

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

DRAFT

**ADMINISTRATIVE LAW JUDGE'S PROPOSED FIRST NOTICE ORDER WITH
SUMMARY OF NICOR GAS COMPANY'S POSITIONS**

October 14, 2011

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

DRAFT
ADMINISTRATIVE LAW JUDGE’S PROPOSED FIRST NOTICE ORDER
FILED BY NICOR GAS COMPANY

I. PROCEDURAL BACKGROUND

On October 31, 2006, the Illinois Commerce Commission (“Commission”) issued an Initiating Order (“Initiating Order”) to initiate Docket 06-0703 in order “to produce an internally consistent set of rules that will balance the interests of the public utilities regulated by the rules and customers of those utilities.” Initiating Order, p. 1. The Initiating Order was based on an October 25, 2006 Staff Report by the Staff of the Consumer Services Division of the Illinois Commerce Commission (“Commission”), which advocated for the initiation of a rulemaking docket to revise 83 Ill. Adm. Code 280, “Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service Deposits, Payment Practices, and Discontinuance of Service.” Initiating Order, p. 1.

Pursuant to recommendation in the Staff Report, workshops addressing the Part 280 rulemaking were held starting in 2007.

On September 11, 2009, Staff filed Staff Ex. 1.0, the Direct Testimony of Jim Agnew and Joan Howard, which described the proposed rule and the rationale therefor. Agnew/Howard Dir., Staff Ex. 1.0. Their testimony included an attachment containing Staff’s proposed Part 280. Agnew/Howard Dir., Staff Ex. 1.0, Attachment A. Interested parties responded, and Staff offered subsequent revisions of its proposed rule in rebuttal and surrebuttal testimony in response to the concerns and recommendations of other parties. Agnew/Howard Reb., Staff Ex. 2.0, Attachment J; Agnew/Howard Sur., Staff Ex. 3.0, Attachment A. For the sake of brevity, this Order discusses the last proposal made on any portion of the rule.

Leave to Intervene was granted to the following parties: Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”); Citizens Utility Board (“CUB”); People of the State of Illinois (“AG”); City of Chicago (“City”)(collectively, CUB, AG and City are referred to as the Government and Consumer Intervenors, or “GCI”); Utilities, Inc.; Community Action for Fair Utility Practice (“CAFFUP”) and South Austin Coalition Community Council (“SACCC”), collectively referred to as Low Income Residential

Consumers (“LIRC”); Lt. Governor Pat Quinn; Commonwealth Edison Company (“ComEd”); the Peoples Gas Light and Coke Company and North Shore Gas Company; Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP (collectively, Ameren Illinois Utilities or “AIUs”); Mt. Carmel Public Utility Co.; Dynegy Inc.; MidAmerican Energy Company; Constellation NewEnergy, Inc.; AARP; Illinois Department of Healthcare and Family Services; Illinois-American Water Company; Local Union No. 15, International Brotherhood of Electrical Workers (“IBEW Local Union No. 15”), AFL-CIO; Interstate Gas Supply of Illinois, Inc.; MC Squared Energy Services, LLC; Nicor Energy Services Company d/b/a Nicor National and Prairie Point Energy, LLC d/b/a Nicor Advanced Energy LLC (collectively, “Nicor”).

Direct Testimony has been filed by the following parties: GCI; Nicor Gas; Nicor; Illinois-American Water Company; The Peoples Gas Light and Coke Company and North Shore Gas Company; ComEd; Mt. Carmel Public Utility Co.; Retail Gas Suppliers; LIRC; Constellation NewEnergy, Inc.; AARP; Ameren; MidAmerican Energy Co. ; IBEW Local Union No. 15.

Rebuttal Testimony was filed by: Staff; GCI; Nicor Gas; Illinois-American Water Company; the Peoples Gas Light and Coke Company and North Shore Gas Company; Nicor; ComEd; AIUs; MidAmerican Energy Co.; IBEW Local Union No. 15; AARP.

Surrebuttal testimony was filed by: Nicor Gas; Staff; City; GCI; Peoples Gas Light and Coke Company and North Shore Gas Company; Illinois-American Water Company; AIUs; Retail Gas Suppliers; and ComEd.

Hearings were held May 25, 2011, and June 7-9, 2011 where parties had the opportunity to present evidence and cross examine witnesses.

II. BACKGROUND

Currently, 83 Ill. Adm. Code 280 (“Part 280) governs the “Procedures for gas, electric, water and sanitary sewer utilities governing eligibility for service, deposits, payment practices, and discontinuance of service.” It contains 26 Sections, Policy, Scope and Application, Saving Clause, Definitions, Applicants for Service, Present Customers, Deposits, Refunds, Refunds of Additional Charges, Estimated Bills, Past Due Bills and Late Payment Charges, Untilled Service, Treatment of Illegal Taps, Deferred Payment Agreements, Budget Payment Plan, Discontinuance of Service, Discontinuance of Service During the Period of Time from December 1 Through and Including March 31, Energy Act of 1989 Participants Discontinuance Prohibition, Reconnection of former Residential Utility Customers for the Hearing Season, Discontinuance of Service to Accounts Affecting Master Metered Apartment Buildings, Service Reconnection Charge, Dispute Procedures, Commission Complaint Procedures, Public Notice of Commission Rules, Second Language Notices, and Customer Information Booklet.

Part 280 also currently contains four appendices, Notice of Utility Shut Off, Requirements to Avoid Shut Off, Requirements to Avoid Shut Off of Service in the Event of Illness, Public Notice, and Insert to be Included with Each Notice of Disconnection Sent to Residential Gas and Electric Customers.

The impetus for the proposed overhaul that is the subject of this docket, according to the Staff Report, was “[d]ue to the extensive changes proposed in numerous dockets and the apparent need to update the rules.” Staff Report. As proposed by Staff, the new version of Part 280 is intended to reflect “changes in the utility industry pertaining to the provision of customer service practices and technical support systems,” to ensure “the adequacy of consumer protections,” and to include “recent legislative changes.” Staff Report; Commission Initiating Order.

