moving from one premises to another is allowed to elapse while the customer still maintains their “customer” status and does not have to become a new applicant for service. On this topic, Staff supports its original language to allow 14 calendar days. The second potential point of conflict also regards timing as it relates to the presentation of a billing dispute by a customer who seeks a transfer of service.

### **2. GCI**

GCI asserts that the appropriate length of time to retain customer status between moves is 30 days. (GCI Ex. 2.0, Page 3, Line 73.) Staff observes that extending the window to a full month may have unintended consequences upon the billing and collection cycle. Staff believes that 14 days is an appropriate amount of time, given that

residential utility bills are due within 21 days of issuance and non-residential bills are due within 14 days of issuance. (Staff Ex. 2.0, Page 13, Lines 280-288.)

### **3. Utilities**

#### **a. Nicor**

Through cross examination, Nicor Gas raised concerns about what might be perceived as frivolous disputes that would allow a customer to unfairly force a utility to transfer the service when it would otherwise be able to deny the transfer as a result of an unpaid bill or deposit. Staff believes that this could indeed occur if a consumer waits until the point of transfer to invoke a dispute over the unpaid amount. However, the utility would still retain its right to disconnect service after notice once it has answered the dispute. Staff believes that the utility responses to such “frivolous” disputes could be completed rather quickly. (Tr., June 8, 2011, Pages 793-796.)

## **VI. Section 280.30 Application**

### **A. Subsection 280.30 (b)**

#### **1. Staff’s Position**

Staff supports its original proposed language for this subsection. (Staff Ex. 1.0, Page 7; Staff Ex. 2.0, Pages 16-17.)

#### **2. AARP, LIRC, & GCI**

Consumer advocates assert that the information requirements proposed by Staff do not fully cover all the rights that consumers will have under the new rule. In particular, the consumer advocacy parties seem most concerned about two topics of disclosure: deposits (LIRC Ex. 1.3, Page 2) (AARP Direct Testimony of Scott T. Musser, Page 4, Lines 14-18) (GCI Ex. 2.0, Page 6, Lines 143-155) and low income

customer rights. (Tr., June 8, 2011, Pages 768-771.) Staff explained on cross examination that the various sections of the proposed rule work together, and it had accepted GCI's suggested edits to the draft Section 280.40 Deposits of the proposed rule. (Staff Ex. 2.0, Pages 28-29, Lines 646-659) (Tr., June 8, 2011, Pages 766-767.) It is Staff's contention that this addresses the concerns of advocates about deposit disclosures.

The advocates' second concern regards disclosing all of the rights available to low income customers, and not just those who have been assessed deposits. Based upon the proposed rule's requirement that utilities provide a full description of their application process, Staff had anticipated that utilities would provide this information at the point of application if the topic came up during the discussion with an applicant for service. (Tr., June 8, 2011, Pages 793-796.) Staff does concede that this process might not inform all potential low income customers of their rights under the rule at the point of application for service. (*Id.*, Pages 771-772.) However, Staff does note that the proposed rule requires this disclosure about low income customer rights in writing whenever a disconnection notice is sent to a customer.

## **B. Subsection 280.30 (c) (2)**

### **1. Staff's Position**

Staff supports maintaining its originally proposed language for this subsection that deals with third party applications. In crafting language to describe third party applications, Staff sought to eliminate a recurring problem that happens under the current rule. The current rule initially states that a utility must confirm the validity of a third party application, but then the rule provides a loophole by saying that "users will be

responsible for their usage.” This statement in the current rule effectively allows a utility to leave service on and then bill the occupants after the fact, whether they have a third party application or not. Staff recognizes that there are cost savings to be achieved by leaving service on between customers for a reasonably short period of time while the utility waits for a new application. However, Staff objects to any policy that allows the service to remain on indefinitely with no customer of record and without an application for service simply because the utility knows that it can recover billing from the “users” or occupants once they have been identified. (Staff Ex. 2.0, Pages 17-18, Lines 379-396.)

## **2. Utilities**

### **a. ComEd & Nicor Gas**

Both utilities seek to have the current rule’s language retained in the proposed rule. (ComEd Ex. 1.1, Page 7; Nicor Gas, Ex 1.0, Page 8, Lines 156-178.) For the reasons noted above, Staff believes this suggestion should be rejected.

## **C. Subsection 280.30 (d) (1) and (2)**

### **1. Staff’s Position**

Staff supports its originally proposed language for this subsection. (Staff Ex. 2.0, Page 19; Staff Ex. 2.0, Pages 18-20.)

### **2. GCI**

GCI seeks to include a requirement that utilities disclose all the possible forms of acceptable identification at the time an applicant applies for service. (GCI Ex. 1.2, Page 7.) Staff does not agree that utilities should have to recite the entire menu of possibilities for every applicant. If an applicant willingly provides the first forms of identification that a utility seeks, then such a litany is unnecessary. If an applicant

cannot provide the first forms of identification sought by a utility or would prefer to provide another form of identification, then Staff's proposed language would protect those consumers. (Staff Ex. 2.0, Page 19, Lines 428-436.)

### **3. Utilities**

Several utilities raised concerns that the proposed subsection might compel them to accept forms of identification that could be inferior to others. Fearing that a lack of greater utility control over the possible forms of identification might lead to fraud, they offered a variety of language edits to solve the perceived problem. (ComEd Ex. 1.0, Page 5, Lines 105-108; IAWC Ex. FLR-1.0, Page 6, Lines 121-133; Mt. Carmel Ex. 1.0, Page 7, Lines 108-115; MEC Ex. 1.0, Page 6, Lines 104-110; Nicor Gas Ex. 1.0, Page 11, Lines 233-248; PGL/NSG Ex. JR-2.0, Pages 7-8, Lines 137-152.) Staff observes that the proposed rule taken as a whole already would provide the utility and its customers with the protection they seek. Because the later subsection 280.30 (d) (2) requires that the "identification provided is valid and accurate," utilities would not be obliged to accept forms of identification that cannot be verified as valid and accurate. (Staff Ex. 2.0, Page 18, Lines 411-417.)

#### **D. Subsection 280.30 (d) (3)**

##### **1. Staff's Position**

Staff supports the retention of its original proposed language for this subsection.

##### **2. Utilities**

###### **a. MEC**

MEC seeks to eliminate this item from the proposed subsection, claiming that utilities are already burdened with tracking different rate classes of customers, and that

this would add a confusing exception to force tracking of small businesses. (MEC Ex. 1.0, Page 7, Lines 132-140.) Staff responds that this proposed item in the subsection supports the requirements found in Staff's proposed Subsection 280.40 (i) (1) which is based on the Small Business Utility Deposit Relief Act (220 ILCS 35/4). (Staff Ex. 2.0, Page 31, Lines 710-716). If the utility does not know whether or not a commercial customer is a "small business" then it cannot properly follow the statute.

#### **E. Subsection 280.30 (d) (4)**

##### **1. Staff's Position**

Staff supports the retention of its original proposed language for this subsection. (Staff Ex. 2.0, Page 20.)

##### **2. Utilities**

Some utilities would prefer that the customer contact information in Staff's proposed rule did not contain parenthetical notations to distinguish between those items which a utility may require of an applicant and those items which are designated as "optional." The utilities are particularly concerned with allowing the telephone number to be optional. (ComEd Ex. 1.0, Pages 5-6, Lines 109-115;IAWC Ex. FLR-1.0, Page 5, Lines 112-120;MEC Ex. 1.0, Page 7, Lines 143-148;PGL/NSG Ex. JR-2.0, Page 8, Lines 153-155.) Although Staff recognizes that utilities need to be able to reach customers, Staff did not want to craft a rule that might allow an applicant for service to be rejected if they simply did not have one of the required methods of contact at their disposal. (Staff Ex. 2.0, Page 20, Lines 447-458.)

**F. Subsection 280.30 (e) (2) (B)****1. Staff's Position**

Staff adopted the edits suggested by both advocates and utilities for Subsection 280.30 (e) (2) and (e) (2) (A). However, Staff does not support any alteration of its proposed language in (e) (2) (B). (Staff Ex. 2.0, Page 21.) Staff's intent with this item is to allow the utility the ability to negotiate at its own discretion a restoration or new activation of service for an applicant who owes the utility an unpaid debt.

**2. GCI**

GCI seeks to remove the language from the subsection item that would allow for the utility to enter into an agreement at its own discretion. (GCI Ex. 1.2, Page 9.) With the exception of the winter reconnection period in Staff's proposed rule, Staff does not believe it is appropriate for a utility to be compelled to restore service without full payment of previous debts to the utility. (Staff Ex. 2.0, Page 21, Lines 470-476.)

**G. Subsection 280.30 (j)****1. Staff's Position**

Staff notes that the current rule contains no specific requirements for timely activation of utility service once an application has been accepted. (Staff Ex. 1.0, Page 7, Lines 151-160.) Staff maintains that its proposed rule requirements for timeliness strike a fair and necessary balance between what can reasonably be achieved by utilities and the logical desire for consumers to have service on as soon as possible. (Staff Ex. 2.0, Pages 23-25.) Last, Staff agrees with MEC that in very limited circumstances the utility should be able to set aside the requirements, but only on a

“temporary” basis and only when the cause of the inability to meet the standards is “unforeseen.” (Staff Ex. 2.0, Page 23, Lines 515-521.)

## **2. AARP & GCI**

Both AARP and GCI assert that utilities should be able to activate service much faster than 4 (Water, Sewer, Electric) and 7 (Natural Gas) calendar days from the date an application is accepted. The length of time they prefer is 1 business day for Water, Sewer and Electric service and 2 business days for natural gas service. (AARP Direct Testimony of Scott T. Musser, Page 5, Lines 8-11; GCI, Ex. 1.2, Pages 10-11.) Staff believes, however, that the much shorter standards proposed by advocates cannot be met for any activation process that routinely requires a field visit. This is particularly true for natural gas where safety requirements dictate an appointment and inside access to the customer's facilities. (Staff Ex. 2.0, Page 25, Lines 554-557.)

## **3. Utilities**

### **a. ComEd**

ComEd seeks to have the 4 calendar days requirement for service activation for electric service in the proposed rule changed to 3 business days, claiming that weekends and holidays will make the calendar day requirement unreasonably burdensome. (ComEd Ex. 1.0, Page 6, Lines 120-131.) Staff believes that 4 calendar days will still provide ample time to activate service even when working around holidays and weekends, and does not support a shift to business days. (Staff Ex.2.0, Page 24, Lines 536-542.)

## **H. Subsection 280.30 (k)**

### **1. Staff's Position**

In Staff's experience the application process is a source of significant dispute, particularly as it most often involves the immediate question of whether or not an individual applicant can acquire service. Moreover, the proposed rule contains an entirely new provision in Section 280.210 Payment Avoidance by Location (PAL) that affects the application process. Therefore, Staff asserts the need to introduce a limited set of data collection, maintenance and reporting requirements into the proposed rule on this topic. Staff believes the 5 data points in its proposed rule will deliver important information about the function of the process, and will not be unreasonably burdensome on utilities. (Staff Ex. 2.0, Pages 25-26.)

### **2. AARP & GCI**

AARP and GCI believe that the Commission should adopt a much broader set of reporting requirements for utilities than the limited ones which Staff has proposed. GCI outlines those requirements it supports as a new "Subpart O: Periodic Data Reporting, Section 280.270 Annual Reporting to the Commission." (GCI Ex. 1.2, Pages 68-70.) While Staff acknowledges the usefulness of reporting data in general, Staff is also cognizant of the expense associated with each new tracking requirement. Moreover, Staff believes that the consumer complaint process already delivers robust monitoring capabilities to both Staff, utilities and consumer advocates. (Staff Ex. 2.0, Page 96, Lines 2197-2208.) Last, with the shift proposed in the draft rule to add the Consumer Service Division's ("CSD") contact information to every bill statement instead of only on disconnection notices (as the current rule provides), Staff anticipates access to an even

broader range of topics involving utilities and their customers than it has ever before had. (Staff Ex. 2.0, Page 38, Lines 862-867.)

