

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION	:	
On its Own Motion	:	Docket No. 06-0703
	:	
Revision of 83 Ill. Adm. Code 280	:	

NICOR GAS COMPANY'S
POST-HEARING INITIAL BRIEF

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**NICOR GAS COMPANY'S
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I. INTRODUCTION

Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas” or the “Company”) submits this Post Hearing Initial Brief in this docket to consider revision of Part 280 of the Commission’s Rules, 83 Ill. Adm. Code 280.

A. Background

Part 280 governs the manner in which all gas, electric, water, and sanitary sewer utilities, including Nicor Gas, interact with customers concerning the initiation of service, billing for service and discontinuance service. Illinois Commerce Commission (“Commission” or “ICC”), Staff (“Staff”) witnesses Jim Agnew and Joan Howard, in addition to running the extensive workshops conducted in this docket, took the lead in the testimonial phase of this proceeding by submitting a completely new proposed Part 280 in their direct panel testimony to which all other parties responded. Agnew/Howard Dir., Staff Ex. 1.0, Attachment A. Staff offered subsequent revisions of its proposed rule in rebuttal and surrebuttal testimony in response to the concerns

and recommendations of other parties. Agnew/Howard Reb., Staff Ex. 2.0, Attachment J; Agnew/Howard Sur., Staff Ex. 3.0, Attachment A.¹

Many parties, including Nicor Gas, agree with or do not object to most of Staff's new proposed rule as submitted in its surrebuttal testimony. Nicor Gas commends Staff on its effort to draft a proposed rule that takes into account and balances the interest of all parties in a fair and reasonable manner. Notwithstanding Nicor Gas' overall support for Staff's proposed rule, a limited number of Staff proposals are not reasonable for various reasons, including legal, operational and cost/benefit concerns, and should not be adopted. As described in detail below, Nicor Gas proposes several discreet additions, deletions, and revisions to Staff's proposed rule to address these issues. Nicor Gas' proposed revisions to Staff's proposed rule are appropriate for the reasons indicated below, and should be adopted by the Commission.

Some parties, such as the Citizens Utility Board ("CUB"), City of Chicago ("City"), and the Illinois Attorney General (the "AG") (collectively, Government and Consumer Intervenors ("GCI")), continue to propose significant revisions to Staff's proposed rule. In many instances, these proposed revisions do not address an identified issue or need, but would impose significant costs on utilities and their ratepayers with no apparent additional benefits. Nicor Gas supports Staff's decision to decline to incorporate such changes into its proposed rule and the Commission should likewise reject such proposed revisions.

B. Estimated Cost to Implement Part 280 Changes

Even though Nicor Gas and other utilities do not object to many of the changes included in Staff's proposed rule, the Commission should not lose sight of the fact that implementing Staff's proposed changes to Part 280 will represent a significant and costly undertaking for the

¹ Unless otherwise indicated, any reference to Staff's "proposed rule" is to Staff's final proposed rule as contained in its surrebuttal testimony.

utilities and their ratepayers. Part 280 provides many of the rules which govern the manner in which Nicor Gas can initiate service, bill for service and terminate service. Nicor Gas has developed operational processes and procedures, and created an information technology (“IT”) infrastructure to meet its operating needs, while complying with the Commission’s existing rules. Ultimately, changes to Part 280 will have an impact on the Company’s operations and require the expenditure of considerable resources and money to implement the process and IT changes required to meet any modification to Part 280.

Nicor Gas has examined Staff’s proposed changes and evaluated which IT and business process changes would be required to implement Staff’s proposal. Grove Dir., Nicor Gas Ex. 2.0, 7:148-49. In total, if all of Staff’s proposed changes were adopted, it would require 71 separate IT changes and 56 business process changes. *Id.* at 7:153-55. Were the Company to make all of Staff’s proposed changes, the Company has estimated it would require \$7 million to deploy the necessary IT systems modifications. *Id.* at 7:155-56. Meanwhile, Nicor Gas estimates it would incur an additional \$4 million in annual operating expenses to implement Staff’s recommendations. *Id.* at 4:156-5:157. If Intervenors’ proposed changes were adopted, it would require over 75 complex and cross functional business changes, and would drive up the increase in additional annual operating expenses for Nicor Gas from an increase of \$4 million to an increase of \$6.7 million. Grove Reb., Nicor Gas Ex. 4.0, 16:352-56. Nicor Gas presents this information in order for the Commission to fully understand the financial impact of such rule changes, as Nicor Gas’ customers will ultimately bear these costs.

C. Regulatory Perspective and Overview

In considering the proposals and revisions suggested by the parties, the Commission should keep several key factors in mind. *See generally* Kirby Reb. (adopted by Grove), Nicor Gas Ex. 5.0, 5:92-7:150.

First, many suggested amendments seek to micromanage the utility's operations. Indeed, various proposals are prescriptive, making assumptions as to what customers know, or should know, about certain issues. For example, GCI witness Ms. Alexander proposes a series of specific disclosures that should be added to a utility's obligations when discussing a new applicant's request for service. Another example is where GCI proposes that a utility should be required to include on its bill a graphic representation of a customer's current and historic usage.

In proposing such prescriptive rules, these parties are unreasonably limiting a utility's ability to respond to changing customer demands and technological improvements. Part 280 is a rule of general applicability to electric, gas, water, and sewer utilities. A one-size-fits-all approach simply does not work. Each utility operates in a unique service territory, with varying customer and operational needs. Put another way, what may work for Nicor Gas may not work for Illinois-American Water Company. While Part 280 should provide general rules for utilities to follow, it must provide a utility with flexibility to meet the requirements of the rule, in order to meet its customers' expectations in an effective and cost-efficient manner.

Second, many of the proposed amendments are a solution in search of a problem. For example, GCI witness Ms. Alexander essentially proposes a re-write of Part 280, yet she has admitted in data request responses that she did not undertake a review of customer complaints received by GCI members relating to Part 280 issues. *See* Nicor Gas Ex. 5.1. She further admits that the proposed rule "is not a reflection of any particular utility's current practices." *Id.* Consequently, she is proposing wholesale changes to Part 280 without identifying any real

problems with the existing Part 280 rule. From both a policy and real world perspective, if parties cannot demonstrate that there are actual, substantial issues with the existing rule, the Commission should be very cautious about making dramatic and, apparently, unnecessary rule changes to practices and rules that have prevailed for over 20 years.

Third, many Staff and Intervenor proposals, if adopted, would require Nicor Gas, and likely other utilities, to incur substantial costs to address non-existent issues -- costs ultimately borne by ratepayers. Nicor Gas would be required to incur substantial costs to modify its IT infrastructure and business processes. Absent any showing that real, systemic problems exist with the current provisions in Part 280, it does not make sound regulatory policy or economic sense to impose such costs on utilities and their customers.

Fourth, many of the proposed amendments simply do not balance the interests of all stakeholders. For example, Nicor Gas has an obligation to all customers to manage its bad debt expense. However, certain proposed amendments appear oblivious to balancing such interests. For example, certain amendments seek to eliminate or lessen the use of customer deposits and late payment penalties, or seek to weaken approval requirements for new applicants. While such proposals may be well-intended, they impose more risk on paying customers through a likely increase in uncollectible expense.

Finally, it is imperative that the Commission not consider any proposed amendment to Part 280 in isolation. Over time, all utilities have developed IT infrastructures, business processes and customer communication plans to meet the current Part 280 requirements and their respective operational needs. While the Company agrees that certain amendments to Part 280 are necessary, wholesale changes to the rule will require utilities to redesign systems and processes -- an exercise that would take time and add expense for utilities and their customers.

Sections of Part 280 should not be amended simply based on the unsupported wishes of a particular party. Rather, if the current rule presents real, systemic issues, then the Commission should amend the rule in a fashion that allows utilities to comply in an effective and economically efficient manner, and which also allows flexibility in recognition of the unique characteristics of each utility. Nicor Gas has proposed certain amendments to achieve that goal, and recommends various edits to Staff's revised proposals that balance the interests of all stakeholders.

II. SUBPART A: GENERAL

A. Section 280.05 Policy

1. Response to GCI

Staff adopted Nicor Gas' proposal to add "under reasonable terms and conditions" to the end of the statement that the "purpose of this rule is to ensure that essential utility services are provided to and maintained for the People of the State of Illinois." See Lukowicz Reb., Nicor Gas Ex. 3.0, 4:82-91; Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 3. While it is difficult to conceive of a reason to object to this revision, GCI proposed deletion of this language in the Joint Pre-Hearing Outline filed June 8, 2011 ("PH Outline"). PH Outline, p. 6. When cross examined regarding this language, GCI witness Ms. Marcelin-Remé did not provide any basis for objecting to the addition of "under reasonable terms and conditions," and testified that she would not object to adding "under reasonable terms and conditions" to the rule. Tr. 691:12-692:2.

Similarly, Staff adopted Nicor Gas' proposal to replace the general and non-descriptive "within the scope of this Part" language from the proposed policy section with "governing eligibility for service, deposits, billing, payments, refunds and disconnection of service for gas,

electric, water and sanitary sewer utilities,” which is the statement of scope contained in the title of proposed Part 280. See Lukowicz Reb., Nicor Gas Ex. 3.0, 4:92-5:100; Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 3. Once again, while it is difficult to conceive of a reason to object to this revision, GCI proposed deleting this language in the PH Outline. PH Outline, p. 6. Accordingly, there is no reasonable basis for GCI’s objection to this language, and the objection should be rejected.

2. Nicor Gas Position

GCI witness Ms. Marcelin-Remé recommended adding a policy section at the beginning of the proposed rule, and Staff panel witnesses Mr. Agnew and Ms. Howard ultimately adopted the policy language proposed in GCI Ex. 1.2 with some revisions. See Marcelin-Remé Dir., GCI Ex. 2.0, 5:112-13; Agnew/Howard Reb., Staff Ex. 2.0, 3:44-52, Attachment (“Att.”) J; Agnew/Howard Sur., Staff Ex. 3.0, 2:43-7:149, Att. A.² While Nicor Gas is not opposed to adding a policy statement to the proposed rule, the current proposed policy language presents a number of issues and should only be adopted with revisions. Nicor Gas proposes the following edits to Staff’s proposed policy language in Section 280.05:

The purpose of this rule is to ensure that essential utility services are provided to and maintained for the People of the State of Illinois under reasonable terms and conditions, and to establish fair and equitable procedures governing eligibility for service, deposits, billing, payments, refunds and disconnection for gas, electric, water and sanitary sewer utilities, that take into account the duty of the utility, customer, applicant and occupant to demonstrate good faith and fair dealing. The ~~requirements~~ ~~policies~~ and procedures outlined in this rule ~~shall take precedence over any inconsistent utility tariff, unless the conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption from this rule, and~~ shall be viewed as the minimum standards applicable to gas, electric, water and sanitary sewer utilities. ~~Utilities that are subject to these rules shall have the ability to expand or supplement the customer rights guaranteed by these provisions as long as those policies are applied in a nondiscriminatory manner.~~

² Citations to the page number(s) and line(s) in pre-filed testimony are provided in the format of “Page:Line-Line” or “Page:Line - Page:Line”.

Nothing in this Part 280 should be construed to prevent a utility from offering requirements and procedures more beneficial than the minimum standards contained in the rule.

Lukowicz Reb., Nicor Gas Ex. 3.0, 3:47-8:188. The issues and bases for Nicor Gas' objections and proposed revisions to Staff's current proposed language are set forth below.

The first issue concerns the proposal to adopt language that the "policies" outlined in the rule shall take precedence over any inconsistent utility tariff. This language is directly contrary to law, and its adoption would exceed the Commission's jurisdiction. "Administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes." *People ex rel. Madigan v. Illinois Commerce Comm'n*, 231 Ill.2d 370, 380 (2008); *see also Monarch Gas Co. v. Illinois Commerce Comm'n*, 261 Ill.App.3d 94, 98 (5 Dist. 1994). It is also well established that statutory declarations of policy, findings and intent are nothing more than prefatory, and as such are of no substantive or positive legal force. *See Monarch Gas Co. v. Illinois Commerce Comm'n*, 261 Ill.App.3d 94, 99 (5 Dist. 1994); *Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 220 Ill.App.3d 68, 74 (3rd Dist. 1991). As explained in *Illinois Independent Telephone Association v. Illinois Commerce Comm'n*, 183 Ill. App. 3d 220, 236-37 (4th Dist. 1988):

Prefatory language ... generally is not regarded as being an operative part of statutory enactments. The function of the preamble of a statute is to supply reasons and explanations for the legislative enactments. The preamble does not confer powers or determine rights. [Citation.] A declaration of policy contained in a statute is, like a preamble, not a part of the substantive portions of the act. Such provisions are available for clarification of ambiguous substantive portions of the act, but may not be used to create ambiguity in other substantive provisions. [Citation.]

Consistent with this principle, the Illinois Supreme Court held that the Commission cannot rely upon principles of equity in the Public Utility Act's preamble to impose a sharing of coal tar clean-up costs because "the equity language the Commission relies upon is within the preamble

to the Act, and is not a part of the substantive law of the Act.” *Citizens Utility Bd. v. Illinois Commerce Comm'n*, 166 Ill.2d 111, 130-31 (1995).

GCI’s proposed language adopted by Staff attempts to mandate by rule that statements of “policy” in the proposed rule be treated as substantive legal requirements, and as such is directly contrary to the law in Illinois regarding the treatment of legislative preambles and legislative statements of policy, intent and goals. GCI’s proposed language purports to have general statements of policy control over specific provisions contained in a utility’s tariffs. Like administrative rules, a Commission-approved tariff “is a law, not a contract, and has the force and effect of a statute.” *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 55 (2004); *see also Globalcom, Inc. v. Illinois Commerce Comm'n*, 347 Ill.App.3d 592, 600 (1st Dist. 2004). Hence, GCI’s proposal runs directly contrary to the holdings in *Citizens Utility Bd.* and *Illinois Independent Telephone Association* that policy declarations are not a part of the substantive portions of a legislative enactment. *Citizens Utility Bd.*, 166 Ill.2d at 131; *Illinois Independent Telephone Association*, 183 Ill. App. 3d at 237 “Such provisions are available for clarification of ambiguous substantive portions of the act, but may not be used to create ambiguity in other substantive provisions.” *Illinois Independent Telephone Association*, 183 Ill. App. 3d at 237.

Moreover, “[t]he Commission only has those powers given it by the legislature through the Act.” *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill.2d 192, 201 (1989) (“BPI I”); *see also People ex rel. Ryan v. Illinois Commerce Comc'n*, 298 Ill.App.3d 483, 487 (2nd Dist. 1998) (“The Commission derives its power from the statute and only has the authority that is expressly conferred upon it.”). Clearly, the Public Utilities Act (“Act” or “PUA”), 220 ILCS 5/1-101 et seq., does not authorize the Commission to prescribe rules of statutory construction. Thus, not only is this proposal contrary to the law, it is also

beyond the power of the Commission. Accordingly, the reference to “policies” should be deleted and replaced with “requirements.”

The second issue concerns the proposal to provide that the policies and procedures outlined in the rule “shall take precedence over any inconsistent utility tariff, unless the conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption from this rule” The need for this “precedence” provision has not been established. It is difficult to conceive of a situation where, absent a waiver from such provision, a utility would claim that it is not required to comply with an explicit provision contained in an otherwise valid Commission rule. It is possible that parties have disputed the meaning of a vague or ambiguous provision in the current Part 280, and in that context asserted that a tariff provision was not “inconsistent” with any rulemaking provision. Such a scenario does not involve a claim that a tariff takes precedence over a rule. Further, the issue in such scenario can only be addressed by providing clear requirements in the rule, not by adding “precedence” language.

The explicit waiver language of this sentence also ignores the fact that Part 280 is not new in Illinois. The proposed language states that the rule takes precedence over any inconsistent tariff provision “unless the conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption from this rule.” Agnew/Howard Sur., Staff Ex. 3.0, App. A., p. 3 (emphasis added). Since the proposed Part 280 is presented as a complete rewrite of the current rule, this would appear to mean there could be no waivers or exemptions without new orders explicitly granting a waiver or exemption. This proposal is clearly overbroad and unreasonable on its face. While the new proposed Part 280 contains some new requirements, a substantial number of requirements in the current rule are carried forward to

the new rule. If the Commission has already determined that a tariff provision is acceptable and proper under the old rule (either as an explicit waiver or implicitly in approving the tariff) and the new rule does not contain new or changed substantive requirements, then there is no reason to treat the prior waiver or approval as invalid. The proposed “precedence” language is neither needed nor reasonable and should be rejected.

While Nicor Gas maintains there is no need to insert “precedence” language in the rule, in the spirit of compromise and reducing contested issues, Nicor Gas would not object to maintaining such language if the rule language is modified to provide that “[t]he explicit requirements and procedures outlined in this rule shall take precedence over any inconsistent utility tariff, unless the conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption from this rule” To the extent that subsequent events reveal unanticipated ambiguity in some provision of the new proposed rule, the precedence language does not and should not apply to those situations. Clarifying that the precedence language only applies to “explicit requirements and procedures” adds clarity, removes ambiguity and avoids holding utilities to an impossibly vague standard (i.e., essentially telling utilities they are bound by and must seek waiver from implied requirements).

Also, it is not surprising that specific examples of ambiguity to demonstrate the Company’s concern are not easily identified (see Tr., 926:16-927:18): if a party was aware of an ambiguous clause in the proposed rule they would have proposed language to eliminate the ambiguity.³ While rules and laws are generally drafted to avoid ambiguity, drafters are seldom

³ For instance, Nicor Gas has proposed to add language to Section 280.35(e) (regarding landlord/property manager agreements) to clarify that when a utility is otherwise required to obtain an actual meter reading but is unable to do so, an estimated read can be used if the landlord/property manager agrees. See Section III.B.3. This is an example of a situation that would benefit from clarifying that the “precedence” language in Section 280.05 only applies to “explicit requirements.” Without Nicor Gas’ recommended revision to Section 280.35(e), the rule would be silent and ambiguous regarding

able to identify every contingency or real world development and ambiguous statutes and rules are routinely identified after the fact. Section 280.05 should be revised as proposed by Nicor Gas to take into account the inevitable and hopefully limited ambiguous provisions that will be identified during implementation of the rule.