In initiating this proceeding, the Commission found, “[t]he Staff Report makes a convincing case for the repeal of the current rules and the adoption of new rules as an alternative to the potential piecemeal amendment of Part 280 occurring in the four open dockets. It is the Commission’s intention that the proceeding initiated by this Order produce an internally consistent set of rules that will balance the interests of the public utilities regulated by the rules and the customers of those utilities.” Commission Initiating Order.

Thus, the proposed rulemaking herein is intended to overhaul the current provisions set forth in 83 Ill. Adm. Code 280, in their entirety, which is currently titled “Procedures for Gas, Electric, Water and Sanitary Sewer Utilities Governing Eligibility for Service Deposits, Payment Practices, and Discontinuance of Service.”

III. PROPOSED RULES

Staff’s proposed rule submission was filed as ICC Staff Exhibit 3.0 Attachment A, with a final corrected version filed March 17, 2011 within the Surrebuttal Testimony of Ms. Howard and Mr. Agnew.

Over the course of approximately five years, the parties have participated in workshops, submitted evidence, and presented thoughtful argument and debate regarding this rulemaking. Through these efforts, the parties have made great strides in negotiating amenable provisions and reaching compromise. Though many of the current proposals are no longer contested, this Order will address the remaining disputed issues under each subsection.

IV. SUBPART A: GENERAL

A. Section 280.05 Policy

1. Nicor Gas

Reasonable Terms and Conditions / Description of Part 280

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

she would not object to adding “under reasonable terms and conditions” to the rule. Tr. 691:12-692:2. Nicor Gas recommends adoption of its language.

Similarly, Staff adopted Nicor Gas’ proposal to replace the general and non-descriptive “within the scope of this Part” language from the proposed policy section with “governing eligibility for service, deposits, billing, payments, refunds and disconnection of service for gas, electric, water and sanitary sewer utilities,” which is the statement of scope contained in the title of proposed Part 280. See Lukowicz Reb., Nicor Gas Ex. 3.0, 4:92-5:100; Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 3. Nicor Gas submits that there is no reasonable basis for GCI’s objection to this language, and the objection should be rejected.

GCI failed to address in its Initial Brief 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. Nicor Gas argues these proposed GCI modifications should be rejected because they are unreasonable and GCI has failed to support them in its Initial Brief.

Policy, Precedence and Discrimination Language

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

~~The requirements, policies and procedures outlined in this rule shall take precedence over any inconsistent utility tariff, unless the conflicting tariff provision has been specifically approved by the Commission as a waiver or exemption from this rule, and shall be viewed as the minimum standards applicable to gas, electric, water and sanitary sewer utilities. Utilities that are subject to these rules shall have the ability to expand or supplement the customer rights guaranteed by these provisions as long as those policies are applied in a nondiscriminatory manner. Nothing in this Part 280 should be construed to prevent a utility from offering requirements and procedures more beneficial than the minimum standards contained in the rule.~~

Lukowicz Reb., Nicor Gas Ex. 3.0, 3:47-8:188.

The first issue addressed by Nicor Gas concerns the proposal to adopt language that the “policies” outlined in the rule shall take precedence over any inconsistent utility tariff. This language is directly contrary to law, and its adoption would exceed the

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

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

Consistent with this principle, the Illinois Supreme Court held that the Commission cannot rely upon principles of equity in the Public Utility Act's preamble to impose a sharing of coal tar clean-up costs because "the equity language the Commission relies upon is within the preamble to the Act, and is not a part of the substantive law of the Act." *Citizens Utility Bd. v. Illinois Commerce Comm'n*, 166 Ill.2d 111, 130-31 (1995).

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

Nicor Gas also argues that "[t]he Commission only has those powers given it by the legislature through the Act." *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill.2d 192, 201 (1989) ("BPI I"); see also *People ex rel. Ryan v. Illinois Commerce Comc'n*, 298 Ill.App.3d 483, 487 (2nd Dist. 1998) ("The

Commission derives its power from the statute and only has the authority that is expressly conferred upon it.”). The Public Utilities Act (“Act” or “PUA”), 220 ILCS 5/1-101 et seq., does not authorize the Commission to prescribe rules of statutory construction. Thus, not only is this proposal contrary to the law, it is also beyond the power of the Commission. Accordingly, Nicor Gas states the reference to “policies” should be deleted and replaced with “requirements.”

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

Nicor Gas also asserts that this proposal is overbroad and unreasonable on its face. A substantial number of requirements in the current rule are carried forward to the new rule. If the Commission has already determined that a tariff provision is acceptable and proper under the old rule (either as an explicit waiver or implicitly in approving the tariff) and the new rule does not contain new or changed substantive requirements, then there is no reason to treat the prior waiver or approval as invalid. The proposed “precedence” language is neither needed nor reasonable and should be rejected.

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

The third and final issue asserted by Nicor Gas relates to the last sentence of proposed Section 280.05 that states “[u]tilities that are subject to these rules shall have the ability to expand or supplement the customer rights guaranteed by these provisions as long as those policies are applied in a nondiscriminatory manner.” Agnew/Howard Reb., Staff Ex. 2.0, Att. J, p. 3; Agnew/Howard Sur., Staff Ex. 3.0, Att. A., p. 3.. The proposed policy statement contains vague references to guaranteed rights and discusses expanding or supplementing those rights instead of exceeding minimum

standards as discussed in the prior sentence. Moreover, the language providing that a utility may go beyond the minimum requirements of the rule but must do so in a nondiscriminatory manner is vague and ambiguous. This language could be argued to prohibit a utility from making an accommodation to one customer in a hardship situation unless it makes that same accommodation for all customers arguably facing similar hardships. This is counter-productive and unreasonable, and this language should be deleted. Nicor Gas does not oppose a policy statement that nothing in Part 280 should be construed to prevent a utility from offering practices and procedures more beneficial than the minimum standards contained in the rule.