### **3. Utilities**

#### **a. AIC & MEC**

In contrast to the consumer advocates, AIC and MEC seek to remove even Staff's limited reporting requirements from the proposed rule. (AIU Ex. 1.0, Page 3, Lines 53-58; MEC Ex. 1.0, Page 9, Lines 184-190.) As Staff described above, however, the application process is a situation that merits greater scrutiny than other parts of the rule that can be effectively monitored through the complaint process alone.

## **VII. Section 280.35 Revert to Landlord/Property Management Agreements**

### **A. Staff's Position**

Staff agreed to two limited changes within this proposed section of the draft rule. The first allows a utility to forgo the requirement to annually update its arrangements with landlords on a case by case basis when the utility is unable to make contact with the landlord/property manager. (Staff Ex. 2.0, Pages 27-28, Lines 621-632.) The second change shifts the notification requirement under subsection 280.35 (c) to "within two business days" instead of the original "immediately" Staff had proposed. (Staff Ex. 2.0, Page 28, Lines 636-642.) Further, during cross examination, Staff was asked if the written agreement between the utility and the landlord could be accomplished electronically, and Staff agreed that it could. (Tr., June 8, Pages 820-821.) Staff believes that this could be accomplished with the following parenthetical addition to the proposed subsection:

(b) Prearrangement to be in writing (may include electronic written communications): The utility and landlord/property manager shall . . .

Staff supports no other changes to this proposed section.

## **B. GCI**

GCI generally agrees with Staff's intent within the proposed section, but seeks to strengthen the obligation upon a utility to disconnect if it has no customer. GCI would add a provision at the end of subsection 280.135 (b) that would require the utility to disconnect service to a premises within 5 days after a customer leaves if the utility does not have a revert to landlord/property manager agreement in place and it has received no new applications for service. (GCI Ex. 4.0, Page 3, Lines 51-74). Staff believes it is better to simply set the condition that the utility be unable to collect if it leaves the service active when it has no new customer and no landlord agreement in place. Staff prefers to allow the utilities to decide on a case by case basis where the threshold for disconnection will be because different properties will necessarily have different rates of consumption. (Staff Ex. 3.0, Page 12, Lines 260-274.)

## **C. Utilities**

### **1. MEC & Nicor Gas**

Both utilities described difficulties that they believe would occur under the proposed rule's requirement, as initially drafted by Staff, to update the landlord/property manager agreements annually (MEC Ex. 1.0, Pages 10-11, Lines 194-220; Nicor Gas Ex. 1.0, Pages 14-15, Lines 320-335). Staff rejects MEC's contention that the requirement to update should be entirely eliminated, but Staff recognizes that the annual updating requirement can only be met with the property owner/manager's

cooperation. As outlined in Staff's position above and reflected in the latest version of Staff's proposed rule, Staff believes the proper remedy is to condition the annual update upon the property owner/manager's cooperation.

## **2. Nicor Gas**

Nicor Gas seeks to insert language into Staff's proposed section that would allow the utility to bill the landlord/property manager for the period of time when there is usage between a former customer and a new applicant if that landlord refuses to sign an agreement. (Nicor Gas Ex. 1.0, Page 12, Lines 266-268.) Staff observes that allowing such language into the proposed rule would effectively thwart one of the main purposes of the whole section: to not have service left on indefinitely without a new applicant for service or a reversion agreement in place. (Staff Ex. 2.0, Page 27, Lines 601-614.)

## **VIII. Section 280.40 Deposits**

### **A. Subsection 280.40 (b) (1)**

#### **1. Staff's Position**

Staff agrees with GCI's initial redline (GCI Ex. 1.2, Page 13.) that the assessment of the deposit should not precede the notification to the customer, and therefore Staff added a sentence to the end of the subsection item to address this. (Staff Ex. 2.0, Pages 28-29, Lines 646-650.) Staff supports no other changes on this item.

#### **2. GCI**

GCI altered its position slightly from its initial direct testimony redline to its surrebuttal testimony redline to specify that the deposit shall not be assessed on the customer's bill until after the notification. (GCI Ex. 5.1, Page 14.) Staff does not object to GCI's changes for this limited item in the subsection, but observes that the effect of

either the initial GCI language (accepted by Staff) or the surrebuttal language would be identical under Staff's proposed rule since Subsection 280.40 (f) of Staff's proposal requires that the initial installment of the deposit be collected on the bill statement that follows the issuance of the deposit demand. (Staff Ex. 3.0, Attachment A, Page 15.)

### **3. Utilities**

#### **a. MEC & Nicor Gas**

Both utilities do not agree with the above described addition made by Staff, but their objections have more to do with how Subsection 280.40 (b) (1) works in tandem with Staff's proposed Subsection 280.40 (b) (2) to require them to make the notice in writing before they can begin collecting the deposit. Staff will address this immediately below.

#### **B. Subsection 280.40 (b) (2)**

##### **1. Staff's Position**

Staff believes that the disclosures associated with deposits are important to consumers being able to retain their utility service, and therefore must be made in writing prior to the assessment of the deposit. This will ensure the accuracy and consistency of the message, guarantee that the full set of all nine detailed requirements in the proposed rule are disclosed, and work with Subsection 280.40 (f) to provide applicants with enough time to either dispute or pay the deposit after service has been activated. (Staff Ex. 2.0, Page 30, Lines 676-686.)

##### **2. GCI**

Although GCI initially claimed that the disclosures should be made in writing every time, it changed its stance to one where the disclosures should be made orally at

the time of application with a provision that the disclosures also be provided in written form upon request from consumers. (GCI Ex. 5.0, Page 17, Lines 354-367.) Curiously, GCI goes on to point out the lack of this “in writing by request” provision in Staff’s draft rule, ignoring the fact that Staff’s draft rule requires written disclosure every time, and not just when a consumer asks for it. (GCI Ex. 5.0, Page 17, Lines 370-373.) GCI’s concern appears to be one of timing, fearing that consumers must wait for written disclosures to arrive. Staff observes that its proposed rule subsection 280.40 (f) works in tandem with the written disclosure requirement to preserve a customer’s right to timely appeal the deposit because it disallows the immediate collection of the deposit prior to service activation, and forces the utility to wait to collect the first installment of the deposit until the new customer’s first bill is due. (Staff Ex. 3.0, Attachment A, Page 15.)

### **3. Utilities**

#### **a. MEC & Nicor Gas:**

Staff is doubtful regarding utility claims that full disclosure of all the detailed requirements in the proposed rule can be made orally by utility customer service personnel at the time of the application or that the customer information packet required under Staff’s proposed Section 280.260 will suffice. (MEC Ex. 1.0, Pages 12-13, Lines 240-266; Nicor Gas Ex. 3.0, Page 33, Lines 772-779.) For the reasons outlined above, Staff believes a written notice must happen every time a deposit is demanded.

**C. Subsection 280.40 (d) (3)****1. Staff's Position**

Staff supports its original proposed language on this topic. (Staff Ex. 2.0, Pages 29-30.)

**2. AARP & GCI**

Both advocates seek to eliminate credit scoring as a means of determining a deposit requirement for applicants. (AARP Direct Testimony of Scott T. Musser, Page 5, Lines 17-18; GCI Ex. 2.0, Page 7, Lines 186-187.) Staff disagrees with the removal of the process, stating that it views credit scoring as a viable means to assess potential risk. Staff observes that the provision to require a utility that uses credit scoring to describe the process in its tariff will provide important clarity on the topic that the current rule lacks. (Staff Ex. 2.0, Pages 29-30, Lines 663-672.)

**D. Subsection 280.40 (e)****1. Staff's Position**

The current rule provides utilities with the low threshold of simple tardiness on bill payments in order to subject a customer to a deposit, while at the same time raising an illogical barrier to any deposit assessment for customers with over two years of tenure, no matter how risky their payment behavior becomes. Staff remedies both of these shortcomings by eliminating the immunity clause and replacing the simple late payment hurdle with a "dual trigger" that requires a late payment pattern combined with delinquency that lasts over 30 days. (Staff Ex. 1.0, Pages 9-10, Lines 200-215.) Staff supports its original proposed language on this topic.

## **2. GCI**

GCI supports Staff's "dual trigger" but also seeks to retain the current rule's immunity from deposits based upon customer tenure. In arguing to keep the illogical 2-year immunity clause, however, GCI repeatedly mischaracterizes Staff's proposal by ignoring the dual trigger and claiming that it is instead based upon lateness alone. GCI further errs in describing Staff's proposal by saying that it will disproportionately affect low income customers. (GCI Ex. 3.0, Pages 8-10.) Staff responds by reminding GCI of the dual trigger requirement and that under Staff's proposed Subsection 280.45 (b) (2), low income customers are granted full immunity from "late payment/over 30 days past due" deposit demands, regardless of tenure. (Staff Ex. 3.0, Pages 15-16, Lines 330-348.)

### **E. Subsection 280.40 (e) (4) (Nicor Gas' proposed language)**

#### **1. Staff's Position**

Staff did not include this provision in its proposed rules, and does not support it.

#### **2. Utilities**

##### **a. Nicor Gas**

Nicor Gas proposes to add this subsection that would allow the utility to collect a deposit from a large commercial or industrial customer for "indications of financial insecurity." (Nicor Gas Ex. 1.0, Page 16, Lines 361-376.) Staff observes that its expertise is limited in this regard, and advises that it believes the Commission would need to seek input from all affected parties, including utilities and large business interests to determine how to implement such a practice if the Commission wanted to entertain the concept. (Staff Ex. 2.0, Page 33, Lines 740-749.) In rebuttal, Nicor asserts

that the Commission need not follow Staff's advice and claims that the tariffing process would allow for appropriate input. (Nicor Gas Ex. 3.0, Page 31, Lines 718-734.)

**F. Subsection 280.40 (i)**

**1. Staff's Position**

Staff supports its original proposed language for this subsection. (Staff Ex. 2.0, Pages 31-32.)

**2. Utilities**

**a. ComEd:**

ComEd asserts that the direct refund policy should not be invoked unless the amount of the deposit exceeds 125% of the customer's average monthly bill. (ComEd Ex. 3.0, Pages 14-15, Lines 313-322.) Staff simply observes that the deposit amounts allowed to be collected by a utility under the proposed rule Subsection 280.40 (c) are 200% of a residential or small business customer's average monthly bill and 400% of a large business customer's average monthly bill. (Staff Ex. 3.0, Attachment A, Page 14.) Unless utilities will routinely collect significantly smaller amounts for deposits than those allowed by the proposed rule, the difference between Staff's proposed 25% and ComEd's 125% will not affect the final outcome of how the refund or credit is made.

**b. IAWC**

IAWC would prefer that deposit refunds be made by issuing credits to customer accounts, and states that a policy which favors a direct refund by check to the customer will be expensive. (IAWC FLR 1.0, Page 7, Lines 146-151; IAWC FLR-2.0, Pages 5-6, Lines 109-119.) Staff replies that the Small Business Utility Deposit Relief Act (220 ILCS 35/4) already requires a direct refund, and that Staff believes this same policy is

appropriate to carry over to all other customers, with the added provision that the utility should be allowed to issue the refund as a credit if the customer so desires. (Staff Ex. 2.0, Page 32, Lines 722-733.)

## **IX. Section 280.45 Deposits for Low Income Customers**

### **A. Staff's Position**

Staff supports its original proposed language for this section. Staff's proposed subsection 280.45 (a) describes the reasons for which a utility can still demand a deposit from a low income customer, while the proposed subsection 280.45 (b) lists the reasons for which a utility cannot demand a deposit from a low income customer. Staff's decisions regarding where to place the conditions reflects a balanced approach that measures the level of risk associated with each condition. (Staff Ex. 2.0, Page 34, Lines 766-781.)