The third and final issue relates to the last sentence of proposed Section 280.05 that states “[u]tilities that are subject to these rules shall have the ability to expand or supplement the customer rights guaranteed by these provisions as long as those policies are applied in a nondiscriminatory manner.” Agnew/Howard Reb., Staff Ex. 2.0, Att. J, p. 3; Agnew/Howard Sur., Staff Ex. 3.0, Att. A., p. 3.. The proposed policy statement contains vague references to guaranteed rights and discusses expanding or supplementing those rights instead of exceeding minimum standards as discussed in the prior sentence. Moreover, the language providing that a utility may go beyond the minimum requirements of the rule but must do so in a nondiscriminatory manner is vague and ambiguous. This language could be argued to prohibit a utility from making an accommodation to one customer in a hardship situation unless it makes that same accommodation for all customers arguably facing similar hardships. This is counter-productive and unreasonable, and this language should be deleted. Nicor Gas does not oppose a policy statement that nothing in Part 280 should be construed to prevent a utility from offering practices and procedures more beneficial than the minimum standards contained in the rule.

whether an estimated read is allowable where agreed to by a landlord. As currently proposed by Staff, Section 280.35(e) does not explicitly prohibit agreed to estimated reads where a utility is unable to obtain an actual meter read, but at the same time does not list an estimated read agreed to by the landlord as a permissible option. A utility should not be required to anticipate unstated requirements and seek an exemption from prohibitions that are not explicitly stated in the rule because such a requirement is vague, uncertain and unreasonable. The Company’s proposal to refer to “explicit requirements” addresses this concern.

B. Section 280.10 Exemptions

1. Nicor Gas Position

Section 280.10 of Staff's proposed rule sets forth the process and standards for requesting modification of or exemption from any section of Part 280. Such provisions are common in Commission rules. The issue with Staff's proposed exemption language focuses on the standard for granting an exemption. The particular language proposed by Staff appears to be based on, and closely tracks, the exemption language in Section 410.30 of the Commission's rules. 83 Ill. Adm. Code 410.30. The following is a comparison of Staff's proposed language for Section 280.10 and the language of Section 430.10.

Any entity may file ~~a petition~~~~an application~~ 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 ~~safety, reliability~~ or the service obligations of the entity or harm consumers, 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~~~~set forth~~ specific reasons and facts in support of the requested exemption or modification.

As indicated by this comparison, Staff removed the references to "safety" and "reliability" -- which are not the focus of Part 280 -- and added the clause "or harm consumers."

Commonwealth Edison Company ("ComEd") witness Mr. Walls testified that the "not ... harm consumers" language and requirement would "constitute an unnecessarily impossible barrier" because any waiver, even if beneficial to most consumers, is bound to have some "harmful" side effects for some smaller portion of the consumer population. Walls Dir., ComEd Ex. 1.0, 4:66-72. Staff panel witnesses Mr. Agnew and Ms. Howard did not dispute Mr. Walls' statements on harm, but rejected ComEd's proposal to replace "or harm consumers" with "and is otherwise just and reasonable under the circumstances." Agnew/Howard Reb., Staff Ex. 2.0, 4:73-84. Mr. Agnew and Ms. Howard expressed the view that ComEd's concern had less to do

with the proposed language and more to do with the review of a petition for exemption and the Commission's decision. *Id.*

In rebuttal, Nicor Gas witness Mr. Lukowicz joined in the concerns expressed by Mr. Wall, but explained that the concern is not with how the Commission may exercise its discretion in a particular case. Rather, the concern is that Staff's proposed standard for a waiver (*i.e.*, must show no harm to consumers) unduly limits the Commission's discretion and would unreasonably prevent the Commission from granting a waiver even if it found the harm to consumers to be minimal and the requested waiver to be justified and beneficial for customers as a whole. Lukowicz Reb., Nicor Gas Ex. 3.0, 9:210-11:240. Mr. Lukowicz proposed to resolve this issue by replacing "or harm customers" with "and will not unduly or unreasonably harm customers." *Id.*, 10:234-11:236.

In surrebuttal, Staff acknowledged, but did not dispute, the concerns of Mr. Walls and Mr. Lukowicz. Agnew/Howard Sur., Staff Ex. 3.0, 7:151-58. Further, in response to Mr. Wall's testimony that his concern would be satisfied if the proposed language is interpreted to mean 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)," Mr. Agnew and Ms. Howard testified "[t]his is what we believed the phrase meant." ComEd Ex. 2.0, 4:80-82; Agnew/Howard Sur., Staff Ex. 3.0, 7:151-58. However, Staff did not revise its proposed language to conform to its understanding and intent, and did not incorporate Nicor Gas' proposed language or ComEd's proposed language.

Notwithstanding Staff's statement that it intended its language to mean no net harm, its proposed language refers to "harm" rather than "net harm." No party appears to dispute that "no harm" is an unduly rigid standard that may be impossible to meet even if a waiver is otherwise

reasonable and justified. GCI witness Ms. Marcelin-Remé testified that language along the lines of “no unreasonable harm” or “no net harm” would be reasonable. Tr., 702:15-703:1. Similarly, Staff witnesses Mr. Agnew and Ms. Howard testified that they were comfortable with Mr. Walls’ entire sentence⁴ and the Commission will consider any harm and the reason for the exemption request in deciding whether to grant or not grant an exemption. Tr., 788:1-789:17.

The Commission should modify Staff’s exemption language to eliminate the rigid “not ... harm consumers” language. Nicor Gas proposed and supports the following modification to Staff’s “exemption” language:

Upon a showing that the modification or exemption is economically and technically sound and will not compromise the service obligations of the entity ~~or~~ and will not unduly or unreasonably harm consumers, the Illinois Commerce Commission (Commission) may grant the modification or exemption.

Lukowicz Reb., Nicor Gas Ex. 3.0, 9:190-11:240. The following alternative language, based on Staff’s surrebuttal testimony, is also acceptable to Nicor Gas:

Upon a showing that the modification or exemption is economically and technically sound and will not compromise the service obligations of the entity ~~or~~ and will not result in a net harm to consumers overall, the Illinois Commerce Commission (Commission) may grant the modification or exemption.

Similarly, ComEd’s replacement of “or harm consumers” with “and is otherwise just and reasonable under the circumstances” is acceptable to Nicor Gas.

2. Response to GCI

GCI proposes some additional edits to Section 280.10 that were rejected by Staff. PH Outline, pp. 7-8; Marcelin-Reme Dir., GCI Ex. 2.0, 5:129-34; Agnew/Howard Reb., Staff Ex. 2.0, 3:53-4:71. Nicor Gas supports Staff’s position in this regard. Lukowicz Reb., Nicor

⁴ As indicated above, Mr. Walls statement was “the proposed waiver will not result in a net harm to consumers overall (i.e., the benefits to consumers exceed the costs to consumers).” ComEd Ex. 2.0, 4:80-82.

Gas Ex. 3.0, 9:190-209. GCI's proposed additional language is redundant, overbroad and unnecessary. With regard to the proposal to require the petition to explain why the utility is unable to comply with the rule, Staff's language already requires a utility to include specific reasons and facts in support of the requested waiver. The proposal to automatically require annual approval of any waiver is unreasonable and inefficient. Waivers are sometimes, if not typically, based on facts that are not expected to change for the foreseeable future. If such facts justify an exemption, there is no basis to require annual approval. If the Commission is presented with facts demonstrating that an exemption is needed on a short term or temporary basis, then the Commission can condition or limit that exemption as appropriate. The modifications proposed by GCI and rejected by Staff should be rejected by the Commission.

C. Section 280.15 Compliance

Nicor Gas proposes adding a "compliance" provision to Staff's proposed rule allowing utilities two years from the effective date of the proposed rule to come into compliance with all sections that will require modification of existing IT and business processes to come into compliance. Specifically, Nicor Gas proposes to add Section 280.15 as follows:

Section 280.15 Compliance

Each utility subject to this Part shall have two (2) years after the effective date of this Part to comply with all Sections that require it to modify its existing IT and business processes to come into compliance.

Grove Dir., Nicor Gas Ex. 2.0, 7:145-9:188; Grove Reb., Nicor Gas Ex. 4.0, 16:359-17:379; Lukowicz Dir., Nicor Gas Ex. 1.0, 4:65-71.

Adoption of a new Part 280 by the Commission will impose new and additional requirements on utilities that will require substantial IT and business process changes to implement. Grove Dir., Nicor Gas Ex. 2.0, 7:145-9:188. For instance, with respect to the low-

income customer sections of Staff's proposed rule, Nicor Gas would engage in conceptual design, coding, testing and incorporation of these changes into the Company's existing systems. This is no small undertaking. Moreover, the Company must be sure these changes do not disrupt other related systems. Further, Nicor Gas would need to develop the appropriate business processes to communicate, both internally and externally, the rule changes and how they will be applied to customers. *Id.*, 8:164-80.

Nicor Gas originally estimated that it will take approximately 18-24 months to make all of the IT and business process changes to implement any new rule. *Id.*, 9:181-88. The new requirements that Nicor Gas and other utilities would need to comply with will not be established until the new rule is formally adopted pursuant to the rulemaking process. Accordingly, the process of making the required IT and business process changes cannot be conducted in advance of adoption of the final new rule. Thus, it is appropriate and necessary for the proposed rule to contain a provision allowing adequate time for utilities to come into compliance with the new rule by making necessary IT and business process changes. *Id.* While the exact scope of work required cannot be known until there is a final rule, the rebuttal version of Staff's proposed rule suggests that even more work than originally contemplated may be necessary, and that the 18 to 24 month estimate is very conservative estimate of the time needed to make necessary changes. Grove Reb., Nicor Gas Ex. 4.0, 16:367-17:379. The Commission should adopt Nicor Gas' proposal to allow utilities 24 months from the effective date of the new rule before they are required to be in full compliance with the sections requiring IT and business process changes.

D. Section 280.20 Definitions

1. Applicant – Response to GCI and MidAmerican

Staff rejected GCI's additional proposal to delete the final sentence of the definition of "applicant," which reads, "[s]uccessful applicants immediately become customers." Alexander Dir., GCI Ex. 1.0, 38:1018-35; GCI Ex. 1.2, Section 280.20; Agnew/Howard Reb., Staff Ex. 2.0, 4:86-5:92. Staff explains that clear lines are needed in terms of an applicant's or customer's status and its recommendations are based on this need. *Id.* Nicor Gas concurs with Staff on these issues. GCI's proposed deletion would create uncertainty as indicated by Staff. Lukowicz Reb., Nicor Gas Ex. 3.0, 11:243-52.

2. Credit Scoring – Response to GCI

See Section IV.A.2.a below. GCI proposes deletion of this definition based on its opposition to the use of credit scoring. *See* PH Outline, p. 9. Nicor Gas opposes GCI's position, as explained in Section IV.A.2.a below, and the proposal to delete this definition should be rejected.

3. Delivery Services – Response to GCI

See Section VI.A.2 below. All parties except GCI, who did not submit any testimony on the partial payment allocation issue until it submitted three paragraphs on the issue in surrebuttal testimony, have accepted Staff's decision to delete the subsection on partial payment allocation in Section 280.60 of the proposed rule. *See* PH Outline, pp. 63-65; Alexander Sur., GCI Ex. 5.0R, 9:192-10:210, 22:495-23:519. GCI proposes to reinsert a partial payment subsection in Section 280.60, and Nicor Gas opposes such proposal, as explained in Section VI.A.2 below. GCI also proposes to reinsert definitions for "delivery service" for electricity and gas, which were terms originally contained in Staff's now deleted partial payment allocation subsection.

See PH Outline, pp. 10-11; Alexander Sur., GCI Ex. 5.0R, 9:192-10:210. The definitions for delivery services should be excluded from the rule as part of the exclusion of the partial payment allocation subsection discussed in Section VI.A.2 below. Moreover, the term “delivery services” does not appear anywhere in the body of Staff’s proposed rule or proposed revisions thereto, including GCI’s proposed partial payment allocation language, and it should be excluded from the definitions section on that basis as well.

4. Low Income Customer

Nicor Gas believes that the proposed “low income customer” definition would be clearer if it referred to “effective” dates rather than “achieved” or “active” dates. Lukowicz Reb., Nicor Gas Ex. 3.0, 12:264-15:348. Accordingly, Nicor Gas proposed non-substantive edits to the definition of “low income customer” as follows:

Qualification is ~~achieved through~~ effective for purposes of this rule when the Low Income Home Energy Assistance Program (LIHEAP) administrator notifies ~~notifying~~ the customer's utility of the customer's low income status. Unless water and sewer utilities begin participation in a low income assistance program with the LIHEAP agencies, it shall be the individual customer's responsibility to notify and provide proof to the water and/or sewer utility of the customer's low income status under the income criteria of Section 6 of the Energy Assistance Act of 1989. Qualifications established on or after September 1 shall remain effective ~~active~~ until December 31 of the following year. Qualifications established before September 1 shall remain effective ~~active~~ until December 31 of that same ~~the current~~ year. The utility shall notify the customer no less than 30 days and no more than 90 days prior to the expiration of a customer's qualification.

Id. While GCI and Low-Income Residential Consumers (“LIRC”) apparently oppose these revisions and Staff has not adopted them, Nicor Gas is not aware of any testimony explaining the basis for such opposition or non-adoption. See PH Outline, p. 13.

5. Past Due

a. Response to GCI

GCI proposes to revise the definition of “past due” to exclude “amounts that are past due for more than two years” as follows:

"Past due" means any amount unpaid for more than two days beyond the due date on a customer's utility account bill statement, but does not include amounts that are past due for more than two years.

PH Outline, p. 15. As an initial matter, the proposed revision creates a circular definition by referring to “past due” in the definition. GCI’s proposed revisions to the definition of “past due” should also be rejected for the reasons stated in Section VIII.A.1.a below.

6. Transfer of Service

a. Nicor Gas Position

Nicor Gas supports most aspects of Staff’s proposed definition of “transfer of service,” and specifically concurs with Staff’s use of a 14-day time period to identify and distinguish a transfer of service by a current customer from a request for new service by a former customer. *See* Lukowicz Reb., Nicor Gas Ex. 3.0, 20:450-21:485 (supporting 14 versus 30 days). However, Nicor Gas sought a modification of Staff’s original proposed language because it did not allow restrictions on transfers of service for a customer with a delinquent balance at the current location, but instead limited the ability to deny a transfer of service to customers “subject to an active disconnection notice.” *See* Lukowicz Dir., Nicor Gas Ex. 1.0, 6:111-7:152. If this proposal had been in place in 2008, Nicor Gas estimates it would not have been able to address delinquencies of over \$5 million that year and ultimately would have led to write-offs borne by other customers. *Id.* at 7:138-43. Nicor Gas proposed modifying Staff’s original definition of “transfer of service” as follows:

Outside any winter, temperature or other period defined by statute or rule restricting disconnection of service, a customer requesting a transfer of service, but who is subject to an active disconnection notice or has not made payment on one or more bills, may be denied the transfer ~~unless the customer remedies the reason for the disconnection notice.~~

Id. at 7:149-52.

In rebuttal testimony, Staff incorporated new language to respond to Nicor Gas' concern by allowing a utility to deny a transfer of service outside of any period when disconnection is restricted by law if the customer does not pay or enter into a payment arrangement on "undisputed" past due amounts that are more than 2 days past due. Agnew/Howard Reb., Staff Ex. 2.0, 13:290-124:302. Nicor Gas continues to support its original language, but finds Staff's alternative proposed language to be acceptable if the term "undisputed" is defined in a reasonable manner. Nicor Gas' concern is that limiting the ability to address delinquent balances on a transfer of service to "undisputed" amounts, without any definition or restriction of that term, could allow that exception to when a utility can address delinquent balances overtake the rule allowing a utility to deny a transfer of service for customers not addressing delinquent balances. A "dispute" that is newly asserted only to meet this exception (i.e., one not made in good faith) should not result in an exception to the rule allowing denial of a transfer of service if a customer does not address qualifying past due amounts.

Given the context of this exception (i.e., amounts owing for more than 2 days past the due date), Nicor Gas simply proposes to add a requirement that the "dispute" must have been asserted prior to the request for a transfer of service. Specifically, Nicor Gas proposes the following modification to Staff's proposed language:

Outside any winter, temperature or other period defined by statute or rule restricting disconnection of service, a customer requesting a transfer of service but who has ~~undisputed~~ past due utility charges or deposit amounts owing for more than 2 days past the due date, that have not previously been disputed by the

customer, may be denied the transfer unless the customer pays the past due utility charges or deposit or enters into a payment agreement on the amounts owing.

Alternatively, it would be acceptable to Nicor Gas to use Staff's newly proposed "transfer of service" definition and add a separate definition of "undisputed" to the rule as follows:

"Undisputed' means not previously disputed by the customer."

b. Response to GCI

GCI witness Ms. Marcelin-Remé recommended extending the 14-day period for a transfer of service to a 30-day period, and asserted that customer confusion may exist during this transition period. Marcelin-Remé Dir., GCI Ex. 2.0, 3:72-4:77. Staff panel witnesses Mr. Agnew and Ms. Howard declined to accept this recommendation, citing the failure of GCI to "address the effect of billing cycles and bill due dates on its proposed period of 30 days." Agnew/Howard Reb., Staff Ex. 2.0, 13:283-88. Nicor Gas supports Staff's decision to retain its proposed 14-day transfer period. The 14-day period is a reasonable and adequate amount of time for a transfer of service to occur. Moreover, the application process for a former customer desiring to return to service with no previous balance will take only minutes to complete. A customer with a past due balance can transfer the debt to the new address within the 14 day period. Extending the period to 30 days does not accomplish anything that cannot be accomplished in 14 days, does not change the amount owed or requests for payment. The main difference is the amount of time the utility is asked to carry the debt. Finally, to the extent that any confusion exists, that same confusion will exist at 30 days that exists at 14 days. Lukowicz Reb., Nicor Gas Ex. 3.0, .20:458-21:470.