Response to GCI

GCI's Initial Brief attempts to address Nicor Gas' objections to the addition of precedence language in Section 280.05, 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. Nicor Gas states that precedence language is not needed from a legal perspective, and GCI has not attempted to demonstrate otherwise. Rather, GCI's asserted basis for the precedence language is to provide 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.¹ 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 is unnecessary, may have the unintended consequence of discouraging utilities from accommodating customers experiencing hardships, and should be rejected.

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. GCI’s proposal is inefficient and unnecessary. 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 states 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. Nicor Gas

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 supported by Nicor Gas (Nicor Gas IB, p. 15), and Nicor Gas supports Staff’s proposed language. Nicor Gas recommends that Staff’s language be revised 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.” Nicor Gas also concurs with Staff’s rejections of GCI’s

¹ 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.

revisions because they are not needed and would unduly handcuff the Commission's authority. See Staff IB, pp. 5-6.

Response to GCI

GCI proposes some additional edits to Section 280.10 that were rejected by Staff. PH Outline, pp. 7-8; Marcelin-Reme Dir., GCI Ex. 2.0, 5:129-34; Agnew/Howard Reb., Staff Ex. 2.0, 3:53-4:71. Nicor Gas supports Staff's position in this regard. Lukowicz Reb., Nicor Gas Ex. 3.0, 9:190-209. GCI's proposed additional language is redundant, overbroad and unnecessary. With regard to the proposal to require the petition to explain why the utility is unable to comply with the rule, Staff's language already requires a utility to include specific reasons and facts in support of the requested waiver. The proposal to automatically require annual approval of any waiver is unreasonable and inefficient. Waivers are sometimes, if not typically, based on facts that are not expected to change for the foreseeable future. If such facts justify an exemption, there is no basis to require annual approval. If the Commission is presented with facts demonstrating that an exemption is needed on a short term or temporary basis, then the Commission can condition or limit that exemption as appropriate. The modifications proposed by GCI and rejected by Staff should be rejected by the Commission.

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. 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 (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 10-101 and the General Assembly has specifically vested the Commission with such authority. 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:).

Similarly, Nicor Gas asserts 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 now accepted by Staff to refer to *no unreasonable (or net) harm*. See GCI IB, pp. 11-12; Nicor Gas IB, pp. 13-15.

C. Section 280.15 Compliance

1. Nicor Gas

Nicor Gas proposes adding a "compliance" provision to Staff's proposed rule, which would allow utilities two years from the effective date of the proposed rule to come into compliance with all sections requiring modification of existing IT and business processes to come into compliance. Grove Dir., Nicor Gas Ex. 2.0, 7:145-9:188; Grove Reb., Nicor Gas Ex. 4.0, 16:359-17:379; Lukowicz Dir., Nicor Gas Ex. 1.0, 4:65-71.

Nicor Gas provided testimony explaining that adoption of proposed Part 280 will impose new and additional requirements on utilities that will require substantial IT and business process changes to implement. Grove Dir., Nicor Gas Ex. 2.0, 7:145-9:188. For instance, with respect to the low-income customer sections of Staff's proposed rule, Nicor Gas would engage in conceptual design, coding, testing and incorporation of these changes into the Company's existing systems. Nicor Gas submits that implementing such IT changes is no small undertaking and that it must be sure such changes do not disrupt other related systems. Further, Nicor Gas would need to develop the appropriate business processes to communicate, both internally and externally, the rule changes and how they will be applied to customers. *Id.*, 8:164-80.

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

months from the effective date of the new rule before they are required to be in full compliance with the sections requiring IT and business process changes.

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 states it 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."

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. See *City of Chicago v. Illinois Commerce Commission*, 264 Ill. App. 3d 403, 404, 410 (1st Dist. 1993). 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. Nicor Gas responds that 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.

Similarly, Nicor Gas states that GCI mischaracterizes this issue as one involving delay. GCI IB, p. 14. Nicor Gas observes that 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. Nicor Gas asserts that 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. Nicor Gas states 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.

Nicor Gas maintains that 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

a) Nicor Gas

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

2. Credit Scoring

a) Nicor Gas

GCI proposes deleting the "credit scoring" definition based on its opposition to Staff's proposal in Section 280.40(d)(3) to continue the current rule's authorization of credit scoring as a basis for assessing applicant deposits. Nicor Gas opposes GCI's position here for the same reasons it opposes GCI's proposal to eliminate credit scoring in Section 280.40(d)(3), and states the proposal to delete the "credit scoring" definition should be rejected.

3. Customer

a) Nicor Gas

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

4. Delivery Services

a) Nicor Gas

GCI proposes to reinsert a partial payment subsection in Section 280.60, addressed below. GCI also proposes to reinsert definitions for "delivery service" for electricity and gas, which were terms originally contained in Staff's now deleted partial payment allocation subsection. Nicor Gas states that per the Prehearing Outline all parties except GCI, who did not submit any testimony on the partial payment allocation issue until surrebuttal testimony, have accepted Staff's decision to delete the subsection on partial payment allocation in Section 280.60 of the proposed rule.

Nicor Gas opposes GCI's proposal to reinsert definitions for "delivery service" based on its opposition to GCI's proposal to reinsert a partial payment subsection in Section 280.60. Nicor Gas also notes that the term "delivery services" does not appear

anywhere in the body of Staff's proposed rule or proposed revisions thereto, including GCI's proposed partial payment allocation language, and argues that definitions for "delivery services" should not be reinserted on that basis too.

5. Low Income Customer:

a) Nicor Gas

In order to provide additional clarity to the definition of "low income customer" Nicor Gas proposes non-substantive edits as follows:

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

Nicor Gas notes the absence of any testimony explaining or providing a basis for not adopting these recommended changes.

6. Occupant

a) Nicor Gas

GCI proposes to exclude from the definition of "occupant" a person who has become an applicant. GCI IB, p. 24. Nicor Gas argues 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."

7. Past Due

a) Nicor Gas

GCI proposes to revise the definition of "past due" to "not include amounts that are past due for more than two years." Nicor Gas observes that the proposed revision

creates a circular definition by referring to “past due” in the definition. Nicor Gas also argues that the revision should not be adopted for the same reasons stated in responding to GCI’s proposal regarding Section 280.20(b), below.