### **B. LIRC**

LIRC seeks to disallow deposits of low income customers for any reason. (LIRC Ex. 1.0, Page 8, Line 3.) Staff rejects this approach, asserting that utilities will only be able to assess deposits to low income customers who have created actual collection difficulties (as opposed to simple risk) in the past by either tampering with the utility's equipment, being disconnected for non-payment or left a final bill owing that is greater than 20% of the total average annual amount billed to residential customers of the utility. (Staff Ex. 3.0, Attachment A, Pages 17-18.)

**C. Utilities:****1. AIC & MEC**

Both utilities assert that any customer who leaves an unpaid final bill, no matter how small, should be assessed a deposit. (AIU Ex. 3.0, Pages 5-6, Lines 104-121; MEC Ex. 1.0, Pages 13-14, Lines 284-290.) Staff believes its more nuanced approach that measures risk by assessing the size of the unpaid bill provides a better balance to the proposed rule. (Staff Ex. 2.0, Page 35, Lines 795-799.)

**2. IAWC**

As described above in Section 280.20 Definitions, IAWC does not believe any of the Low Income Customer provisions of the rule should apply to water and sewer utilities. Staff reiterates its response from above.

**X. Section 280.50 Billing (MEC proposed Subsection 280.50 (b) (3))****A. Staff's Position**

Staff did not propose this subsection in its draft rule, and has maintained a neutral position on this topic.

**B. MEC**

MEC seeks the flexibility to work out abbreviated billing schedules with non-residential customers so that multiple bills could be issued each month, but not to exceed a period of 6 months total. (MEC Ex. 1.0, Page 14, Lines 298-302.) In response to Staff's concern that there was not enough information available on this type of billing for Staff to form an opinion, MEC explained that it employs more frequent billing in service territories outside Illinois as a means for a large commercial customer to avoid disconnection or a deposit. (MEC Ex. 2.0, Pages 17-18, Lines 374-387.) Although Staff

does not directly oppose MEC's proposal, Staff believes that the proposed language would need to be altered further to limit it to large commercial customers and more directly aim it towards accomplishing the goals (preventing disconnections and deposits) that MEC outlined in its testimony.

### **C. Subsection on 280.50 (c)**

#### **1. Staff's Position**

Staff made certain modifications to its original proposal, based upon comments received from various other parties in testimony. The entire subsection is lengthy, containing many smaller items that Staff believes are critical to consumers being able to understand their bills. ComEd seeks to eliminate the entire subsection, and MPCU raises general concerns about the expense and difficulty it will endure under the proposed subsection, therefore, Staff will outline and respond to ComEd's and MPCU's positions immediately below, and then address the more limited arguments of other parties for those items separately.

#### **2. Utilities**

##### **a. ComEd**

ComEd claims that Staff's proposed Subsection 280.50 (c) is not only unnecessary and duplicative of the bill content requirements found in the current 83 IL Administrative Code Parts 410, 500 and 600, but ComEd also makes the claim that Staff is somehow trying to alter those other rules with its proposal for this subsection. (ComEd Ex. 1.0, Pages 7-8, Lines 141-157.) Staff responds that it has only made limited incorporations into its draft rule of the bill content language from those other code parts. Moreover, it is Staff's intent that, as much as possible, the new Part 280 will

provide a more complete view of all the rights and responsibilities of consumers regarding the topics covered by the rule. Forcing consumers to consult multiple codes to find the most basic information is not only unhelpful, but arguably a barrier to consumers gaining even a minimal understanding of their rights. (Staff Ex. 2.0, Pages 36-37, Lines 829-843.)

**b. MCPU**

MCPU points out that, as a small localized utility, its method of conducting business is highly personal, including face to face contact with customers. As such, it avers that the detailed information required by Staff's proposed subsection is simply unnecessary because its customers can visit MCPU for all the information and help they may require. (Mt. Carmel Ex. 1.0, Pages 9-10.) While Staff acknowledges that the presence of local offices and helpful utility personnel therein could pose a potential case for limited waivers to the bill content requirements under this proposed subsection, Staff observes that such conditions have become a rarity, and that the majority of Illinois utility customers do not enjoy that same level of accessibility. Since the new rule will affect millions of citizens across the State, Staff believes the content requirements are necessary. (Staff Ex. 2.0, Pages 37-38, Lines 852-858.)

**D. Subsection 280.50 (c) (1) (H)**

**XI. Staff's Position**

Staff believes it is important for consumers to have regular information about the deposits being held and any further amount owing for deposits on their accounts. Accordingly, Staff supports its original proposed language on the topic. (Staff Ex. 2.0, Pages 39-40.)

**1. Utilities****a. MEC & PGL/NSG**

MEC objects in general to the requirement for any deposit information on bill statements, but seems especially concerned about the accumulated interest clause. The utility believes that this may lead customers to erroneously believe that they are entitled to the interest at any time they wish. (MEC Ex. 1.0, Page 15, Lines 309-313.) PGL/NSG agrees with MEC regarding the accumulated interest concern, but only seeks to delete that limited concept instead of the entire requirement for deposit information. (PGL/NSG Ex. JR-2.0, Page 18, Lines 374-384.) Staff responds that consumers are often unaware that deposits are being held or how much more deposit money is being required of them after paying one or more installments on the deposit. Further, Staff believes that regularly displayed information about deposits may lead to more timely payments as consumers will view the amount held and accumulated interest as targets for refund that can only be achieved by avoiding late payment. (Staff Ex. 2.0, Pages 39-40, Lines 898-905.)

**B. Subsection 280.50 (c) (1) (I)****1. Staff's Position**

Staff supports GCI's suggested addition of this item, as it provides useful information to consumers about their historical usage and billing patterns. (Staff Ex. 2.0, Page 40, Lines 909-912.)

## **2. Utilities**

### **a. MEC & Nicor Gas**

Both utilities find this addition to be unnecessary micromanagement of utility communications with customers and state it ignores the fact that the utilities themselves pay attention to customer feedback and attempt to design the best bill statements possible. (MEC Ex. 2.0, Pages 20-21, Lines 434-450; Nicor Gas, Ex. 3.0, Page 35.) Staff notes that several utilities already employ such graphic comparisons on their bills. In Staff's experience, the information has proved quite useful to consumers in identifying areas of potential concern and taking steps to modify their usage patterns. (Staff Ex. 2.0, Page 40, Lines 912-915.) Staff also observes that this graphic information may aid utilities in resolving high bill complaints.

## **C. Subsection 280.50 (c) (2) (B)**

### **1. Staff's Position**

Staff believes that utility consumers should be provided with broader access to the information and assistance available through the ICC's Consumer Services Division (CSD). Under the current rule, CSD's contact information is most commonly provided within disconnection notices. Staff's draft rule provides for CSD's contact information on each bill statement. (Staff Ex. 3.0, Attachment A, Page 19.)

## **2. Utilities**

### **a. MCPU**

MCPU expressed concern that this greater accessibility will lead to dramatic, perhaps unmanageable, increases in the contact volume handled by CSD. (Mt. Carmel Ex. 1.0, Page 10, Lines 174-178.) In Staff's experience, consumers must typically wait

until a problem has escalated to the point of threatened disconnection before they are provided with CSD's contact information on a disconnection notice. Staff believes that it can better serve citizens if concerns can be handled prior to that tipping point. Moreover, Staff asserts that its draft Section 280.220 Utility Complaint Process will continue to deliver the same requirement under the current rule that consumers first attempt to work out a dispute with utilities prior to escalating their problem to CSD. Last, Staff believes the CSD's role as an educator can be better fulfilled with contact information provided on bills and not just disconnection notices. (Staff Ex. 2.0, Page 38, Lines 862-875.)

**D. Subsection 280.50 (e) (2) and (e) (3)**

**1. Staff's Position**

Based upon conceptual discussions during the Part 280 re-write workshops, Staff supports the idea that mailings to or from locations not within or next to Illinois may take longer to arrive. Staff maintains its original proposed language on this topic. (Staff Ex. 2.0, Page 42.)

**2. Utilities**

**a. MEC**

MEC seeks deletion of the requirement that customers be provided more time to pay bills that are mailed to or from locations farther away. To support this, it provides evidence from its own experience to illustrate that mailings from Pennsylvania to Illinois customers arrive without delay (MEC Ex. 1.0, Page 15, Lines 327-331.) Staff would need data from not just MEC and Pennsylvania to be persuaded that the same would

occur for all utilities and for mailings to/from many other locations away from Illinois and its border states. (Staff Ex. 2.0, Page 42, Lines 957-960.)

**E. Subsection 280.50 (f)**

**1. Staff's Position**

Staff supports its original proposed language on the topic. Staff believes consumers need more details on the origins of transferred balances that show up on their current bill statements.

**2. Utilities**

**a. ComEd, MEC & PGL/NGS**

Three utilities raise concerns that if there are multiple past accounts that comprise a total transfer balance, then it will be overly burdensome for the utility to have to list each of those balances and their places of origination. The utilities prefer to be able to simply list the most recent past account or location, rather than all of them. (ComEd, Ex. 1.0, Page 8, Lines 158-165; MEC Ex. 2.0, Page 18, Lines 388-399; PGL/NSG Ex. JR-2.0, Pages 17-18, Lines 369-373.) Staff observes that the problem with allowing multiple serial transfers without any indication as to where the older debts were incurred is that it may actually lead to more disputes because consumers, CSD and consumer advocates are unable to decipher the balance due when it is all lumped into one amount. (Staff Ex. 2.0, Pages 42-43, Lines 968-976.)

**XII. Section 280.60 Payments****A. Subsection 280.60 (a)****1. Staff Position**

Staff agrees with MEC that “non-sufficient funds (NSF)” was inadvertently left in the latest version of this subsection submitted by Staff, (Staff Ex. 3.0, Attachment A, Page 22.) despite the fact that Staff previously agreed to remove the term completely from Section 280.20 Definitions of the proposed rule and replace it with “returned payments.” (MEC Ex. 2.1, Page 25.)

**B. Subsection 280.60 (b) (2)****1. Staff’s Position**

Staff seeks to maintain its original proposed language for this item. (Staff Ex. 2.0, Page 44.)

**2. AARP & GCI**

In reaction to utility local office closings and the advent of credit card/debit cards and electronic methods of payment where utilities have contracts with vendors to take payments, the advocates seek to “socialize” the costs of those newer payment methods which are currently assessed fees by the vendors upon the individual consumers who use the methods. Moreover, advocates point out that utilities have the ability to negotiate prices with vendors so as to achieve the smallest expense for the services. (AARP Direct Testimony of Scott T. Musser, Page 7, Lines 21-22;GCI Ex. 2.0, Pages 10, Lines 248-254.) Staff supports a “cost causer” method of determining who pays the expense associated with various methods of payment, just as consumers have traditionally been responsible for the cost of affixing postage stamps to mailed bill

payments or paying for the transportation associated with traveling to a utility's local office to deliver payment. (Staff Ex. 2.0, Page 44, Lines 1000-1012; Staff Ex. 3.0, Page 17, Lines 378-387.)

**C. Subsection 280.60 (d) (2)**

**1. Staff's Position**

Staff agrees with IAWC's correction of a typo in the most recent version of the rule proposed by Staff. (Staff Ex. 3.0, Attachment A, Page 23.) The word "to" should be eliminated in the first line of the item so that it reads, "Late fees shall not exceed . . ." instead of the typo: "Late fees shall not to exceed . . ." (IAWC Ex. FLR-3.1, Page 23.)

**D. Subsection 280.60 (d) (3)**

**1. Staff's Position**

Staff supports its original proposed language for this item. (Staff Ex. 2.0, Page 46.)

**2. Utilities**

**a. IAWC**

IAWC believes that it is not appropriate to disallow late fees on budget billing payments that are not timely made. It asserts that the Commission should recognize the extra expense associated with late payment, regardless of what type of billing plan is in effect for the consumer. Moreover, IAWC believes that late fees serve to encourage timely payment. (IAWC Ex. FLR-1.0, Pages 7-8, Lines 158-169; IAWC Ex. FLR-2.0, Pages 8-9, Lines 162-183.) Staff responds that the exclusion of late fee assessment on budget billing is already in the current rule. Further, Staff asserts that utilities retain the right to remove a customer who fails to make timely payments from

budget billing. Last, Staff points out the difficulty associated with determining which portion of a budget payment amount should be assessed the late charge since budget payments are not reflective of the actual amount due for a given month's bill. (Staff Ex. 2.0, Page 51, Lines 1158-1168.)

