

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 REPLY BRIEF

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**NICOR GAS COMPANY'S
POST-HEARING REPLY BRIEF**

I. INTRODUCTION

Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas” or the “Company”) submits this post hearing reply brief in this docket to consider revision of Part 280 of the Commission’s Rules, 83 Ill. Adm. Code 280, in accordance with Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission (“Commission” or “ICC”) and the schedule adopted by the Administrative Law Judge (“ALJ”).

Nicor Gas Company’s Post-Hearing Initial Brief (“Nicor Gas’ Initial Brief” or “Nicor Gas IB”) was filed on August 4, 2011. The Initial Brief of AARP (“AARP’s Initial Brief” or “AARP IB”), the Initial Brief of Ameren Illinois Company (“Ameren’s Initial Brief” or “Ameren IB”), the Brief of Commonwealth Edison Company (“ComEd’s Initial Brief” or “ComEd IB”), Dynegy Inc.’s Initial Brief (“Dynegy’s Initial Brief” or “Dynegy IB”), the Governmental and Consumer Intervenors’ Initial Brief (“GCI’s Initial Brief” or “GCI IB”), the Initial Brief of Illinois-American Water Company (“IAWC’s Initial Brief” or “IAWC IB”), the Initial Brief of MidAmerican Energy Company (“MEC’s Initial Brief” or “MEC IB”), the Initial Brief of Mt. Carmel Public Utility Co. (“MCPU’s Initial Brief” or “MCPU IB”), the Initial Brief of The Peoples Gas Light and Coke Company and North Shore Gas Company (“PGL/NSG’s Initial

Brief” or “PGL/NSG IB”), the Initial Brief of the Retail Gas Suppliers (“RGS’ Initial Brief” or “RGS IB”), the Brief of South Austin Coalition Community Council and Community Action for Fair Utility Practice (collectively referred to as Low Income Residential Customers “LIRC”) (“LIRC’s Initial Brief” or “LIRC IB”), and the Initial Brief of Staff of the Illinois Commerce Commission (“Staff’s Initial Brief” or “Staff IB”) were also filed on August 4, 2011.¹

Some of the issues raised in the parties’ initial briefs were addressed in Nicor Gas’ Initial Brief and, in the interest of avoiding unnecessary duplication, Nicor Gas has not repeated every argument or response previously made in its Initial Brief. Thus, the omission of a response to an argument that Nicor Gas previously addressed should be interpreted to mean that Nicor Gas continues to take the position stated in Nicor Gas’ Initial Brief.

II. SUBPART A: GENERAL

A. Section 280.05 Policy

1. Response to Staff

Staff disagrees with Nicor Gas’ concern that all existing waivers should not be made void by enactment of the new rule. Staff IB, p. 4. As discussed below in response to GCI, while mandating re-approval of all waivers is inefficient and unnecessary, Nicor Gas is willing, as described below, to drop its objection to the rule language requiring waivers to be obtained even if a prior waiver was already granted. While Staff noted it has accepted some of Nicor Gas’ proposed language changes to Section 280.05, Staff’s Initial Brief did not address other proposals by Nicor Gas regarding Section 280.05. See Nicor Gas IB, pp. 13-15.

¹ On August 9, 2011, the Governmental and Consumer Intervenors (“GCI”) filed a Corrected Initial Brief containing a cover page dated August 10, 2011. All references to GCI’s Initial Brief or GCI IB are to the corrected version of GCI’s Initial Brief.

2. Response to AARP

AARP supports Staff's proposed language and expresses a general opposition to what it calls "utility proposals to add language into Part 280 which would allow utility tariffs to override the protections contained in these rules." AARP IB, p. 3. It is not clear to Nicor Gas what specific utility proposals AARP is referring to in its Initial Brief and no specific arguments are provided by AARP. To the extent AARP is referring to the issue of requiring re-approval of previously approved waivers, that issue is addressed below in response to GCI. AARP's remaining arguments appear to be general support for GCI's arguments, which are addressed below.

3. Response to GCI

Notwithstanding the clear direction from Judge Hilliard both on and off the record that parties should address other parties' positions in their initial briefs (*see* Tr., 841:15-21) and not simply wait until reply briefs, the positions of Governmental and Consumer Intervenors ("GCI") on much of the disputed language in Section 280.05 remain vague or unidentified following GCI's Initial Brief.

GCI fails to address its proposals to modify Staff's proposed Section 280.05 by deleting "under reasonable terms and conditions" and referring to "procedures within the scope of this part" instead of the more descriptive "procedures governing eligibility for service, deposits, billing, payments, refunds and disconnection for gas, electric, water and sanitary sewer utilities." See Joint Pre-Hearing Outline filed June 8, 2011 ("PH Outline"), p. 6. These proposed GCI modifications should be rejected because they are unreasonable (Nicor Gas IB, pp. 6-7) and GCI has failed to support them in its Initial Brief.

GCI's Initial Brief attempts to address Nicor Gas' objections to the addition of precedence language in Section 280.05,² but misses the main point of Nicor Gas' objection that such language is itself ambiguous and confusing in situations where the issue is *whether a rule applies*. This concern is particularly applicable given GCI's proposal to apply its precedence language to the "policies" outlined in the rule rather than "requirements." GCI readily admits that disputes could arise under "a specific set of facts" as to "*whether a rule applies*" or "*whether a conflict exists between a rule and a tariff,*" but argues this is not a sound basis for rejecting the proposed precedence language. GCI IB, pp. 8-9 (emphasis added). GCI explains this statement by arguing that "[i]f a clear conflict were to arise, ... this policy language makes clear that that the utility must affirmatively seek a waiver from Part 280." *Id.* at 9.

While Nicor Gas did present testimony explaining that re-obtaining a waiver where the applicable rule language has not changed is inefficient and unnecessary, GCI ignores the obvious problem the its "precedence" language creates for situations where the issue is *whether a rule applies* and not whether an exception should be granted from a clearly applicable provision. Precedence language is not needed from a legal perspective,³ and GCI has not attempted to demonstrate otherwise. Rather, GCI's asserted basis for the precedence language is to provide

² GCI's Initial Brief fails to address Nicor Gas' objection to the use of the word "policies" in Staff's proposed language. PH Outline, p. 4; *see also* Nicor Gas IB, pp. 8-10.

³ In *BlueStar Energy Services, Inc. v. Central Illinois Light Company*, Ill. C.C. Docket No.09-0460, p. 7 (Order, April 12, 2011) the Commission found that where a tariff is clearly inconsistent with a rule, the rule controls absent a waiver:

These provisions are clearly inconsistent with regard to residential internet enrollments with an ARES.

The fact that the UCB-POR tariffs were accepted following the conclusion of Docket Nos. 08-0619 et al. is without consequence. The adoption of any tariff provision that is inconsistent with a rule must be considered an oversight. Allowing tariff provisions to override or "trump" Commission rules simply because the tariff is more recent would upend the regulatory structure. Effective tariffs must be within the confines of existing Commission rules (absent a waiver granted under a particular rule)

an accessible source of information for consumers on this topic. GCI IB, pp. 7-8. While informing consumers is a goal shared by Nicor Gas, this goal does not support providing confusing, misleading or incomplete information or oversimplifying complex legal concepts. The proposed precedence language oversimplifies the concept of “precedence” and does not even attempt to explain its inapplicability to the issue of *whether* a rule applies to particular facts. In this regard, the proposed language is as likely to confuse as it is to inform. If the Commission were to include some version of this language in the rule, it should modify the language to make clear that it only applies to “explicit requirements and procedures” outlined in the rule. *See* Nicor Gas IB, p. 11. This is particularly appropriate given GCI’s non-legal focus on providing accessible information to customers.

While GCI’s Initial Brief notes that the provisions in Part 280 should be *minimum* standards (GCI IB, p. 6), GCI does not address its proposal to require utilities that exceed these minimums to do so in a *nondiscriminatory manner*. *See* Nicor Gas IB, p. 12. Clearly, utilities may not discriminate against a class or group of customers and discrimination is already prohibited under the Public Utilities Act (“PUA”), 220 ILCS 5/1-101 et seq.⁴ Nor does Nicor Gas object to stating that the *requirements* and procedures outlined in the rule are the minimum standards. The issues that concern Nicor Gas are the vague reference to *guaranteed* rights and the explicit tying of utility actions exceeding the minimum requirements to an ambiguous “nondiscriminatory manner” requirement. The *nondiscriminatory manner* requirement could be read to prohibit a utility from accommodating a customer experiencing some hardship unless it adopts that individual accommodation as a universal exception. The *nondiscriminatory* language

⁴ Section 8-101 of the PUA requires the provision of facilities and service “without discrimination,” and Section 9-241 prohibits establishing or maintaining any unreasonable differences. 220 ILCS 5/8-101 and 9-241.

is unnecessary, may have the unintended consequence of discouraging utilities from accommodating customers experiencing hardships, and should be rejected. *See* Nicor Gas IB, p. 12.

GCI also recommends adoption of its proposed language requiring the Commission to re-approve any existing waivers from Part 280 after the new version of Part 280 goes into effect. GCI IB, pp. 9-10. As explained in Nicor Gas' Initial Brief, if the Commission has already determined a waiver is appropriate under the existing rule and the new rule does not contain new or changed substantive requirements, there is no reason to treat a prior waiver as invalid and it would be inefficient to do so. Nicor Gas IB, pp. 10-11. GCI responds that if the Commission were presented with that situation, "it is unlikely the Commission would not re-approve of the existing waiver." GCI IB, p. 9. GCI also argues that it would be clearer for consumers if new waivers were obtained. While GCI's proposal is inefficient and unnecessary, Nicor Gas is not currently aware of any waivers from Part 280 applicable to Nicor Gas. Nicor Gas also notes, as discussed earlier, that the issue of whether a waiver should be granted for an express or clear conflict between the rule and a tariff is separate and distinct from the issue of whether there is a conflict with a rule. No waiver is or would be required for Commission approved tariff provisions which do not conflict with Part 280. With this understanding, and in the interest of reducing contested issues, Nicor Gas is willing to drop its objection to the rule language requiring waivers to be obtained even if a prior waiver was already granted.

B. Section 280.10 Exemptions

1. Response to Staff

Staff's Initial Brief incorporates language in Section 280.10 requiring a showing that the modification or exemption "will not ... result in net harm to consumers overall." Staff IB, p. 5.

This language is consistent with one of the alternative proposals identified in Nicor Gas' Initial Brief (Nicor Gas IB, p. 15), and Nicor Gas supports Staff's proposed language. Nicor Gas' only comment is non-substantive. The sentence in Section 280.10 should be modified to read:

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

This change avoids implying that the Commission must make such showing. The obvious intent is for the entity seeking the exemption to make such a showing. Nicor Gas concurs with Staff's rejections of GCI's revisions because they are not needed and would unduly handcuff the Commission's authority. *See* Staff IB, pp. 5-6.