In its Initial Brief, GCI asserted 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.

8. Transfer of Service

a) Nicor Gas

Nicor Gas supports most aspects of Staff’s proposed definition of “transfer of service,” and specifically concurs with Staff’s use of a 14-day time period to identify and distinguish a transfer of service by a current customer from a request for new service by a former customer. Nicor Gas’ had concerns with Staff’s original proposed language because it did not allow restrictions on transfers of service for a customer with a delinquent balance unless they were “subject to an active disconnection notice.” Had this proposal been in place in 2008, Nicor Gas estimates it would not have been able to address delinquencies of over \$5 million and would have led to write-offs borne by other customers.

In rebuttal, Staff incorporated new language allowing a utility to deny a transfer of service outside of any period when disconnection is restricted by law if the customer does not pay or enter into a payment arrangement on “undisputed” past due amounts that are more than 2 days past due. Nicor Gas’ only remaining concern with Staff’s new proposal is that limiting the ability to address delinquent balances on a transfer of service to “undisputed” amounts, without any definition or restriction of that term, would create a vague exception that could be misused. Nicor Gas submits that a “dispute” newly asserted only to meet this exception (i.e., one not made in good faith) should not result in an exception to the provisions allowing denial of a transfer of service if a customer does not address qualifying past due amounts. Nicor Gas proposes to address this issue by retaining Staff’s language but defining “undisputed” as not subject to an unresolved dispute *asserted prior to the request for a transfer of service*.

Nicor Gas supports Staff’s rejection of GCI’s proposal to extend the 14-day period for a transfer of service to a 30-day period. GCI fails to address the effect of

billing cycles and bill due dates on its proposal, as noted by Staff. Nicor Gas adds that the 14-day period is a reasonable and adequate amount of time for a transfer of service to occur. A customer with a past due balance can transfer the debt to the new address within the 14 day period. Extending the period to 30 days does not accomplish anything that cannot be accomplished in 14 days, and does not change the amount owed or requests for payment. The main difference, Nicor states, is the amount of time the utility is asked to carry the debt. Nicor Gas also responds that to the extent any customer confusion exists at 14 days, it will also exist at 30 days.

GCI 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. Nicor Gas asserts that GCI's objection is based on its mischaracterization of Staff's proposal and should be denied. 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." Section 280.20 ("Transfer of Service"). Nicor Gas states that Staff's language is reasonable and merely requires the customer to address the past due amount by payment or entry into a payment arrangement.

V. SUBPART B: APPLICATIONS FOR UTILITY SERVICE

A. Section 280.30 Application

1. Subsection (b)

a) Nicor Gas

Nicor Gas opposes GCI's proposal to add "deposit" requirements to the "application" section. 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 provided to "customers who request a copy." PH Outline, p. 19. Nicor Gas maintains that GCI's proposed additional language is not necessary, and that Staff's proposed notice provisions are reasonable, appropriate, and should be adopted by the Commission.

2. Subsection (c)

a) Paragraph (2)- Third Party Application.

(1) Nicor Gas

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. Nicor Gas contends 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. Nicor Gas claims Staff’s concerns are misdirected and do not support its changes to the third party application provisions. Indeed, 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.

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’s proposed language would effectively eliminate the practice of obtaining applicant information from third-parties, and add yet another layer of time and inconvenience to prospective customers. Lukowicz Dir., Nicor Gas Ex. 1.0, 8:175-77. If

a utility must contact the applicant to confirm authorization, there is no benefit for any party to accept information from a third-party in the first place. *Id.* at 8:177-79. Staff offered no direct testimony explaining why they now propose to add a new confirmation requirement or why such a requirement is reasonable. See Agnew/Howard Dir., Staff Ex. 1.0, 7:138-8:162. Staff's proposal would impose unnecessary costs on utilities and their customers, costs which are estimated to exceed \$530,000 annually for Nicor Gas alone. Lukowicz Dir., Nicor Gas Ex. 1.0, 8:154-9:192; Lukowicz Reb., Nicor Gas Ex. 3.0, 24:542-25:570. Thus, there is no reason for the Commission to impose requirements that will drastically curtail, if not eliminate, the third party application process, as well as inconvenience and impose significant additional costs on customers.

Staff's proposed Section 280.30(c)(2) also provides that "[i]f a utility fails to verify authorization, it shall not be entitled to collect for service." Agnew/Howard Reb., Staff Ex. 2.0, Att. J, p. 7. This language is overreaching in that it purports to prohibit collection from the customer of record for service in any and all situations involving the unverified processing of an application via a third-party -- even if the named applicant moves into the premises, uses the utility's service, and does not disclaim responsibility for requesting service. While the current rule imposes some limitation on collecting for service provided pursuant to an unverified third party application, it conditions such limitation on "the customer disclaiming any responsibility for requesting the service ..." and excludes from that limitation customers who are actual "users" of the service. 83 Ill. Adm. Code 280.50(d). Staff supposes that "the original intent of this language may have been to protect utilities from claims by occupants that they were not responsible for usage because they did not personally apply for service." Agnew/Howard Reb., Staff Ex. 2.0, 17:388-89. What Staff overlooks is that the language of the current rule comports with the common law principle of *quantum meruit* recovery. Staff's proposal to drastically change the current rule departs from applicable law and exceeds the authority of the Commission.