**E. Subsection 280.60 (d) (5)**

**1. Staff's Position**

Staff supports its original proposed language for this item. (Staff Ex. 2.0, Pages 46-47.)

**2. Utilities**

**a. ComEd**

ComEd does not agree with Staff that utility late fees should not be assessed on non-utility charges appearing on a utility bill. (ComEd Ex. 1.0, Page 9, Lines 178-182.) Staff's main goal with its draft language for this item is to prevent the late fees for non-utility charges from becoming a reason to disconnect or deny utility service. While ComEd does appear to agree with Staff that late fees assessed on non-utility charges should not be included in the amount for which a customer may be denied utility service or disconnected, ComEd's testimony seems to assume that all utilities will follow that same line reasoning naturally and will refrain from doing so. (ComEd Ex. 3.0, Pages 19-20, Lines 425-440.) Staff does not agree, and believes the rule needs to make this clear so that the practice is uniform across all utilities.

**F. Subsection 280.60 (e)****1. Staff's Position**

Staff's intent with its original proposed language regarding partial payment allocation was to attempt to limit the possibility that consumers would be denied utility service or face disconnection for failing to pay charges that are either in dispute or not directly associated with delivery or supply. (Staff Ex. 1.0, Pages 12-13, Lines 272-276.) In rebuttal Staff tried to address the concerns of competitive suppliers with a number of changes to this subsection as well as the proposed Section 280.20 Definitions. (Staff Ex. 2.0, Page 47, Lines 1066-1074.) However, after reviewing the rebuttal testimony of several parties, Staff came to believe that the concept was unworkable and had to be abandoned in its proposed form. (Staff Ex. 3.0, Pages 16-17, Lines 367-374.)

**XIII. Section 280.65 Late Payment Fee Waiver for Low Income Customers****A. Staff's Position**

Staff supports its originally proposed language for this Section of the draft rule. (Staff Ex. 1.0, Page 13; Staff Ex. 2.0, Pages 47-48.)

**B. Utilities****1. MEC**

MEC seeks to delete the entire proposed Section, stating that it opposes this alteration of existing policy as it would undermine utility efforts to encourage timely payment. (MEC Ex. 1.0, Pages 16-17, Lines 345-356.) Staff observes that for low income customers, timely payment is often not a matter of choice and late fees can accumulate substantially over time until low income customers are able to secure grants to help pay their bills. Moreover, Staff seeks to avoid as much as possible any large

scale shifts in the carefully balanced pieces of its proposed rules. Staff agrees with PGL/NSG that concerns about the proposed rule as a whole must be weighed against any changes that would undo the accomplishments of the lengthy workshop process. (Staff Ex. 2.0, Pages 47-48, Lines 1079-1093.)

#### **XIV. Section 280.70 Preferred Payment Date**

##### **A. Subsection 280.70 (b)**

###### **1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 48-49.)

###### **2. Utilities**

###### **a. MCPU & MEC**

The utilities raise concerns about the expense associated with the notification requirements in Staff's proposed subsection. (Mt. Carmel Ex. 1.0, Page 11, Lines 192-208.) (MEC Ex. 1.0, Page 17, Lines 358-375.) However, Staff asserts that the importance of preferred payment dates to consumers who can pay their bills but live paycheck to paycheck outweighs utility concerns over the cost of administering Staff's proposed requirements that consumers who begin to exhibit a pattern of late payment be notified of this tool to avoid late fees, deposit demands and deferred payment arrangement default. (Staff Ex. 2.0, Pages 48-49, Lines 1106-1125.)

**XV. Section 280.80 Budget Payment Plan****A. Subsection 280.80 (b)****1. Staff's Position:**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 50.)

**2. Utilities****a. MEC**

MEC attests that budget payment plans should not be extended through the proposed rule to small business customers. In practice, MEC offers such plans to both large and small businesses, and the utility is concerned that the proposed rule would force it to track and distinguish which commercial customers are "small." (MEC Ex. 2.0, Pages 23-24, Lines 515-521.) Staff observes that Illinois' Small Business Utility Deposit Relief Act (220 ILCS 35/4) should already necessitate such tracking by utilities.

**B. Subsection 280.80 (h)****1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 50.)

**2. GCI**

GCI believes that reconciliation of budget payment plans needs to occur on a quarterly basis. GCI agrees with Staff that a goal of budget billing should be to avoid overly large shortfalls or credit balances, but GCI is also concerned about reconciliations that happen so frequently that they effectively nullify the concept of budget payment altogether. (GCI Ex. 4.0, Page 5, Lines 106-115.) Staff believes that

its proposed rule's subsections 280.80 (g) and (h) will work together to accomplish the goal that GCI seeks without requiring standardized adjustment periods. (Staff Ex. 2.0, Page 50, Lines 1141-1151.) Moreover, Staff believes that a greater degree of flexibility should be built into this portion of the proposed rule as utilities have a direct interest in ensuring that budget payment plans are successfully administered due to the potential expense associated with multiple calls from frustrated consumers to utility customer service departments. Last, Staff is concerned that forcing utilities to reconcile their budget payment plans every three months may actually drive up complaints about the program for those consumers whose budget plans were accurately established at the outset.

**C. Subsection 280.80 (i)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. As discussed above under Subsection 280.60 (d) (3), Staff rejects utility concerns that they should be allowed by the proposed rule to begin a new policy of assessing late fees on untimely payments for budget payment plans. (Staff Ex. 2.0, Page 51.)

**XVI. Section 280.90 Estimated Bills**

**A. Subsection 280.90 (b) (2)**

**1. Staff's Position**

Staff altered its originally proposed language on this topic to allow for a utility that employs remote meter reading devices to deliver written notice of a failed reading by means other than a personal visit to the customer's premises. (Staff Ex. 2.0, Page 52, Lines 1183-1195.)

## 2. Utilities

### a. ComEd & MEC

The utilities agreed with Staff's accommodation of the remote reading process in the proposed rule, but argue further that the notification method should not be limited to "written" notification. (MEC Ex. 2.0, Page 25, Lines 541-546.) ComEd believes that it should be allowed by the proposed rule to warn consumers of a problem by placing outgoing phone calls to them. (ComEd Ex. 3.0, Page 22, Lines 485-493.) While Staff does not object to telephone notifications for failed readings, it believes that the proposed rule language would need to be re-structured to provide for written (including electronic written communications<sup>2</sup>) notification as a default when telephone calls fail to reach the consumer or successfully leave a voice message. (Staff Ex. 3.0, Pages 18-19, Lines 412-422.) Staff's suggested additions are:

" . . . then the utility may mail or use other means to deliver written notification (may include electronic written notification for customers who have elected electronic billing methods) of the failed reading to the customer in lieu of leaving a door hanger. The utility may contact a customer by telephone to provide notice of a failed reading, provided that written notification must be sent if the utility fails to reach the customer directly or successfully leave a voice message.

## B. Subsection 280.90 (d)

### 1. Staff's Position

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 53-54.)

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<sup>2</sup> See also Tr., June 8, 2011, Pages 814-824 (cross examination of Staff by MEC regarding written versus electronic communications.)

## **2. GCI**

Advocates raise the concern that consumers are often compelled to accept estimated readings at the beginning and ending of service, and that this leads to disputes over the validity of the bills associated with those readings. To remedy this, GCI asserts that the rule should provide for actual readings to start and end utility service. (GCI Ex. 2.0, Page 13, Lines 335-342.) While Staff agrees that the situation described by GCI creates problems, it is Staff's opinion that the issue is typically made worse by a lack of regular actual readings by the utility, and Staff believes that its proposed requirement that an actual reading must have occurred within the last 60 days represents a fair solution to this problem without creating the potentially massive expense of requiring a separate, off cycle, field visit every time a consumer starts or ends service. (Staff Ex. 2.0, Pages 53-53, Lines 1213-1225.)

### **C. Subsection 280.90 (f)**

#### **1. Staff's Position**

Staff agrees with PGL/NSG that there is a typo in the proposed rule where what should be subsection 280.90 (f) is instead mislabeled as subsection 280.90 (h). (PGL/NSG Ex. VG 1.2, Page 1.)

### **D. Subsection 280.90 (g)**

#### **1. Staff's Position**

In response to concerns raised by GCI, Staff added this subsection to its proposed rule in surrebuttal. The proposed subsection is based upon a similar rule in Pennsylvania, and it provides protection against disconnection for non payment of

estimated bills for customers whose meters have not been read through no fault of their own. (Staff Ex. 3.0, Pages 17-18.)

## **2. GCI**

GCI initially recommended that utilities be forced to forfeit collection of payment if they routinely fail to secure actual meter readings when customers are attempting to provide access to their meters. (GCI Ex. 2.0, Page 13, Lines 327-331.) After Staff observed that it did not believe there was statutory authority to enact such a requirement, (Staff Ex. 2.0, Page 53, Lines 1201-1204.) GCI then proposed that the Commission should consider the rule in Pennsylvania as a potential guide to a compromise solution on the topic (GCI Ex. 3.0, Page 14, Lines 305-319; GCI Ex. 4.0, Page 6, Lines 125-132.) Staff reviewed the Pennsylvania rule, and agreed to incorporate the concept of limited immunity from disconnection as a solution. (Staff Ex. 3.0, Page 18, Lines 396-409.) However, with its surrebuttal (filed on the same date as Staff's Ex. 3.0), GCI called for the Commission to adopt what it refers to as the "plain language in the Missouri Public Service Commission rule" on estimated bills. (GCI Ex. 5.0, Pages 26-28, Lines 588-657.) Staff disagrees that this proposal represents "plain language." The lengthy and complicated text conflicts strongly with Staff's goal of a proposed rule that will be concise, accessible to consumers and not open to wide legal interpretations. While Staff agrees with GCI that other states can provide valuable conceptual guidance to Illinois (as evidenced by Staff's acceptance of the idea from Pennsylvania above), Staff rejects the simple bootstrapping of excerpts from other states' regulatory texts into the proposed rule in Illinois, particularly when those passages are discordant with Staff's proposed rule as a whole.

**XVII. Section 280.100 Previously Unbilled Service****A. Subsection 280.100 (b) (1) and (2)****1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 54.)

**2. Utilities****a. MEC**

MEC acknowledges that Staff's proposed language accomplishes the same goals as the current rule's subsection 280.100 (a) (1) and (2), but the utility prefers the current rule's actual text over Staff's proposal. (MEC Ex. 1.0, Page 19, Lines 399-405.) Staff observes that, with the concepts being equal, it is Staff's preference that the individual subsections of the proposed rule maintain as much as possible the plain language goal to read more like the whole. (Staff Ex. 2.0, Page 54, Lines 1229-1236.)

**XVIII. Section 280.110 Refunds and Credits****A. Subsection 280.110 (d)****1. Staff's Position**

Staff supports modifications to its originally proposed language in this subsection for two purposes: first, to not require a utility to pay interest on overpayments until the actual money is in the utility's possession; and second, to not require a utility to pay interest on a budget payment plan credit balance unless the budget plan is cancelled. (Staff Ex. 3.0, Pages 19-20, Lines 426-458; Staff Ex. 3.0, Attachment A, Page 31.)