2. Response to GCI

GCI recommends inclusion of language providing that Part 280 cannot be amended except through a formal rulemaking proceeding and restricting exemption or waiver petitions to a single utility. GCI IB, p. 10; PH Outline, pp. 7-8.⁵ These suggested modifications are unnecessary and improper. The Commission's rulemaking authority is already established by the PUA and the Illinois Administrative Procedure Act, 5 ILCS 100/1-1 et seq. *See* 220 ILCS 5/10-101; 5 ILCS 100/Art. 5. GCI's proposed language limiting the Commission to "formal rulemaking proceedings" is contrary to Section 10-101 of the PUA which provides, in relevant part, that "[a]ny proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to *either rulemaking or contested case provisions*, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to." 220 ILCS 5/10-101

⁵ GCI presented these arguments with its Section 280.05 arguments, but its recommended language to implement these proposals is contained in Section 280.10.

(emphasis added). While any subsequent amendment of Part 280 would likely occur through rulemaking, it is possible that some aspect of the rule could be addressed through the contested case provisions per Section 10-101⁶ and the General Assembly has specifically vested the Commission with such authority. Similarly, there is no basis for prohibiting joint petitions if warranted by appropriate facts and circumstances. GCI's proposal to prohibit consolidation of waiver petitions is contrary to Section 200.600 of the Commission's Rules of Practice which allows consolidation of proceedings involving a similar question of law or fact where rights of the parties or the public interest will not be prejudiced. 83 Ill. Adm. Code §200.600.

While GCI mentions the inclusion of the *no harm to customers* language in Section 280.10, it does not address utility proposals to refer to *no unreasonable (or net) harm*, Staff's statement that its language was intended to mean *no net harm*, or its own witness' testimony that language conveying the concept of "no unreasonable harm" or "no net harm" would be reasonable. See GCI IB, pp. 11-12; Nicor Gas IB, pp. 13-15. Similarly, Nicor Gas has already

⁶ The Commission has established policies applicable to more than one utility through the contested case provisions rather than a rulemaking on a number of occasions. See e.g., *In re: Investigation concerning issues related to coal tar clean-up expenditures with respect to Central Illinois Light Company et al.*, 91-0080; 91-0081; 91-0082; 91-0083; 91-0084; 91-0085; 91-0086 (Consolidated); 91-0087; 91-0088; 91-0089; 91-0090; 91-0091; 91-0092; 91-0093; 91-0094; 91-0095, 1992 Ill. PUC LEXIS 379 at *213-216; 137 P.U.R.4th 272 (Order Sept. 30, 1992); *In re: Requirements governing the form and content of contract summaries for the neutral fact-finder process for 2003 under Section 16-112(c) of the Public Utilities Act*, 03-0006, 2003 Ill. PUC LEXIS 34, (Order, Jan. 8, 2003) "[P]ursuant to Section 10-101 of the PUA, ... this proceeding shall be conducted pursuant to contested case provisions"); *In re: Proceeding under Section 16-112(m) of the Public Utilities Act to determine whether to further suspend the neutral fact-finder procedure*, 03-0007, 2003 Ill. PUC LEXIS 35 (Order, Jan. 8, 2003 ("[P]ursuant to Section 10-101 of the PUA, ... this proceeding shall be conducted pursuant to contested case provisions"); *In re: Requirements governing the form and content of contract summaries for the neutral fact-finder process for 2000 under Section 16-112(c) of the Public Utilities Act*, No. 00-0007, 2000 Ill. PUC LEXIS 40 (Order, Jan. 4, 2000) ([P]ursuant to Section 10-101 of the PUA, ... this proceeding shall be conducted pursuant to contested case provisions); *In re: Requirements governing the form and content of contract summaries for the 1999 neutral fact-finder process under Section 16-112(c) of the Public Utilities Act*, 98-0769, 1998 Ill. PUC LEXIS 1034 (Order, Nov. 5, 1998) ([P]ursuant to Section 10-101 of the PUA, ... this proceeding shall be conducted pursuant to contested case provisions

explained that GCI's proposal to require annual re-certifications for any and all waivers is unreasonable and should be rejected as recommended by Staff. GCI IB, pp. 11-13; Nicor Gas IB, pp. 15-16.

C. Section 280.15 Compliance

1. Response to Staff

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. See Nicor Gas IB, pp. 16-17. Staff's Initial Brief does not agree to this provision, but also does not specifically oppose it. Rather, Staff reasonably acknowledges it may take some time to implement some of the changes and additional requirements of the draft rule, submits that it lacks information technology ("IT") expertise to assess the proposed timeline, and cautions that a utility should not be allowed to implement those portions of the rule that benefit the utility while waiting longer to implement those provisions that would benefit consumers. Staff IB, pp. 7-8. Nicor Gas submitted detailed testimony by Ms. Grove, who does have IT expertise, explaining the need for time to implement various provisions of the draft rule. No witness with IT expertise opposed this testimony. Based on this record, the Commission should adopt Section 280.15. It was not Nicor Gas' intent that a utility could implement provisions deemed to benefit the utility before implementing provisions deemed to benefit consumers. Thus, Nicor Gas would not object to adding the following to Section 280.15 to address Staff's concern: "Utilities must implement all provisions that require it to modify its existing IT and business processes on a comparable basis so as not to give a timing preference unrelated to the scope or amount of work to be performed to one provision over another."

2. Response to GCI

GCI opposes proposed Section 280.15. *See* GCI IB, pp. 13-20. But even GCI recognizes that additional time will be needed to comply with some of the new requirements of the proposed rule. *Id.* at 18. GCI also makes a new proposal in its Initial Brief. *Id.* at 19-20. Remaining silent in testimony and waiting until the briefing stage to make a totally new proposal is an inappropriate litigation strategy that should be rejected.⁷ GCI's proposal ignores the strong evidence supporting Section 280.15, and its arguments should be rejected.

GCI contends that Section 280.15 represents a one size fits all proposal (GCI IB, p. 14), but this characterization is not accurate. Section 280.15 recognizes that the IT and business process changes required by new Part 280 may vary by utility, and specifically limits the exemption to those "Sections that require it [(i.e., the particular utility)] to modify its existing IT and business processes to come into compliance." While Section 280.15 allows two years to comply with Sections requiring a utility to modify its IT and business processes in order to come into compliance, it nowhere prohibits compliance prior to expiration of that two year period. If desired by the Commission, Nicor Gas would not oppose adding the words "up to" prior to "two (2) years" for added clarity in this regard.

⁷ Similar tactics have been rejected by the Commission, and the Commission's rejection of such tactics has also been upheld by the Courts. In *City of Chicago v. Illinois Commerce Commission*, 264 Ill. App. 3d 403, 404 (1st Dist. 1993) the City of Chicago ("City") appealed from a Commission's order. The City presented no witnesses, but argued that the Commission's order was not supported by substantial evidence and contained inadequate findings. *Id.* at 404, 406-407. The City further argued that the issues raised on appeal were raised in the proceedings before the Commission, but were not addressed by the Commission's order. *Id.* at 409. The Commission responded that "any omission of the City's arguments from its order is the result of the fact that the City offered none of its own evidence to the Commission but, instead, chose to "lay in the weeds until the briefing stage" before raising its objections." *Id.* at 409-410. Consistent with the Commission's rejection of the City's "lay in the weeds" tactics, the Court rejected the City's argument. *Id.* at 410.

Similarly, GCI mischaracterizes this issue as one involving delay. GCI IB, p. 14. To the contrary, the record is filled with uncontested testimony about the time required to modify IT systems and business practices. This issue simply reflects the reality that the proposed new rule will require utilities to make substantial additional investments in programming and software, and that it will take time to complete this work. As explained by Nicor Gas witness Ms. Grove, the estimate of work, costs and time was a detailed rather than a high level analysis:

We had a team of business people and IT people and we went through our normal estimating process at Nicor. And so every single change, we did a usual IT estimate as we would with any business initiative that we were going to undertake.

So it was a very detailed plan.

Tr., 871:18-872:3. Ms. Grove testified that any attempt to accelerate the timeline “would be additional costs because it would just be additional resources,” and also explained that it might not be possible to accelerate the timeline “when you're customizing a system, because of the testing and the test environments, ... sometimes you run into the issue where you can't actually go faster because some of these changes have to be done sequentially.” Tr., 873:19-874:3.

Ms. Grove also explained that the Part 280 changes are fundamentally different from the types of changes implemented on a shorter timeframe following a general rate case or rider proceeding:

[Those IT changes] would have required configuration changes, which means that the program would not have had to have been customized.

The system as a package -- or customer system as a package is built to make rate and rider changes. It's an off-the-shelf package with that capability.

[W]e have a very -- relatively new customer system that was installed approximately five years ago. And we bought it, what they call off-the-shelf package. It's an Oracle product, and it's an Oracle product built for distribution utilities.

And so there are preprogrammed things that are part of that off-the-shelf package that can accommodate with relative ease changes such as changes in rates and riders.

And beyond that, based on utility -- based on Commission -- you know, regulatory requirements across different jurisdictions, any of these packages that are not -- are not customized for any specific jurisdiction.

And so we would have to go into our system and create customized programming for specific things required in the state of Illinois.

Tr., 866:10-16; 895:18-896:13. GCI's contrary assertions that utilities could have somehow made their systems more modular or taken actions in advance (*see* GCI IB, p. 16) are not supported by any evidence. GCI's argument is also unreasonable in that it is premised on a non-existing requirement for utilities to comply with and begin implementing rules that have not yet been adopted.

Similarly, GCI's Initial Brief improperly speculates that because some programming changes may be performed with in-house resources that this somehow means there may be no incremental costs. GCI IB, p. 17. The record is clear and uncontested that Nicor Gas will incur additional capital costs, as well as ongoing operating expenses, to implement the proposed changes to Part 280. Grove Dir., Nicor Gas Ex. 2.0C, 7:145-8:160. New capitalized programming costs are always incremental as they are not reflected in current rates.

GCI's new argument that utilities should use the waiver procedure is unreasonable and inappropriate. *See* GCI IB, p. 18. The issue of time needed to comply has been fully addressed in Nicor Gas' and other parties' testimony, and it should be addressed within Part 280 as proposed in Section 280.15. This is a known issue, and there is no basis to ignore it. Indeed, the Commission has recognized delayed implementation with other rules recognized to involve a substantial compliance effort. *See* 83 Ill. Adm. Code § 785.65 (Allowing carriers from one to

four years to come into compliance with new requirements.); see also 83 Ill. Adm. Code § 791.200(e).

D. Section 280.20 Definitions

1. Applicant

No new arguments are contained in the initial briefs. *See* Nicor Gas' IB, p. 18. Nicor Gas supports Staff's language.

2. Credit Scoring

a. Response to GCI

GCI did not address the definition of credit scoring in its Initial Brief.