Quantum meruit is a form of implied contract created as a matter of law based on the well-established principle that no one should be permitted to unjustly enrich himself at another's expense. *Gary-Wheaton Bank v. Burt*, 104 Ill.App.3d 767, 775 (2nd Dist. 1982). *Quantum meruit* literally means "as much as he deserves." *Rohter v. Passarella*, 246 Ill.App.3d 860, 866 (1st Dist. 1993), quoting Black's Law Dictionary 649 (abr. 5th ed.1983). "The common law adopted the term to describe a cause of action which seeks to recover the reasonable value of services which have been nongratuitously rendered, but where no contract exists to prescribe exactly how much the [plaintiff] should have been paid." *Rohter*, 246 Ill.App.3d at 866. In general, a party can recover under *quantum meruit* upon a showing "that: (1) he performed a service to benefit the defendant, (2) he did not perform this service gratuitously, (3) defendant accepted this service, and (4) no contract existed to prescribe payment for this service." *Installco, Inc. v. Whiting Corp.*, 336 Ill.App.3d 776, 781 (1st Dist. 2002), citing *Canel & Hale, Ltd. v. Tobin*, 304 Ill.App.3d 906, 913 (1st Dist. 1999). *Quantum meruit* is neither new nor novel, but rather has "a long and vigorous history in Illinois jurisprudence." *K. Miller Const. Co., Inc. v. McGinnis*, 394 Ill.App.3d 248, 256 (1st Dist. 2009); *Aff'd. in Part*

and Rev. in Part 238 Ill.2d 284 (2010) (Affirming ruling regarding quantum meruit claim.).

The Commission's existing rule comports with the longstanding principle of *quantum meruit* recovery by providing "that users will be responsible for paying for their use." 83 Ill. Adm. Code 280.50(d). The Commission has simply provided in its existing rule that customers processed through a third party application cannot avoid their obligation under applicable utility tariffs to pay for utility service they actually receive and use based on non-verification of a third party application.² Thus, Staff's new proposed language is inconsistent with principles of *quantum meruit* recovery. Moreover, Staff's proposal goes beyond the Commission's jurisdiction. As discussed in Section 0 above, "[t]he Commission only has those powers given it by the legislature through the Act." *BPI I*, 136 Ill.2d 192, 201 (1989). Staff's new proposed language purports to legislatively change common law principles of *quantum meruit* recovery otherwise applicable in Illinois courts. No such authority is conferred upon the Commission in the Act. Indeed, it has long been established that the Commission has no authority to adjudicate individual property or contract rights, much less the authority to establish or remove those rights on a universal basis as proposed here. *Mitchell v. Illinois Cent. R. Co.*, 317 Ill. App. 501, 509 (1943) (The Commission "is not a judicial body and it has no jurisdiction to adjudicate controverted individual property or contract rights."), *citing People v. Peoria & P. U. Ry. Co.*, 273 Ill. 440 (1916).

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

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

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

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

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) Nicor Gas

Nicor Gas Position

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

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

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

First, Staff' proposal fails to provide adequate protection for confirming an individual's identity. Identity theft is a national issue confronting consumers, businesses and utilities everywhere. For Nicor Gas, and presumably other Illinois utilities, identity theft occurs when fraudulent information is provided at the time service is requested. One tactic of identity thieves is to establish utility service under a fraudulent name so that consumer credit then can be obtained under the fraudulent name. Lukowicz Dir., Nicor Gas Ex. 1.0, 10:205-10. With the growth of identity theft, the Federal Government in 2007 established new regulations on banks, businesses and utilities that place responsibility for spotting potential identity theft and refusing service to the identity thieves. These regulations are known as the "Red Flag Rules." See 12 CFR § 222.90 et seq. The regulations specifically define a "covered account" to include a "utility account," and define "red flag" as "a pattern, practice, or specific activity that indicates the possible existence of identity theft." *Id.* at § 222.90(b)(3)(i) and (9). Staff's proposed language would make it extremely difficult for Illinois utilities to comply with the Red Flag Rules.

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

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

In response, Staff pointed to its language in Section 280.30(d)(2), which states: "so long as the identification provided is valid and accurate." Agnew/Howard Reb., Staff Ex. 2.0, 18:411-15. Staff went on to say that "[i]f certain forms of identification may take longer to verify or in the end cannot be verified after appropriate efforts by the utility, then so be it." *Id.* at 18:416-17. Staff's response on this issue is insufficient, unreasonable, and contrary to Staff's explicit goal of clarity. The structure of this aspect of Staff's rule is a recipe for confusion and frustration. Applicants would logically expect that presentation of identification listed in subsection (d) of the rule would be accepted, notwithstanding the statement in subsection (e) that "[i]nformation submitted must be accurate and verifiable[.]" See PH Outline, p. 27. Immense confusion and frustration will result if utilities must state on one hand that various forms of identification are acceptable, but on the other hand are compelled to reject that same identification because it is difficult or impossible to verify its validity and/or accuracy. Lukowicz Reb., Nicor Gas Ex. 3.0, 27:630-28:647.

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

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

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

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

- ~~I) Credit card;~~
 - ~~J) Employment records;~~
 - ~~K) Government benefits/compensation records;~~
 - ~~L) Tax ID number;~~
 - ~~M) Articles of incorporation; or~~
 - ~~N) Business license.~~
- ~~2) The applicant shall have the opportunity to choose which form(s) of identification to provide from the available list. The utility may not oblige an applicant to provide one form of identification in favor of another, so long as the identification provided is valid and accurate.~~

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

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

- 1) Positive identification (ID) of applicants may be required by up to three ~~two~~ forms of ID, including one form of picture ID, including but not limited to any of the following:
 - A) Government issued photo ID;
 - B) Social Security number (optional);
 - C) Driver's license ~~number~~;
 - D) Passport;
 - E) Birth certificate;
 - F) Immigration and/or naturalization documents;
 - G) Student identification;
 - H) Banking information;
 - ~~I) Credit card;~~
 - I) Employment records;
 - JK) Government benefits/compensation records;
 - KL) Tax ID number;
 - LM) Articles of incorporation; or
 - MN) Business license.

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

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 earlier, this scenario would be confusing and frustrating to customers.