## **2. Utilities**

### **a. AIC, ComEd, IAWC, MEC, & PGL/NSG**

The utilities object to the requirement in Staff's proposed subsection that they must pay interest on any overpayment, regardless of the source of the payment (customer or government grant money) or which party is the cause of the overpayment (utility billing error as opposed to intentional overpayment by a customer seeking interest). (AIU Ex. 3.0, Pages 10-13, Lines 213-262; ComEd Ex. 1.0, Page 10, Lines 198-203; IAWC Ex. FLR-1.0, Page 8, Lines 179-183; MEC Ex. 1.0, Page 19, Lines 419-422; PGL/NSG Ex. JR-2.0, Pages 26-27, Lines 572-597.) Staff responds that the simple way for a utility to avoid paying interest on most overpayments is by issuing timely refunds. Questions of intent (did the customer overpay on purpose?) or which party is at fault for the overpayment (did the utility fail to properly read the meter or did the customer somehow thwart a reading?) overcomplicates the concept. Staff believes it is appropriate for interest to be paid on amounts being held that are not actually owed to the utility. (Staff Ex. 2.0, Page 57, Lines 1297-1310.)

## **3. Nicor Gas**

Nicor Gas seeks to add language to the subsection to allow a utility to pay interest at a rate established by tariff instead of at the Commission set deposit interest rate, as proposed by Staff. (Nicor Gas Ex. 2.0, Pages 3-4, Lines 59-77.) Staff acknowledges that the Commission has the authority to allow exceptions to its rules. However, Staff does not agree that the existence of tariff exceptions to the current rule must somehow control or modify the re-write process. (Staff Ex. 2.0, Page 58, Lines 1319-1325.) As indicated earlier under Staff's discussion of its proposed Section

280.05 Policy, Staff believes that the rule will take precedence over any conflicting tariffs and that any waivers desired by utilities will have to be sought after the new rule takes effect.

**B. Subsection 280.110 (f) (1)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic, but would be willing to compromise.

**2. Utilities**

**a. ComEd**

ComEd seeks to modify the percentage amount of a customer's credit balance that will trigger a direct refund, raising it from Staff's proposed >25% of the customer's average monthly bill to >125% of the customer's average monthly bill. (ComEd Ex. 1.0, Page 9, Lines 191-197.) Staff has indicated a willingness to accept this change if utilities accept Staff's position on the interest policy discussed in the proposed Subsection 280.110 (d) above. (Staff Ex. 2.0, Page 56, Lines 1284-1286.)

**XIX. Section 280.120 Deferred Payment Arrangements (DPAs)**

**A. Subsection 280.120 (a)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 66-67.)

## **2. Utilities**

### **a. IAWC**

IAWC does not agree that DPAs should be focused only upon past due utility service amounts, and instead should include all past due charges. It attests that Staff's proposal of a narrower requirement could require a utility to undergo "extensive customization" of its programming. (IAWC Ex. FLR-1.0, Page 9, Lines 198-201.) Staff responds that its intent with DPAs is to ensure that customers are provided a fair opportunity to retire the amounts they owe for deniable charges (those charges for which utilities are authorized to disconnect service when customers fail to pay). Although Staff does not object to utilities establishing concurrent payment agreements for non-deniable charges, Staff seeks to avoid scenarios where DPAs can default if customers fail to pay the non-deniable portions of their bills. (Staff Ex. 2.0, Page 66, Lines 1513-1519.)

## **B. Subsection 280.120 (b) (1)**

### **1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 64-65.)

### **2. AARP & GCI**

GCI seeks to edit Staff's proposed description of the utility's obligation to offer DPAs to customers who fall behind on their bills. The changes supported by GCI are aimed primarily at ensuring that utilities will actively offer DPAs to customers with delinquent accounts and that the DPAs will be highly customized to those customers' individual circumstances. GCI's language goes so far as to allow the utility to "require

the customer to disclose the customer's circumstances." (GCI Ex. 5.1, Page 34.) GCI believes that Staff's proposed rule will excuse utilities from any obligation to consider each customer's circumstances, and will result in standardized DPAs. (GCI Ex. 1.0, Pages 22-24, Lines 596-663.) Moreover, AARP and GCI seek to encode the specific factors that must be considered when establishing DPAs. (AARP Direct Testimony of Scott T. Musser, Page 10, Lines 10-14; GCI Ex. 2.0, Page 16, Lines 412-427.) Staff responds that its proposed subsection 280.120 (g) (2) already requires utilities to factor in an individual customer's ability to retire a DPA, without forcing them to divulge highly personal details about their lives to utilities. (Staff Ex. 3.0, Attachment A, Page 34.)

**C. Subsection 280.120 (b) (1) (A)**

**1. Staff's Position:**

Staff supports its originally proposed language on this topic.

**2. Utilities**

**a. IAWC**

IAWC objects to the concept found in Staff's proposed language that would require a utility to consider a customer as eligible for a new DPA any time after they have brought their account current, regardless of whether or not the customer defaulted on a previous DPA before bringing the account current. IAWC is concerned that this will not properly incent consumers to keep up with their DPAs all the way to successful completion. (IAWC Ex. FLR-1.0, Page 9, Lines 187-197.) Staff certainly agrees that the best case is one where the original DPA is followed to completion without any difficulties, but Staff believes that any behavior that ultimately results in full payment of

debts without disconnection should be rewarded. (Staff Ex. 2.0, Page 65, Lines 1479-1482.)

**D. Subsection 280.120 (b) (1) (B)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 65-66.)

**2. Utilities**

**a. AIC & PGL/NSG**

The utilities believe that eligibility for a DPA should end on the “day of utility disconnection” rather than “until utility service is disconnected,” as Staff has proposed. Their concerns regard the ability of a utility to effectively stop an order for disconnection that has been dispatched to its field personnel, (AIU Ex. 1.0, Page 7, Lines 147-154.) and the potential that customers may engage in hostile acts to delay or stop field personnel from performing disconnections as a result. (PGL/NSG Ex. JR-2.0, Page 29, Lines 624-635.) Staff observes that its proposal is no different from the current rule, and modern utilities should have robust field communications tools at their disposal. (Staff Ex. 2.0, Pages 65-66, Lines 1497-1507.) Staff finds it difficult to believe that a customer who is so irrational and desperate that they would threaten or actually attack utility personnel would be somehow more likely to do so simply because they can establish a DPA. Further, Staff’s proposed Section 280.130 Disconnection does not contain the requirement of the current rule that the utility personnel performing a disconnection attempt to make contact with the customer. (Staff Ex. 3.0, Attachment A, Page 40.)

**E. Subsection 280.120 (c)****1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 66-67.)

**2. Utilities****a. IAWC**

As described in Subsection 280.120 (a) above, IAWC objects to Staff's proposal that DPA's only contain deniable amounts. Staff's response is the same as above.

**F. Subsection 280.120 (d)****1. Staff's Position**

Staff supports its originally proposed language on this topic.

**2. Utilities****a. IAWC**

IAWC objects to Staff's proposal that a customer's DPA move with them during a service transfer. The utility states that it should be allowed to start an entirely new DPA at the new premises to accommodate its billing systems programming. (IAWC Ex. FLR-1.0, Pages 9-10, Lines 202-208.) Staff does not object to this concept so long as the "new" DPA is identical to the previous DPA. Staff observes that such flexibility would already be available to utilities under Staff's proposed Section 280.120 because nowhere does it prohibit a utility from offering a customer a new DPA that is identical to the old one. Indeed, the effect for the customer could be seamless and invisible if the utility simply made the changes internally, and the terms continued on as originally planned. However, Staff cautions that it will not support any changes to its proposed

rule that would allow for harsher DPA terms (e.g. less time to pay, larger installments) to be imposed at the time of transfer.

**G. Subsection 280.120 (e)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 61.)

**2. GCI**

While GCI does not object to Staff's proposed language that would require clear itemization of DPA information on a customer's bill, GCI disagrees with Staff that the bill itemization subsection should replace the existing rule's requirement that a separate statement be sent to a consumer describing the DPA at its inception. GCI would reinsert this requirement in the proposed rule. (GCI Ex. 5.1, Page 35, new subsection (d).) In Staff's experience, the separately mailed statement is often no longer in a customer's possession once a dispute arises, in contrast to bill statements and disconnection notices that are more commonly available. By shifting the focus of information to the monthly bills, utility expense will be reduced while customers will be reminded over and over again about the terms of their DPAs. Staff anticipates that this will lead to greater success rates for DPAs, as well as decrease disputes. (Staff Ex. 2.0, Page 61, Lines 1397-1408.)

**H. Subsection 280.120 (e) (2)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 67-68.)

## **2. Utilities**

### **a. IAWC & MEC**

IAWC objects generally to the expense associated with the informational requirements of this item. (IAWC Ex. FLR-1.0, Page 10, Lines 214-218.) MEC does not object to the requirement in general. Rather, it disagrees with Staff that the message to a customer who has defaulted on a DPA should include the amount necessary to reinstate the defaulted plan. MEC attests that because the amount to reinstate is a moving target, it could confuse customers if the utilities were forced to put the reinstatement amount in writing as Staff has proposed. (MEC Ex. 1.0, Page 22, Lines 473-475.) Staff responds that the expense associated with handling lengthy calls to customer service and field visits for disconnection far outweigh the expense of bill statements or mailings to explain the amount required to keep service going. Further, reinstatement amounts only change as frequently as a customer's bill statements. In fact, having a clear statement of the amount required should reduce confusion. (Staff Ex. 2.0, Pages 67-68, Lines 1540-1549.)

#### **I. Subsection 280.120 (f)**

##### **1. Staff's Position**

Staff supports its originally proposed language on this topic.

##### **2. GCI**

GCI seeks to change the proposed language regarding the DPA down payment so that it will reflect the same detailed changes GCI supports in Subsection 280.120 (b) above that would compel utilities and customers to discuss the customer's personal household conditions and income. GCI's proposal calls for a 25% down payment to be

required only when the customer refuses to discuss the conditions and income. (GCI Ex. 5.1, Page 36.) Staff observes that its proposed rule Subsection 280.120 (g) (2) already calls for the utility to take into consideration the ability of a customer to successfully complete a DPA, and Staff's proposed Subsection 280.120 (f) (3) allows the utility to reduce the down payment amount for that purpose. (Staff Ex. 3.0, Attachment A, Page 34.)

**J. Subsection 280.120 (g)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic.

**2. GCI**

As with Subsection 280.120 (b) and Subsection 280.120 (f), GCI wants the language regarding the DPA term length to require the utility and customer discuss the customer's personal household conditions and income. GCI's proposal contains a default to set the term between 4 and 12 months only when the customer refuses to discuss the conditions and income. (GCI Ex. 5.1, Page 37.) Staff observes that its proposed rule Subsection 280.120 (g) (2) already calls for the utility to take into consideration the ability of a customer to successfully complete a DPA, and Staff's proposed language in Subsection 280.120 (g) (1) provides the utility with the authority to extend the DPA term beyond 12 months for that purpose. (Staff Ex. 3.0, Attachment A, Page 34.)

**K. Subsection 280.120 (j)****1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 61-62.)

**2. GCI**

GCI would replace Staff's entire proposed subsection on reinstatement with a requirement that utilities offer a second payment agreement to a customer in default on a first payment agreement. (GCI Ex. 5.1, Page 38.) Staff observes that this is very similar to the current rule that essentially allows for only two chances: an initial DPA, and then one reinstatement after one default. Based upon Staff's complaint handling experience with the difficulties that the current rule creates for households who default on DPAs more than once, Staff does not understand GCI's resistance to Staff's proposed rule. Instead of just two chances, it will provide repeated opportunities for defaulting customers to reinstate their DPAs and avoid disconnection. (Staff Ex. 2.0, Pages 61-62, Lines 1408-1416.) This will be especially important for working families who live paycheck to paycheck and may not always have the money available to pay utility bills by the due dates. GCI's testimony indicates concern with Staff's proposal that customer's pay a tariffed fee to reinstate a DPA. (GCI Ex. 2.0, Page 17, Lines 450-458.) However, GCI's testimony overlooks the fact that, under Staff's proposal, the first reinstatement has no such fee. Staff's proposed rule also provides for a waiver of all reinstatement fees for Low Income Customers in its proposed Subsection 280.125 (d). (Staff Ex. 2.0, Page 62, Lines 1416-1428.)