3. Customer

a. Response to GCI and MidAmerican Energy Company ("MEC")

Nicor Gas supports Staff's proposed language and opposes the use of a 30 day time period with respect to a transfer of service. *See* Nicor Gas IB, p. 20.

4. Delivery Services

a. Response to GCI

This phrase is not used in the proposed rule, and thus should not be included in the rule. *See* Nicor Gas IB, pp. 18-19. At one point in this proceeding the phrase "delivery services" appeared in proposed language regarding partial payments, but that is no longer the case as all parties support or do not oppose Staff's decision to drop partial payment language from the proposed rule. While it appeared GCI may have been advocating partial payment language, GCI did not address or propose partial payment language in its Initial Brief. *See* GCI IB, pp. 47-48.

5. Occupant

GCI proposes to exclude from the definition of “occupant” a person who has become an applicant. GCI IB, p. 24. This proposal is unnecessary and should be rejected. A person who is receiving the benefit of utility service at a service location and is not the utility customer is an “occupant” as that term is used in the proposed rule -- even if the person has applied for service and is therefore also an “applicant.” GCI states that “applicants” are provided certain rights under Part 280. *Id.* This is true, but nothing in Part 280 indicates a person cannot be both an “occupant” and an “applicant.” Consequently, a person does not automatically lose any rights specifically afforded by virtue of their status as an “applicant” by also being an “occupant.”

6. 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.” See GCI IB, p. 25. Nicor Gas opposes this proposal on various grounds as explained in detail in its Initial Brief. Nicor Gas IB, pp. 20, 57-62. GCI now asserts that its proposed language was not intended “to affect utilities’ rights to collect older debts through traditional debt collection means,” but would “prevent utilities from using debt that is greater than two years old as a basis for disconnecting a customer.” GCI IB, p. 25. GCI’s “explanation” of its position is directly contrary to its witness’ testimony that she intended this language to impose a cutoff of collection after 24 months. Tr., 707:12-22; 708:11-14 (“If the Commission was accepting two years as the cutoff to keep bill information, then it should be a two-year cutoff for seeking to collect.”). GCI’s collection cutoff proposal suffers from numerous defects and deficiencies (Nicor Gas IB, pp. 20, 57-62), and GCI’s withdrawal of this proposal is obviously acceptable to Nicor Gas. However, GCI cannot now introduce a new proposal to

impose an unsupported limitation on disconnection. This proposal is also totally lacking in merit. If a customer games the system to avoid paying for service without disconnection for over two years, it would be unreasonable and unfair to reward and encourage those actions with subsequent immunity from disconnection related to such service.

7. Transfer of Service

a. Response to Staff

Nicor Gas has one limited issue with Staff's proposed definition of "transfer of service." See Nicor Gas IB, pp. 20-22. Staff's proposed definition provides that a utility may deny a transfer of service if a customer does not pay or enter into a payment arrangement for "undisputed" past due amounts owing for more than 2 days past the due date. Nicor Gas' concern is that use of the undefined term "undisputed" in this context could result in newly asserted disputes that are not made in good faith to avoid having to address these past due amounts. Staff acknowledges this concern, states that the utility would retain its right to disconnect service after notice once it has answered such a dispute, and opines that it believes utility responses to such disputes could be completed quickly. Staff IB, p. 14. Unfortunately, Staff did not respond to Nicor Gas' proposal to address this concern by defining "undisputed" to mean "not previously disputed by the customer." See PH Outline, p. 17. Staff has acknowledged the merits of Nicor Gas' concern, but has not provided a full response to this issue. Nicor Gas' proposal is reasonable and should be adopted by the Commission.

b. Response to GCI

GCI opposes Staff's use of a 14 day time period from the termination of service at a prior location as the cutoff mark to distinguish a transfer of service from an application for new service. GCI IB, pp. 25-6. Nicor Gas supports Staff's position. Nicor Gas IB, p. 20. A 14-day

transfer period is reasonable and adequate period of time to transfer service. Lukowicz Reb., Nicor Gas Ex. 3.0, 20:458-21:470. Extending the period to 30 days does not accomplish anything that cannot be accomplished in 14 days, and does not change the amount owed or requests for payment. *Id.* Extending this period to 30 days is unnecessary and will only serve to extend the period of time a utility must carry a debt from the prior service location. *Id.*

GCI also objects to Staff’s language addressing the situation where a customer requesting a transfer of service has an amount past due for more than 2 days past the due date. GCI IB, p. 26. GCI’s claim that Staff has provided that such customers “be rejected” (*id.*) is false. To the contrary, Staff’s language only provides that such customers “may be denied the transfer unless the customer pays the past due utility charges or deposit or enters into a payment agreement on the amount owing.”⁸ Section 280.20 (“Transfer of Service”). Staff’s language is reasonable and merely requires the customer to address the past due amount by payment or entry into a payment arrangement. GCI’s objection is based on its mischaracterization of Staff’s proposal and should be denied.

III. SUBPART B: APPLICATIONS FOR UTILITY SERVICE

A. Section 280.30 Application

1. Subsection (b)

a. Response to GCI

GCI’s proposal to add “deposit” requirements to the “application” section is confusing and illogical. GCI IB, p. 28; PH Outline, p. 19. Staff has proposed and Nicor Gas does not oppose Staff’s language requiring a documentation describing a utility’s application process be

⁸ Moreover, this provision of Staff’s proposed rule only applies “[o]utside any winter, temperature or other period defined by statute or rule restricting disconnection of service”

provided to “customers who request a copy.” PH Outline, p. 19. GCI’s proposed additional language is not necessary. Staff’s proposed notice provisions are reasonable and appropriate, and should be adopted by the Commission.

2. Subsection (c)

a. Paragraph (2) - Third Party Applications

i. Response to Staff

Staff’s proposed language for third-party applications changes the standards under the existing rule by requiring verification of authorization by direct contact or written documentation with the applicant and absolutely prohibiting any collection for service provided without such verification. As explained in Nicor Gas’ Initial Brief, these changes would effectively eliminate third party applications, increase costs, add time and inconvenience to prospective customers, and exceed the Commission’s authority in certain respects. See Nicor Gas IB, pp. 23-27. Staff’s Initial Brief does not point to any problem with the third party application process itself under the current rule or contest Nicor Gas’ concerns regarding costs and inconvenience, but rather asserts that Staff is addressing a problem with utilities leaving service on and billing occupants “whether they have a third party application or not.” Staff IB, pp. 15-16. Staff then states that it “objects to any policy that allows the service to remain on indefinitely with no customer of record and without an application for service simply because the utility knows that it can recover billing from the ‘users’ or occupants once they have been identified.” *Id.* at 16. Staff’s concerns are misdirected and do not support its changes to the third party application provisions.⁹ Indeed,

⁹ Staff’s statements regarding the conduct forming the basis for its concern are also overstated. Staff’s direct testimony did not identify or explain the basis for changing the third party application standards (*see* Agnew/Howard Dir., Staff Ex. 1.0, 7:138-8:162), and Staff’s rebuttal testimony merely stated that “[s]ome utilities, in our experience, have seized upon this concept of ‘users’ as a means to delay their already lengthy disconnection process, particularly in instances where a premises is in (continued ...)

Staff itself describes the problem it purports to remedy as involving actions that allegedly occur “whether they have a third party application or not.” Staff IB, p. 16.

The problem Staff desires to address is not logically or analytically connected in any way to the third party application provisions at issue. Section 280.50(d) of the current rule provides as follows:

- (d) 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). Nothing in this language, which Nicor Gas proposes be retained in the current rule, purports to generally allow a utility to keep service on following termination of service at a premises, without a customer of record, and bill an occupant for subsequent use. Rather, this language only addresses the situation where there is an application processed by telephone from a person or entity who will not be the customer of the service. A utility that processes an application in this manner must verify such application with the customer. If the utility does not verify the application with the customer, it is not entitled to collect from such customer if the customer disclaims any responsibility for requesting service and is not a user of such service. If the customer is a user, he remains responsible for paying for his use.

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transition between customers.” Agnew/Howard Reb., Staff Ex. 2.0, 17:390-92. Staff’s testimony did not provide any empirical evidence related to this alleged *non-disconnection* problem and described the problem’s scope in terms as involving “some” rather than “all” or even “most” utilities. Nicor Gas submitted testimony making clear that Nicor Gas diligently pursues disconnection consistent with applicable rules, laws and tariff provisions, and explaining that it would be contrary to a utility’s interest to leave service on “for as long as possible” without a paying customer. Lukowicz Reb., Nicor Gas Ex. 3.0, 18:406-19.

The third party application language does not address disconnections in any way, and does not generally enable a utility to collect for service from users who are not customers. The current rule does state “that users will be responsible for paying for their use.” But it is clear from the preceding language authorizing telephone applications by persons who will not be the customer that this language is referring to use by the customer processed by a third party telephone application. While the meaning of this language is clear, Nicor Gas is open to modifying this language to read as follows: “provided, however, that ~~users~~ such customers will be responsible for paying for their use.” In any event, it is clear that the rule’s third party application language does not have any logical relationship to the problem Staff relies on to support its changes.

Staff has not contested the problems its language will cause, and the support offered by Staff for this language is faulty. Accordingly, the Commission should adopt Nicor Gas’ proposal to include the language in its current rule regarding third party applications.

ii. Response to GCI

GCI opposes Nicor Gas’ proposal but has not offered any valid new reasons for this opposition. GCI IB, pp. 29-30. GCI ignores that the third party application process creates customers, and those customers should remain liable for their use even if they later disclaim having authorized the third party application for the reasons indicated in the Company’s Initial Brief. Nicor Gas IB, pp. 23-7. This is fair and reasonable, and consistent with the law. Further, what GCI characterizes as an “egregious” Nicor Gas proposal (*id.* at 30) is nothing more than the actual language of the current rule. Such hyperbole is not helpful. While GCI argues that its proposed language will not diminish third party applications, there is no substance to its argument as it has not explained how requiring an actual contact with the named customer make

third party applications beneficial. *Id.* If utilities must engage in a contact with the named customer in any event, how is there any benefit to processing a separate third party application? This requirement essentially requires the application to occur twice, once by the third party agent and again by the named customer.

3. Subsection (d)

a. Response to Staff

Staff supports its originally proposed language for this subsection. Staff IB, p. 16. Nicor Gas concurs with Staff's view that GCI's proposal to modify Staff's language to require utilities to recite the entire menu of possible forms of acceptable identification is unnecessary and will be inefficient. *See* Staff IB, pp. 16-17. Staff then discusses utilities' concerns that Staff's proposed list of acceptable forms of identification could be problematic. Staff IB, p. 17. Staff's response is that because Section 280.30(d)(2) "requires the 'identification provided is valid and accurate' utilities would not be obliged to accept forms of identification that cannot be verified as valid and accurate." *Id.* Staff's argument does not withstand scrutiny in this instance, and fails to address the substantive concerns and deficiencies with Staff's proposal raised by Nicor Gas. *See* Nicor Gas IB, pp. 28-33.