III. SUBPART B: APPLICATIONS FOR UTILITY SERVICE

A. Section 280.30 Application

1. Subsection (c)

a. Paragraph (2) - Third Party Applications

Nicor Gas opposes the following Staff proposed language for paragraph (2) of Section 280.30(c) regarding third party applications:

Third party applications may be made only by persons who have been authorized to act on behalf of the applicant, and the utility must verify this authorization either by documentation or by direct contact with the applicant. If a utility fails to verify authorization, it shall not be entitled to collect for service.

Staff Ex. 1.0, Att. A, pp. 7-8. Staff's proposed language would impose significant limitations on the use of third party applications not contained in Section 288.50(d) of the current rule, which provides as follows:

If a utility takes applications for service by telephone from third parties or users who will not be the customers of the service, and if the utility does not verify the third party or user application with the customer, the utility shall not be entitled to collect from the customer of the service if the customer disclaims any responsibility for requesting the service; provided, however, that users will be responsible for paying for their use.

83 Ill. Adm. Code 280.50(d).

Staff's proposed language would effectively eliminate the practice of obtaining applicant information from third-parties, and add yet another layer of time and inconvenience to prospective customers. Lukowicz Dir., Nicor Gas Ex. 1.0, 8:175-77. If a utility must contact the applicant to confirm authorization, there is no benefit for any party to accept information from a third-party in the first place. *Id.* at 8:177-79. Staff offered no direct testimony explaining why they now propose to add a new confirmation requirement or why such a requirement is reasonable. *See* Agnew/Howard Dir., Staff Ex. 1.0, 7:138-8:162. Staff's proposal would impose unnecessary costs on utilities and their customers, costs which are estimated to exceed \$530,000

annually for Nicor Gas alone. Lukowicz Dir., Nicor Gas Ex. 1.0, 8:154-9:192; Lukowicz Reb., Nicor Gas Ex. 3.0, 24:542-25:570. Thus, there is no reason for the Commission to impose requirements that will drastically curtail, if not eliminate, the third party application process, as well as inconvenience and impose significant additional costs on customers.

Staff's rebuttal testimony provided little additional insight into the basis for Staff's proposal. *See* Agnew/Howard Reb., Staff Ex. 2.0, 17:377-18:396. Staff did not point to any particular problems or misuse of the existing third party application process. Rather, Staff made non-specific allegations that some utilities have seized on the "users" concept to delay already lengthy disconnection processes. *Id.*, 17:389-92. This appears to be the same concern Staff expressed regarding landlord/property manager agreements. *See* Agnew/Howard Reb., Staff Ex. 2.0, 27:601-09. Nicor Gas disagrees with Staff's unsupported assertion both in general and as applied to Nicor Gas. But even assuming *arguendo* that Staff's concern was reasonable, Staff is unreasonably conflating the separate issues of third party applications and landlord/property manager agreements. Staff's concerns are out of place outside of the landlord/tenant context. New customers resulting from changes in ownership occur far less frequently than new customers resulting from changes in tenants. Staff also suggests that this issue is somehow linked to the "household rule." *Id.*, 17:392-94. To the contrary, third party applications and customers intentionally trying to avoid payment at a single location by simply changing the customer name to a different current occupant after disconnection are separate and distinct issues.

Staff's proposed Section 280.30(c)(2) also provides that "[i]f a utility fails to verify authorization, it shall not be entitled to collect for service." Agnew/Howard Reb., Staff Ex. 2.0, Att. J, p. 7. This language is overreaching in that it purports to prohibit collection from the

customer of record for service in any and all situations involving the unverified processing of an application via a third-party -- even if the named applicant moves into the premises, uses the utility's service, and does not disclaim responsibility for requesting service. While the current rule imposes some limitation on collecting for service provided pursuant to an unverified third party application, it conditions such limitation on "the customer disclaiming any responsibility for requesting the service ..." and excludes from that limitation customers who are actual "users" of the service. 83 Ill. Adm. Code 280.50(d). Staff supposes that "the original intent of this language may have been to protect utilities from claims by occupants that they were not responsible for usage because they did not personally apply for service." Agnew/Howard Reb., Staff Ex. 2.0, 17:388-89. What Staff overlooks is that the language of the current rule comports with the common law principle of *quantum meruit* recovery. Staff's proposal to drastically change the current rule departs from applicable law and exceeds the authority of the Commission.

Quantum meruit is a form of implied contract created as a matter of law based on the well-established principle that no one should be permitted to unjustly enrich himself at another's expense. *Gary-Wheaton Bank v. Burt*, 104 Ill.App.3d 767, 775 (2nd Dist. 1982). *Quantum meruit* literally means "as much as he deserves." *Rohter v. Passarella*, 246 Ill.App.3d 860, 866 (1st Dist. 1993), quoting Black's Law Dictionary 649 (abr. 5th ed.1983). "The common law adopted the term to describe a cause of action which seeks to recover the reasonable value of services which have been nongratiotously rendered, but where no contract exists to prescribe exactly how much the [plaintiff] should have been paid." *Rohter*, 246 Ill.App.3d at 866. In general, a party can recover under *quantum meruit* upon a showing "that: (1) he performed a service to benefit the defendant, (2) he did not perform this service gratuitously, (3) defendant

accepted this service, and (4) no contract existed to prescribe payment for this service.” *Installco, Inc. v. Whiting Corp.*, 336 Ill.App.3d 776, 781 (1st Dist. 2002), citing *Canel & Hale, Ltd. v. Tobin*, 304 Ill.App.3d 906, 913 (1st Dist. 1999). *Quantum meruit* is neither new nor novel, but rather has “a long and vigorous history in Illinois jurisprudence.” *K. Miller Const. Co., Inc. v. McGinnis*, 394 Ill.App.3d 248, 256 (1st Dist. 2009); *Aff’d. in Part and Rev. in Part* 238 Ill.2d 284 (2010) (Affirming ruling regarding quantum meruit claim.).

The Commission’s existing rule comports with the longstanding principle of *quantum meruit* recovery by providing “that users will be responsible for paying for their use.” 83 Ill. Adm. Code 280.50(d). The Commission has simply provided in its existing rule that customers processed through a third party application cannot avoid their obligation under applicable utility tariffs to pay for utility service they actually receive and use based on non-verification of a third party application.⁵ Thus, Staff’s new proposed language is inconsistent with principles of *quantum meruit* recovery. Moreover, Staff’s proposal goes beyond the Commission’s jurisdiction. As discussed in Section II.A.2 above, “[t]he Commission only has those powers given it by the legislature through the Act.” *BPI I*, 136 Ill.2d 192, 201 (1989). Staff’s new proposed language purports to legislatively change common law principles of *quantum meruit* recovery otherwise applicable in Illinois courts. No such authority is conferred upon the Commission in the Act. Indeed, it has long been established that the Commission has no authority to adjudicate individual property or contract rights, much less the authority to establish or remove those rights on a universal basis as proposed here. *Mitchell v. Illinois Cent. R. Co.*,

⁵ This is also consistent with the fact that the Commission is the entity charged with exclusive responsibility for determining reasonable charges for utility service. Thus, while actions to recover for unpaid utility charges are properly brought before the courts, courts may not independently examine “whether the rates charged by the Utility were unreasonable.” *Candlewick Lake Utilities Co. v. Quinones*, 82 Ill.App.3d 98, 101 (2nd Dist. 1980).

317 Ill. App. 501, 509 (1943) (The Commission “is not a judicial body and it has no jurisdiction to adjudicate controverted individual property or contract rights.”), *citing People v. Peoria & P. U. Ry. Co.*, 273 Ill. 440 (1916).

Nicor Gas currently receives application information from a variety of third party sources, including family members, relocation services, home builders, realtors, landlords and parties moving out of premises. Lukowicz Dir., Nicor Gas Ex. 1.0, 9:183-192 Under the current rules, a utility can accept information from a third-party and initiate service. All applicants processed through a third-party application receive a letter confirming service has been placed in their name. Applicants with Nicor Gas always can call or e-mail changes before or after the date service is started without penalty. *Id.* Absent any rationale for injecting a confirmation requirement into interactions with third-parties assisting applicants, the Commission should maintain its existing rule on this issue – which will benefit prospective customers and utilities alike. *Id.*

For all the foregoing reasons, Staff’s proposed change should be rejected and the current rule language maintained. Accordingly, Nicor Gas proposes the following changes to Staff’s proposed language in paragraph 2 of Section 280.30(c):

- 2) If a utility takes applications for service by telephone from third parties or users who will not be the customers of the service, and if the utility does not verify the third party or user application with the customer, the utility shall not be entitled to collect from the customer of the service if the customer disclaims any responsibility for requesting the service; provided, however, that users will be responsible for paying for their use. ~~Third party applications may be made only by persons who have been authorized to act on behalf of the applicant, and the utility must verify this authorization either by documentation or by direct contact with the applicant. If a utility fails to verify authorization, it shall not be entitled to collect for service.~~

Lukowicz Dir., Nicor Gas Ex. 1.0, 8:159-9:192; Lukowicz Reb., Nicor Gas Ex. 3.0, 24:542-26:586.

2. Subsection (d)

a. Nicor Gas Position

Staff's proposed Section 280.30(d)(1) provides that in connection with an application for service "[p]ositive identification (ID) of applicants may be required by up to *two* forms of ID" Agnew/Howard Dir., Staff Ex. 1.0, Att. A, p. 7 (emphasis added); *see also* Agnew/Howard Sur., Staff Ex. 3.0, Att. A., p. 8 and PH Outline, p. 20. At the same time, Staff's proposed Section 280.30(d)(2) provides as follows:

The applicant can have the opportunity to choose which form(s) of identification to provide from the available list. The utility may not oblige a customer to provide one form of identification in favor of another, so long as the identification provided is valid and accurate.

Agnew/Howard Dir., Staff Ex. 1.0, Att. A, p. 7; Agnew/Howard Sur., Staff Ex. 3.0, Att. A., p. 8 and PH Outline, p. 24 (Changing "customer" to "applicant.>"). Staff's proposal has significant flaws that require modification, as outlined below.

First, Staff's proposal fails to provide adequate protection for confirming an individual's identity. Identity theft is a national issue confronting consumers, businesses and utilities everywhere. For Nicor Gas, and presumably other Illinois utilities, identity theft occurs when fraudulent information is provided at the time service is requested. One tactic of identity thieves is to establish utility service under a fraudulent name so that consumer credit then can be obtained under the fraudulent name. Lukowicz Dir., Nicor Gas Ex. 1.0, 10:205-10. With the growth of identity theft, the Federal Government in 2007 established new regulations on banks, businesses and utilities that place responsibility for spotting potential identity theft and refusing service to the identity thieves. These regulations are known as the "Red Flag Rules." See 12 CFR § 222.90 et seq. The regulations specifically define a "covered account" to include a "utility account," and define "red flag" as "a pattern, practice, or specific activity that indicates

the possible existence of identity theft.” *Id.* at § 222.90(b)(3)(i) and (9). Staff’s proposed language would make it extremely difficult for Illinois utilities to comply with the Red Flag Rules.

In the Company’s experience under the current application process, over 70% of applicants can be verified using available online services from the credit industry without the need for physical identification. However, when a red flag is raised – such as when an applicant provides inconsistent information or is unable to provide any information -- that physical proof of identification is requested. It is imperative that when identification is requested, the required identification is adequate to provide reasonable proof of identity as well as comply with the Red Flag Rules. Lukowicz Dir., Nicor Gas Ex. 1.0, 10:218-11:227.

Nicor Gas demonstrated that Staff’s proposed identification language is vague and would cause confusion. For example, Staff’s proposed rule lists student identification and a credit card as acceptable forms of identification. Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 8 (Section 280.30(d)(1)(I) and (G)). At the same time, Section 280.30(d)2) of Staff’s proposed rule provides that applicants can “choose which form(s) of identification to provide from the available list” and that a “utility may not oblige an applicant to provide one form of identification in favor of another, so long as the identification provided is valid and accurate.” *Id.* at Section 280.30(d)(2). Thus, applicants with a valid student identification and credit card could expect to receive service in this scenario under Staff’s proposed language. In reality, though, a utility would be unable to validate either the credit card or the student identification card. Lukowicz Dir., Nicor Gas Ex. 1.0, 11:228-32.

In response, Staff pointed to its language in Section 280.30(d)(2), which states: “so long as the identification provided is valid and accurate.” Agnew/Howard Reb., Staff Ex. 2.0, 18:411-

15. Staff went on to say that “[i]f certain forms of identification may take longer to verify or in the end cannot be verified after appropriate efforts by the utility, then so be it.” *Id.* at 18:416-17. Staff’s response on this issue is insufficient, unreasonable, and contrary to Staff’s explicit goal of clarity. The structure of this aspect of Staff’s rule is a recipe for confusion and frustration. Applicants would logically expect that presentation of identification listed in subsection (d) of the rule would be accepted, notwithstanding the statement in subsection (e) that “[i]nformation submitted must be accurate and verifiable[.]” See PH Outline, p. 27. Immense confusion and frustration will result if utilities must state on one hand that various forms of identification are acceptable, but on the other hand are compelled to reject that same identification because it is difficult or impossible to verify its validity and/or accuracy. Lukowicz Reb., Nicor Gas Ex. 3.0, 27:630-28:647.

Nicor Gas proposes that an applicant for service be required to provide up to *three* forms of identification: two forms considered “primary” identification, including one form of government issued picture identification, and a third form considered “secondary” identification, if necessary. Asking for up to three forms of identification, including one with picture identification, after the applicant has already provided inconsistent or incorrect information, is both prudent and reasonable. Nicor Gas’ proposal compares favorably to the identification requirements imposed when applying for a driver’s license: the State of Illinois requires four forms of identification when applying for a driver’s license -- including the originals of documents for identification, along with a written signature on one document. Lukowicz Dir., Nicor Gas Ex. 1.0, 11:233-48; Nicor Gas Ex. 1.1.

As explained above, the physical identification of an applicant only occurs when Red Flags exist and an applicant has been unable to prove identity using any other alternative. When

identification is required (which is only 30% of the time for Nicor Gas), physical identification is the last step in the process. In those situations, it is imperative that the rule allows a utility to require an applicant present identification that will permit effective verification of the applicant's identify. Staff's proposal, however, fails to provide adequate protection for confirming an individual's identity. Additionally, some of the acceptable forms of identification listed by Staff are not verifiable. While banking records and credit cards are on Staff's list, neither banks nor credit card companies are willing to provide name, account, or other identifying information in response to a third party inquiry. Lukowicz Dir., Nicor Gas Ex. 1.0, 12:249-58.

Staff's proposed Section 280.30(d)(1) should be revised to allow utilities to require up to three forms of identification, including one form of government issued picture identification. Further, credit cards should be removed from the list of acceptable forms of identification, as they do not provide a reasonable means for confirming an applicant's identification. Lukowicz Dir., Nicor Gas Ex. 1.0, 12:249-58; Lukowicz Reb., Nicor Gas Ex. 3.0, 27:601-06. More specifically, Nicor Gas proposes modifying Staff's proposed language as follows:

- 1) Positive identification ~~(ID)~~ of applicants may be required by up to three ~~two~~ forms of identification: ~~ID~~ two forms considered "primary" identification, including one form of government issued picture identification, and a third form considered "secondary" identification, if necessary. Primary forms of identification include: state issued driver's license, United States passport, state identification card, birth certificate, social security number (optional), other government-issued photo identification, voter registration card, or military identification. Secondary forms of identification include: student identification, immigration documentation, banking information, employment records, government benefits/compensation records, and W-2 or other employment records. Commercial forms of identification include: Federal or State tax identification number, notarized articles of incorporation, or a business license. ~~, including but not limited to any of the following:~~
 - A) — Government issued photo ID;
 - B) — Social Security number;

- C) — ~~Driver's license number;~~
- D) — ~~Passport;~~
- E) — ~~Birth certificate;~~
- F) — ~~Immigration and/or naturalization documents;~~
- G) — ~~Student identification;~~
- H) — ~~Banking information;~~
- I) — ~~Credit card;~~
- J) — ~~Employment records;~~
- K) — ~~Government benefits/compensation records;~~
- L) — ~~Tax ID number;~~
- M) — ~~Articles of incorporation; or~~
- N) — ~~Business license.~~

~~2) — The applicant shall have the opportunity to choose which form(s) of identification to provide from the available list. The utility may not oblige an applicant to provide one form of identification in favor of another, so long as the identification provided is valid and accurate.~~

Lukowics Dir., Nicor Gas Ex. 1.0, 9:193-12:258; Lukowicz Reb., Nicor Gas Ex. 3.0, 26:587-29:656.

At a minimum, and in the alternative, Nicor Gas proposes the following modifications to paragraph (1) of Section 280.30(d) in the event the Commission does not accept Nicor Gas' primary recommendation:

- 1) Positive identification (ID) of applicants may be required by up to three ~~two~~ forms of ID, including one form of picture ID, including but not limited to any of the following:
 - A) Government issued photo ID;
 - B) Social Security number (optional);
 - C) Driver's license ~~number~~;

- D) Passport;
- E) Birth certificate;
- F) Immigration and/or naturalization documents;
- G) Student identification;
- H) Banking information;
- ~~I) Credit card;~~
- I) Employment records;
- ~~J~~K) Government benefits/compensation records;
- ~~K~~L) Tax ID number;
- ~~L~~M) Articles of incorporation; or
- ~~M~~N) Business license.

Lukowics Dir., Nicor Gas Ex. 1.0, 9:193-12:258; Lukowicz Reb., Nicor Gas Ex. 3.0, 26:587-29:656.

b. Response to GCI

GCI witness Ms. Marcelin-Remé suggests that new applicants should not be required to provide their social security number when applying for service. Marcelin-Remé, GCI Ex. 2.0, 6:160-7:165. Should a customer decline to provide their social security number, Nicor Gas has developed and presently utilizes a detailed process that can be used in lieu of requiring a social security number. The Company’s process complies with new Federal legislation designed to prevent identity theft at the time of the application. Accordingly, Nicor Gas has no objection to identifying a social security number as an optional form of identification. Lukowicz Reb., Nicor Gas Ex. 3.0, 28:648-29:656. Nicor Gas’ proposed language identifies a social security number as “optional.”