Response to GCI

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

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

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

PH Outline, p. 20; GCI Ex. 5.1, p. 8. Nicor Gas has already explained its position on the number and forms of acceptable identification, and opposes GCI's language allowing applicants to select two forms of identification from the list of acceptable identification for the reasons expressed above. Nicor Gas also opposes GCI's proposal to automatically require the utility to inform all applicants of all the available forms of positive identification that may be offered by the applicant as proof of identity. As explained above, positive identification is not an issue for approximately 70% of Nicor Gas' applicants. This proposal attempts to micro-manage utility operations in manner that adds inefficiency and costs. GCI offers no real evidence that the current process presents systemic problems. The Company has a system in place to provide applicants

with necessary information. Staff also finds GCI's identification disclosure proposal unnecessary. Agnew/Howard Reb., Staff Ex. 2.0, 19:426-36. This proposal should be rejected because it is not needed. Lukowicz Reb., Nicor Gas Ex. 3.0, 24:529-40.

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) Nicor Gas

Nicor Gas supports Staff's position and agrees 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. GCI proposes the following revision to paragraph (2) of Section 280.30(e):

- 2) Any past due debts for utility services still owing to the utility by the applicant shall be identified and governed by the following provisions:
 - A) Applicant must pay past due debt in full, and if otherwise required, enter into a payment plan for the deposit amount; or
 - B) ~~At the utility's discretion, e~~Enter into a payment agreement to retire the past due debt and, if otherwise required, pay the deposit amount in full; or

- C) Make a down payment and agreement to retire the debt under the requirements of Section 280.180 Reconnection of Former Residential Customers for the Heating Season.

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

5. Subsection (j)

a) Nicor Gas

GCI originally proposed revising paragraph (2) of Section 280.30(j) to require that gas service must be established within two days. Alexander Dir., GCI Ex. 1.0, 39:1053-56; GCI Ex. 1.2, pp. 10-11. Nicor Gas opposed this original proposal. While establishing service within a time frame of two days can often be met, there will be circumstances under which two days cannot be met. Unexpected events arise from time to time that impact the Company's ability to get necessary personnel to a location to activate service; thus, the two day proposal is unreasonable and costly. Lukowicz Reb., Nicor Gas Ex. 3.0, 23:510-18. Once an applicant becomes eligible for service, the Company is committed to establishing service as rapidly as possible. However, shortening the time frame so dramatically would require more personnel in order to comply, thereby imposing additional costs on customers. *Id.*, 23:518-22. Further, the safety issues associated with initiating service for a gas customer, such as the need to light pilots on gas appliances, require site visits and access to customers' facilities. *Id.*; Agnew/Howard Reb., Staff Ex. 2.0, 25:555-57. GCI's proposal is not reasonable. Staff's proposed activation timeframes are reasonable and should be adopted by the Commission.

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

Temporary exception for unforeseen circumstances: A utility that experiences temporary unanticipated overload of its ability to provide for the timely activation of service due to severe weather or other emergency beyond the control of the utility may, upon notice explaining the circumstances to the Consumer Services Division of the Commission,

temporarily forego the requirements of this section so long as the utility can demonstrate that it is taking diligent action to remedy the overload. A high volume of connection requests during periods of the year in which utilities have historically received high volumes of connection requests shall not constitute an unforeseen circumstance.

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

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.

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.

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. Nicor Gas submits that 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. Subsection (a) – Intent

a) Nicor Gas

Nicor Gas has several concerns with the Landlord/Property Management Agreements Section of Staff's proposed rule, and proposes revisions to improve Staff's proposal. Nicor Gas has used landlord agreements for many years, and in 2006 began soliciting landlords to enter into such agreements to address the handling of gas service at rental properties in between tenants. The agreement offers a landlord the option to have service at a rental property placed into the landlord's name or physically disconnected when no tenant occupies a premises. There is often no response from landlords/property managers. Lukowicz Dir., Nicor Gas Ex. 1.0, 12:261-13:284. There is general agreement regarding the need to address the rules and process by which a utility interacts with landlords and tenants, but Staff's proposal fails to address certain issues already known to exist. In particular, Staff's proposed language fails to provide clarity regarding a utility's ability to discontinue service when, in a situation where there is no landlord/property manager agreement, a tenant vacates a premises and there is no customer of record. If a utility is not allowed to place service into the landlord's or property manager's name in such situation, then the utility's right under the rule to discontinue service should be clear and unequivocal.

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

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

Lukowicz Reb., Nicor Gas Ex. 3.0, 30:685-96. Nicor Gas' proposed revisions more clearly identify the intent of this Subsection. The issues addressed by all parties and covered in the proposed rule involve the rights and duties of a utility and landlord/property manager with respect to discontinuance of service or assumption of billing responsibility and continuance of service when a tenant vacates a premises and the utility has no customer of record. The Company's proposed insertion is reasonable and applies regardless of how the Commission ultimately decides the issues regarding the extent of those rights and duties. The remaining edits are not substantive, but improve the wording of this Subsection. While Staff did not adopt these proposed revisions, it never addressed these specific revisions in testimony. Accordingly, the Company's proposals are reasonable and should be adopted by the Commission.

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

a) Nicor Gas

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

In a landlord/tenant situation, disconnection of service following termination of the customer relationship presents additional issues to consider. In such a situation, a building's pipes may freeze and cause substantial damage to a premises without heat. Because Nicor Gas has potential exposure to claims by landlords for damages resulting from turning off gas service, it desires to minimize such exposure while accommodating the interest of landlords in maintaining gas service at their properties by having service placed in their names when there is no customer of record. One means to address this concern is to allow utilities the option of placing service in a landlord's name. Nicor Gas would not require this right if Part 280 provides clear authority to disconnect service regardless of weather or time of year when there is no customer of record in a landlord/tenant situation and no landlord/property manager agreement. Such proposal is fair to all stakeholders, and should reduce costs and potential liability exposure for utilities and their customers. Lukowicz Reb., Nicor Gas Ex. 3.0, 29:670-30:682.

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

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

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

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

Response to Staff

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. 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.

3. Subsection (e)

a) Nicor Gas

Subsection (e) of Section 280.35 addresses meter readings for landlords becoming customers in the context of a landlord/property manager agreement. Nicor Gas does not oppose Staff's proposed language generally requiring an actual meter reading within the past 60 days. Nicor Gas' concern is with the provision addressing situations where a utility is unable to obtain an actual meter reading. Staff's language requires a utility to allow the landlord/property manager to provide a customer reading in that situation. Again, Nicor Gas does not object to that proposal. However, Staff's language is ambiguous with respect to whether it is allowable to use an estimated meter reading in the "unable to obtain actual meter reading" situation. Many landlords/property managers agree to, and even prefer, an estimated final reading.