Staff cites to Section 280.30(d)(2) which requires the identification to be valid and accurate. But certain forms of identification are not verifiable (Lukowicz Dir., Nicor Gas Ex. 1.0, 12:249-58.), and there is no means to determine the validity and accuracy of such forms of identification. Even if Staff also meant to refer to subsection (e) which requires the identification to be verifiable, Staff's argument is ill-conceived and problematic. As explained in Nicor Gas' Initial Brief:

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.

Nicor Gas IB, p. 30. For the reasons stated above and in Nicor Gas’ Initial Brief, the Company’s recommended language should be adopted by the Commission.

b. Response to GCI

Staff has provided appropriate notification provision in the proposed rule. GCI proposal for additional notice requirements (GCI IB., pp. 30-2) is not necessary and should be rejected. See Nicor Gas IB, pp. 33-4.

GCI’s arguments against Nicor Gas’ proposal for acceptable identification do not address the issues supporting Nicor Gas’ proposal. See Nicor Gas IB, pp. 28-33. The issue is not mere continuation of existing practices, but rather the ability of utilities to reasonably verify the identity of applicants consistent with applicable laws.

As indicated above, Nicor Gas concurs with Staff that GCI’s proposal to require utilities to automatically recite the entire menu of forms of positive identification that may be offered by an applicant is unnecessary and inefficient. GCI IB, pp. 27, 30-2; Nicor Gas IB, pp. 33-4. Positive identification is not an issue for approximately 70% of Nicor Gas’ applicants. Lukowicz Dir., Nicor Gas Ex. 1.0, 10:218-20. GCI has not added anything new to consider in this regard, and the Commission should reject this proposed change.

Staff also rejects the proposal by certain utilities to remove the “optional” designation for certain customer contact information in subsection (d)(4). Staff IB, p. 18. Staff expresses concern that they did not want to have a rule that “might allow an applicant for service to be rejected if they simply did not have one of the required methods of contact at their disposal.” *Id.*

This concern would not appear to apply to the applicant's "preferred method of contact" which is simply a choice and could be "mailing." Nicor Gas also notes that other provisions of the rule require a utility to at least attempt to provide telephonic notice. *See* Section 280.130(j) and 280.135(b)(1). Nicor Gas believes it would be consistent with these other requirements and Staff's concern to remove the "(optional)" designation for telephone number and/or replace it with "(if/when available)".

4. Subsection (e)

a. Response to Staff

Nicor Gas concurs with Staff that it would be inappropriate for a utility to be compelled to restore service after disconnection without payment of previous debts to the utility as proposed by GCI. *See* Staff IB, p. 19; Nicor Gas IB, pp. 34-5.

b. Response to GCI

GCI has proposed to add yet another required payment arrangement after a customer has been disconnected. GCI IB, pp. 32-3; PH Outline, p. 27. GCI has added nothing new in its Initial Brief, and Nicor Gas fully addressed this issue in its Initial Brief:

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.

Nicor Gas IB, p. 35. GCI's proposal should be denied.

5. Subsection (i)

a. Response to LIRC

Staff proposes the following language for Section 280.30(i)(2), regarding denial of an application for service:

- 2) The utility shall notify the applicant of rejection of the application within two business days. Notification shall include the specific reason(s) for the rejection so that the applicant may have the opportunity to remedy the reason(s) for the rejection. If the utility is unable to contact the applicant for notification by a method other than mailing, then written notification of the problems shall be sent to the mailing address provided by the applicant.

PH Outline, p. 29. Thus, Staff's proposal requires that a utility provide notice with specific reasons for rejection of an application to the applicant. Although the rule does not automatically require the notice to be provided in a specific manner, it does require written notification in the event the utility cannot contact the applicant by a method other than mailing.

Although LIRC states that it "support[s] the Staff proposal requiring a written statement of reasons when denying an application," it does not indicate whether the written notice already provided for is satisfactory. LIRC IB, p. 3. LIRC goes on to say that it supports "the modifications" proposed by GCI to Staff's rule. *Id.* However, contrary to LIRC's insinuation, GCI has not proposed any modifications to Staff's rule. See PH Outline, pp. 28-9; GCI IB, p. 33.

LIRC's position is ambiguous and should be rejected. Without offering any proposed language of its own or a credible alternative, the Commission can only guess what is allegedly wrong with a provision uncontested by the Staff, GCI, and Nicor Gas.

Moreover, the proposed subsection (i) is reasonable. It ensures that a rejected applicant receives notice with the reasons for the rejection, which must be in writing if another form of

notice is not successful. Requiring notice that states the reasons for rejection directly addresses LIRC witness Mr. Howat's concerns with the manner of notice, which he vaguely states are "problems, miscommunication and utility abuse," with no further elaboration. Howat Dir., LIRC Ex. 1.0, [13]:12-14.

6. Subsection (j)

a. Response to Staff

Nicor Gas concurs that Staff's proposed service activation timelines strike an appropriate balance between the desire for expedient service activations and what can reasonably be achieved, and that the proposals to further shorten these time frames (particularly for natural gas which requires inside access to customer facilities) are not feasible. Staff IB, pp. 19-20; Nicor Gas IB, pp. 35-6.

b. Response to AARP

AARP "believes that electric, water and sewer service should ideally be reconnected within 1 business day and gas service within 2 business days," but goes on to state that it "would support the proposals made by GCI that would tighten those timelines to 3 and 5 days, respectively." AARP IB. p. 4. AARP also recommends the rule prohibit disconnections from taking place on evenings, weekends, and holidays. *Id.*, pp. 4-5.

It is unclear whether AARP makes its own proposal or simply endorses GCI's proposal. Regardless, either position is unreasonable for the same reasons set forth in Nicor Gas' response to GCI's proposed Part 280.30 language regarding Connection and Reconnection Timelines, as outlined below.

c. Response to GCI

GCI proposes to shorten Staff’s proposed timelines for service activation. GCI IB, pp. 34-5. GCI offers no real basis other than its vague reference to other states. *Id.* at 34. It is not even clear if GCI is actually recommending the same time period as Staff because GCI’s Initial Brief does not specify “calendar” days or “business” days. Five business days would be comparable to Staff’s 7 calendar days. For the reasons indicated in Nicor Gas’ Initial Brief, Staff’s proposed timelines are reasonable and appropriate and should be adopted by the Commission. Nicor Gas IB, pp. 35-6.

Similarly, Staff’s proposed language in paragraph (7) of Section 280.30(j) already refers to “unforeseen circumstances” and the language additions proposed by GCI are unnecessary and should not be adopted. GCI IB, pp. 34-5; Nicor Gas IB, pp. 35-6.

B. Section 280.35 Revert to Landlord/Property Manager Agreements

1. Response to Staff

As indicated in Nicor Gas’ Initial Brief, “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.” Nicor Gas IB, p. 37. Staff’s Initial Brief rejects and responds to Nicor Gas’ proposal from direct testimony to address this situation by allowing utilities to place service into the name of the landlord when there is no landlord/property manager agreement (Staff IB, p. 24), but does not address Nicor Gas’ underlying concern or its rebuttal testimony proposal to address this concern by providing clarity on the ability of utilities to discontinue service in these

situations. Nicor Gas IB, pp. 36-40; Lukowicz Lukowicz Reb., Nicor Gas Ex. 3.0, 29:670-30:682. Nicor Gas has proposed language providing a clear and unequivocal right to discontinue service where a tenant vacates a premises and there is no landlord/property manager agreement.¹⁰ Staff has provided no basis to reject this language which is reasonable and should be adopted by the Commission. Staff's Initial Brief also fails to address Nicor Gas' edits to provide additional clarity regarding the intent for this section. See Nicor Gas IB, pp. 37-8.

Staff agrees to the following parenthetical addition to paragraph (b): "Prearrangement to be in writing (may include electronic written communications): The utility" Staff IB, pp. 22-23. Nicor Gas does not oppose this addition.

IV. SUBPART C: DEPOSITS

A. Section 280.40 Deposits

1. Subsection (b)

a. Paragraph (1)

i. Response to Staff

Nicor Gas proposed deletion of Staff's original proposed language providing that "[a] deposit shall not be assessed until the initial notice is given." Nicor Gas IB, pp. 41-2; PH Outline, p. 36. Nicor Gas witness Mr. Lukowicz explained on cross examination that Nicor Gas did not oppose notice or disclosure, but rather opposed the particular form and manner of notice that appeared to be required before starting the process of billing a deposit under the proposed rule. Tr., 929:3-933:18 (June 9, 2011). The proposed language would add costs and delay

¹⁰ Nicor Gas proposes to add the following: "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." PH Outline, p. 34; Lukowicz Reb., Nicor Gas Ex. 3.0, 30:683-711; Lukowicz Sur., Nicor Gas Ex. 6.0, 2:33-3:49.

without a corresponding additional benefit to what occurs now. Lukowicz Reb., Nicor Gas Ex. 3.0, 33:764-71.

In Staff's Initial Brief, Staff accepts GCI's variant of the non-assessment without notice language providing "the deposit shall not be assessed on the customer's bill until the customer is notified of the deposit demand." Staff IB, pp. 24-5. Staff states the effect of either version is the same because Section 280.40(f) requires the initial installment of a deposit to be collected on the bill statement following issuance of the deposit demand. *Id.* at 25. Staff's only comment to Nicor Gas' concern and argument is that it has more to do how this language works in tandem with Section 280.40(b)(2). *Id.* Staff does not address this statement in its arguments under Section 280.40(b)(2). *Id.* at 26.

Nicor Gas does not oppose written notice as called for under subsection (b)(2). But that particular written notice should not have to precede the process of billing for a deposit on the next bill if a customer has already been notified of a deposit in some manner (e.g., by telephone in applying for service). Thus, the language in paragraph (1) of Section 280.40(b)(1) should be deleted. It is unnecessary and will impose additional costs without corresponding benefits.

ii. Response to GCI

GCI does not address new or additional arguments in its Initial Brief on Subsection (b). *See* GCI IB, pp. 38-9. For the reasons stated in response to Staff and in Nicor Gas' Initial Brief, GCI's proposed language changes should be rejected. Nicor Gas IB, pp. 41-4.

b. Paragraph (2)

i. Response to Staff

Staff rejects GCI's proposal that the deposit disclosures be made orally at the time of application. Staff IB, pp. 25-26. Nicor Gas concurs as making such disclosures orally will be

burdensome and unworkable, add additional costs, and provide no additional benefit to consumers. The proposed detailed disclosures are better suited to a written format.

Staff states that it “is doubtful of utility claims that full disclosure of all the detailed requirements in the proposed rule can be made orally by utility customer service personnel at the time of the application” Staff IB, p. 26. Nicor Gas has not proposed deletion of the written notification requirements of paragraph (2). The testimony cited by Staff for Nicor was addressing the proposal under paragraph (1) to require written notice prior to assessment of the deposit.