GCI also proposes to revise paragraph (1) of Section 280.30(d) as follows:

- 1) At the time of application, the utility shall inform the applicant of all the available forms of positive identification (ID) that may be offered by the applicant as proof of ID. ~~of a~~ Applicants may be required to offer by up to two forms of ID, including but not limited to any of the following:

PH Outline, p. 20; GCI Ex. 5.1, p. 8. Nicor Gas has already explained its position on the number and forms of acceptable identification, and opposes GCI's language allowing applicants to select two forms of identification from the list of acceptable identification for the reasons expressed above. Nicor Gas also opposes GCI's proposal to automatically require the utility to inform all applicants of all the available forms of positive identification that may be offered by the applicant as proof of identity. As explained above, positive identification is not an issue for approximately 70% of Nicor Gas' applicants. This proposal attempts to micro-manage utility operations in manner that adds inefficiency and costs. GCI offers no real evidence that the current process presents systemic problems. The Company has a system in place to provide applicants with necessary information. Staff also finds GCI's identification disclosure proposal unnecessary. Agnew/Howard Reb., Staff Ex. 2.0, 19:426-36. This proposal should be rejected because it is not needed. Lukowicz Reb., Nicor Gas Ex. 3.0, 24:529-40.

3. Subsection (e) – Response to GCI

GCI proposes the following revision to paragraph (2) of Section 280.30(e):

- 2) Any past due debts for utility services still owing to the utility by the applicant shall be identified and governed by the following provisions:
 - A) Applicant must pay past due debt in full, and if otherwise required, enter into a payment plan for the deposit amount; or
 - B) ~~At the utility's discretion, e~~ Enter into a payment agreement to retire the past due debt and, if otherwise required, pay the deposit amount in full; or
 - C) Make a down payment and agreement to retire the debt under the requirements of Section 280.180 Reconnection of Former Residential Customers for the Heating Season.

GCI Ex. 5.1, p. 9; PH Outline, p. 27. Paragraph (2) of Section 280.30(e) addresses an application by a former customer with a past due debt. The former customer subject to paragraph (2) will have already received all applicable opportunities under the rule to enter into and complete one or more payment arrangements. Staff's proposal addresses the issue correctly, providing that where a former customer has an uncured delinquent balance that ultimately resulted in disconnection of service, the former customer cannot unilaterally go back to square one by simply re-applying for service. GCI's proposal would provide a former customer with a past due debt the right to reestablish service by paying a deposit "if otherwise required" and entering into yet another payment arrangement for the past due debt. No basis for imposing additional uncollectible risks through an additional mandatory payment arrangement provision has been offered. GCI's proposal is unreasonable on its face and would clearly lead to additional uncollectible costs. Staff's proposal contemplates that unique circumstances could exist warranting another payment arrangement opportunity and allows the utility the discretion to enter into such arrangements. GCI's proposal is unreasonable and must be rejected.

4. Subsection (j) – Response to GCI

GCI originally proposed revising paragraph (2) of Section 280.30(j) to require that gas service must be established within two days. Alexander Dir., GCI Ex. 1.0, 39:1053-56; GCI Ex. 1.2, pp. 10-11. Nicor Gas opposed this original proposal. While establishing service within a time frame of two days can often be met, there will be circumstances under which two days cannot be met. Unexpected events arise from time to time that impact the Company's ability to get necessary personnel to a location to activate service; thus, the two day proposal is unreasonable and costly. Lukowicz Reb., Nicor Gas Ex. 3.0, 23:510-18. Once an applicant becomes eligible for service, the Company is committed to establishing service as rapidly as

possible. However, shortening the time frame so dramatically would require more personnel in order to comply, thereby imposing additional costs on customers. *Id.*, 23:518-22. Further, the safety issues associated with initiating service for a gas customer, such as the need to light pilots on gas appliances, require site visits and access to customers' facilities. *Id.*; Agnew/Howard Reb., Staff Ex. 2.0, 25:555-57. GCI's proposal is not reasonable. Staff's proposed activation timeframes are reasonable and should be adopted by the Commission.

GCI also proposes to modify paragraph (7) of Section 280.30(j) as follows:

Temporary exception for unforeseen circumstances: A utility that experiences temporary unanticipated overload of its ability to provide for the timely activation of service due to severe weather or other emergency beyond the control of the utility may, upon notice explaining the circumstances to the Consumer Services Division of the Commission, temporarily forego the requirements of this section so long as the utility can demonstrate that it is taking diligent action to remedy the overload. A high volume of connection requests during periods of the year in which utilities have historically received high volumes of connection requests shall not constitute an unforeseen circumstance.

PH Outline, p. 34; GCI Ex. 5.1, p. 11. Staff's proposed language is reasonable. Nicor Gas supports Staff's language without revisions.

B. Section 280.35 Revert to Landlord/Property Manager Agreements

Nicor Gas has several concerns with the Landlord/Property Management Agreements Section of Staff's proposed rule, and proposes revisions to improve Staff's proposal. Nicor Gas has used landlord agreements for many years, and in 2006 began soliciting landlords to enter into such agreements to address the handling of gas service at rental properties in between tenants. The agreement offers a landlord the option to have service at a rental property placed into the landlord's name or physically disconnected when no tenant occupies a premises. There is often no response from landlords/property managers. Lukowicz Dir., Nicor Gas Ex. 1.0, 12:261-13:284. There is general agreement regarding the need to address the rules and process by which

a utility interacts with landlords and tenants, but Staff’s proposal fails to address certain issues already known to exist. In particular, Staff’s proposed language fails to provide clarity regarding a utility’s ability to discontinue service when, in a situation where there is no landlord/property manager agreement, a tenant vacates a premises and there is no customer of record. If a utility is not allowed to place service into the landlord’s or property manager’s name in such situation, then the utility’s right under the rule to discontinue service should be clear and unequivocal.

1. Subsection (a) - Intent

Nicor Gas proposes the following modifications to Section 280.35(a), which describes the purpose or intent of Subsection (a):

- a) Intent: Describe the rights and duties of a utility and landlord/property manager with respect to discontinuance of service or assumption of billing responsibility and continuance of service when a tenant vacates a premises and the utility has no customer of record. Also to describe the process whereby a utility may, by prearrangement with a landlord/property manager, place the service for a premises on a going forward basis into the name responsibility of the landlord/property manager and continue service to the premises when a tenant who had utility service in the tenant's name leaves the premises.

Lukowicz Reb., Nicor Gas Ex. 3.0, 30:685-96. Nicor Gas’ proposed revisions more clearly identify the intent of this Subsection. The issues addressed by all parties and covered in the proposed rule involve the rights and duties of a utility and landlord/property manager with respect to discontinuance of service or assumption of billing responsibility and continuance of service when a tenant vacates a premises and the utility has no customer of record. The Company’s proposed insertion is reasonable and applies regardless of how the Commission ultimately decides the issues regarding the extent of those rights and duties. The remaining edits are not substantive, but improve the wording of this Subsection. While Staff did not adopt these

proposed revisions, it never addressed these specific revisions in testimony. Accordingly, the Company's proposals are reasonable and should be adopted by the Commission.

2. Subsection (b) – Prearrangement to be in writing

In direct testimony, Nicor Gas explained that Staff's proposal was too one-sided in that it prohibited a utility from placing service into the name of a landlord absent an agreement, but did not address a utility's options or rights if a landlord declined to enter into an agreement. Lukowicz Dir., Nicor Gas Ex. 1.0, 12:263-67, 13:285-93, 14:296-319. In response, Nicor Gas proposed that the rule allow utilities to place service into the name of the landlord or property manager if available. *Id.* Staff objected to this proposal, speculating such proposal was the result of a utility's desire to avoid field visits and leave service active for lengthy periods, while hoping to later bill the party. Agnew/Howard Reb., Staff Ex. 2.0, 26:596-27:617. Staff's response completely misconstrued the Company's legitimate concerns and desired remedies.

In a landlord/tenant situation, disconnection of service following termination of the customer relationship presents additional issues to consider. In such a situation, a building's pipes may freeze and cause substantial damage to a premises without heat. Because Nicor Gas has potential exposure to claims by landlords for damages resulting from turning off gas service, it desires to minimize such exposure while accommodating the interest of landlords in maintaining gas service at their properties by having service placed in their names when there is no customer of record. One means to address this concern is to allow utilities the option of placing service in a landlord's name. Nicor Gas would not require this right if Part 280 provides clear authority to disconnect service regardless of weather or time of year when there is no customer of record in a landlord/tenant situation and no landlord/property manager agreement.

Such proposal is fair to all stakeholders, and should reduce costs and potential liability exposure for utilities and their customers. Lukowicz Reb., Nicor Gas Ex. 3.0, 29:670-30:682.

Accordingly, Nicor Gas proposed the following revised revisions to Section 280.35(b) to clearly establish a utility's right to discontinue service where there is no landlord/property manager agreement:

- b) Prearrangement to be in writing: The utility and landlord/property manager shall agree in writing to prearrange the provisions of this Section. The utility shall provide an example of its prearrangement form in the utility's tariff and maintain a copy of the form on its website. So long as the utility is able to contact and gain the cooperation of the respective landlord/property manager for a premises, it shall annually update the individual prearrangements with each landlord/property manager so as to ensure accuracy. Absent a written prearrangement with a landlord/property manager, the utility shall not place service into ~~the name of~~ the landlord/property manager's name unless the landlord/property manager contacts the utility to apply for service and should disconnect service within five days. In the absence of a written prearrangement with the landlord/property owner, a utility may discontinue service to the vacant premises regardless of time of year or weather conditions.

Id. at 30:683-711; Lukowicz Sur., Nicor Gas Ex. 6.0, 2:33-3:49. These revisions are reasonable, incorporate GCI's proposal to establish a five day guideline for disconnection of service in such situations, and should be adopted by the Commission.

Without elaborating, Staff simply responded that it did not believe these revisions were necessary to accomplish disconnection. Agnew/Howard Sur., Staff Ex. 3.0, 13:278-87. Staff's response completely misses the point here. As described above, the landlord/tenant scenario presents a very unique situation where, notwithstanding the vacation of a premises by a customer that would entitle a utility to otherwise discontinue service, there is another entity with rights and interest in the premises who could potentially asserts claims for damages from freezing pipes resulting from no heat. Staff has failed to offer any sound reason for rejecting a proposal to protect utilities and their ratepayers by clearly specifying that a utility may discontinue service to

the vacant premises in the absence of a landlord/property manager agreement, regardless of time of year or weather conditions.

3. Subsection (e)

Subsection (e) of Section 280.35 addresses meter readings for landlords becoming customers in the context of a landlord/property manager agreement. Nicor Gas does not oppose Staff's proposed language generally requiring an actual meter reading within the past 60 days. Nicor Gas' concern is with the provision addressing situations where a utility is unable to obtain an actual meter reading. Staff's language requires a utility to allow the landlord/property manager to provide a customer reading in that situation. Again, Nicor Gas does not object to that proposal. However, Staff's language is ambiguous with respect to whether it is allowable to use an estimated meter reading in the "unable to obtain actual meter reading" situation. Many landlords/property managers agree to, and even prefer, an estimated final reading. Nicor Gas simply proposes to expressly add a clause allowing the landlord/property manager the option to "agree to an estimated final read" in this situation. Lukowicz Dir., Nicor Gas Ex. 1.0, 15:336-16:357. This proposal is reasonable and removes potential ambiguity from the rule.⁶

Accordingly, Nicor Gas proposes revising Section 280.35(e) as follows:

- e) Accuracy of billing: Prior to making the landlord/property manager responsible for service, if the meter has not been read by the utility within the past 60 days, the utility shall obtain an actual meter reading to ensure correct billing so long as the utility is provided access to the meter. If the

⁶ This issue is also an example of a situation that would benefit from clarifying that the "precedence" language in Section 280.05 only applies to "explicit requirements." If the Commission rejects Nicor Gas' recommended revision, the rule will be ambiguous regarding whether an estimated read is allowable where agreed to by the landlord. The rule as currently proposed does not explicitly prohibit estimated reads where a utility is unable to obtain an actual meter read, but at the same time does not list an estimated read agreed to by the landlord as one of the options. Is a utility required to seek a "waiver" or "exemption" from the rule in this scenario? In Nicor Gas' view a utility should not be required to seek an exemption from "requirements" or "prohibitions" that are not explicitly stated in the rule as such a requirement is vague and unreasonable.

utility is unable to obtain an actual meter reading, then the utility must allow the landlord/property manager to provide the utility with a customer reading or agree to an estimated final read.

Lukowicz Dir., Nicor Gas Ex. 1.0, 12:261-16:357. While Staff did not adopt this proposed revision, it also never addressed it in testimony. The Company's proposal is reasonable and should be adopted by the Commission.

IV. SUBPART C: DEPOSITS

A. Section 280.40 Deposits

1. Subsection (b)

a. Paragraph (1) – Deposit Notice Requirement

GCI's proposed adding "[a] deposit shall not be assessed until the initial notice is given" to the end of paragraph (1) of Section 280.40(b). Alexander Dir., GCI Ex 1.0, 6:141-42; Marcelin-Remé Dir., GCI Ex. 2.0, 8:204-06; GCI Ex. 1.2, p. 13. Staff adopted GCI's proposed language. Agnew/Howard Reb., Staff Ex. 2.0, 28:644-29:659, Att. J, p. 13. This proposal is ill-advised and ill-conceived, and highlights the problem with introducing rule language to micromanage processes with which the proponent is unfamiliar and/or uninformed. Nicor Gas currently follows a process that verbally informs customers at the time of a call to initiate service whether a deposit will be assessed, the amount of the deposit, and that the deposit will appear on the first bill. Tr., 931:1-933:18. This is followed by a written letter with a more detailed notice of a customer's rights and benefits, including low-income information. *Id.* at 932:1-4. Deposits are always billed, consistent with the current rule, and do not result in a denial of service at the time of an initial application. 83 Ill. Adm. Code 280.70(c)(1)(B); Tr., 933:9-14. The billing requirement is continued in Section 280.40(f) of Staff's proposed rule, and explicitly provides for the payment of deposits over the first three billing statements -- except for deposits due before service activation under proposed Section 280.210 (Payment Avoidance by Location).

The proposed language simply adds another layer of process and cost, without any additional benefit. Lukowicz Reb., Nicor Gas Ex. 3.0, 33:769-79. If a customer meets the requirements for a deposit, then a deposit can be properly assessed. *Id.* Requiring that a written notice be served prior to assessing a deposit serves no purpose other than delay. *Id.* Customers will receive notice of a deposit, will not be denied initial service activation based on a deposit, will have the opportunity to make further enquiries regarding the deposit, and will have the opportunity to pursue applicable rights and benefits regarding the deposit – all without GCI’s proposed language. There simply is no basis to adopt GCI’s proposal, and it should be rejected.

Accordingly, the Commission should modify Section 280.40(b)(1) as follows:

- 1) A utility shall make an initial notice of a deposit to an applicant or customer no later than 45 days after the applicant's application for service is approved or after the event that justifies the deposit. ~~A deposit shall not be assessed until the initial notice is given.~~

Lukowicz Reb., Nicor Gas Ex. 3.0, 33:772-82.

b. Paragraph (2) – Response to GCI

GCI also proposed revisions to paragraph (2) of Section 280.40(d) in surrebuttal testimony to convert Staff’s “written” deposit notice requirements to “oral” deposit notice requirements. GCI Ex. 5.1, p. 14. The problem with this proposal is that it converts Staff’s detailed notice requirements intended to be made in writing to mandatory, automatic oral disclosures in every instance. This will be burdensome and unworkable, add additional costs, and provide no additional benefit to consumers for the same reasons applicable to GCI’s proposed revisions to paragraph (1). This proposal is not reasonable, has not been adopted by Staff, and should be rejected by the Commission.

GCI also proposed revising Staff’s deposit notice requirements in paragraph (2) of Section 280.40(d) as follows:

- H. The customer has the option of paying the deposit or entering a deferred payment agreement (as provided in Section 280.120)
- I. The deposit policy applicable to qualified low income customers and the criteria for determining who is a low income customer ~~how qualification can be demonstrated; and~~
- J. The right to receive this information in writing upon request; and
- K. The availability and contact information for the Commission's Consumer Services Division in the event of a dispute that the utility has not resolved to the satisfaction of the applicant or customer.

PH Outline, pp. 37-8; GCI Ex. 5.1, p. 14.

With respect to new paragraph (H), Nicor Gas is not aware of a provision in Section 280.120 proposed by Staff or GCI providing deferred payment arrangement (“DPA”) for deposits. Rather, the time period for paying a deposit is set forth in Sections 280.40(f) and 280.45(b)(4) of Staff’s proposed rule. DPAs are allowed for past due deposit amounts, but are not an initial “payment option” as suggested by GCI’s proposed language.

Nicor Gas supports Staff’s proposed language rather than GCI’s proposed revisions to what it labels as paragraph (I).

New paragraph (J) is a corollary to GCI’s proposal for “oral” notification, providing notice of a right to receive this information in writing upon request. Nicor Gas opposes this revision consistent with its opposition to GCI’s proposal to convert the “written” deposit notice requirement to an “oral” deposit notification requirement.

Staff’s proposed rule already contains the language proposed as a revision in GCI’s paragraph (K). Nicor Gas does not oppose Staff’s language.

c. Paragraph (3)

New paragraph (3) is a corollary to GCI’s proposal for “oral” notification, providing a five day timeline for responding to requests for written disclosure. Nicor Gas opposes this

revision consistent with its opposition to GCI's proposal to convert the "written" deposit notice requirement to an "oral" deposit notification requirement.