Nicor Gas simply proposes to expressly add a clause allowing the landlord/property manager the option to “agree to an estimated final read” in this situation. Lukowicz Dir., Nicor Gas Ex. 1.0, 15:336-16:357. This proposal is reasonable and removes potential ambiguity from the rule.

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

- e) Accuracy of billing: Prior to making the landlord/property manager responsible for service, if the meter has not been read by the utility within the past 60 days, the utility shall obtain an actual meter reading to ensure correct billing so long as the utility is provided access to the meter. If the utility is unable to obtain an actual meter reading, then the utility must allow the landlord/property manager to provide the utility with a customer reading or agree to an estimated final read.

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

4. Subsection (i)

a. Nicor Gas

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.

Nicor Gas contends 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.

Nicor Gas also contends 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.

VI. SUBPART C: DEPOSITS

A. Section 280.40 Deposits

1. Subsection (b)

a) Paragraph (1) – Deposit Notice Requirement

(1) Nicor Gas

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

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

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

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

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

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 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.

b) Paragraph (2)

(1) Nicor Gas

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

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

- H. The customer has the option of paying the deposit or entering a deferred payment agreement (as provided in Section 280.120)

I._____The deposit policy applicable to qualified low income customers and the criteria for determining who is a low income customer how qualification can be demonstrated; and

J._____The right to receive this information in writing upon request; and

K._____The availability and contact information for the Commission's Consumer Services Division in the event of a dispute that the utility has not resolved to the satisfaction of the applicant or customer.

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

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

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

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

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

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.

c) Paragraph (3)

(1) Nicor Gas

New paragraph (3) is a corollary to GCI's proposal for "oral" notification, providing a five day timeline for responding to requests for written disclosure. Nicor Gas opposes this revision consistent with its opposition to GCI's proposal to convert the "written" deposit notice requirement to an "oral" deposit notification requirement.

2. Subsection (d) – Applicant deposits

a) Paragraph (3)

(1) Nicor Gas

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

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

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

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

Commission, the reduction in bad debt expense would be reflected in its rates.

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

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

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. Staff IB, p. 27; Nicor Gas IB, pp. 44-5.

Response to GCI

GCI advocates 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 states 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. Nicor Gas concludes GCI's argument is lacking in merit, disregards the interest of paying customers, and ignores the provisions in the law requiring the Commission to "review the 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.

3. Subsection (e) – Present customer deposits

a) Paragraph (1)

(1) Subparagraph (C)

(a) Nicor Gas

GCI proposes to add language essentially eliminating the ability to assess a deposit for any customer with 24 months of service. Marcelin-Remé Dir., GCI Ex. 2.0, 8:194-98; GCI Ex. 1.2, p. 15. This proposal is not reasonable. Simply removing a deposit requirement because the customer has been with a utility for two years is contrary to good business practice. Lukowicz Reb., Nicor Gas Ex. 3.0, 32:716-56. There are circumstances where such a customer represents a sufficient credit risk to require a deposit. *Id.* Staff recognized that a customer’s credit risk could change for the worse notwithstanding 24 months of service, and observed that current standards are not sufficiently granular with respect to deposits:

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

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

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.

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.

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

(1) Nicor Gas

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

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

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

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

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

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

Staff also states that the Commission should seek input from large customers before amending the rule. Agnew/Howard Reb., Staff Ex. 2.0, 33:745-47. To the contrary, this is a rulemaking and all parties have had notice that a rule change could be implemented. Moreover, since further Commission action is required to establish the criteria and source of information used to determine financial insecurity under the Company's proposal, such parties will have a further opportunity for input. As to Staff's claim that Nicor Gas' proposal lacks standards, Staff misses the point. *Id.* at 33:741-44. The Company's proposal offers flexibility to all utilities, and allows each utility to develop a large customer policy that best suits its operations. Moreover, under the Company's proposal the Commission will be required to approve any utility proposal. Consequently, the Commission can evaluate and either accept or reject the standards that a utility may propose. Accordingly, for the reasons described above, the Commission should adopt paragraph (4) as proposed by the Company.

Response to Staff and Dynegy

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. 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.

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.

Nicor Gas contends 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.

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.

Nicor Gas asserts that 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.

Nicor Gas contends 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.

4. Subsection (h) – Refund conditions for deposit

a) Paragraph (1)

(1) Nicor Gas

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

B. Section 280.45 Deposits for Low Income Customers

1. Nicor Gas

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.

VII. SUBPART D: REGULAR BILLING

A. Section 280.50 Billing

1. Subsection (c) - Bill Presentation Requirements

a) Nicor Gas

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

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

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

GCI's proposal appears to assume that utilities do not care about their communications with customers. To the contrary, without the requirements of a rule, Nicor Gas engaged in a wholesale evaluation of its bill presentation that resulted in Nicor Gas substantially redesigning the appearance and information contained in its bill in 2009. Lukowicz Reb., Nicor Gas Ex. 3.0, 35:808-819. These changes were based

on a detailed study of what customers wanted on their bill that included customer focus groups conducted by outside consultants. *Id.* Nicor Gas designed its bill to meet customer expectations, while complying with the Commission's general requirements for a bill. *Id.* It is better to allow utilities to design bills to meet customers' expectations, rather than mandate specific requirements that may be unnecessary and outdated in a short period of time.

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

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

Response to Staff

Nicor Gas proposes deleting Section 280.50(c)(1)(l) 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.

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.