**L. Subsection 280.120 (k)****1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 63-64.)

**2. GCI**

Instead of Staff's proposal that would require renegotiation only when the DPA is not in default status, GCI supports the retention of the language from the current rule that would allow a customer who has only been in default on a DPA for 14 days or less to renegotiate the term of the DPA. (GCI Ex. 5.1, Page 38.) Staff's proposal on renegotiation is meant to work in tandem with the unlimited reinstatements it makes available to customers. The current rule and GCI's proposal, with only one chance to reinstate or establish a second DPA, impose greater limitations on a customer's ability to get back on track with a payment plan and then seek necessary modifications.

**M. Subsection 280.120 (k) (3)****1. Staff's Position:**

Staff proposes an alteration of its proposed language on this topic to clarify its intent.

**2. Utilities****a. MEC**

MEC and Staff seem to share similar opinions regarding the total length of time required for a renegotiated DPA, but the two parties diverge regarding the language each has proposed to accomplish the task. Staff now recognizes that its draft language could be read as adding an extra 24 months to an original DPA that was for 12 months.

At the same time, MEC seems to acknowledge that its draft language could be misinterpreted to mean that the renegotiation cannot extend any length of time beyond the end date of the original DPA, rendering it meaningless. (MEC Ex. 2.0, Page 32, Lines 704-713.) Staff proposes to resolve this problem with the following edit to the item:

- 3) Through renegotiation, the utility shall not be obliged to extend the term of the DPA any longer than 4 to 12 additional billing cycles beyond the original term of the DPA, provided however that the utility and customer may renegotiate the DPA for a longer term if both parties agree twice the amount of time established in the original DPA.

**XX. Section 280.125 Deferred Payment Arrangements for Low Income Customers**

**A. Staff's Position**

Staff supports its originally proposed language on this Section. (Staff Ex. 1.0, Pages 16-17; Staff Ex. 2.0, Pages 70-71.)

**B. Utilities**

**a. IAWC**

As discussed above regarding other Low income Customer portions of Staff's proposed rule, IAWC seeks an exception for water and sewer companies so that this Section will not apply to them because they do not participate in LIHEAP. (IAWC FLR-1.0, Pages 4-5, Lines 84-109.) Staff's response is the same as detailed in Section 280.20 Definitions above under "Low Income Customer".

**b. MEC**

MEC seeks to delete the entire proposed Section, and in its place adds a low income customer down payment clause to Staff's proposed Subsection 280.120 (f) (1)

while also stating that the “Second DPA” clause under Staff’s proposed Subsection 280.125 (e) should be moved to the end of the proposed Section 280.120 so that all DPA information in the rule will appear in a single section. (MEC Ex 1.0, Page 24, Lines 512-525.) Staff rejects these changes, explaining that they reduce the rights of Low Income Customers by removing important portions of Staff’s proposed Section 280.125. (Staff Ex. 2.0, Page 70, Lines 1596-1603.) Moreover, such a move would thwart Staff’s organizational intention to deliver a proposed rule that will not force customers to read through entire sections to find the topic that interests them. (Staff Ex. 1.0, Pages 4-5, Lines 79-100.)

**c. Nicor Gas**

Staff agrees with Nicor Gas’ observation in the pre-hearing outline document that the letter “r” is missing in “April 1 though November 30,” under Subsection 280.125 (a) of Staff’s proposed rule (Staff Ex. 3.0, Attachment A, Page 36.) The word “though” should instead be the word “through”.

**XXI. Section 280.130 Disconnection of Service**

**A. Subsection 280.130 (b) (4)**

**1. Staff’s Position**

Since this subsection item refers to another portion of the draft rule, Staff modified its originally proposed language on this topic to more accurately reflect the requirements of the proposed Section 280.140. (Staff Ex. 3.0, Attachment A, Page 37.)

**2. GCI & City of Chicago**

Consumer Advocates object to Staff’s proposed Section 280.140, and since this subsection item refers to that draft Section, they seek its removal from the proposed

rule. Staff will explain why it does not support this change under Section 280.140 below.

**B. Subsection 280.130 (b) (5)**

**1. Staff's Position**

Staff added this subsection item to its proposed rule after parties observed that there was no clause in the proposed rule to deal with single customer premises where access to utility facilities was being denied. (Staff Ex. 3.0, Attachment A, Page 37.)

**2. Utilities**

**a. ComEd**

ComEd seeks to modify Staff's proposed language so that only two attempts (instead of four as proposed by Staff) to gain access would be required in instances where the purpose is "in order to meet regulatory requirements." (ComEd Ex. 3.0, Page 26, Lines 569-575.) Staff is agreeable to this change since it follows the same standard established in Staff's proposed Subsection 280.140 (b) (1), and supports the following modification:

- 5) Failure to provide access to utility facilities after four attempts (two attempts if in order to meet regulatory requirements) by the utility to gain access to a single customer premises, provided that the utility must comply with the same notification and record keeping requirements of subsection 280.140 c) 1), 2) and 3);

**C. Subsection 280.130 (c) (3)**

**1. Staff's Position**

Staff recognizes that a change will need to be made to its proposed language to reflect the unique condition of sewer service.

## 2. Utilities

### a. IAWC

IAWC asserts that combined water/sewer utilities should be allowed to disconnect the water service for failure to pay the non-disputed sewer charges. (IAWC Ex. FLR-1.0, Page 11, Lines 247-250.) Staff agrees that sewer service, with its entirely different characteristics from the other services the Commission regulates, presents a uniquely difficult (and perhaps from a public health standpoint, hazardous) challenge for disconnection. Accordingly, Staff is willing to modify its proposed language as follows:

- 3) Charges for another type (gas, electric, water or sewer, unless water and sewer utility service are provided by the same utility) of utility service;

## D. Subsection 280.130 (c) (4)

### 1. Staff's Position

Staff supports a modification to its proposed language to reflect the reality of "On Bill Financing" legislation that allows a utility to disconnect for specific products purchased as efficiency measures.

## 2. Utilities

### a. AIC & Nicor Gas

The utilities point out that at least one Illinois statute allows a utility to shut off a customer's utility service for non-payment of specific products or merchandise that can be collected on utility bills, and Staff's proposed language might be viewed as contradicting such legislation. (AIU Ex. 1.0, Pages 9-10, Lines 188-200; Nicor Gas, Ex. 3.0, Page 50, Lines 1152-1158.) Although Staff believes that statutes will always control over conflicting administrative codes, Staff does not wish to produce a rule that

will be confusing to customers. Moreover, Staff acknowledges that it already made a nearly identical change in its proposed subsection 280.130 (c) (1). Staff supports the following change:

- 4) Charges for equipment or merchandise unless otherwise authorized by Illinois Statute.

**E. Subsection 280.130 (e)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 73.)

**2. Utilities**

**a. MEC & Nicor Gas**

The utilities object to Staff's requirement that customers always receive a paper disconnection notice, regardless of whether they have elected electronic billing. (MEC Ex. 1.0, Page 25, Lines 540-553; Nicor Gas Ex. 1.0, Page 18, Lines 403-420.) Staff notes that its proposed subsection does not prevent utilities from also sending an electronic notice, but Staff believes disconnection of service is such a serious matter that consumers must be warned by a physical notice. (Staff Ex. 2.0, Page 73, Lines 1682-1686.)

**F. Subsection 280.130 (i)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. When utilities leave service active after a customer leaves, the new occupants of premises who have failed to apply for service need adequate warning that if they do not apply for and obtain customer status, the service will be shut off. Staff believes it is also appropriate for

property owners to be warned in these situations. (Staff Ex. 1.0, Page 18, Lines 402-411.)

## **2. Utilities**

### **a. MEC**

MEC initially sought to eliminate Staff's entire proposed subsection 280.130 (i). (MEC Ex. 1.0, Page 26, Lines 562-576.) After reviewing Staff's rebuttal response that explained the importance of letting occupants know what was happening, (Staff Ex. 2.0, Pages 74-75, Lines 1705-1713.) MEC altered its position in two ways: first, it seeks to change the "warning letter sent or delivered" to the more general term, "notification," so that utilities will have some flexibility in methods of contacting occupants; second, MEC proposes to remove the requirement that utilities also warn the property owners. (MEC Ex. 2.0, Page 36, Lines 795-804.) Staff still stands by its original assertion that it will be useful to all three parties (occupants, landlords and utilities) if property owners (when known) are notified of these situations. Although Staff does not object to utilities making occupants aware of the need to apply for service by means other than a written letter, Staff is uncertain as to what those other means would be. Aside from an expensive field visit (which Staff's proposed rule would already accommodate by its use of the word "deliver") it stands to reason that the utility would not even possess other means (telephone, e-mail, etc.) of reaching an occupant since he or she has not already contacted the utility to apply for service.

## **G. Subsection 280.130 (j)**

### **1. Staff's Position**

Staff supports its originally proposed language on this topic.

## **2. AARP & GCI**

Advocates support the need for a warning phone call to a customer prior to disconnection, but they also assert that one attempted phone call is not enough, arguing that the utility should be obliged to make a second call to attempt personal contact. (GCI Ex. 5.1, Page 43.) Although Staff believes that a single call is appropriate after the customer has already received a written disconnection notice, if the Commission does include a requirement for a second call in the final rule, Staff recommends that the rule should also provide for a waiver of the requirement to make a second call if the first call succeeds in making contact.

### **H. GCI proposed subsection within 280.130 to require direct contact with customer at the time of disconnection**

#### **1. Staff's Position**

Staff did not include a requirement for direct personal contact at the time of disconnection in its proposed rules. Staff recognizes that the current rule's requirement for direct contact may have provided customers with a legitimate opportunity to stop the disconnection at the last minute if utility field personnel were able to take payments. However, Staff is unaware of any utility that practices this currently. In fact, in response to highly publicized attacks on utility workers, changes have been made to Illinois statutes that make it a more serious felony to assault a utility worker. Staff was primarily motivated by this safety concern in its choice to leave out the requirement in the proposed rule. (Staff Ex. 1.0, Pages 17-18, Lines 378-391.) However, Staff acknowledges that utilities and the unions representing their workers are far better judges of the risks or lack of risks involved with personal contact at the time of disconnection. (Staff Ex. 2.0, Page 76, Lines 1752-1754.)

## **2. AARP & GCI**

Advocates believe that the direct contact clause in the current rule provides an opportunity not just for payment collection, but also to avoid disconnection. More importantly, they assert that it also offers an opportunity to make a safety judgment about the household conditions at the time of the visit. These, they assert, range from potential health issues of the residents that could be exacerbated by the loss of service to potential safety problems with the wiring, piping and/or appliances inside the premises. Last, advocates are particularly concerned that the lack of a direct contact requirement will allow a utility that has equipped its meters with a remote service switch to disconnect customers without any field safety checks. (AARP Direct Testimony of Scott T. Musser, Page 10, Lines 17-21, Page 11, Lines 1-2; GCI Ex. 1.0, Page 29, Lines 781-790.) Although Staff agrees that field visits might provide opportunities to check on the welfare and safety of customers and their households if utility personnel were trained to do so, Staff recommends that if the Commission sees fit to pursue this topic, it should not be limited to those customers who are under threat of involuntary disconnection. (Staff Ex. 2.0, Pages 76-77, Lines 1754-1760.)

### **I. Subsection 280.130 (I)**

#### **1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 78.)

#### **2. AARP & GCI**

Advocates are concerned with the provisions of Staff's proposed subsection that would allow for disconnections of service at any time outside of normal business hours

when the utility is prepared to take payment and restore the service that same day. Both parties assert that the proposed rule should forbid disconnections during evenings, weekends and holidays. They believe that disconnected customers will have a more difficult time securing the funds for reconnection during non-business hours, rendering moot the utility's availability to take payment. (AARP Direct Testimony of Scott T. Musser, Page 11, Lines 3-11; GCI Ex. 1.0, Pages 29-30, Lines 791-804.) Staff responds that the current rule contains similar provisions to Staff's proposed rule, but that the current rule actually lacks the consumer protection requirement that the utility be accessible for contact during any non-business hours when it is performing disconnections. (Staff Ex. 2.0, Page 78, Lines 1789-1795; Staff Ex. 3.0, Attachment A, Page 41.)