2. Subsection (d) – Applicant deposits

a. Paragraph (3) – Response to GCI

Section 280.40(d)(3) of Staff's proposed rule allows a utility to require a deposit if "[t]he residential applicant's credit score fails to meet the minimum standard of the credit scoring system described in the utility's tariff," continuing the current Commission authorized practice in Illinois. GCI and AARP propose to delete this criterion. Marcelin-Remé Dir., GCI Ex. 2.0, 7:186-87; Musser Dir., AARP Ex. 1, 5:17-18. GCI's proposal is not reasonable. Good business practice supports the use of credit scoring to assess a new applicant's ability and propensity to pay his/her bills. Lukowicz Reb., Nicor Gas Ex. 3.0, 32:758-33:767. It is a proven practice that should continue to be incorporated into the turn-on process. *Id.* Neither GCI nor AARP present any reasonable explanation as to why such a generally-accepted method for evaluating new applicants is problematic. *Id.* GCI witness Ms. Alexander's unexplained and unsupported assertion that credit scoring provides "no indication of risk of non-payment for utility bills" is belied by the ubiquitous use of credit scoring by businesses to assess payment risk. Alexander Sur., GCI Ex. 5.0R, 19:420-21.

Ms. Alexander's assertion is also directly contrary to the Commission's explicit findings approving the use of credit scoring under the current rule:

The Commission concludes that the Utilities have demonstrated the need for the proposed amendment to Part 280 that would allow utilities to utilize a credit scoring assessment method for requiring deposits from residential service applicants. Nicor Gas' pilot credit scoring program has resulted in a substantially reduced bad debt expense. The Utilities have demonstrated the importance of early identification of applicants with high credit risk since a significant portion of their uncollectible expense is attributable to customers who had service for less than 12 months. The implementation of credit scoring programs, which must

comply with the provisions of the Fair Credit Reporting Act and the Equal Credit Opportunity Act, should result in early identification of applicants with high credit risk.

The reduction of utilities' bad debt expense can also be beneficial to their conscientious paying customers. Bad debt expense is a component of the utilities' revenue requirement. If a utility files a rate case with the Commission, the reduction in bad debt expense would be reflected in its rates.

Central Illinois Public Service Company (AmerenCIPS), Union Electric Company (AmerenUE), Central Illinois Light Company, Commonwealth Edison Company, Illinois Power Company, MidAmerican Energy Company, Northern Illinois Gas Company d/b/a Nicor Gas Company, North Shore Gas Company, and The Peoples Gas Light and Coke Company, Docket No. 01-0644 at 10 (Order Dec. 11, 2002). Ms. Alexander has provided no basis in evidence or otherwise to depart from the Commission's original determination in this regard.

Finally, GCI's proposal ignores recent developments that highlight the importance of following prudent and reasonable business practices to minimize uncollectible expense. The recently enacted provisions of the Public Utilities Act authorizing uncollectible expense riders provide that the Commission "shall review the prudence and reasonableness of the utility's actions to pursue minimization and collection of uncollectibles" 220 ILCS 5/19-145(c); 220 ILCS 5/16-111.8(c). GCI's proposal to remove an important tool to minimize uncollectible expense (i.e., deposits for applicants not meeting minimum credit scoring standards) is contrary to this new statutory requirement. For all these reasons, GCI's proposal should be rejected.

3. Subsection (e) – Present customer deposits

a. Paragraph (1)

i. Subparagraph (C) – Response to GCI

GCI proposes to add language essentially eliminating the ability to assess a deposit for any customer with 24 months of service. Marcelin-Remé Dir., GCI Ex. 2.0, 8:194-98; GCI

Ex. 1.2, p. 15. This proposal is not reasonable. Simply removing a deposit requirement because the customer has been with a utility for two years is contrary to good business practice. Lukowicz Reb., Nicor Gas Ex. 3.0, 32:716-56. There are circumstances where such a customer represents a sufficient credit risk to require a deposit. *Id.* Staff recognized that a customer's credit risk could change for the worse notwithstanding 24 months of service, and observed that current standards are not sufficiently granular with respect to deposits:

In the current 280, the customer who pays her bill every month without fail, but just a little late, is treated as the same "risk" as the customer who fails completely fails to pay for several months. At the same time, customers whose behavior was once less risky but then become high risk are granted full immunity from the late paying deposit under the current rule, simply by 24 months of tenure as a customer. While raising the logical standard on lateness, we eliminate the illogical standard on customer tenure. We believe our proposed rule on this subsection is fair to all, and should not be altered.

Agnew/Howard Reb., Staff Ex. 2.0, 31:699-706. Nicor Gas agrees that a deposit prohibition after 24 months is not reasonable, and that Staff's proposed rule strikes a proper and fair balance. Accordingly, the Commission should reject GCI's proposal on this issue.

b. Paragraph (4) - Credit Risks for Large Commercial and Industrial Customers

Nicor Gas proposes adding paragraph (4) to Section 280.40(e) as follows:

4) A present large commercial or industrial customer may be required to pay a deposit for indications of financial insecurity in accordance with and as allowed by the terms and conditions of a utility's effective tariffs.

Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76; Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737. This language should be added to the rule to address a utility's exposure on large commercial and industrial customer accounts. Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76.

Currently, large customers are subject to the same deposit criteria as a convenience store. *Id.* This approach makes little sense, and places a utility and, ultimately, its customers, at risk of

incurring substantial losses when a large customer fails to pay its bills. *Id.* Additionally, large customers are likely to be purchasing gas from a third-party. If that third-party determines that a customer is a credit risk, or if the customer is delinquent in paying its bills, the third-party simply can drop the customer. *Id.* Ultimately, that same customer who has already shown a poor payment history will then be served by Nicor Gas with little notice and no security. *Id.* Without question, large customers have significant potential impact on bad debt that can be reasonably avoided with proper deposit requirements.

Good business practice dictates that the Company should be permitted to request a deposit from large commercial and industrial customers if there are indications of financial insecurity. *Id.* Nicor Gas' proposal confirms a utility's option to file, for Commission review and approval, the criteria and source of information used to determine financial insecurity so that a utility can require a security deposit.

Staff rejected the Company's proposal. Agnew/Howard Reb., Staff Ex. 2.0, 32:735-33:749. Staff's rejection of this proposal is not reasonable. First, Staff admits that it has limited experience in assessing the credit worthiness of large customers. *Id.* at 33:748-49. It is in the interests of customers to limit such losses. Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737. As such, there should be no objection to the Company seeking to limit losses that ultimately will be borne by other paying customers. Without additional language that addresses large customers defaulting, existing ratepayers are unfairly and unnecessarily exposed in the event of a default. *Id.*

Staff also states that the Commission should seek input from large customers before amending the rule. Agnew/Howard Reb., Staff Ex. 2.0, 33:745-47. To the contrary, this is a rulemaking and all parties have had notice that a rule change could be implemented. Moreover,

since further Commission action is required to establish the criteria and source of information used to determine financial insecurity under the Company's proposal, such parties will have a further opportunity for input. As to Staff's claim that Nicor Gas' proposal lacks standards, Staff misses the point. *Id.* at 33:741-44. The Company's proposal offers flexibility to all utilities, and allows each utility to develop a large customer policy that best suits its operations. Moreover, under the Company's proposal the Commission will be required to approve any utility proposal. Consequently, the Commission can evaluate and either accept or reject the standards that a utility may propose. Accordingly, for the reasons described above, the Commission should adopt paragraph (4) as proposed by the Company.

4. Subsection (h) – Refund conditions for deposit

a. Paragraph (1) – Response to GCI

GCI proposes to eliminate the requirement that a customer “have less than four late payments” in 12 consecutive months in order to be entitled to a refund a deposit. PH Outline, p. 44. Nicor Gas supports Staff's proposed language. A customer paying late one third of the time has not demonstrated that the risk factors resulting with imposition of a deposit requirement have dissipated or are otherwise no longer applicable. GCI's proposal should be denied.

B. Section 280.45 Deposits for Low Income Customers

LIRC indicates that it supports Staff's current proposed rule notwithstanding its initial testimonial proposals. PH Outline, p. 50; Howat Dir., LIRC Ex. 1.0, 8:3; LIRC Ex. 1.3, pp. 2-3. Nicor Gas does not oppose Staff's proposed language in Section 280.45.

V. SUBPART D: REGULAR BILLING

A. Section 280.50 Billing

1. Subsection (c) - Bill Presentation Requirements

Nicor Gas proposes deleting Section 280.50(c)(1)(I) as follows:

~~D) Electric and Gas utilities shall provide a graphic comparison (bar chart or pie chart) of the current usage and the customer's previous 12 months of historical usage;~~

Lukowicz Reb., Nicor Gas Ex. 3.0, 34:801-35:828. This language was originally proposed by GCI. Alexander Dir., GCI Ex. 1.0, 6:148-7:168; GCI Ex. 1.2, p. 19. While GCI's proposal was undoubtedly proposed to benefit customers by mandating a specific practice currently viewed as a good idea, bill presentation is not a once in a lifetime or one-size-fits-all endeavor. Adopting the details of a current practice as the law of the land represents another example of an attempt to micromanage utility operations to the ultimate detriment of utilities and their customers. Nicor Gas already includes such a comparison in its bills, but opposes adoption of this proposal because it would unnecessarily restrict a utility's ability to craft a bill that best meets the needs of its customers.

GCI's proposal appears to assume that utilities do not care about their communications with customers. To the contrary, without the requirements of a rule, Nicor Gas engaged in a wholesale evaluation of its bill presentation that resulted in Nicor Gas substantially redesigning the appearance and information contained in its bill in 2009. Lukowicz Reb., Nicor Gas Ex. 3.0, 35:808-819. These changes were based on a detailed study of what customers wanted on their bill that included customer focus groups conducted by outside consultants. *Id.* Nicor Gas designed its bill to meet customer expectations, while complying with the Commission's general requirements for a bill. *Id.* It is better to allow utilities to design bills to meet customers'

expectations, rather than mandate specific requirements that may be unnecessary and outdated in a short period of time.

The GCI proposal also ignores the fact that there is a limit as to what can physically be placed on a bill. *Id.* The utility is in the best position to design its bill. Further, increased customer demand to receive electronic communications and billing requires a utility to be nimble and adjust to customer demands and changing technologies. A rule that is too prescriptive, such as GCI's proposal, does not benefit customers. For all of these reasons, this proposal should be rejected.

If the Commission ultimately decides to include this requirement in the rule, then GCI's more recent deletion of the prescriptive "bar chart or pie chart" language should be adopted. GCI Ex. 1.2, p. 19; GCI Ex. 5.1, p. 20; PH Outline, p. 51.

2. Subsection (d) – Bill delivery

Staff's proposed language clarifies that "written confirmation" of the choice to have bills delivered electronically includes "written electronic acceptance." No party, including Nicor Gas, contests any language proposed for Section 280.50(d) in the Pre-Hearing Outline. PH Outline, p. 58.

VI. SUBPART E: PAYMENT

A. Section 280.60 Payment

1. Subsection (b) – Method of payment

a. Paragraph (2)

GCI proposes to revise paragraph (2) of Section 280.60(b) of Staff's proposed rule to prohibit a utility from charging fees to consumers based on their choice of payment method. Alexander Dir., GCI Ex. 1.0, 7:169-8:190; Marcelin-Remé Dir., GCI Ex. 2.0, 10:248-54; GCI

Ex. 1.2, pp. 22-23; GCI Ex. 5.1, p. 23; PH Outline, p. 61. Specifically, GCI proposes the following revisions to paragraph (2) of Section 280.60(b):

- 2) The utility's bill to the customer shall advise the customer how to obtain information on the available payment methods. When contacted by a customer inquiring about making a payment, the utility's customer service personnel shall advise the customer of the available methods of payment, including the most expedient method ~~and least cost methods of available payment.~~ A utility shall not charge customers additional fees associated with any payment method sponsored by the utility on its website or offered to customers through the utility's call center.

Id. Staff notes that such fees are typically the result of third-party vendor fees for handling payment methods, and did not accept this proposal. Agnew/Howard Reb., Staff Ex. 2.0, 44:995-1012. Nicor Gas concurs with and supports Staff's position to reject these proposed revisions.

First, GCI incorrectly suggests that these are utility fees. Nicor Gas is unaware of any utility that charges a fee when payment is made via a particular payment method. Lukowicz Reb., Nicor Gas Ex. 3.0, 37:866-38:872. Nicor Gas does not have a tariff on file that charges a fee that is payment method-based. *Id.* Third-party vendors may charge a fee, but that fee does not benefit the utility. *Id.* For example, a customer that uses the U.S. Mail to pay a bill pays the U.S. Post Office the cost of a First Class stamp. The Company does not receive that fee. Rather, the customer has selected the method of delivering payment to the Company, and pays that vendor for its services. *Id.*

Second, GCI's proposal is contrary to law. GCI witness Ms. Marcelin-Remé supported GCI's proposal by claiming that some "[c]ustomers feel that the utilities should be ... absorbing these costs themselves as a 'cost of doing business.'" Marcelin-Remé Dir., GCI Ex. 2.0, 10:250-52. When cross examined regarding GCI's view on who should pay the costs that are the subject of GCI's proposal, Ms. Marcelin-Remé testified that her policy view supporting GCI's position was that shareholders should pay these costs. Tr., 722:18-723:14. When asked whether GCI

would still want the payment options if the utility would not absorb these costs, she testified GCI “would not want to have them withdraw the option to pay by credit card.” Tr., 723:21-724:1. Clearly, GCI does not question the prudence of making these payment options available. “In setting rates, the Commission must determine that the rates accurately reflect the cost of service delivery and must allow the utility to recover costs prudently and reasonably incurred.” *Citizens Utility Board v. Illinois Commerce Comm’n*, 166 Ill. 2d 111, 121 (1995); see also 220 ILCS 5/16-108(c) (“Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs.”). GCI’s proposal to prohibit charges for these costs in the rule so that the Company and its shareholders can be forced to somehow absorb these prudent and reasonable costs is contrary to these well-established cost recovery principles and must be rejected.

Third, GCI’s proposal should be rejected even if it is premised on the ultimate recovery of these costs from other customers. From a policy perspective, it is not reasonable to have certain customers subsidize the payment methods of other customers. *Lukowicz Reb.*, Nicor Gas Ex. 3.0, 38:873-88. For example, if Customer A pays his bill using the U.S. Mail, he has paid \$0.44 for that payment method. In contrast, Customer B wants to pay a bill using a credit card or through a currency exchange, the fee for using either of those payment methods may be larger. Meanwhile, Customer C may pay her bill electronically. *Id.* The fact that a utility accepts all of these methods of payment does not lead to a conclusion that the cost for these various payment methods should be socialized. Nor is it a question of fairness. Rather, the customer has the option to select the payment method that is most convenient to him or her. The costs of that choice should not be socialized, or subsidized, by other customers. *Id.* This view is supported

by the legislatively declared goal and objective of public utility regulation to ensure “the fair treatment of consumers and investors in order that ... the cost of supplying public utility services is allocated to those who cause the costs to be incurred.” 220 ILCS 5/1-102(d)(iii). While this statement of policy and intent affords the Commission some discretion, it is not simply “an off repeated phrase that has little meaning beyond the statement of some rhetorical advice to justify decision-making” as asserted by GCI witness Ms. Alexander. Tr., 347:11-13. GCI’s view that persons causing certain payment method costs to be incurred should be able to avoid these costs so that other customers can subsidize these costs is not reasonable and contravenes the express statutory goal of ensuring that cost causers are the cost payers.

Finally, GCI witness Ms. Alexander contends that there are utilities in other states that have negotiated contracts with the same type of vendors used by Illinois utilities to offer debit or credit card payment option at no extra charge to customers. Alexander Reb., GCI Ex. 3.0, 12:266-9. Ms. Alexander supports this contention with the following statement:

For Example, residential customers of Ohio Edison (a First Energy electric utility in Ohio) can pay via debit or credit card and obtain confirmation of same day payment without any additional fee. See [https://www.firstenergycorp.com/Residential and Business/Billing and Payments/Pay Your Bill/Pay By Phone.htm](https://www.firstenergycorp.com/Residential%20and%20Business/Billing%20and%20Payments/Pay%20Your%20Bill/Pay%20By%20Phone.htm))

Id., p. 12, fn. 2. Ms. Alexander’s statement could not be confirmed through the provided Web link. Lukowicz Sur., Nicor Gas Ex. 6.0, 3:58-70. Contact with a First Energy Senior Analyst, Customer Service Systems, revealed that Ohio Edison’s payment program is similar to many other utilities. That is, customers pay \$3.95 or \$9.95 via the web, Interactive Voice Response (“IVR”), or call center. *Id.* First Energy does offer a free payment channel for customers that select paperless billing, combined with automated recurring payments on a specific due date. *Id.* at 3:70-4:77. This is not the open payment free channel GCI witness Ms. Alexander has

portrayed. Once again, GCI's assertions lack merit and its underlying proposal should be rejected.

For all the foregoing reasons, GCI's proposed revisions to paragraph (2) of Section 280.60(b) should be rejected by the Commission.

2. Partial Payment Allocation

Nicor Gas opposes GCI's proposal to add partial payment provisions back into the rule as Subsection (e) of Section 280.60. See PH Outline, pp. 64-5. In rebuttal testimony, Staff revised its originally proposed partial payment language in response to the testimony of three parties other than GCI. See Agnew/Howard Reb., Staff Ex. 2.0, 47:1064-74. Nicor Gas and many other parties filed rebuttal testimony objecting to Staff's proposed language and identifying numerous significant problems raised by the proposal. See *e.g.*, Kirby Reb. (adopted by Grove), Nicor Gas Ex. 5.0, 8:151-23:532. In surrebuttal testimony, Staff responded as follows:

Based upon the negative input from the many interested parties on this topic, and especially the highly detailed explanations of Nicor Gas witness Kirby, we are convinced that this subsection causes more challenges than any potential benefit. Moreover, from the widely varying descriptions and edits that the parties have offered in their individual attempts to cure the subsection's ills, we believe that it may be impossible to craft a one-size-fits-all version of these requirements. We recommend its removal.