Nicor Gas does not oppose Staff’s proposed language for paragraph (2). But Staff has not supported the need for preventing the process of billing for a deposit before receipt of the formal written notice required under paragraph (2) if a notice of the deposit demand has already been provided in another form. 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 inquiries regarding the deposit, and will have the opportunity to pursue applicable rights and benefits regarding the deposit – all without the proposed language.

ii. Response to GCI

GCI does not address new or additional arguments in its Initial Brief on its proposal for oral notification in Subsection (b). *See* GCI IB, pp. 38-9. For the reasons stated in response to Staff and in Nicor Gas’ Initial Brief, GCI’s proposed language changes should be rejected. Nicor Gas IB, pp. 42-3.

2. Subsection (d) – Applicant deposits

a. Paragraph (3)

i. Response to Staff

Nicor Gas concurs with Staff that credit scoring is a viable means to assess potential risk and should not be eliminated as proposed by AARP and GCI.¹¹ Staff IB, p. 27; Nicor Gas IB, pp. 44-5.

ii. Response to GCI

GCI continues to advocate rejection of the current Commission-approved credit scoring deposit programs allowed under the current rule through recent amendments. GCI IB, pp. 40-3. Nicor Gas fully addressed GCI’s arguments in its Initial Brief (Nicor Gas IB, pp. 44-5), and GCI has not provided any data or arguments justifying a reversal of the Commission’s original decision to allow deposits based on credit scoring. 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.*

Nicor Gas also notes that GCI repeatedly points to the legislatively approved uncollectible riders as a basis to forego reasonable actions to control uncollectible expense – and in this instance misrepresents utility arguments as based on a need “to maintain utility revenues” rather than the need to control uncollectible costs for paying customers who bear those costs. See GCI IB, p. 42. GCI’s argument is totally lacking in merit, disregards the interest of paying customers, and ignores the provisions in the law requiring the Commission to “review the

¹¹ Nicor Gas notes that the current rule also provides for a utility to include its credit scoring system in its tariff. 83 Ill. Adm. Code § 280.50(a) (“A utility that elects to use a credit scoring system shall file a tariff describing its practice of using a credit scoring system.”)

prudence and reasonableness of the utility's actions to pursue minimization and collection of uncollectibles” 220 ILCS 5/19-145(c). Part 280 must be consistent with this legislative mandate.

For all the reasons stated here and in Nicor Gas’ Initial Brief, GCI’s proposal to eliminate the use of credit scoring to assess deposits lacks merit and should be rejected.

3. Subsection (e) – Present customer deposits

a. Paragraph (1)

i. Response to Staff

Staff rejects GCI’s proposal to preclude deposits based on a customer’s tenure. Staff IB, pp. 27-28. As Staff notes, such a provision illogically prohibits deposits no matter how risky such a customer’s payment behavior becomes. *Id.* at 27. At the same time, Staff added additional customer protections to require a pattern of late payments and a delinquency that last over 30 days. *Id.* Nicor Gas concurs with Staff’s rejection of GCI’s proposed language. Nicor Gas IB, pp. 45-6.

ii. Response to GCI

GCI proposes to preclude deposits based on a customer’s tenure. GCI IB, p. 37. As noted above in response to Staff, such a provision is illogical and unreasonable and should be rejected as recommended by Staff. See also Nicor Gas IB, pp. 45-6.

iii. Response to LIRC

LIRC states that it supports the CGI modification to Staff’s proposal and opposes Staff’s conclusion to assess deposits against current customers for late payments as opposed to non-payment. LIRC IB, pp. 3-4. Nicor Gas addresses these points above in response to GCI. Nicor Gas notes that while LIRC’s Initial Brief limits its concern to requiring deposits for late

payments versus non payments, LIRC does not mention that GCI's proposal does not distinguish between late- and non- payments, but rather prohibits all deposits from current customers after 24 months except for tampering.

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

Staff's proposed language for subsection (e) addresses "present customer deposits" and allows a utility to assess a deposit against a current customer if the customer has paid late 4 times in the last 12 months and has an undisputed past due balance that is more than 30 days past due. Nicor Gas finds these provisions appropriate for residential and small business customers who generally have peak monthly bills of relatively modest amounts. But large commercial and industrial customers can have extremely high gas usage resulting in a single monthly bill for gas supply that dwarfs a residential or small business customer's annual bill. Staff's proposed language simply fails to address this credit risk, and in response 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; PH Outline, p. 41; Nicor Gas IB, pp. 46-8. 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.

i. Response to Staff

Staff's Initial Brief repeats Staff's testimonial statements that Staff has limited expertise assessing the credit worthiness of large customers and recommends obtaining input from all affected parties before determining how to implement such deposits. Staff IB, p. 28. Staff's Initial Brief then provides a very short statement of Nicor Gas' position without elaboration or discussion of whether large commercial and industrial customers can present significant credit risk or whether Nicor Gas' proposal is a reasonable means of addressing such risk. *Id.* at 28-29. Nicor Gas addressed these points in its Initial Brief, and Nicor Gas' proposed language should be adopted. Nicor Gas IB, pp. 46-8.

Staff's position is not reasonable and does not respond to Nicor Gas' concerns on the merits. Nicor Gas' testimony on the credit risks of large commercial customers and the benefits of protecting paying customers from such risk is undisputed. 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.*

Similarly, Staff's recommendation on seeking input from other parties is no basis to reject Nicor Gas' proposal. 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. 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.

ii. Response to Dynegy

Dynegy supports Staff's proposed language and opposes Nicor Gas' proposed additional language. *See generally*, Dynegy IB. Dynegy submitted no testimony on this issue or in this proceeding, and only raises its objection in briefs. Dynegy's strategy of lying in the weeds and waiting until the end of this proceeding to assert that Nicor Gas' proposal should be more comprehensive is improper, lacks any merit, and is not supported by testimony.

Nicor Gas' proposed language addresses a utility's exposure to large commercial and industrial customer accounts in the event of default. The recommendation is grounded in good business practice and protects innocent customers from a preventable burden. Nicor Gas' proposal offers a flexible approach, under which an individual utility may develop, subject to Commission approval, its own criteria to determine what constitutes "financial insecurity."

Approving the details of each utility's credit risk criteria is the same approach approved by the Commission for applicant deposits based on credit scoring for residential service in the current (83 Ill. Adm. Code § 280.50(a)) and proposed (Section 280.40(d)) rule. Thus, Nicor Gas' proposed language would add a layer of consistency to the way Part 280 manages credit risk among customers.

Dynegy claims that Nicor Gas "provides the Commission with no facts" to establish that large customers pose a significant potential impact on bad debt. Dynegy IB, p. 4. To the contrary, Nicor Gas presented the uncontested testimony of Mr. Lukowicz on this point as outlined above (Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76; Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737.), whereas Dynegy provided no opposing testimony of its own and did not address this issue on cross examination. Dynegy's position is also unreasonable and contrary to logic. By definition, large commercial customers consume large quantities of natural gas and thus have correspondingly larger monthly bills than residential or small business customers. As a result, there is a significant level of exposure for large commercial customers based on a single bill that simply does not exist for residential and small business customers. Moreover, in light of the current business and economic climate, there is a genuine risk that some large industrial and commercial customers will default. Such risk can be reasonably mitigated or avoided with proper deposit requirements tailored to this unique group of customers. Dynegy's contentions are contrary to the record and of no merit.

On another note, large commercial customers are likely to purchase gas from third-party suppliers, which often have the right to stop serving the customer if they determine the customer is a credit risk. Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76; Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737. In such a situation, the large customer dropped by its third-party supplier

due to bad credit poses the same payment risk to the utility and should be subject to a deposit in appropriate circumstances to mitigate that risk. However, Dynegy's approach of disregarding this issue overlooks this type of scenario and fails to account for the unique contingencies that invariably arise. In the event a third-party vendor drops a customer for lack of credit-worthiness, the utility, with little notice, is saddled with the responsibility of servicing such high-risk customer. Customers ultimately bear the price if a large customer defaults. Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76; Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737. Thus, a deposit provides security to a utility's non-delinquent customers in the event of a large default. Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76; Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737.

Dynegy also makes the unfounded claim that Nicor Gas should have proposed actual criteria and source information. Dynegy IB, p. 4. This claim lacks credibility, as evidenced by Dynegy's decision to lay in the weeds until the briefing phase instead of raising this issue in testimony. Moreover, this claim lacks merit. As noted above, the comparable credit scoring deposit for residential applicants follows the same approach of allowing each individual utility to propose specific credit criteria in its tariffs for Commission approval. This approach allows flexibility for each program to be tailored to the facts and circumstances applicable to each utility. To the extent that one utility's large commercial customer base is different than another's in terms of size or credit risk, those facts can be taken into account. This is eminently reasonable and appropriate. Dynegy's claim that Staff has proposed a "uniform" rule (*id.*) is a mischaracterization as Staff's proposed rule simply fails to address the credit risk of large commercial customers. As Nicor Gas explained in testimony, this approach effectively treats a

large commercial factory the same as a convenience store. Lukowicz Dir., Nicor Gas Ex. 1.0, 16:359-76; Lukowicz Reb., Nicor Gas Ex. 3.0, 31:717-32:737.

The Commission should reject Dynegy's proposal because it unreasonably burdens non-delinquent customers and fails to include adequate tools for utilities to manage the credit risks of large commercial customers. A default by a large commercial customer can have a significant impact on a utility's bad debt, which is ultimately borne by the utility's customers. Waiting for four late or missed payments from a particularly large customer may have serious impacts on a utility's bad debt due to the larger monthly bill amounts of such customers. This is especially true when combined with the requirement that a payment be undisputed for 30 days, which could induce a customer to assert a billing error to avoid termination of service, thus extending the length of time past due amounts accrue. Because Dynegy's approach fails to account for the unique differences between utilities and large commercial customer credit risk, the Commission should reject its proposal as inadequate.

For all the foregoing reasons, the Commission should reject Dynegy's arguments and accept Nicor Gas' proposed language.

B. Section 280.45 Deposits for Low Income Customers

1. Response to LIRC

Nicor Gas does not oppose Staff's proposed language in Section 280.45. LIRC indicates that it supports Staff's current proposed rule notwithstanding its initial testimonial proposals. LIRC IB, pp. 4-5. Thus, there is no contested issue among Staff, Nicor Gas and LIRC regarding Section 280.45.