**J. Subsection 280.130 (m)**

**1. Staff's Position**

Staff agrees with MEC that the proposed subsection in Staff's most recent version contains the wrong number of days duration for medical certification. The proposed rule should reflect a 60 days certification period, not 30 days. (MEC Ex. 2.1, Page 47.)

**XXII. Section 280.135 Winter Disconnection of Residential Heating Services, December 1 through March 31**

**A. Subsection 280.135 (a)**

**1. Staff's Position**

Staff agrees with AIU's observation in the pre-hearing outline document that there is a typo on the fourth line of the paragraph where the word "hearting" appears. It should be "heating."

**XXIII. Section 280.140 Disconnection for Lack of Access to Multi-Meter Premises****A. Staff's Position**

Staff supports its most recent proposed language of the Section attached to Staff's surrebuttal testimony. (Staff Ex. 3.0, Attachment A, Pages 46-47.)

**B. City & GCI**

Advocates seek the removal of the entire section, citing their concerns that Staff's proposal will lead to scenarios where individuals residing in the affected multi-unit buildings may be without essential utility services indefinitely and through no fault of their own. (City Ex. 1.0, throughout; City Ex. 2.0, throughout; City Ex. 3.0, throughout; GCI Ex. 2.0, Pages 805-814.) Staff replies that utilities have always had this same power of disconnection under the current rule when they are unable to gain access and they have issued 4 consecutive estimated bills. However, with the advent of remote meter reading, utilities may still have the same access problems but the bills are no longer estimated. With remotely read meters, they are unable to disconnect service (or even threaten it) as a means to gain access. Moreover, Staff's proposal would implement new protections, such as field visits, notification and record keeping requirements, that the current rule lacks. (Staff Ex. 2.0, Pages 80-81, Lines 1845-1851.)

**XXIV. Section 280.160 Medical Certification****A. ComEd's proposed changes to Staff's entire Section 280.160****1. Staff's Position**

Staff does not support ComEd's changes on this Section of the proposed rule.

## **2. Utilities**

### **a. ComEd**

ComEd would delete everything proposed by Staff, and instead re-insert the language from the current rule into the proposal. Staff outlined in detail its concerns with the current rule, including the serious flaw in its wording regarding the topic of renewals. (Staff Ex. 1.0, Pages 20-21, Lines 456-473.) In addition, Staff observes that ComEd's reintroduction of the current rule's language would defeat the plain language and simplified structure goals of Staff's proposed rule as a whole. (Staff Ex. 2.0, Page 82, Lines 1872-1874.)

### **B. GCI proposed Subsection of 280.160 to allow customer to orally declare a medical emergency**

#### **1. Staff's Position**

Staff did not include such a provision in its proposed rules. Staff's intent is to only allow licensed physicians and boards of health to provide medical certification.

#### **2. GCI**

GCI seeks to provide consumers with the ability to temporarily delay disconnection for 3 business days by declaring their own medical emergency. GCI's stated intent is to allow consumers the necessary time to visit a doctor and acquire certification. (GCI Ex. 1.0, Page 35, Lines 956-958.) Staff is concerned, however, that the proposed language from GCI effectively allows for temporary self-certification. (Staff Ex. 2.0, Page 82, Lines 1884-1886.) Moreover, Staff's proposed text on disconnection under Subsection 280.130 (g) (2) already provides for an additional two days beyond the current rule's eight before a utility may act on a disconnection notice. (Staff Ex. 3.0, Attachment A, Page 39.)

**C. Subsection 280.160 (d) (3)****1. Staff's Position**

Staff agrees with AIC's observation in the pre-hearing outline document that there is a typo where the word "as" should be "at".

**D. Subsection 280.160 (g)****1. Staff's Position**

Staff supports a 60 days certification period on this topic. (Staff Ex. 2.0, Page 83.)

**2. Utilities****a. AIC**

AIC proposes to retain a modified version of the current rule's back to back 30 day periods, but instead of a renewal clause, the customer must make a "good faith effort payment" within the first 30 days in order to secure the second 30 days. (AIU Ex. 4.1, Page 49.) Staff believes the rule should be structured to provide at least a 30 day window where no payment is required so that the customer can try to recover. (Staff Ex. 1.0, Page 21, Lines 476-480.)

**b. Nicor Gas**

Nicor Gas seeks the reduction of the number of days of certification to 30, citing concerns that the longer period in Staff's proposal too easily leads to scenarios where consumers will be able to use the proposed rule as a whole (including payment arrangements and other moratoriums) to prevent disconnection altogether. (Nicor Gas Ex. 4.0, Pages 12-13, Lines 257-289.) Staff observes that the current rule already provides for a total of 60 days for medical certification, but does so through an initial 30

days certification and a confusingly written renewal clause for an additional 30 days. Staff's proposal retains the 60 day period while eliminating the difficult renewal clause. Staff also notes that its proposed rule on disconnection provides utilities with an obligation to act on a disconnection notice under Subsection 280.130 (k). Staff believes this will reduce the impact of the otherwise potentially lengthy timeline that Nicor Gas laments. (Staff Ex. 3.0, Attachment A, Pages 40-41.)

## **E. Subsection 280.160 (h)**

### **1. Staff's Position**

Staff believes its proposal for automatic medical payment arrangements (MPAs) will prevent confusion between MPAs and DPAs, relieve customers and utilities from the burden of negotiating yet another payment plan, provide up to a year to pay off the past due balance, and incent customers to acquire certification prior to disconnection. (Staff Ex. 1.0, Pages 21-22, Lines 475-489.)

### **2. GCI**

GCI objects to the standardized MPAs in Staff's proposal, raising concerns that MPAs should be negotiated and tailored to each customer's individual conditions. GCI would prefer language that is similar to that which it proposed for Section 280.120 Deferred Payment Arrangements. (GCI Ex. 5.1, Page 53.) As with GCI's DPA proposal, the language it supports for MPAs is overly complicated and requires customers to divulge personal information. (Staff Ex. 2.0, Page 84, Lines 1916-1925.)

### **3. Utilities**

#### **a. AIC, ComEd, IAWC, MEC & MCPU**

The utilities also expressed concern regarding the lack of flexibility in the MPAs proposed by Staff, but unlike GCI, they would prefer plans that function more like DPAs under the current rule or simply retain the current rule's imprecise reference to "arrangements" only. (AUI, Ex. 1.0, Page 11, Lines 223-235; ComEd Ex. 1.0, Pages 11-12, Lines 231-234; IAWC Ex. FLR-1.0, Page 12, Lines 267-273; MEC Ex. 1.0, Page 29, Lines 617-622; Mt. Carmel Ex. 1.0, Pages 13-14, Lines 248-252.) Staff believes the process needs greater structure than the current rule's language provides.

**F. Subsection 280.160 (i) (2)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 84-85.)

**2. Utilities**

**a. AIC, IAWC, MEC & Nicor Gas**

The utilities are concerned with Staff's proposal to encode, in Staff's experience, a longstanding, but unwritten practice that customers be allowed to use a new medical certificate after 12 months have passed since the beginning of a previous one. (AIU Ex. 1.0, Page 10, Lines 206-220; IAWC Ex. FLR-1.0, Page 12, Lines 271-273; MEC Ex. 2.0, Pages 41-42, Lines 921-927; Nicor Gas Ex. 2.0, Page 5, Lines 86-92.) Staff acknowledged that this practice has the potential to support chronic payment delinquency, (Staff Ex. 2.0, Pages 84-85, Lines 1934-1936) particularly when coupled with utility collection practices of delivering repeated disconnection notices but not acting on them. Staff agrees with GCI that the previously unwritten policy served to

protect vulnerable populations with chronic illness, and it supported its retention in Staff's proposed rule. (GCI Ex. 3.0, Page 8, Lines 180-187.)

## **XXV. Section 280.170 Timely Reconnection of Service**

### **A. Subsection 280.170 (b)**

#### **1. Staff's Position**

Staff supports its originally proposed language on this topic. Staff structured this proposed section to mirror the timing requirements found in Staff's proposed Section 280.30 Applications for Service. (Staff Ex. 1.0, Pages 22-23.)

#### **2. GCI**

GCI seeks to reduce the required number of calendar days for restoration so that all utilities must restore service within 2 days. (GCI Ex. 5.1, Page 55.) Staff believes, however, that the much shorter standards proposed by advocates cannot be met without significant increases in utility expenses that would be passed on to all ratepayers.

#### **3. Utilities:**

##### **a. ComEd**

ComEd seeks to change Staff's proposal from four calendar days for reconnection of electric, water and sewer service to three business days. (ComEd Ex. 1.0, Page 12, Lines 254-256.) Staff believes that 4 calendar days will still provide ample time to reconnect service even when working around holidays and weekends, and does not support a shift to business days. (Staff Ex. 2.0, Page 24, Lines 536-540.) ComEd also suggests that the timeline of delay that determines when a customer should receive a credit should be altered from two calendar days to 2 business days (ComEd

Ex. 1.0, Page 13, Lines 257-258.) Staff observes that the credit issuing requirements of Staff's proposed subsection are not invoked until another two calendar days have passed beyond the missed deadline. (Staff Ex. 2.0, Page 24, Lines 540-542.) Staff does not support a move to business days, as this would effectively move the triggering bar out even farther for the modest credits in Staff's proposal.

**XXVI. Section 280.180 Reconnection of Former Residential Customers for the Heating Season**

**A. Subsection 280.180 (g)(1)**

**1. Staff's Position**

Staff agrees with AIC's observation in the pre-trial outline document that the letter "f" is missing from the word "of" in the phrase, "primary source of space heating . . ."

**XXVII. Section 280.200 Tampering**

**A. MEC's proposed Subsection 280.200 to incorporate disconnection powers**

**1. Staff's Position**

Staff does not support MEC's addition. (Staff Ex. 2.0, Page 88.)

**2. Utilities**

**a. MEC**

MEC seeks to incorporate the disconnection capabilities of Staff's proposed Subsection 280.205 (b) into Section 280.200, and then delete Staff's proposed Section 280.205 altogether. (MEC Ex. 1.0, Pages 29-30, Lines 643-647.) Staff observes that the current rule contains no disconnection for tampering clause (although utilities can still disconnect when safety issues arise as a result of the tampering). Staff only supports the disconnection clause for non-residential customers who tamper. Staff

rejects any attempt to extend the power to residential accounts. (Staff Ex. 2.0, Page 88, Lines 2013-2017.)

**B. Subsections 280.200 (f) and (g)**

**1. Staff's Position**

Staff agrees with PGL/NSG that the subsections are mislabeled so that they appear out of alphabetical order. (PGL/NSG Ex. VG-1.2, Page 2.) The letters simply need to be switched with each other as they appear in the document (Staff Ex. 3.0, Attachment A, Page 57.)

**XXVIII. Section 280.210 Payment Avoidance by Location**

**A. Subsection 280.210**

**1. Staff's Position**

Staff supports the language proposed in its surrebuttal testimony. Staff believes its language proposed earlier in rebuttal testimony was too complicated and therefore, aimed to simplify the language without allowing for the involuntary reassignment of debt responsibility from one person to another. Staff believes that the proper way to look upon the problems caused by individuals who engage in this behavior is one of risk assessment rather than shared culpability. Therefore, Staff proposed that the simplified standard of proof of PAL should be co-habitation of the former customer and the new applicant during both the accrual of the former customer's debt and the new application for service. Staff's proposed language allows for a single remedy in this occurrence which consists of a refundable deposit that must be paid in full before service is granted to the new applicant. (Staff Ex 3.0, Pages 21- 22, Lines 477-496.) Staff believes its proposed language may satisfy some of the other parties concerns regarding this

section and invites parties to comment on Staff's proposed language in reply briefs if they do not do so in initial briefs.