Agnew/Howard Sur., Staff Ex. 3.0, 16:368-17:374. Except for GCI, all interested parties -- including the parties who initially expressed concerns regarding Staff's original language -- have expressed their willingness to accept Staff's removal of the partial payment subsection in its final proposed rule. See PH Outline, pp. 63-65. The Commission should reject GCI's proposal to add partial payment provisions back into the rule as Subsection (e) of Section 280.60.

GCI's proposal to add a partial payment section back into the rule does not attempt to address, much less resolve, the host of issues raised by the parties. Moreover, as correctly

recognized by Staff, a one-size-fits-all version of partial payment requirements is not workable. In addition to the practical, technical, and policy issues Staff was referring to, different statutory provisions apply to gas versus electric utilities. While Section 16-108(b) of the Act addresses partial payments for electric utilities, no similar provision exists for gas, water, or sewer utilities:

An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers. The tariff filed pursuant to this subsection shall (i) **require partial payments made by retail customers to be credited first to the electric utility's tariffed services**, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) **retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself**, and (iv) require the alternative retail electric supplier or other electric utility that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services

220 ILCS 5/16-118(b) (emphasis added). GCI's proposed partial payment language in paragraph (3) refers to a few specific services, but not all tariffed services, and thus conflicts with this statutory mandate for electric utilities. Nor does GCI's language take into account the partial payment provisions contained in the Energy Assistance Act:

If a customer makes a partial payment, a public utility, municipal utility, or electric cooperative may elect either: (i) to apply such partial payments first to amounts owed to the utility or cooperative for its services and then to payment for the Energy Assistance Charge or (ii) to apply such partial payments on a pro-rata basis between amounts owed to the utility or cooperative for its services and to payment for the Energy Assistance Charge

305 ILCS 20/13(f).

While GCI did add the undefined phrase "supply services provided by the natural gas utility" to its proposed payment waterfall language, it did not deal with or address the many other charges that exist. See Kirby Reb. (adopted by Grove), Nicor Gas Ex. 5.0, 14:301-15:335. For

electric utilities, GCI's proposal refers to "generation services provided by the Illinois Power Agency or successor agency." While the Illinois Power Agency ("IPA") develops procurement plans and holds procurement events for most Illinois electric utilities⁷ that result in electric utility contracts with third party suppliers (see 220 ILCS 5/16-111.5; 20 ILCS 3855/1-75), the IPA does not independently provide generation services to electric utilities or their customers⁸ as indicated by GCI's proposed language. Nor does GCI's proposal even attempt to address the myriad of other issues that convinced Staff to remove this proposed section from the rule. *See generally* Kirby Reb. (adopted by Grove), Nicor Gas Ex. 5.0, 14:301-15:335. GCI's proposal is also internally inconsistent, directing a payment application order based on the effect of the payment application in paragraph (2) and a payment application order based on certain types of charges in paragraph (3). No direction is given as to which directive should be given preference when these methods produce different results.

The GCI proposal stumbles before it even leaves the starting blocks, never attempts to get over the hurdles, and is completely unworkable. The Commission should adopt Staff's proposal on this issue -- which removed the partial payment section -- and reject GCI's proposal to add a partial payment section.

⁷ The procurement provisions of the IPA Act only apply to "the eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois." 20 ILCS 3855/1-75(a).

⁸ The IPA does have authority to construct certain generation facilities, but its authority to supply electricity produced by those facilities is limited "to municipal electric systems, governmental aggregators, or rural electric cooperatives in Illinois." 20 ILCS 3855/1-80(d).

B. Section 280.65 – Late Payment Fee Waiver for Low Income Customers

C. Section 280.70 Preferred Payment Date

D. Section 280.80 Budget Payment Plan

VII. SUBPART F: IRREGULAR BILLING

A. Section 280.90 Estimated Bills

1. GCI’s Surrebuttal Testimony Proposal

In the surrebuttal round of testimony, GCI witness Ms. Alexander proposed for the first time an extensive series of new subsections under Section 280.90 (deleting everything after subsection (a) and replacing with totally new subsections (b) through (f)). Alexander Sur., GCI Ex. 5.0R, 25:573-74; GCI Ex. 5.1, pp. 29-32. This last minute proposal that no party or Staff has had an opportunity to respond to should be rejected by the Commission. Staff and all other parties have worked with the language proposed by Staff for estimated bills. Nicor Gas has no issues with Staff’s current proposed language, and it appears that only a few minor issues remain with other parties. PH Outline, pp. 71-74. The Commission should reject GCI’s proposal and adopt Staff’s proposed language.

B. Section 280.100 Previously Unbilled Service

VIII. SUBPART G: REFUNDS AND CREDITS

A. Section 280.110 Refunds and Credits

1. Subsection (b)

a. Response to GCI

GCI witness Ms. Marcelin-Remé recommends adding language to proposed Section 280.110(b)(1) to “require that the utility issue a refund based on the records of whichever party has the oldest billing records.” Marcelin-Remé Dir., GCI Ex. 2.0, 15:378-80; GCI Ex. 1.2, p. 30. She also recommends adding language in proposed Section 280.20 to affirmatively exclude from

the definition of “past due” -- a phrase not used in proposed Section 280.110 -- any unpaid amount “more than two years old.” *Id.* at 15:383-384; GCI Ex. 1.2, p. 6. Both of these proposals should be rejected.

Staff witnesses Mr. Agnew and Ms. Howard responded that the fairness of any particular subsection should be considered against the whole rule, and observed that Section 280.100(b) “contains a 1 year limit for recovery of previously unbilled service to residential customers and a two year limit for the same with regard to non-residential customers.” Agnew/Howard Reb., Staff Ex. 2.0, 55:1256-60. While originally reserving judgment to consider input from other parties (*id.* at 55:1263-65), Mr. Agnew and Ms. Howard did not adopt GCI’s proposals in Staff’s final proposed rule. Agnew/Howard Sur., Staff Ex. 3.0, Att. A., pp. 6, 31. Nicor Gas supports Staff’s rejection of GCI’s proposals.

While ostensibly proposed to achieve fairness, GCI’s proposals create an explicit and harmful inequity: the ability of customers to seek refunds would be reinforced; whereas a utility’s ability to take various actions under Part 280 based on “past due” amounts would be rigidly and unfairly cut off at two years. A graphic representation is presented in Nicor Gas Ex. 2.1 that explains how the proposed rule could allow customers to permanently avoid paying their gas bill by stringing together multiple protections available under the rule. GCI’s proposal would cement the ability of customers to perpetually obtain service without paying their bills by preventing a utility from taking any action whatsoever on delinquent balances more than two years old. Grove Reb., Nicor Gas Ex. 4.0, 4:74-85.

GCI asserts that “rather than providing the full amount due to a customer for the entire timeframe of the overcharge as is called for in the current regulation, the utilities provide a refund of two years or less.” Marcelin-Remé Dir., GCI Ex. 2.0, 14:364-66. GCI also assert that

utilities seem to have records going back indefinitely when a past due balance is owed, but only have records for two years when a credit is involved. *Id.* at 14:372-76. GCI's allegations are speculative and incorrect for Nicor Gas and other Illinois utilities. Grove Reb., Nicor Gas Ex. 4.0, 5:100-05. Nicor Gas has a consistent and evenly applied records retention policy. *Id.* The Company does not have one policy for "refund" records and another policy for "collection" records. They are often the same documents. *Id.* GCI also claims that consumers are only successful in receiving the full refund amount owed them by filing a formal complaint with the Illinois Commerce Commission. Marcelin-Remé Dir., CGI Ex. 2.0, 14:366-68. Since only .05% of the Company's customers call the Commission for additional assistance to resolve a complaint (Grove Dir., Nicor Gas Ex. 2.0, 6:114-17), this charge rings hollow for Nicor Gas.

GCI's assertions also appear to be misdirected complaints about applicable statutory timelines. Section 9-252 of the Public Utilities Act ("PUA") provides that "[a]ll complaints for the recovery of damages shall be filed with the Commission within two years from the time the produce, commodity or service as to which complaint is made was furnished or performed" 220 ILCS 5/9-252. Section 9-252.1 of the PUA similarly provides that "[a]ny complaint relating to an incorrect billing must be filed with the Commission no more than two years after the date the customer first has knowledge of the incorrect billing." 220 ILCS 5/9-252.1. These two year statutory timeframes are not optional, and any complaints about them are misdirected and cannot be addressed in a rulemaking.

GCI also gets it wrong in asserting that proposed Section 280.110(b)(2) establishes a new two year refund period. Marcelin-Remé Dir., GCI Ex. 2.0, 14:376-15:378. Proposed Section 280.110(b)(2) requires that utilities "retain billing records and ledgers that would allow determining a refund or credit for a **minimum** of two years." Agnew/Howard Sur., Staff Ex. 3.0,

Att. A, p. 31 (emphasis added). As this subsection clearly states, it is a simple minimum records retention requirement. Moreover, nothing prevents a customer from retaining its records for as long as he/she desires.

GCI witness Ms. Marcelin-Remé then attempts to justify her amendment of “past due” based on the assertion that “Section 280.110(b)(2) should not have a two year minimum unless the utility companies will only be keeping records for two years and collecting on past debts has a reciprocal, two year maximum.” Marcelin-Remé Dir., GCI Ex. 2.0, 15:381-83. The premise of this argument, that a new two year refund period is being created, is incorrect as explained above. In addition, this proposal is beyond the authority of the Commission. Ms. Marcelin-Remé clearly states that her “past due” proposal was intended to ensure that “collecting on past debts has a reciprocal, two year maximum.” Despite testimony indicating her intent to limit a utility’s ability to collect past due amounts after two years, Ms. Marcelin-Remé did not have an understanding and could not confirm whether she intended her proposed rule language to apply to collection actions brought in the circuit courts of Illinois. Tr., 710:1-711:15. Nor did she have or offer an understanding of the basis for the assertion of Commission’s authority to limit collection actions in the circuit courts.

As discussed in Section II.A.1 above, “[t]he Commission only has those powers given it by the legislature through the Act.” *BPI I*, 136 Ill.2d 192, 201 (1989); *see also People ex rel. Ryan v. Illinois Commerce Comc'n*, 298 Ill.App.3d 483, 487 (2nd Dist. 1998) (“The Commission derives its power from the statute and only has the authority that is expressly conferred upon it.”). The Courts have held that the Commission has no authority to adjudicate individual property or contract rights, much less the authority to set statutes of limitation on the exercise of such rights at issue here. *Mitchell v. Illinois Cent. R. Co.*, 317 Ill.App. 501, 509 (1943) (The

Commission “is not a judicial body and it has no jurisdiction to adjudicate controverted individual property or contract rights.”), *citing People v. Peoria & P. U. Ry. Co.*, 273 Ill. 440 (1916). The PUA provides no authority for the Commission to place a time limit on collection actions in the circuit courts, and GCI’s proposal to impose such a limit is defective and contrary to law.

GCI’s recommendation to add a provision that “[t]he utility shall use the oldest records to determine the amount of the refund” at the end of proposed Section 280.110(b)(1) is not needed. As noted above, Section 280.110(b)(1) already requires refunds “for the full period of time during which an overcharge occurred,” and specifically allows use of either party’s “billing records that would allow determining a refund or credit.” Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 31. There is nothing in this proposed section that prohibits use of records of a certain age, and a requirement to “use the oldest records” is more confusing than helpful. GCI’s phrasing seems to indicate that where records of different ages support different results, the “oldest” records are to be used to make a determination. To the extent errors were detected and corrected, would this compel use of the older but erroneous records? GCI’s argument suggests this is not what GCI intended, but this illustrates that the language is confusing and unnecessary and should not be added.

GCI’s recommendation to modify the definition of “past due” should also be rejected. This proposed language change is inequitable and unreasonable, as explained above, and would be harmful to utilities and other customers. This edit has no reasonable relation to the alleged “inequity” cited by GCI and is not needed. Proposed Part 280 grants significant rights based on the existence of “past due” amounts, and GCI’s proposal significantly restricts the definition of “past due” amounts. This edit would have a significant impact on bad debt, as a utility would

lose significant rights to deny or discontinue service for delinquent balances more than two years old. Ultimately, this harm would fall on those ratepayers who fund uncollectible expense.

For all the foregoing reasons, GCI's proposals should be rejected.

2. Subsection (d)

a. Nicor Gas Position

Nicor Gas proposes the following modifications to Section 280.110(d):

- d) Interest on refunds and credits: All refunds and credits shall be accompanied with interest calculated at the rates approved by the Commission for refunds and credits in the utility's tariffs or, if no such rate has been approved by the Commission for the utility, at the rates set by the Commission for customer deposits. Interest shall accumulate starting 30 days from the date the actual money comprising the overpayment is held by the utility until the date the utility issues a refund or credit to the customer's account.— Credit balances accumulated on active budget payment plans shall not be subject to interest under this subsection unless the budget payment plan is cancelled while a credit balance remains. Interest shall accumulate from the date of the budget payment plan cancellation until the credit is refunded or consumed by future billing. A credit balance that results from a cancel and re-bill shall not be considered an overpayment for the period of time prior to the date of the cancel and re-bill.

Grove Dir., Nicor Gas Ex. 2.0, 3:59-4:77; Grove Reb., Nicor Gas Ex. 4.0, 7:146-9:206.

Nicor Gas currently pays interest on customer refunds and credits, and uses the Commission-approved interest rate based on a 13-week Treasury bill rate as stated in the Company's terms and conditions. Grove Dir., Nicor Gas Ex. 2.0, 3:59-4:64. Section 280.110(d) refers to a customer deposit interest rate, and conflicts with the Company's current Commission-approved terms and conditions. *Id.* at 4:65-70. In addition, the proposed rule states that "interest shall accrue over the full time period during which the overpayment occurred." *Id.* In a cancel and rebill situation, the credit does not exist until the transaction is completed in the billing system. *Id.* at 4:72-3. The proposed rule should allow Nicor Gas to continue to use the approved

terms and conditions interest rate now in place for refunds and credits. Similarly, the proposed rule should clarify that an overpayment with a cancel and rebill arises on the date of the cancel and rebill – consistent with Nicor Gas’ current process.

b. Response to Staff

Staff responded to the interest rate issue in a cursory fashion by simply concluding that rules should always control over tariffs, and did not give any substantive basis for dismissing the Company’s concern. Agnew/Howard Reb., Staff Ex. 2.0, 57:1312-58:1325. Nicor Gas should be allowed to use its Commission-approved and tariffed interest rate now in place for refunds and credits. Nicor Gas has been paying interest on credit balances for decades, and has established systems and processes to implement this decision. Grove Reb., Nicor Gas Ex. 4.0, 8:155-65. The proposed rule should accommodate the Company’s existing practice in this regard. The Commission’s utility specific decisions, having taken into account specific facts and information relative to the utility, should not – absent a significant problem that needs to be remedied -- be discarded and subjected to general, one-size-fits-all guidelines. Further, the Commission approved the Company’s current tariffed interest rate notwithstanding that current Part 280 provided for use of the rate on deposits -- the same rate proposed by Staff for credits— for refunds and overcharges. 83 Ill. Adm. Code 280.75(b), 280.76.

IX. SUBPART H: PAYMENT ARRANGEMENTS

A. Section 280.120 Deferred Payment Arrangements (“DPAs”)

Nicor Gas supports Staff’s proposed new language for DPAs. Proposed Section 280.120 is clear and sets forth the duties, obligations and rights of utilities and customers with respect to deferred payment arrangements. Lukowicz Reb., Nicor Gas Ex. 3.0, 44:1016-19. The proposed language allows every customer sincerely interested in doing so a clear, meaningful and

beneficial opportunity to enter into a deferred payment arrangement. The rule establishes eligibility, minimum and maximum payment term, and identifies factors to be considered in arriving at a payment term. *Id.* at 44:1022-25.

1. Response to GCI

Staff's proposed language continues two reasonable limitations on DPA. Proposed Section 280.120(b)(1) prohibits the use of multiple DPAs in a single 12 month period absent successful completion of the first DPA. This limitation in no way prohibits a customer from having an opportunity to obtain an initial DPA, and nothing else in the rule otherwise limits initial DPAs. Second, proposed Section 280.120(k)(2)(C) limits renegotiations of DPAs to situations where a DPA is not in default. Again, this is a reasonable limitation. A customer is allowed to renegotiate the terms of a DPA to address changed financial conditions, but must not wait until after failing to make a payment to seek such renegotiation. Staff's rule also allows reinstatement by making all payments otherwise due under the DPA with no reinstatement fee for a first reinstatement, and allows reinstatement fees for subsequent reinstatements if provided for in a utility's tariffs. *Lukowicz Reb., Nicor Gas Ex. 3.0, 45:1028-38.* The GCI proposals to expand the eligibility for DPAs by eliminating these common sense and reasonable limitations should be rejected.

GCI proposes the following modifications to Section 280.120:

- 1) Subsection (b)(1): The utility shall inform the customer that it will offer DPAs based on the customers individual circumstance and other customer specific factors.
- 2) Subsection (b)(1): Applicant's ability to pay and other listed factors shall be taken into consideration when offering a DPA.
- 3) Subsection (d) [New]: Utility must send written confirmation of the specific terms of the DPA within 3 business days.

- 4) Subsections (f)((1) and (g)(1): Down payment and length should be determined by customer's ability to pay and other listed factors.
- 5) Subsection (f)(3): Utility discretion to decrease down payment amount deleted.
- 6) Subsection (j): Delete subsection, including provisions providing utility has no obligation to reinstate DPA after service disconnection and allowing reinstatement fee after first reinstatement of defaulted DPA, and insert new reinstatement provisions without these provisions.
- 8) Subsection (k)(2): Customer may renegotiate a DPA within 14 days after defaulting from the original DPA.