V. SUBPART D: REGULAR BILLING

A. Section 280.50 Billing

1. Subsection (c) - Bill Presentation Requirements

a. Response to Staff

Nicor Gas proposes deleting Section 280.50(c)(1)(I) which requires utilities to include a bar chart or pie chart of the customer's current usage and the previous 12 months of historical usage. Nicor Gas IB, pp. 49-50. The issue here is that utilities are already interested in providing such information to customers, and requiring a particular bill presentation is too prescriptive and will stifle innovation and responsiveness to customers. Nicor Gas already provides the information that would be required by the proposed rule. But locking utilities into the current usage presentation method notwithstanding that new and different methods may be developed in the future is counterproductive and inappropriate. Staff's Initial Brief simply points out that the required information is useful, but does not address Nicor Gas' underlying concern. Staff IB, p. 35. This proposed language should not be adopted for the reasons indicated above and in Nicor Gas' Initial Brief.

b. Response to GCI

GCI supports the requirement to include a graphical representation of a customer's usage on their bill, but acknowledges that utilities should have some flexibility in this regard. GCI IB, p. 45. While GCI's elimination of the particular type of presentation (bar chart or graph) is an improvement, GCI's language does not eliminate the issue and, for the reasons stated above and in Nicor Gas' Initial Brief, the Company recommends deletion of this language. Nicor Gas IB, pp. 49-50.

Nicor Gas also notes that while the electronic disconnection notice issue is addressed in Section 280.130, GCI states here that it supports paper disconnection notices as testified to by

Ms. Alexander. GCI IB, pp. 45-6. This contravenes GCI's other witness, Ms. Marcelin-Remé, who supported 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.

VI. SUBPART E: PAYMENT

A. Section 280.60 Payment

1. Subsection (b) – Method of payment

a. Paragraph (2)

i. Response to Staff

Staff opposes GCI's and AARP's proposal to "socialize" the costs of certain payment methods. Staff supports a "cost causer" method of determining who pays the expense associated with various payment methods. Staff IB, pp. 38-9. Nicor Gas concurs. Nicor Gas IB, pp. 50-4.

ii. Response to GCI

GCI continues to advocate its proposal to "socialize" the cost of certain payment methods. *See* GCI IB, pp. 47-9. Nicor Gas addressed the issues raised by GCI in its Initial Brief, and GCI's proposal should be rejected. Nicor Gas IB, pp. 50-4. Nicor Gas notes that GCI continues to mischaracterize certain vendor charges as utility charges when that is not the case.

2. Partial Payment Allocation

At the time of filing Nicor Gas' Initial Brief, it appeared that all parties except GCI had accepted Staff's removal of the partial payment subsection in its final proposed rule. PH Outline, pp. 63-65. GCI did not make that proposal in its Initial Brief (*see* GCI IB, p. 47-9), and the other parties addressing this issue confirmed their non-opposition to Staff's removal of the

partial payment subsection from the rule. *See* Staff IB, p. 41; ComEd IB, p. 17; Nicor Gas IB, p. 56; RGS IB, p. 3. Thus, there is no proposal to reintroduce the partial payment language, the issue is not contested, and Nicor Gas will not address it further.

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

1. Response to LIRC

LIRC supports Staff’s proposal, which allows for a waiver from late payment fees for low income customers, arguing the assessment of late payment charges is punitive and can lead to disconnection and increase bad debt and other utility costs. LIRC IB, p. 5. Nicor Gas does not oppose Staff’s proposed language.

C. Section 280.80 Budget Payment Plan

1. Response to Staff

Staff does not agree with GCI’s proposal to mandate a particular reconciliation schedule for budget payment plans in subsection (h). Staff IB, pp. 43-4. Nicor Gas supports Staff’s language, and concurs that GCI’s proposed changes are not necessary and could cause the other issues identified by Staff.

2. Response to GCI

See Response to Staff. GCI IB, pp. 49-50.

VII. SUBPART F: IRREGULAR BILLING

A. Section 280.90 Estimated Bills

1. Subsection (d)

a. Response to Staff

Staff continues to support its proposed language and does not accept GCI’s proposal to mandate readings on all service starts and stops. Staff IB, pp. 45-6. Staff explains that its

proposal to require an actual reading within the last 60 days fairly and reasonably addresses this issue while not imposing significant additional expenses for separate, off cycle, field visits every time a customer starts or stops service. *Id.* Nicor Gas shares Staff's view.¹² Lukowicz Reb., Nicor Gas Ex. 3.0, 42:958-43:1000. Moreover, many of Nicor Gas' customers choose to have the convenience of an estimated read when moving. *Id.* These customers always have the option of scheduling an appointment for a read or calling in their own reading. *Id.* Staff's proposal to require an actual read within the past 60 days is a reasonable approach that facilitates customer options, allows utilities to adapt existing processes to obtain more accurate information without unnecessary additional expense, and meet the 60 day requirement. *Id.*

b. Response to GCI

As noted in Nicor Gas' Initial Brief, GCI proposes an extensive series of new subsections under Section 280.90 (deleting everything after subsection (a) and replacing with totally new subsections (b) through (f)) that were not presented until the surrebuttal round of testimony. Alexander Sur., GCI Ex. 5.0R, 25:573-74; GCI Ex. 5.1, pp. 29-32; Nicor Gas IB, p. 57. GCI maintains this proposal in its Initial Brief. *See generally*, GCI IB, pp. 50-8. 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 objection to Staff's current proposed language. The Commission should reject GCI's proposal and adopt Staff's proposed language.

¹² GCI appears to have abandoned its earlier proposals in favor of its new rewrite submitted only in surrebuttal testimony with no opportunity for parties to respond. Both GCI's original and new proposals should be rejected. Nicor Gas IB, p. 57. As Staff notes, the Missouri Public Service Commission rule proposed in surrebuttal by GCI is lengthy and complicated, generally discordant with Staff's proposed rule as a whole, and far from the plan language goal for Staff's proposed rule. Staff IB, p. 47.

GCI's arguments also lack merit. GCI refers with no record citation to a widespread practice of estimating bills for many months on end. GCI IB, p. 50. Putting aside the lack of record support, such a practice is not condoned by Staff's proposed rule which requires an actual reading at least every second billing period unless the utility's effort to do so is prevented. Section 280.90(b)(1). The proposed rule also imposes an obligation to contact the customer to resolve the reason for consecutive estimated bills (Section 280.90(b)(5)), and allows customer meter readings that may not exceed six consecutive months. *Id.* at (c). Staff's proposed rule also requires the formula for estimating bills to be included in a utility's tariffs (*id.* at (e)), requires estimated reads to be labeled as such (*id.* at (f)), and prohibits disconnections based on two or more consecutive estimated bills unless actual reads have been prevented. *Id.* at (g). These Staff proposed provisions are reasonable, appropriately address concerns regarding estimated read, and should be accepted by the Commission.

GCI also argues that estimated starting bills could potentially result in a customer paying for the actual usage of a prior customer. GCI IB, p. 54. This argument is a red herring, as a customer is not obligated to use an estimated read under the proposed rule. Moreover, each utility's formula for calculating an estimated reading is and will be approved by the Commission when reviewing utility tariffs, and will have been found to produce reasonably accurate estimates. **If** a service starting "estimated" read is actually below the actual usage as of the starting date, then by definition a customer opting to use an estimated read in such a situation would pay for more than his or her actual usage. But the converse is also true – a customer would pay less than he would pay with an actual read if a service starting "estimated" read is above the actual usage as of the starting date. GCI has done nothing more than point out that each data point around a mean value is not equal to the mean. GCI presented no evidence to

show that estimated reads do not produce accurate estimates in general. Indeed, rates in general are based upon similar estimates of billing determinants.

As Staff has found, GCI has not made a convincing case for changing the language proposed for estimated readings and the Commission should adopt Staff's proposed language.

VIII. SUBPART G: REFUNDS AND CREDITS

A. Section 280.110 Refunds and Credits

1. Subsection (b)

a. Response to GCI

GCI's Initial Brief simply restates its position from testimony regarding a requirement to use the oldest records. GCI IB, pp. 58-9. Nicor Gas addressed GCI's arguments in its Initial Brief. Nicor Gas IB, pp. 57-62.

2. Subsection (d)

As explained in Nicor Gas' Initial Brief, the Company 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. Nicor Gas IB, p. 62. Proposed Section 280.110(d) conflicts with the Company's current Commission-approved terms and conditions. *Id.* In addition, in a cancel and rebill situation, a credit does not exist until the transaction is completed in the billing system. *Id.* The proposed rule should allow Nicor Gas to continue to use the interest rate now in place per its Commission approved tariffs and clarify that an overpayment with a cancel and rebill arises on the date of the cancel and rebill. *Id.* at 62-3. Nicor Gas has proposed language to effectuate these proposals.

a. Response to Staff

Staff responds that rules should always control over tariffs (Staff IB, pp. 49-50), but does not address whether it is reasonable to impose the cost of this proposal or whether it would be harmful to adopt the Company's proposals. Nicor Gas is not arguing that tariff's control over rules; rather, Nicor Gas' position is that the rule should be modified to avoid creating this conflict which would require Nicor Gas to change its existing practice. Nicor Gas established that its proposals are reasonable and fair (Nicor Gas IB, pp. pp. 62-3), and the Commission should adopt Nicor Gas' proposed language.

IX. SUBPART H: PAYMENT ARRANGEMENTS

A. Section 280.120 Deferred Payment Arrangements ("DPAs")

1. Response to Staff

Nicor Gas supports Staff's non-acceptance of GCI's proposed edits to subsections 280.120(b), (f), (g), and (j), including the proposals to require DPAs that are highly customized to customers' individual circumstances. *See* Staff IB, pp. 51-2, 56-8; Nicor Gas IB, pp. 63-6. Staff's rule strikes the appropriate balance of requiring utilities to take into account "the ability of the customer to successfully complete the DPA" without forcing customers to disclose highly personal information. Staff IB, p. 52; PH Outline, p. x, Section 280.120(g)(2). Similarly, Staff's proposal avoids forcing utilities to engage in consumer credit counseling functions far removed from their core function of delivering utility services. Lukowicz Reb., Nicor Gas Ex. 3.0, 47:1082-87. Staff's proposed language should be adopted by the Commission.

Nicor Gas also supports Staff's non-acceptance of GCI's proposal to insert language to require documentation of a DPA separate from Staff's requirement to include such information in a customer's bill. Staff IB, p. 55; Nicor Gas IB, pp. 64-5; PH Outline, p. 87. As Staff correctly concludes, including such information in a customer's bill will be a cost-effective and

useful means of conveying such information that is more likely to be retained and available to customers. *Id.*

Nicor Gas also concurs with Staff's rejection of GCI's proposed edits to subsection 280.120(k). Staff IB, p. 59; Nicor Gas IB, p. 64. Staff's proposal conditions the ability to renegotiate the terms of a DPA to DPAs that are not in a default status. *Id.* This limitation is reasonable and accommodates customers who proactively seek such a renegotiation rather than waiting until after a default has occurred.

2. Response to GCI

GCI repeats its testimonial arguments in support of its proposal for highly customized DPAs. GCI IB, pp. 60-5. GCI's speculations about compliance with the current rule are wrong, unsupported and represent a desperate attempt to create an issue where one does not exist. For the reasons indicated above in response to Staff and in Nicor Gas' Initial Brief, the Commission should adopt Staff's proposed language and reject GCI's proposed changes. Nicor Gas IB, pp. 63-6.