**B. Subsections 280.210 (e) through (g)**

**1. Staff's Position**

Staff agrees with Nicor Gas' observation in the pre-trial outline document that three of the subsections are mislabeled starting with a duplicate subsection (d) that should be subsection (e) instead. The subsection currently labeled as (e) should be (f). Finally, what is currently labeled as subsection (f) at the end of the Section is mislabeled and should instead be (g). (Staff Ex. 3.0, Attachment A, Pages 59-60.)

**XXIX. Section 280.220 Utility Complaint Process**

**A. Subsection 280.220 (e)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 90.)

**2. GCI**

GCI seeks to reduce Staff's proposed number of days for the utility response from 14 to 7 (GCI Ex. 1.0, Page 40, Lines 1061-1068.) Staff's intent for this subsection was to establish ceilings, rather than average answer times. Staff believes that utilities will answer more quickly than 14 days on average. (Staff Ex. 2.0, Page 90, Lines 2055-2062.)

**B. Subsection 280.220 (i)****1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Page 91.)

**2. GCI**

GCI wants to add language to Staff's proposal that would compel the utility's regular customer service personnel to ask each customer whether they are satisfied at the end of the complaint. This would then serve as a launch point for supervisory escalations. (GCI Ex. 2.0, Page 20, Lines 522-528.) In Staff's experience, it is not an inability on the part of consumers to express dissatisfaction, but rather, a lack of awareness about escalation options and a lack of available supervisory personnel that sometimes thwarts the escalation process. (Staff Ex. 2.0, Page 91, Lines 2084-2090.)

**3. Utilities****a. Nicor Gas**

Nicor disputes the need to advise customers of their option to escalate to supervisory personnel. (Nicor Gas Ex. 2.0, Page 7, Lines 138-139.) Staff supports this requirement in its proposed rule because not all customers are aware of their right to escalate. (Staff Ex. 2.0, Page 91, Lines 2087-2090.)

**C. Subsection 280.220 (j)****1. Staff's Position**

Staff added this proposed subsection in response to the suggestion from consumer advocates that utilities should better track consumer complaints. (Staff Ex. 2.0, Pages 91-92; Staff Ex. 3.0, Pages 22-23.)

## **2. Utilities**

### **a. Nicor Gas**

Nicor Gas argues that this addition to Staff's proposal is unnecessary, as utilities are better able to track complaints through the notations made by customer service personnel within each customer's account records. (Nicor Gas Ex. 4.0, Page 15, Lines 355-340.) Staff responds that this tracking standard overlooks anyone who lacks a utility account, such as new applicants for service. Moreover, in Staff's experience, utilities often have difficulty extracting from the ad hoc account notations the information that will address a specific complaint topic. (Staff Ex. 2.0, Pages 22-23, Lines 504-522.)

## **XXX. Section 280.240 Public Notice of Commission Rules**

### **A. Staff's Position**

Staff finds AIC's redline change submitted in surrebuttal to be acceptable. (Ameren Ex. 4.1, Page 65)

### **B. Utilities**

#### **1. AIC, IAWC & MEC**

IAWC and MEC protest an annual mailing requirement to utility customers of Staff's proposed Appendix C that will notify customers of the availability of Commission rules. The utilities believe that customers are already made aware of rule availability by other means, and such a requirement is not cost effective. (IAWC Ex. FLR-1.0, Page 14, Lines 311-316; MEC Ex. 1.0, Pages 30-31, Lines 665-671.) Staff did not initially object to the concept that a separate mailing might not be the most efficient means of notification, but sought a solution other than the entire elimination of the requirement. (Staff Ex. 2.0, Page 92, Lines 2113-2117.) Staff found AIC's proposal in this regard to

the best, as it retains the annual notification requirement but provides utilities with the flexibility to provide the notice as a bill message. (Ameren Ex. 4.1, Page 65.)

### **XXXI. Section 280.260 Customer Information Packet**

#### **A. Subsection 280.260 (b) (2) (A) and (B)**

##### **1. Staff's Position**

Staff supports its originally proposed language on this topic. (Staff Ex. 2.0, Pages 93-94.)

##### **2. Utilities**

###### **a. MEC**

MEC expressed concern that Staff's proposed language for utilities to describe their procedures for billing and estimated billing is not clearly defined. (MEC Ex. 1.0, Pages 31-32, Lines 689-692.) Staff responded that it believed the requirements were not intended to be confusing, and moreover that it had incorporated the later requirement to have advance review of any changes to the information packet by the Manager of CSD as a means to ensure the accuracy and usefulness of the descriptions that utilities will create. (Staff Ex. 2.0, Pages 93-94, Lines 2133-2142). MEC then replied that its concern is that Staff's proposal does not provide utilities with guidance on what level of detail will be required. (MEC Ex. 2.0, Page 46, Lines 1023-1034.) Staff's intent with this Section of the proposed rule is to provide utilities with the general topics that must be covered, and then work with utilities (after receiving advanced copies under Staff's proposed Subsection 280.260 (d) to ensure that the details for each item are appropriate for their customers. For example, it was clear in the cross examination of Staff by MEC during the trial that both parties agree that a complicated mathematical

formula that one would expect to find in a tariff would not constitute an appropriate description of the estimated billing process to be covered under the proposed Subsection 280.260 (b) (2) (B). (Tr., June 8, 2011, Pages 805-806.)

**B. Subsection 280.260 (b) (2) - GCI proposed addition of Low Income Customer rights**

**1. Staff's Position**

Staff concedes that Low Income Customers may not be made aware of all of their extra rights under the proposed rule if they are not verbally informed by utility personnel or they do not receive a disconnection notice or deposit demand.

**2. GCI**

GCI seeks to add the requirement that Low Income Customer rights and the method to qualify for those rights be described in the customer information packet. (GCI Ex. 5.2, Page 70.) During cross examination of Staff by GCI, it became clear that Staff had already satisfied GCI's concerns with regard to Low Income Customers who are subjected to a deposit demand at the time they apply for service. (Tr., June 8, 2011, Pages 761-762.) However, Staff's proposed rule does not provide the same direct situational notification of Low Income Customer rights on the other two topics where Staff's proposed rules grant extra rights to Low Income Customers: late fees and DPAs. It does, however, provide for notification through the disconnection notice in Appendix B. (Staff Ex 3.0, Attachment A, Page 69.) Although Staff does not accept the other additions proposed by GCI to this subsection (winter rules and medical certification), Staff is willing to accept the inclusion of Low Income Customer rights with the addition of the following language in this subsection:

(O) That special rights are available to Low Income Customers, and how to qualify for Low Income Customer status.

**C. Subsection 280.260 (d)**

**1. Staff's Position**

Staff supports its originally proposed language on this topic.

**2. Utilities**

**a. MEC**

MEC seeks justification from Staff as to why it would need advance copies of any changes to a utility's customer information packet. The utility does not agree that Staff should need to review or suggest changes to such documents, citing the fact that MEC's current booklet has never been the subject of any suggested changes from Staff. (MEC Ex. 2.0, Page 47, Lines 1050-1060.) While Staff agrees that MEC's current document has needed no changes in Staff's opinion, and Staff commends MEC for its repeated high marks for customer service (MEC Ex. 1.0, Page 34, Lines 747-753.), Staff observes that the rule will apply to the entire state. Staff cannot support a lighter standard based upon one utility's performance. Moreover, even if all utilities maintained the same performance levels, Staff would still want advance copies as a means to ensure continued good public policy and compliance with Commission rules. Staff's intent is not to micromanage utilities, but rather to have the opportunity to spot potential problems and work with utilities towards solutions only if necessary.

**XXXII. GCI's proposal to add Section 280.270 Annual Reporting to the Commission****A. Staff's Position**

Staff did not propose or support a separate and expanded reporting Section. (Staff Ex. 2.0, Pages 96-97.) Staff's proposed rule contains limited data collection and reporting requirements for the topics: applications for service, deposits and Payment Avoidance by Location (PAL).

**B. AARP & GCI**

AARP and GCI believe that the Commission should adopt a much broader set of reporting requirements for utilities than the limited ones which Staff has proposed. GCI outlines those requirements it supports as a new "Subpart O: Periodic Data Reporting, Section 280.270 Annual Reporting to the Commission." (GCI Ex. 5.1, Pages 71-73.) While Staff acknowledges the usefulness of reporting data in general, Staff is also cognizant of the expense associated with each new tracking requirement. Moreover, Staff believes that the consumer complaint process already delivers robust monitoring capabilities. (Staff Ex. 2.0, Page 96, Lines 2197-2208.) Last, with the shift proposed in the draft rule to add the CSD's contact information to every bill statement instead of only disconnection notices (as the current rule provides), Staff anticipates access to an even broader range of topics involving utilities and their customers than it has ever before had. (Staff Ex. 2.0, Page 38, Lines 862-867.)

**XXXIII. Section 280 Appendix A: Disconnection Notice****A. Staff's Position**

Appendix A in Staff's most recent version contains the wrong number of days that medical certification will halt disconnection. The proposed rule should reflect a 60

days certification period, not 30 days. (See discussion of Subsection 280.130 (m) above.) In addition, Staff is willing to accept Nicor Gas' suggested change described below. Staff supports no other changes.

**1. Utilities**

**a. MEC**

MEC seeks to delete "issuance date" from Staff's proposal, and would prefer to use the term "due date" instead of "effective date" as proposed by Staff. (MEC Ex. 1.0, Page 32, Lines 704-709.) Staff believes consumers need to know the date a notice was sent to them, and Staff is concerned that "due date" may imply money is owed when in fact the cause of the disconnection notice may be something other than a past due bill or deposit. (Staff Ex. 2.0, Page 95, Lines 2169-2172.)

**b. Nicor Gas**

Nicor Gas perceives Staff's proposed Disconnection Notice as lacking the flexibility utilities have under the current rule. Staff was unable to understand how its proposal was somehow more limiting than the current rule which also contains a standard form for disconnection notices as an appendix A. (Staff Ex. 2.0, Page 95, Lines 2183-2185.) Based upon Nicor Gas's edit provided in the pre-trial outline document, it appears that the utility simply wanted the following changes in the first line of the Section:

Disconnection notices sent to customers shall be in red and substantially in the following form format:"

Although Staff observes that the word "substantially" may be a slight departure from a plain language goal, Staff has no objection to this change.

**XXXIV. Section 280 Appendix B: Customer Rights**

**A. Staff's Position**

Appendix B in Staff's most recent version contains the wrong number of days that medical certification will halt disconnection. The proposed Appendix B should reflect a 60 days certification period, not 30 days. (See discussion of Subsection 280.130 (m) above.)

Staff supports no other changes to its proposed language.

**XXXV. Section 280 Appendix D: Insert to be Included with Each Disconnection Notice Sent to Residential Gas and Electric Customers**

**A. Staff's Position**

Staff agrees with MEC that there is an extra word, "the" inserted in the text that must be removed. Staff is also willing to accept Nicor Gas' suggested change described below. Staff supports no other changes to its proposed language.

**B. Utilities**

**1. MEC**

MEC points out that "the" appears as an extra word in the sentence:

The total number of installments that ~~the~~ you pay will dictate how much each equal installment will be.

(Staff Ex. 3.0, Attachment A, Page 71.)

Staff agrees with MEC that this should be stricken.

**2. Nicor Gas**

As described above in Staff's proposed Section 280 Appendix A: Disconnection Notice, Nicor Gas had expressed concern that Staff's proposal for Appendix D would also reduce the flexibility that utilities have under the current rule's version of this

document. (Nicor Gas Ex. 1.0, Page 26, Lines 592-600.) As with Appendix A, Staff expressed similar lack of comprehension for the utility's position on Appendix D. (Staff Ex. 2.0, Page 96, Lines 2190-2194.) But based upon Nicor Gas's edit provided in the pre-hearing outline document, it appears that the utility simply wanted the following line added at the beginning of the Section:

Disconnection notices sent to residential gas and electric customers shall include an insert in substantially the following form:

Staff has no objection to this change.

### **XXXVI. Conclusion**

For the foregoing reasons, Staff respectfully requests that the Commission approve Staff's draft proposed rule in accordance with Staff's recommendations contained herein.

Respectfully submitted,

---

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