Alexander Dir., GCI Ex. 1.0, 8:191-10:245, 21:574-28:757; GCI Ex. 1.2, pp. 32-26; GCI Ex. 5.1, pp. 34-39; PH Outline, pp. 83-94. AARP witness Mr. Musser proposed or supported similar modifications to Section 280.120, including requiring utilities to take into account individual customer circumstances and provide a written letter confirmation of a DPA. Musser Dir., AARP Ex. 1, 9:22-10:9.

Staff did not alter its proposal other than to add a provision regarding overlapping arrangements. With respect to the proposal for a separate notification of DPA terms, Staff responded that they sought to provide better information for customers and complaint handlers by requiring the terms of the DPA to be included on bill statements. Agnew/Howard Reb., Staff Ex. 2.0, 60:1364-64:1463.

GCI's proposals to micromanage customizable DPA's should be rejected. The rule has reasonable and practical guidelines in this regard. Utilities are not social service organizations or financial counselors, but make every reasonable effort to work with customers. Lukowicz Reb., Nicor Gas Ex. 3.0, 47:1082-86. Utilities are not and should not be in the business of making business decisions based on the proactive examination of individual customer circumstances. *Id.* at 47:1086-87. The variations to be considered under GCI's proposal would be endless and

would put an unreasonable burden on utilities and their customer service representatives. *Id.* at 47:1087-89. The terms and conditions contained in Staff's rule are reasonable and fair to all parties. GCI's proposed modifications are neither needed nor reasonable and should be rejected by the Commission.

B. Section 280.125 Deferred Payment Arrangements for Low Income Customers

Nicor Gas has no objection to Staff's proposed language and proposes correction of a typographical error in Section 280.125 as follows:

- a) Intent: To enable low income customers the means to better retain essential utility services, a low income customer shall be eligible for all the provisions described in Section 280.120, April 1–~~though~~ through November 30, and in addition, a low income customer shall be entitled to the altered provisions described below:

X. SUBPART I: DISCONNECTION

A. Section 280.130 Disconnection of Service

1. Subsection (b)

a. Nicor Gas Position

Nicor Gas proposes the correction of minor scrivener errors regarding allowable reasons for disconnection, as follows:

- 8) ~~Compliance~~ Non-compliance with any rules of the utility on file with the Commission for which the utility is authorized by tariff to disconnect service in the event of non-compliance;
- 9) ~~Compliance~~ Non-compliance with an order of the Commission;

Tr., 797:18-798:17.

2. Subsection (c) – Non-deniable charges

The title of Subsection (c) – non-deniable charges -- represents a phrase used by Staff and utility consumer service representatives, refers to charges that are ineligible for disconnection, and may not be readily understood by some customers. Tr., 798:18-799:15. Nicor Gas

recommends that this heading be changed to “Charges not eligible for disconnection” or “Charges ineligible for disconnection,” but does not formally object to the Staff proposed title and defers to the Commission and Staff.

a. Paragraph (4)

Nicor Gas proposes the following revisions to paragraph (4) of Section 280.130(c):

- 4) Charges for non-utility equipment or merchandise, unless otherwise authorized by Illinois statute; or

Lukowicz Reb., Nicor Gas Ex. 3.0, 49:1150-50:1162.

Proposed Section 280.130(c) is a list of items that are **not** valid reasons for disconnection. To address concerns raised by parties regarding non-payment of charges for on-bill financing, Staff agreed to add language addressing this concern by adding “unless otherwise authorized by Illinois statute.” Agnew/Howard Reb., Staff Ex. 2.0, 73:1667-74, Att. J., p. 37. Nicor Gas supports this change. However, Staff only made this change to paragraph (1) regarding “charges for non-utility service” but not to paragraph (4) regarding “charges for equipment or merchandise.” *Id.* On-bill financing can be used for energy efficient equipment as well as “services,” so the “unless otherwise authorized” language should be included in paragraph (4) as well. Lukowicz Reb., Nicor Gas Ex. 3.0, 49:1150-50:1162. In addition, since meters and other items may be considered to be “equipment,” the exclusion of “equipment” in paragraph (4) should be limited to “non-utility” equipment. *Id.* Staff indicated it did not intend to exclude charges authorized by statute or charges for equipment included in a utility’s tariffs. Tr., 799:16-802:14. Nicor Gas believes the revisions proposed above reflect this intent, but is open to consideration of alternative language submitted by Staff in its initial brief.

b. Paragraph (6) – Response to GCI

GCI proposes to add a new paragraph (6) to Section 280.130(c) to add “charges calculated on the basis of estimated billings ... [except in certain described circumstances]” to the list of non-deniable charges. PH Outline, p. 99. This provision is unnecessary. The allowable use of estimated billings is already addressed in Subpart F. Section 280.90(g) of Staff’s proposed rule already provides that a “utility shall not disconnect a customer for non-payment of two or more consecutively estimated bills until the utility takes an actual reading of the meter to verify the accuracy of the billing.” PH Outline, p. 74. GCI’s proposal to add new and different standards should be rejected.

3. Subsection (e) – Method of disconnection notice delivery

a. Paragraphs (2) and (4)

Nicor Gas proposes the following modifications to paragraphs (2) and (4) of Section 280.130(e):

- 2) The notice shall be mailed through the United State Postal Service or hand delivered, unless paragraph (4) below is applicable.

* * *

- 4) ~~Nothing shall prevent a utility from submitting a duplicate notice to the customer electronically as long as it has also mailed or hand delivered a paper version of the notice to the customer.~~ A disconnection notice shall be sent by mail unless a customer has requested and accepted the terms of an electronic notification program.

Lukowicz Dir., Nicor Gas Ex. 1.0, 18:401-20; Lukowicz Reb., Nicor Gas Ex. 3.0, 36:838-50, 48:1131-37.

As with other areas, the advancement of electronic communications is developing rapidly. Lukowicz Dir., Nicor Gas Ex. 1.0, 18:408-20. Customers today often request electronic communications only. Nicor Gas’ customers are becoming very accustomed to doing business

electronically. In fact, almost 50% of payments received in 2009 by Nicor Gas were electronic, instead of a paper check. *Id.* The United States Post Office itself offers electronic communication that not only is less expensive, but provides confirmation of delivery. *Id.* Encouraging electronic communication is considered a “green” initiative and is consistent with energy efficiency measures that the State of Illinois advocates. To allow for those situations where a customer requests that a utility communicate via electronic means, Staff’s proposed language should be amended to accommodate such a situation. *Id.*

GCI witness Ms. Marcelin-Remé supports the right of customers to select electronic correspondence, billing, and notifications (Marcelin-Remé Dir., GCI Ex. 2.0, 9:218-25), and proposed language providing that customers who elect to receive electronic communications “must retain the right to have all notices, including disconnect notices..., by U.S. mail at any time.” GCI Ex. 1.2, p. 21. This is a reasonable proposal, and should be consistently reflected in Section 280.50 regarding billing and Section 280.130 regarding disconnection. Electronic communication is exponentially growing as indicated by customer demand for this type of communication. Lukowicz Reb., Nicor Gas Ex. 3.0, 36:837-47.

Staff opposes Nicor Gas’ proposal to allow electronic disconnect notices if electronic notices are elected by the customer. Agnew/Howard Reb., Staff Ex. 2.0, 73:1678-86. Staff would require a physical disconnection notice regardless of customer choice to receive notice electronically. Staff states that “disconnection represents such a serious escalation that it must be accompanied by a physical notice.” Agnew/Howard Reb., Staff Ex. 2.0, 73:1684-86. Nicor Gas believes customers should be allowed to choose if they prefer to receive their disconnect notice electronically or by U.S. Mail, provided the appropriate process is in place to assure customer understanding of their choice. Lukowicz Reb., Nicor Gas Ex. 3.0, 36:844-47. Indeed, for

customers who prefer, select and receive all their communications electronically, mailed communication may be reviewed only intermittently and easier to overlook or miss. The Commission should accommodate all electronic communications, allow the rule to adapt to the growing use of electronic communication, and allow for customer choice.

b. Paragraph (5) – Response to AARP

AARP proposes to add a paragraph (5) to Section 280.130(e) as follows:

- 5) Immediately preceding the disconnection of service, the employee of the utility designated to perform this function, except where the safety of the employee is endangered, shall make a reasonable effort to contact and identify him/herself to the customer or a responsible person then upon the premises and shall announce the purpose of his/her presence.

Musser Rebuttal, AARP Ex. 2.0R, pp. 2-4; PH Outline, p. 101. This proposal raises issues substantially the same as those addressed under Subsection (j) and should be rejected for those same reasons. *See* Section X.A.5 below.

4. Subsection (h)

Nicor Gas proposes the following modification to Section 280.130(h):

- h) Exemptions to notice requirements: Disconnection notices substantially in the form of Appendix A to this Part shall be required prior to all disconnections of service, except in cases of:

Lukowicz Dir., Nicor Gas Ex. 1.0, 25:556-26:586. This is the same modification discussed in connection with Section 280 Appendix A in Section XVI.A below, and should be adopted for the same reasons supporting the modification of Section 280 Appendix A.

5. Subsection (j)

a. Nicor Gas Position

Paragraph (1) of Section 280.130(j) of Staff’s proposed rule addresses “Warning call to residential and master-metered customers,” and provides as follows:

Unless the customer has no phone number on record, the utility shall provide a warning call to the customer a minimum of 24 hours prior to the scheduled disconnection.

Staff Ex. 3.0, Att. A, p. 40; PH Outline, p. 105. Nicor Gas originally objected to this provision as imposing a redundant notification that raised safety concerns (Lukowicz Dir., Nicor Gas Ex. 1.0, 19:421-20:461), but subsequently determined that it had inaccurately viewed this paragraph to require a contact with the customer at the time of disconnection. An additional call at the time of disconnection would have duplicated other calls routinely made as part of the past due collection process. *Id.* at 19:429-35, 20:451-61. Such a call would have also raised safety concerns by providing detailed and specific information as to when an account will be physically disconnected. *Id.* at 19:436-20:450. Disconnecting service is always the Company's last resort and is an unpleasant transaction for both the utility and the customer. Employee/customer interaction at the time of a disconnection presents potential safety concerns due to the possibility of confrontational interactions. Indeed, one of the reasons Staff proposed amending this Section of the rule was concern over the safety of utility employees. *Id.*; Staff Ex. 1.0, 17:379-89.

Staff's proposed Section 280.130(j)(1) requires "a warning call to the customer a *minimum* of 24 hours prior to the scheduled disconnection" Agnew/Howard Reb., Staff Ex. 2.0, Att. J, p. 40 (emphasis added). Upon giving further consideration to this language, Nicor Gas observed that it would allow the current advance notification requirements to continue as long as those notifications do not occur less than 24 hours prior to the scheduled disconnection. Lukowicz Reb., Nicor Gas Ex. 3.0, 49:1135-44. As such, Staff's rule also does not present the safety concerns previously discussed, and Nicor Gas withdrew its opposition to Staff's proposed language. *Id.*

b. Response to AARP

AARP's proposal for paragraph (5) Subsection (e) raises the same safety concerns discussed above in the context of Subsection (j). Nicor Gas opposes AARP's proposed language for those same reasons.

c. Response to GCI

GCI proposes the following revisions to paragraphs (1) and (2) of Section 280.130(j):

- 1) Unless the utility has exercised due diligence to obtain a telephone number for the customer and cannot obtain a working telephone number, the utility shall attempt personal contact with the customer with ~~provide a~~ minimum of two warning calls to the customer over two different days during day and evening hours a minimum of 24 hours prior to the scheduled disconnection.
- 2) The warning call may be live or automated, and it shall advise the customer of the utility's date of the disconnection notice, the amount owed or other requirements to avoid disconnection of service, and that the utility intends ~~intent~~ to disconnect the service as of a date certain.

PH Outline, p. 106. GCI's proposal should be rejected. As noted above, there are already multiple notices provided as part of the past due collection process. GCI's proposal raises the same redundancy concerns discussed above, is not needed, and should be rejected by the Commission.

GCI also proposes to insert an additional paragraph as follows:

k) Contact at the time of disconnection of service.

A utility shall attempt to advise the customer that service is being discontinued by directing its employee making the disconnection to contact the customer at the time service is being discontinued. If the utility is unable to discontinue service during a call made at the customer's premise, the utility shall attempt to leave a notice at the premise or billing address informing the customer that an attempt to discontinue service has been made and that his/her service continues to be subject to disconnection.

PH Outline, p. 106. GCI's proposal raises the same safety concerns discussed above, is not needed, and should be rejected for those reasons.

6. Subsection (l) – Response to GCI

GCI proposes a number of drastic revisions to the provisions of Staff's proposed rule addressing time of day and day of the week prohibitions and limits. PH Outline, pp. 107-08. Staff's proposed rule took the very reasonable and balanced approach of requiring a utility to have customer service personnel available to address a customer contact at least one hour after the time of any non-business hour or non-business day disconnection. GCI takes the unreasonable approach of prohibiting any disconnections during all of the hour and day periods addressed in Staff's proposed rule, while at the same time retaining the customer service requirements. These recommendations are unreasonable and should be rejected. There is no evidence of any abuse or problem with weekend or non-business hour service disconnections that would justify prohibiting such disconnections. Utilities also need some flexibility to schedule and deploy their crews in an efficient and reasonable manner. Removing that flexibility will add costs with no corresponding benefit. If scheduling a disconnection for 6:00 P.M. is the most efficient and effective use of a utility's crews, the rule should not prohibit such actions provided customer protections are in place. Staff's rule does this by mandating that customer service representative must be available to address customer contacts when off-hour or off-day disconnections are processed.

B. Section 280.135 – Winter Disconnection of Residential Hearing Services, December 1 through March 31

C. Section 280.140 Disconnection for Lack of Access to Multi-Meter Premises

D. Section 280.150

XI. SUBPART J: MEDICAL CERTIFICATION

A. Section 280.160 Medical Certification

1. Subsections (a) and (g)

Nicor Gas proposes the following modifications to Section 280.160(a):

- a) Intent: To temporarily prohibit disconnection of utility service to a residential customer for at least ~~60~~ 30 days in cases of certified medical necessity; and to provide an opportunity for the customer to retire past due amounts by periodic installments under an automatic medical payment arrangement (MPA) commencing after 30 days.

Grove Reb., Nicor Gas Ex. 4.0, 12:257-13:289.

Similarly, Nicor Gas proposes the following modification to Section 280.160(g):

- g) Duration of certificate: The certificate shall protect the account from disconnection for ~~60~~ 30 days from the date of certification. If the customer was disconnected prior to certification, then the ~~60~~ 30 day period shall not begin until the utility restores the customer's service.

Grove Reb., Nicor Gas Ex. 4.0, 12:257-13:289.

Nicor Gas opposes the proposal to increase certification duration to a flat 60 days. There was no need to revise the proposed rule in this regard. By extending the total certification time to 60 days or longer, the rule would merely prolong the debt owed on the account to be paid.

Grove Reb., Nicor Gas Ex. 4.0, 12:261-63. The proposed rule provides for automatic medical payment arrangements (“MPAs”), and customers will be allowed to have multiple regular DPAs under other provisions of the proposed rule. The need for MPAs is unclear, and the need for yet another extension on top of all the other protections already provided is unnecessary and unreasonable. *Id.* at 12:263-67. Care must be taken to ensure that protections are focused and

limited, and do not needlessly facilitate or create chronic and perpetual re-certifications and disconnect deferrals without payments. *Id.* at 12:268-70. As shown in Nicor Gas Exhibit 4.1, this is exactly what Staff's proposal would create—a perpetual process that prevents disconnection notwithstanding a failure to make payment. This result is bad for utilities and ratepayers alike, and should be rejected by the Commission.

a. Response to GCI

GCI proposes to revise Section 280.160(a) as follows:

- a) Intent: To permit customers with medical emergencies to obtain additional time to negotiate needed extensions or payment plans to ensure that utility service is not disconnected. This provision also provides for, at a minimum, a temporarily prohibition on disconnection of utility service to a residential customer for at least 60 days in cases of certified medical necessity; and to provide an opportunity for the customer to retire past due amounts by periodic installments under an automatic medical payment arrangement (MPA) commencing after 360 days.

PH Outline, pp. 117-18. For the reasons indicated above, Nicor Gas supports a 30 day time frame. As to the remainder of GCI's proposed revision, Nicor Gas continues to support Staff's proposed language.

2. Customer Self Declaration of Medical Emergency – Response to GCI

GCI proposes to add a new Subsection (b) providing that customers be permitted to orally declare a medical certification to remain in effect for five business days. Alexander Dir., GCI Ex. 1.0, 35:956-58; PH Outline, p. 118. This recommendation is neither needed nor reasonable, and appears to serve no purpose. Grove Reb., Nicor Gas Ex. 4.0, 11:250-12:256. A medical professional should be declaring the medical reason justifying the need for service. Certainly, a medical professional will be involved when medical emergencies arise. *Id.* The proposed rule already provides that medical professionals may establish the initial certification by phone call.

Nicor Gas supports Staff's decision to decline to adopt this recommendation. Agnew/Howard Reb., Staff Ex. 2.0, 82:1876-86.

3. Subsection (c) – Response to GCI

GCI proposes to revise Section 280.160(c) as follows:

- c) Method of certification by the licensed physician or local board or health:
 - 1) ~~Initial~~ The utility shall accept an oral certification, but may require a written certification (by mail, facsimile, or electronic transmission) within seven (7) days after the initial certification. by phone call is allowed.
 - 2) ~~Written (may be mailed, faxed or delivered electronically) certification must be provided within 7 days after an initial certification by phone call.~~

PH Outline, p. 118. GCI's proposed revision should be rejected. The proposal makes telephonic certification the default, and would require utilities to make follow-up requests for written certifications. This proposal is not reasonable and should be rejected.

4. Subsection (e) – Response to GCI

GCI proposes to revise Section 280.160(e) as follows:

- e) Certificate timing:
 - 1) Certificate presentation prior to disconnection earns a Medical Payment Arrangement term, as described under subsection (h)(1) below.
 - 2) ~~Certificate may be presented up to 14 days after disconnection, with utility discretion as to whether it shall accept a certificate after more than 14 days from disconnection have passed. Any certificate submitted by a customer whose service has been disconnected within the previous 14 days shall require the utility to reconnect service promptly on the same day as the receipt of the certification, but no later than 48 hours after such receipt. In appropriate circumstances, the utility may accept a certification after 14 days.~~ Certification presented after disconnection earns a medical payment arrangement term, as described under subsection (h)(2) below.