B. Section 280.125 Deferred Payment Arrangements for Low Income Customers

1. Response to LIRC

Neither LIRC nor Nicor Gas contest Staff's proposed Section 280.125 language regarding Deferred Payments, aside from a typographical change mentioned by Nicor Gas. See LIRC IB, pp. 5-6; Nicor Gas Initial Brief, p. 66.

X. SUBPART I: DISCONNECTION

A. Section 280.130 Disconnection of Service

1. Subsection (c) – Non-deniable charges

a. Paragraph (4)

i. Response to Staff

Paragraphs (1) through (5) of subsection 280.130(c) identify charges that may not be the basis for disconnection of regulated utility service. Paragraph (4) lists charges for equipment or merchandise. Staff agreed to modify paragraph (4) of Section 280.130(c) as recommended by Nicor Gas to add “unless otherwise authorized by Illinois statute” to be consistent with statutory provisions (e.g., on-bill financing provisions) allowing cost recovery for certain equipment or merchandise. Staff IB, pp. 63-4; *see* Nicor Gas IB, p. 67. Nicor Gas concurs with this change. Staff did not address Nicor Gas’ proposal to clarify the reference to “equipment” by adding “non-utility” before equipment. *Id.* Nicor Gas’ proposal on equipment, or other language clarifying that utility equipment such as meters is not included in this reference, should be adopted by the Commission.

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

a. Paragraphs (2) and (4)

i. Response to Staff

Staff continues to recommend that a disconnection notice must always be sent by mail notwithstanding whether the customer desires and has agreed to receive such a notice electronically. Staff IB, p. 64. Staff states that its requirement is appropriate given the seriousness of disconnection notices. *Id.* Nicor Gas does not dispute that a disconnection notice is a serious matter, but Staff fails to acknowledge or address that some customers have moved to and desire paperless electronic communications for all communications including billing,

banking and other matters of a comparable serious nature. *See* Nicor Gas IB, pp. 68-70. Indeed, for a customer who is accustomed to electronic communications and does not check paper communications as often as electronic communications, a paper notice may be an inferior form of notice. While the Electronic Commerce Security Act (“ECS Act”), 5 ILCS 175/1-101 et seq., is not directly applicable to this issue, Staff’s proposal is clearly inconsistent with its spirit and goals of facilitating and removing barriers to electronic communications. 5 ILCS 175/1-105. Indeed, the Commission itself allows parties to elect all electronic communications through its e-Docket system. *See* 83 Ill. Adm. Code § 200.1000 – 200.1060. The Commission should adopt Nicor Gas language and allow customers desiring to receive all communications electronically, including disconnection notices, to do so.

3. Subsection (h)

a. Response to Staff

Staff did not respond to Nicor Gas’ proposal to modify the language of subsection (h) to refer to disconnection notices “substantially in the form of Appendix A.” *See* Nicor Gas IB, p. 70; Staff IB, p. 64. However, Nicor Gas notes that Staff has indicated that it does not object to the correlated proposal to include that same language in Appendix A itself. Staff IB, p. 84. The same reasoning supporting the revision to Appendix A applies here as well. Presumably, Staff would not oppose that same language here, and Nicor Gas’ proposal should be adopted by the Commission.

4. Subsection (j)

a. Response to Staff

Staff does not accept GCI’s proposal to require a minimum of two warning calls for a disconnection, finding “that a single call is appropriate after the customer has already received a

written disconnection notice” Staff IB, p. 66. Nicor Gas concurs. *See* Nicor Gas IB, pp. 70-1.

b. Response to GCI

See Response to Staff and Nicor Gas IB, pp. 70-1.

5. GCI Proposal for Direct Contact with Customer at Time of Disconnection

a. Response to Staff

Staff observes that it did not include a direct contact requirement for disconnections out of a concern for worker safety, including its knowledge of “highly publicized attacks on utility workers” and the legislative response to elevate such attacks to a felony. Staff IB, p. 66. Nicor Gas concurs with Staff’s position in this regard. *See* Nicor Gas IB, pp. 72-3.

b. Response to GCI

See Response to Staff. *See* also Nicor Gas IB, pp. 72-3.

6. Subsection (l)

a. Response to Staff

Staff rejects GCI’s proposals to prohibit disconnections outside of normal business hours and Nicor Gas concurs. Staff IB, pp. 67-8; Nicor Gas IB, p. 73. Staff’s proposal contains the reasonable requirement that customer service representative must be available to address customer contacts when off-hour or off-day disconnections are processed.

b. Response to GCI

See Response to Staff and Nicor Gas IB, p. 73.

7. Subsection (m)

a. Response to Staff

Consistent with Nicor Gas position with respect to Section 280.160, the Company recommends that the time period for medical certifications remain at 30 days. See Nicor Gas IB, pp. 74-5. Accordingly, Nicor Gas opposes the proposed change to the timeline in Section 280.130(m) from 30 days to 60 days (*see* Staff IB, p. 68) for the same reasons stated for Section 280.160.

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

1. Response to Staff

Staff supports its most recent proposed language for this section, notes utilities have had this power of disconnection under the current rule, and notes the new protections provided in the proposed rule. Staff IB, p. 69. Nicor Gas supports Staff’s proposed language.

2. Response to GCI

See Response to Staff.

D. Section 280.150

XI. SUBPART J: MEDICAL CERTIFICATION

A. Section 280.160 Medical Certification

1. Subsections (a)

a. Response to Medical Certificate Duration Arguments

Nicor Gas addresses arguments regarding the proposal to increase the medical certificate duration from 30 days to 60 days in subsection (g), below.

2. Customer Self Declaration of Medical Emergency

a. Response to Staff

Staff declines to adopt GCI's proposal to allow customers to orally declare a medical emergency. Staff IB, p. 70. Nicor Gas concurs. Nicor Gas IB, pp. 75-6. As Staff notes, the effect of this proposal will be to allow for temporary self-certification to postpone disconnection. Staff IB, p. 70. Staff's intent to only allow licensed physicians and boards of health to provide medical certification is reasonable. *Id.*; *see also* Nicor Gas IB, pp. 75-6. Staff's proposed rule allows medical professionals to establish the initial certification by telephone, and GCI's proposed language is neither needed nor reasonable. Nicor Gas IB, p. 75-6.

b. Response to GCI

See Response to Staff and Nicor Gas IB, pp. 75-6.

3. Subsection (g)

a. Response to Staff

Staff continues to support its proposal to extend the medical certificate duration from 30 days to 60 days. Staff IB, pp. 71-2. As explained in Nicor Gas' Initial Brief, there is no need to revise the proposed rule in this regard. Nicor Gas IB, pp. 74-5. Extending the total certification time to 60 days or longer would merely prolong the debt owed on the account to be paid. *Id.* The proposed rule incorporated the concept of automatic medical payment arrangements ("MPAs"), and customers will be allowed to have multiple regular DPAs under other provisions of the proposed rule. *Id.* 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.* All of the payment arrangements and disconnection moratoriums in the proposed rule should be considered together so as to avoid unintended consequences, and the proposal to extend medical

certificates to 60 days would needlessly facilitate chronic and perpetual re-certifications and disconnect deferrals without payment. *Id.*; see Nicor Gas Exhibit 4.1. The 60 day proposal should not be adopted by the Commission.

Staff states that the current rule already allows for a medical certification duration of 60 days through its provisions for a 30 day renewal, and postulates that its provisions requiring utilities to act on disconnection notices under Subsection 280.130(k) will somehow remedy or reduce the use of payment arrangements and moratoriums by some customers to obtain prolonged service without payment. Staff IB, pp. 71-2. The impact of Staff's automatic 60 day deferral cannot reasonably be compared to the current rules allowance of a 30 day extension based on a second certification. 83 Ill. Adm. Code § 280.130(j)(3). Similarly, utility diligence in disconnecting service is not the issue here. Putting aside the lack of any showing that utilities avoid disconnections as asserted by Staff, no amount of utility diligence in pursuing disconnections will address the problem of customers taking advantage of multiple payment arrangement rights and disconnection prohibitions to avoid disconnection without making payment. An automatic 60 day deferral is neither needed nor reasonable, and should not be adopted by the Commission.

4. Subsection (h)

a. Response to Staff

Nicor Gas agrees with Staff's that GCI's proposal for highly customized MPAs should be rejected for the same reasons the comparable provisions for DPAs were rejected. Staff IB, p. 72; Nicor Gas IB, p. 77. Nicor Gas also notes that Staff's proposed default MPA provisions provide very favorable payment arrangements to such customers, which provides yet another reason to reject GCI's proposal. *See* Section 280.160(h).

b. Response to GCI

See Response to Staff and Nicor Gas IB, p. 77.

5. Subsection (i)

a. Response to Staff

Staff's proposed Section 280.160(i) governs the repeated use of medical certificates and provides that accounts with a prior valid medical certificate are eligible after "either" the total account balance has been brought current "or" 12 months have expired from the beginning date of the prior certificate. See PH Outline, p. 125. Nicor Gas did not object to Staff's proposal for the repeated use of medical certificates once every 12 months, but maintained that both of Staff's conditions should be met for re-certification. Nicor Gas IB, pp. 77-80. Specifically, Nicor Gas recommended deleting the word "either" and changing "or" to "and" so that multiple medical certificates would require the passage of 12 months and successful completion of the prior MPA *Id.*

Staff responds to all utilities together, including Nicor Gas, and implies that utilities would delete this clause altogether. Staff IB, pp. 73-4. This is certainly not true for Nicor Gas, and Staff fails to respond to the concerns raised by Nicor Gas. Without Nicor Gas' edits, Staff's proposed language provides additional opportunities to defer payment that are unreasonable and would facilitate a perpetual non-paying customer. Grove Dir., Nicor Gas Ex. 2.0, 5:86-93. Staff does not provide a valid basis for allowing multiple MPAs regardless of whether the original MPA was successfully completed. Coupled with other limitations in the proposed rule on disconnections, 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. The Commission should adopt Nicor Gas' proposed edits.

XII. SUBPART K: RECONNECTION

A. Section 280.170 Timely Reconnection of Service

1. Subsection (b)

a. Paragraphs (3) and (4)

i. Response to Staff

Staff rejects GCI's proposal to shorten Staff's proposed timelines for reconnection of service, which mirror Staff's timelines for initial service activation (see Section III.A.6 above (Section 280.130)), and Nicor Gas concurs. Staff IB, p. 74; Nicor Gas IB, p. 80. A proposal for much shorter timeframes for service restoration would have a significant cost impact and is not needed. *Id.*

ii. Response to GCI

See Response to Staff and Nicor Gas IB, p. 80.