PH Outline, p. 120. GCI's proposed revision should be rejected. Customers have multiple opportunities to enter into payment arrangements, and Staff correctly concluded that Medical Certification presented more than 14 days after service disconnection should only occur at the discretion of the utility to accept such a certificate. Similarly, GCI's proposed restoration times are too rigid. Staff's proposed language should be adopted.

5. Subsection (h) – Response to GCI

GCI recommends adding the following language at the beginning of Section 280.160(h):

Upon contact by a customer whose account is delinquent or who desires to avoid a delinquency and who has received a medical certificate, the utility shall inform the customer that it will offer a medical payment arrangement appropriate for both the customer and the utility. The utility may require the customer to demonstrate an inability to pay or other household circumstances that should be taken into account to negotiate the terms of the MPA. If the customer proposes payment terms, the utility may exercise discretion in the acceptance of the payment terms based upon the account balance, the length of time that the balance has been outstanding, the customer's recent payment history, the reasons why payment has not been made, and any other relevant factors concerning the circumstances of the customer, including health, age, and family circumstances. If a customer is unwilling to discuss the customer's household circumstances or ability to pay, the utility may require the following payment terms:

PH Outline, pp. 121-22. Nicor Gas opposes inclusion of this language for the same reasons it opposes insertion of similar language in Section 280.120. See Section IX.A.1 above. Similarly, Nicor Gas opposes changing 30 to 60 days in paragraphs (1) and (2) of Subsection (h) for the reasons indicated above.

6. Subsection (i)

Nicor Gas proposes the following modification to Section 280.160(i)

- i) New certification of previously certified accounts: Accounts that received a prior valid medical certificate shall be eligible for new certification any time after ~~either~~:
 - 1) The total account balance has been brought current; and ~~or~~

- 2) 12 months from the beginning date of the prior certification has passed.

Grove Dir., Nicor Gas Ex. 2.0, 4:79-5:104; Grove Reb., Nicor Gas Ex. 4.0, 10:210-11:245; Lukowicz Sur., Nicor Gas Ex. 6.0, 4:80-5:100.

Staff's proposed language provides additional opportunities to defer payment that are unreasonable. By providing that a customer is eligible for a medical payment arrangement ("MPA") by meeting just one of the two conditions, Staff's proposed language has created the last link for a customer to become a perpetual non-paying customer. Grove Dir., Nicor Gas Ex. 2.0, 5:86-93. Specifically, Staff's proposal allows multiple MPAs after the mere passage of time regardless of whether the original MPA was successfully completed. Coupled with other limitations on when the Company can disconnect customers for nonpayment, Staff's proposal would enable unscrupulous customers to further game the system in an effort to avoid paying their bill. *Id.* Nicor Gas Ex. 2.1 shows how Staff's proposal could allow customers to permanently avoid paying their gas bill. This Company's proposed revisions will ensure that a customer is current on his bill before receiving a second medical certificate, and limit the opportunities for unscrupulous customers to game the process to avoid paying their bills.

The rebuttal testimony of Staff witnesses Mr. Agnew and Ms. Howard noted that a number of parties raised concerns regarding the new certification of previously certified accounts provisions, declared they were open to some movement on this issue, openly sought some level of support for modification of these provisions from consumer advocates, and sought comment from the parties in rebuttal before deciding to support or oppose this change. Agnew/Howard Reb., Staff Ex. 2.0, 84:1927-85:1942. However, to date, Staff has not adopted Nicor Gas' proposed language. Nicor Gas urges Staff and the Commission to adopt the Company's proposed revisions. Medical certificates are the most abused process currently in effect and are a

source of concern for both utilities and Staff. Grove Reb., Nicor Gas Ex. 4.0, 10:227-11:234. On the other hand, medical certificates serve a legitimate purpose for households experiencing true medical emergencies. *Id.* If the rule is going to accommodate the desire of some for liberal provisions with respect to obtaining and implementing medical certification protections, this needs to be balanced with reasonable but definite limits on the repeated use of medical certificates. Otherwise, stricter controls would be needed to address the misuse of medical certificates at the front end of the process.

a. Response to GCI

Ms. Marcelin-Remé testifies she supports changing the rule to accommodate a yearly certification procedure. Marcelin-Remé Reb., GCI Ex. 4.0, 8:180-7. If this means that GCI supports Nicor Gas' proposal to limit recertifications in all cases to situations where both (a) 12 months from the beginning date of the prior certification has passed and (b) the total outstanding balance is brought current, then Nicor Gas concurs. Lukowicz Sur., Nicor Gas Ex. 6.0, 4:81-5:100. If Ms. Marcelin-Remé means something else, Nicor Gas disagrees. A considerable amount of effort has been placed into this section. *Id.* Most of the language of Section 280.160 was derived from discussions where there was agreement on the intent, method, timing, restoration, duration of the certification, and the medical payment arrangement. All parties had made concessions regarding how the proposed language should be written. *Id.* The currently proposed Section 280.160 has introduced the concept of recertification of a medical customer section. The language for the recertification process as written will be abused because it would purport to allow recertification after 12 months regardless of whether the total outstanding balance has been brought current. *Id.* This would allow a perpetual cycle of non-payment. This

simply is unacceptable. Nicor Gas' proposed language should be adopted to control uncollectible costs for utility ratepayers. *Id.*

XII. SUBPART K: RECONNECTION

A. Section 280.170 Timely Reconnection of Service

1. Subsection (b)

a. Paragraphs (3) and (4)

GCI proposes revising paragraphs (3) and (4) to shorten the timeframe for reconnection of service as follows:

- 3) A disconnected electric, water or sewer customer who remedies the reason for the disconnection, and is not required by the utility to provide information as a new applicant for service, shall be reconnected as soon as reasonably possible, but no later than two ~~within four~~ calendar days.
- 4) A disconnected natural gas customer who remedies the reason for the disconnection, and is not required by the utility to provide information as a new applicant for service, shall be reconnected as soon as reasonably possible, but no later than two ~~within seven~~ calendar days, unless there are circumstances beyond the control of the utility that justify a later date. Such circumstances shall be documented by the utility.

PH Outline, p. 133. GCI's proposed revisions are unreasonable and should be rejected. Nicor Gas has already explained, and GCI has acknowledged, the need for more reasonable time frames for service activation. See Section III.A.4 above. Staff's proposed language is reasonable and should be adopted by the Commission.

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

XIII. SUBPART L: UNAUTHORIZED SERVICE USAGE

A. Section 280.190 Treatment of Illegal Taps

B. Section 280.200 -- Tampering

C. Section 280.210 -- Payment Avoidance by Location (PAL)

1. Background

The utilities have identified the very real problem of payment avoidance schemes being employed by some to obtain utility services without payment. To address this situation and the related impact on uncollectible expense, Nicor Gas and others sought the adoption of payment avoidance by location (“PAL”) provisions to obtain a tool to prevent or minimize increases in bad debt resulting from intentional payment avoidance schemes by occupants at the same premises. The PAL issue has been the subject of considerable debate among interested stakeholders.

Staff’s initial PAL proposal allowed utilities to deny service in certain PAL situations, but placed strict conditions on the ability to use the PAL protections. Objections were voiced on both sides to Staff’s proposed language. Some argued there were not enough restrictions on the use of PAL protections. Others argued that the restrictions were so strict as to render the protections ineffective and useless. In surrebuttal testimony, Staff made a fairly significant revision in its proposal rule language intended to acknowledge and balance the arguments of all parties and address its own concerns. Staff’s revised proposal limited the PAL protection mechanism or remedy to a refundable deposit that must be paid in advance, and simplified the requirements for implementation of the PAL protections:

[W]e propose 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. With this we propose a single remedy: a refundable deposit that must be paid in full before service is granted to the new applicant.

Agnew/Howard Sur., Staff Ex. 3.0, 21:473-22:496.

2. Nicor Gas Position

Nicor Gas is willing to accept the PAL language proposed by Staff in its surrebuttal testimony. Staff's proposed language represents a significant step in addressing a serious problem, and Nicor Gas appreciates Staff's thoughtful and balanced proposal. Nevertheless, Nicor Gas continues to maintain that its previously stated revisions and objections to Staff's original proposed language are valid and reasonable. *See* Lukowicz Dir., Nicor Gas Ex. 1.0, 22:502-24:554; Lukowicz Reb., Nicor Gas Ex. 3.0, 15:350-20:448, 51:1199-54:1281; Lukowicz Sur., Nicor Gas Ex. 6.0, 5:103-6:130. Similarly, Nicor Gas also maintains that the original PAL remedy is an appropriate and reasonable remedy.

It appears from the Pre-Hearing Outline that no-party has a general objection to Staff's proposed language. PH Outline, pp. 143-48. Indeed, many parties indicate they are willing to accept Staff's latest proposed PAL language. *Id.* Nor is there an indication that any party objects to Staff's current general approach to PAL in the Spreadsheet Summary of Party Positions. There is a notation that "GCI supports the PAL version that was included as part of Staff's Rebuttal Testimony. Staff Ex. 2, Att. J," but this notation is listed in the row for Subsection (d) and not Section 280.210 in general. A few parties propose some revisions to the notice language in Subsection (d). Nicor Gas does not take a position on these proposals.

Nicor Gas' only other comment is that Section 280.210 of Staff's proposed rule has two subsections numbered "d", and the second subsection (d) should be renumbered to subsection (e)

and subsequent subsections renumbered accordingly. Agnew/Howard Sur., Staff Ex. 3.0, Att. A, pp. 57-60.

XIV. SUBPART M: COMPLAINT PROCEDURES

A. Section 280.220 Utility Complaint Process

1. Subsection (i)

Nicor Gas proposes deleting paragraph 1 of Section 280.220(i) as follows:

- 1) ~~The utility personnel answering a customer complaint shall, upon the customer's non-acceptance of the resolution, advise the customer of the right to escalate the complaint to supervisory personnel for further review and response.~~

Grove Dir., Nicor Gas Ex. 2.0, 5:106-7:143; Grove Reb., Nicor Gas Ex. 4.0, 13:293-15:326.

Staff's notification requirement in Section 280.220(i)(1) of Staff's proposed rule is a "solution seeking a problem" that would micromanage utility processes in a manner that leads to inefficiency and increased costs. Grove Reb., Nicor Gas Ex. 4.0, 13:298-14:300. Only a very small number of Nicor Gas customer complaints (.05 percent) escalate to the point where the customer calls the Commission. *Id.* at 14:300-02. Staff's proposed language would likely undermine the ability of the Company's customer service representatives to manage the customer concern, could needlessly double the number of customers seeking an escalation of the matter, and, ultimately, further frustrate the customer when they receive the same answer from a supervisor. *Id.* at 14:302-06. Staff's proposal likely will also require the Company to incur additional expense to have the necessary "supervisory" personnel available to identify and address a greater volume of requests to speak to a supervisor. *Id.* at 306-08; *see also* Grove Dir., Nicor Gas Ex. 2.0, 5:106-7:143.

Staff did not dispute these concerns, but instead indicated it was primarily attempting to address the issue of supervisor availability:

Staff observes that, in our experience, problems arise due to the unavailability of supervisory personnel to take consumers escalated calls. Our primary intent in our proposed subsection 280.220(i) is to ensure this availability. Because some customers may also not be fully aware of their rights, we included the requirement that utility customer service notify a customer of supervisory availability when the customer does not accept the answer provided by customer service.

Staff Ex. 2.0, 91:2085-2090. Staff's concern of unavailable supervisory personnel is not an issue for Nicor Gas, and Staff's proposal may contribute to the condition they hope to remedy as customers will be unnecessarily encouraged to escalate matters that were fully addressed by the customer service representative. Grove Reb., Nicor Gas Ex. 4.0, 14:318-21. Moreover, with the prevalence of "call centers" to take care of numerous retail consumer issues, it is highly unlikely that a Nicor Gas customer would not know they can ask to speak to a supervisor if they are unsatisfied with their response from the customer service representative. *Id.* at 14:321-24.

For all the foregoing reasons, the Commission should accept Nicor Gas' proposed revision and delete paragraph (1) of Section 280.220(i).

a. Response to GCI

For essentially the same reasons indicated above, GCI's proposal to add an additional notification/inquiry requirement at the beginning of Subsection (i) should be rejected. This detailed micromanagement of customer service activities is inefficient, costly, and not needed.

2. Subsection (j) -- Complaint Number

Nicor Gas proposes deleting subsection (j) of Section 280.220 as follows:

~~j) All customer complaints must be assigned a complaint number which is retained by the utility for a period of two years.~~

Grove Reb., Nicor Gas Ex. 4.0, 15:328-40.

In response to a recommendation by GCI, Staff added a new paragraph (j) to proposed Section 280.220. GCI Ex. 2.0, 20:530-35; Staff Ex. 2.0, 91:2092-92:2097. That new paragraph

provides that “[a]ll customer complaints must be assigned a complaint number which is retained by the utility for a period of two years.” Staff Ex. 2.0, Att. J, p. 61.

Nicor Gas customer service representatives already enter a “customer contact” onto a customer’s account indicating the specifics of any complaint. Grove Reb., Nicor Gas Ex. 4.0, 15:335-40. There is no need to create a separate complaint number. This would be burdensome to do and unnecessary. *Id.* As long as the customer has a Nicor Gas account number the complaint can be tracked effectively. The Commission should accept Nicor Gas’ proposed deletion of paragraph (j) of proposed Section 280.220.

XV. GCI REQUEST FOR PERIODIC DATA REPORTING

GCI witness Ms. Alexander proposed the addition of 26 specific data collection and reporting requirements. Alexander Dir., GCI Ex. 1.0, 17:428-20:557. This proposal should be rejected by the Commission.

The Commission is the entity that regulates Nicor Gas and other Illinois utilities. Nicor Gas regularly works with Staff and the Commission to respond to information requests. Lukowicz Reb., Nicor Gas Ex. 3.0, 55:1277-1279. GCI has not identified any information problem experienced by the Commission. To the extent any party seeks relevant information in connection with a Commission proceeding, there are discovery processes in place to address the exchange of information. The Commission issues various reports based on information supplied by utilities, including the Commission’s Annual Report on Electricity, Gas, Water and Sewer Utilities. Commission reports, and the information contained therein, are generally available to the public. With respect to GCI witness Ms. Alexander’s reference to a report issued by the National Association of Regulatory Utility Commissioners’ (“NARUC”) Consumer Affairs Subcommittee, the report she quotes “recommend[s] a collections survey as the tool to gather the

data.” Alexander Dir., GCI Ex. 1.0, 15:369-70. The NARUC report cited by GCI also discusses high level aggregate data on billings and uncollectible amounts much different from the detailed information she recommends be reported. Lukowicz Reb., Nicor Gas Ex. 3.0, 55:1288-91. There is no demonstrated need for the reporting requirements proposed by GCI, and Staff has not sought such information requirements in the rule. GCI’s proposal should be rejected.

XVI. APPENDICES TO RULE

A. Section 280 Appendix A: Disconnection Notice

Nicor Gas proposes the following modification to Appendix A:

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

Lukowicz Dir., Nicor Gas Ex. 1.0, 25:556-26:589.

Staff’s proposed disconnection notice is too prescriptive, and effectively micromanages the Company’s process for notifying its customers who are subject to disconnection. Today, utilities have flexibility in drafting disconnection notices. Lukowicz Dir., Nicor Gas Ex. 1.0, 25:558-60. Under the current Part 280 a “utility can discontinue service only after it has mailed or delivered by other means a written notice of discontinuance **substantially in the form of Appendix A.**” 83 Ill. Adm. Code 280.130(a)(2) (emphasis added). Appendix A, as referred to in the current rule, provides direction as to contents of a disconnection letter but provides utilities some flexibility as to exact wording and format. In contrast, Staff’s proposed rule and form letter, as found in proposed Appendix A, mandates specific language and a specific format. Such specificity is neither reasonable nor warranted.

While Staff claims that its proposal uses “plain language,” Staff cites to not one example of problems customers are experiencing by allowing utilities to develop their own notices, which conform to current rules. Staff Ex. 1.0, 30:676. Nicor Gas desires to maintain the flexibility of

using a disconnection notice that customers are well familiar with and understand. Mandating a specific universal format will also create confusion in territories where a customer is served by more than one utility. Lukowicz Dir., Nicor Gas Ex. 1.0, 25:574-75. Nicor Gas currently uses a question and answer format that is effective and covers all the necessary points needed to prevent disconnection. *Id.* at 25:575-77; Nicor Gas Ex. 1.2.

For all the foregoing reasons, Nicor Gas' proposed revisions should be accepted by the Commission.

B. Section 280 Appendix D: Insert To Be Included With Each Disconnection Notice Sent To Residential Gas And Electric Customers

Nicor Gas proposes modifying Appendix D as follows:

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

Lukowicz Dir., Nicor Gas Ex. 1.0, 26:590-600. Staff's proposal for the insert to be included with the Disconnection Notice removes all flexibility from the utility and requires the utility to follow the exact format of the insert that Staff suggests. However, Staff cites to no customer-specific problems with the existing process. Agnew/Howard, Staff Ex. 1.0, 31:699—708. Utilities should maintain the flexibility to manage this document in an effective and efficient manner. Not only would this provide utilities with the flexibility to communicate with its customers, but it would also avoid the additional expense and paperwork associated with Staff's proposal. *Id.* At the same time, adopting the "in substantially the following form" language ensures that the document includes the substance of the information that should be disclosed.

For the foregoing reasons, the Commission should adopt Nicor Gas' proposed revisions.

XVII. CONCLUSION

Nicor respectfully requests that the Illinois Commerce Commission approve Staff's proposed rule with the modifications proposed by Nicor Gas.

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Respectfully submitted,

Northern Illinois Gas Company d/b/a Nicor
Gas Company

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