XIII. SUBPART L: UNAUTHORIZED SERVICE USAGE

A. Section 280.210 -- Payment Avoidance by Location

1. Response to GCI

GCI's arguments on Staff's proposed payment avoidance by location ("PAL") provisions reveal the extreme depth of their opposition to any reasonable effort to address the PAL issue. GCI's position ignores the reasonableness of Staff's underlying proposal. To make matters worse, GCI engages in blatant mischaracterizations of Staff's proposal to make its arguments, avoids any real discussion of the full scope of the substantive modifications embodied in Staff's proposal, and spends most of its time making arguments that respond to a proposal that is no longer proposed by Staff. These arguments lack merit and should be rejected. Staff's proposal is reasonable, addresses a known issue in an appropriate manner, and should be adopted by the Commission.

The utilities have identified the very real problem of payment avoidance schemes being employed by some to obtain utility services without payment. See Lukowicz Dir., Nicor Gas Ex. 1.0, 23:521-23, 24:551-53 (“[C]hanging the name on an account to intentionally avoid payment (while the delinquent customer remains in the residence) is a common and serious problem.”); Lukowicz Reb., Nicor Gas Ex. 3.0, 52:1203-12, 53:1213-16.¹³ A Nicor Gas study confirmed the existence and extent of such payment avoidance schemes, and estimates based on this study show such actions account for approximately \$10 million of bad debt charge offs for Nicor Gas alone. Lukowicz Reb., Nicor Gas Ex. 3.0, 53:1213-16. GCI did not counter or refute this evidence with its own counter-evidence (*see* Alexander Dir., GCI Ex. 1.0, generally; Alexander Reb., GCI Ex. 3.0, generally; Alexander Sur., GCI Ex. 5.0 Rev., 36:840-37:859), nor did it cross examine Mr. Lukowicz on this aspect of his testimony. Nicor Gas testimony regarding the existence and size of this significant problem is uncontested.

To address the PAL issue and the related impact on uncollectible expense, Nicor Gas and others sought the adoption of payment avoidance by location 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. Staff’s initial PAL proposal allowed utilities to deny service

¹³ As explained by Nicor witness Mr. Lukowicz:

Gaming occurs at the time of the application process. In the typical scenario Customer A and Customer B are roommates at the same premises. Utility service is in the name of Customer A. Customer A owes Nicor Gas \$500. Nicor Gas turns Customer A off for nonpayment. Rather than pay the delinquent balance, Customer B calls Nicor Gas and requests service at the same premises in his name. The current Part 280 prevents the utility from denying Customer B service in this scenario. A new utility account is established in Customer B’s name and Customer A still resides at the same premises owing \$500. Customer A’s account balance will be sent to a collection agency and possibly written off. Customers A and B have abused the system to avoid payment in this scenario.

Nicor Gas Ex. 3.0 at 52:1203-12.

in certain PAL situations, but placed such strict conditions on the ability to use the PAL protections that they would have been ineffective. *See* Lukowicz Reb., Nicor Gas Ex. 3.0, 53:1213-24. 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.

GCI begins, and continues through most of its argument, by making arguments related to Staff's original proposal. *See* GCI IB, pp. 89-93. Finally, on page 91 of its Initial Brief, GCI mentions Staff's new proposal and laments Staff's simplified standard of proof of PAL without mentioning there that Staff's simplified standard corresponds to its simplified and reduced remedy -- a refundable deposit *instead of the ability to deny service*. *Id.* at 91. Staff's proposal recognizes the increased risk of non-payment associated with situations where the former customer and new applicant were co-habitants at the time of the accrual of the former customer's debt and at the time of the new application. Agnew/Howard Sur., Staff Ex. 3.0, 21:473-22:496. The remedy or tool to address this risk is a refundable deposit.

GCI fails to mention that Staff's current proposal in no way imposes the former customer's debt on the new applicant/customer, but argues that Staff's revised proposal is inconsistent with contract law "because the credit agreement at issue is with the original debtor." GCI IB, p. 91. GCI's argument is a non-starter as its underlying premise is based on a

mischaracterization of Staff's current proposal. Staff has appropriately identified a significant risk of non-payment based on the record in this proceeding, and addressing that risk through a deposit is reasonable, appropriate and legal. The size of the required deposit is unrelated to the size of the outstanding debt of the former customer. PH Outline, p. 147 (Section 280.210(d)(1)). Moreover, Staff's proposal provides that such deposit will be refunded under the conditions specified for all deposits in Section 280.40. *Id.* (Section 280.210(d)(4)).

GCI continues to mischaracterize Staff's proposal, claiming it is based on assumptions regarding fraudulent conduct. GCI IB, p. 92. While an intentional scheme to maintain service without payment by changing the name on an account (where the new applicant was an occupant during the accrual of the former customer's debt and the former delinquent customer remains in the residence) is clearly fraudulent, Staff's proposal is not based on such a claim. Accordingly, this argument is irrelevant as indicated above. Similarly, Staff's proposal does not purport to hold the new applicant "liable for the delinquent customer's breach." *Id.* at 93. No requirement to pay the delinquent balance of the former customer is imposed on the new applicant under Staff's proposal. Indeed, Staff explicitly rejected the concept of reassigning debt responsibility from one person to another in favor of a risk assessment tool:

[W]e still reject the many requests from utilities to hand them a "household rule" that effectively allows for the involuntary reassignment of debt responsibility from one person to another. We believe that the proper way to look upon the problems caused by individuals who engage in this behavior is one of risk assessment rather than shared culpability

Agnew/Howard Sur., Staff Ex. 3.0, 21:478-82. Contrary to GCI's assertion, Staff does not propose "to hold an individual responsible for payment of another's debt" GCI IB, p. 93. GCI's argument is irrelevant, based on blatant mischaracterizations of Staff's current proposal, and must be denied.

XIV. SUBPART M: COMPLAINT PROCEDURES

A. Section 280.220 Utility Complaint Process

1. Subsection (e)

a. Response to Staff

Nicor Gas concurs with Staff's rejection of GCI's proposal to reduce the maximum complaint response timeline from 14 days to 7 days. Staff IB, p. 77. As Staff correctly points out, this is a ceiling rather than an average response timeline and utilities will respond more quickly than 14 days on average.

2. Subsection (i)

a. Response to Staff

Nicor Gas proposes deleting the requirement contained in paragraph 1 of Section 280.220(i) to automatically inform a customer of the right to escalate a complaint to supervisory personnel in every case. *See* Nicor Gas IB, pp. 83-4. Nicor Gas does not oppose notifying customers of the right to escalate a complaint if a customer service representative is requested to identify a customer's options, but requiring an automatic escalation notification for all customer complaints is unreasonable and will result in unnecessary and unproductive escalations at additional costs. Moreover, there is no evidence of a problem in this regard, and only a very small number of Nicor Gas customer complaints (.05 percent) escalate to the point where the customer calls the Commission. *Id.* Staff's Initial Brief does not mention or address these concerns. Staff IB, p. 78. Nicor Gas' proposed deletion is reasonable and should be adopted by the Commission.

3. Subsection (j) -- Complaint Number

a. Response to Staff

Nicor Gas proposes deleting the requirement in subsection (j) of Section 280.220 to assign a separate complaint number to all complaints. Nicor Gas IB, pp. 84-85. 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 add unnecessary cost. *Id.*

Staff argues that Nicor Gas’ proposal overlooks anyone without an account number, such as new applicants. Staff IB, p. 79. However, as Nicor witness Ms. Grove testified, contact information can be retrieved by name as well as account number. Tr., 878:3-9. While well intended, Staff’s proposal in this instance will add unnecessary cost with no additional benefit and should not be adopted by the Commission.

b. Response to GCI

GCI raises arguments similar to Staff. GCI IB, pp. 94-5. See Response to Staff and Nicor Gas IB, pp. 84-5.

XV. SUBPART N: INFORMATION

A. Section 280.260 Customer Information Packet

1. Subsection (b)(2)

a. Response to Staff

Staff proposes to modify the required disclosures in response to concerns expressed by GCI to include: “O. That special rights are available to Low Income Customers and how to qualify for Low Income Customer status.” Staff IB, pp. 81-2. Nicor Gas does not oppose this addition.

XVI. SUBPART O [GCI REQUEST FOR PERIODIC DATA REPORTING]

A. Response to Staff

Nicor Gas concurs with Staff that its data collection requirements contained in new Section 280.30(k) will provide information that Staff finds important but which will not be unreasonably burdensome on utilities. Staff IB, pp. 21, 83. Nicor Gas also concurs with Staff that the much broader set of data collection requirements proposed by GCI do not strike the appropriate balance between costs and benefits, and are not needed given other provisions in the proposed rule. Staff IB, pp. 21-22, 83; Nicor Gas IB, pp. 85-6. The Commission should reject GCI's proposed additional disclosures.

B. Response to GCI

GCI continues to recommend adoption of its proposal for 26 specific data collection and reporting requirements. GCI IB, pp. 97-104. Nicor Gas responded to GCI's testimonial arguments in its Initial Brief (Nicor Gas IB, pp. 85-6), and GCI's Initial Brief is a recitation those testimonial arguments. Thus, for the reasons indicated in Nicor Gas' Initial Brief and summarized below, GCI's proposal should be rejected by the Commission. *Id.*

The Commission is the entity that regulates Illinois utilities. Nicor Gas and other utilities regularly work with Staff and the Commission to respond to information requests. *Id.* 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. *Id.*

With respect to GCI's reference to a report issued by the National Association of Regulatory Utility Commissioners' ("NARUC") Consumer Affairs Subcommittee (GCI IB, pp. 99-100), the report "recommend[s] a collections survey as the tool to gather the data," not a rule. *Id.* at 100. The NARUC report cited by GCI also discusses high level aggregate data on billings and uncollectible amounts much different from the detailed information GCI 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.

C. Response to LIRC

LIRC supports the GCI proposal, which would add a Subpart O to the proposed rule containing 26 additional data collection and reporting requirements to the rule. LIRC IB, pp. 6-7. Nicor Gas disagrees with the proposal as GCI has failed to identify a sufficient basis for the requirement, as explained above. See Nicor Gas IB, p. 85.

XVII. APPENDICES TO RULE

A. Section 280 Appendix A: Disconnection Notice

1. Response to Staff

Staff advises it has no objection to Nicor Gas' proposal to modify Appendix A to state "Disconnection notices sent to customers shall be in red and substantially in the following format." Staff IB, p. 84. Thus, this issue is no longer contested.

As noted earlier with respect to Section 280.160, Nicor Gas opposes adopting a 60 day medical certificate duration and, for the reasons indicated above, opposes including that same time period in Appendix A and Appendix B. See Staff IB, pp. 83-4.

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

Staff does not oppose Nicor Gas' proposal to add language to Appendix D as follows:

“Disconnection notices sent to residential gas and electric customers shall include an insert in substantially the following form.” Accordingly, this issue is not contested.

XVIII. CONCLUSION

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

Dated: October 7, 2011

Respectfully submitted,

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

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