2. Subsection (d) – Bill delivery

a) Nicor Gas

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

VIII. SUBPART E: PAYMENT

A. Section 280.60 Payment

1. Subsection (b) – Method of payment

a) Paragraph (2)

(1) Nicor Gas

Nicor Gas opposes GCI proposal to revise paragraph (2) of Section 280.60(b) of Staff’s proposed rule to prohibit a utility from charging fees to consumers based on their choice of payment method. Staff notes that such fees are typically the result of third-party vendor fees for handling payment methods, and did not accept this proposal. Nicor Gas concurs with and supports Staff’s position to reject these proposed revisions. Nicor Gas submits that GCI’s proposed revisions to paragraph (2) of Section 280.60(b) should be rejected by the Commission for the following reasons.

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

Second, GCI’s proposal is contrary to law. GCI’s witness testified that her policy view supporting GCI’s position was that shareholders should pay these costs. Tr., 722:18-723:14. When asked whether GCI would still want the payment options if the utility would not absorb these costs, she testified GCI “would not want to have them withdraw the option to pay by credit card.” Tr., 723:21-724:1. “In setting rates, the Commission must determine that the rates accurately reflect the cost of service delivery and must allow the utility to recover costs prudently and reasonably incurred.” *Citizens Utility Board v. Illinois Commerce Comm’n*, 166 Ill. 2d 111, 121 (1995); see also 220 ILCS 5/16-108(c) (“Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs.”). Nicor Gas argues that GCI’s proposal to prohibit charges for these costs in the rule so that the Company and its shareholders can be forced to somehow absorb these

prudent and reasonable costs is contrary to these well-established cost recovery principles and must be rejected.

Third, GCI's proposal is improper even if it is premised on the ultimate recovery of these costs from other customers. From a policy perspective, it is not reasonable to have certain customers subsidize the payment methods of other customers. Lukowicz Reb., Nicor Gas Ex. 3.0, 38:873-88. For example, if Customer A pays his bill using the U.S. Mail, he has paid \$0.44 for that payment method. In contrast, Customer B wants to pay a bill using a credit card or through a currency exchange, the fee for using either of those payment methods may be larger. Meanwhile, Customer C may pay her bill electronically. *Id.* The fact that a utility accepts all of these methods of payment does not lead to a conclusion that the cost for these various payment methods should be socialized. Nor is it a question of fairness. Rather, the customer has the option to select the payment method that is most convenient to him or her. The costs of that choice should not be socialized, or subsidized, by other customers. *Id.* This view is supported by the legislatively declared goal and objective of public utility regulation to ensure "the fair treatment of consumers and investors in order that ... the cost of supplying public utility services is allocated to those who cause the costs to be incurred." 220 ILCS 5/1-102(d)(iii). While this statement of policy and intent affords the Commission some discretion, it is not simply "an off repeated phrase that has little meaning beyond the statement of some rhetorical advice to justify decision-making" as asserted by GCI witness Ms. Alexander. Tr., 347:11-13. GCI's view that persons causing certain payment method costs to be incurred should be able to avoid these costs so that other customers can subsidize these costs is not reasonable and contravenes the express statutory goal of ensuring that cost causers are the cost payers.

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

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

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

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.

2. Partial Payment Allocation

a) Nicor Gas

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 and the issue is not contested. Nicor Gas supports Staff's removal of the partial payment subsection, and this issue appears uncontested.

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

1. Nicor Gas

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. Nicor Gas

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.

IX. SUBPART F: IRREGULAR BILLING

A. Section 280.90 Estimated Bills

1. GCI's Surrebuttal Testimony Proposal

a) Nicor Gas

In the surrebuttal round of testimony, GCI witness Ms. Alexander proposed for the first time an extensive series of new subsections under Section 280.90 (deleting everything after subsection (a) and replacing with totally new subsections (b) through (f)). Alexander Sur., GCI Ex. 5.0R, 25:573-74; GCI Ex. 5.1, pp. 29-32. Nicor Gas submits that 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 does not oppose Staff's current proposed language. Nicor Gas recommends the Commission reject GCI's proposal and adopt Staff's proposed language.

2. Subsection (d)

a) Nicor Gas

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. 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.*

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.

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.

X. SUBPART G: REFUNDS AND CREDITS

A. Section 280.110 Refunds and Credits

1. Subsection (b)

a) Nicor Gas

GCI witness Ms. Marcelin-Remé recommends adding language to proposed Section 280.110(b)(1) to "require that the utility issue a refund based on the records of whichever party has the oldest billing records." Marcelin-Remé Dir., GCI Ex. 2.0, 15:378-80; GCI Ex. 1.2, p. 30. She also recommends adding language in proposed Section 280.20 to affirmatively exclude from the definition of "past due" -- a phrase not used in proposed Section 280.110 -- any unpaid amount "more than two years old." *Id.*

at 15:383-384; GCI Ex. 1.2, p. 6. Nicor Gas argues that both of these proposals should be rejected.

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

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

GCI asserts that “rather than providing the full amount due to a customer for the entire timeframe of the overcharge as is called for in the current regulation, the utilities provide a refund of two years or less.” Marcellin-Remé Dir., GCI Ex. 2.0, 14:364-66. GCI also assert that utilities seem to have records going back indefinitely when a past due balance is owed, but only have records for two years when a credit is involved. *Id.* at 14:372-76. GCI’s allegations are speculative and incorrect for Nicor Gas and other Illinois utilities. Grove Reb., Nicor Gas Ex. 4.0, 5:100-05. Nicor Gas has a consistent and evenly applied records retention policy. *Id.* The Company does not have one policy for “refund” records and another policy for “collection” records. They are often the same documents. *Id.* GCI also claims that consumers are only successful in receiving the full refund amount owed them by filing a formal complaint with the Illinois Commerce Commission. Marcellin-Remé Dir., CGI Ex. 2.0, 14:366-68. Since only .05% of the Company’s customers call the Commission for additional assistance to resolve a complaint (Grove Dir., Nicor Gas Ex. 2.0, 6:114-17), this charge rings hollow for Nicor Gas.

GCI’s assertions appear to be misdirected complaints about applicable statutory timelines. Section 9-252 of the Public Utilities Act (“PUA”) provides that “[a]ll complaints for the recovery of damages shall be filed with the Commission within two years from the time the produce, commodity or service as to which complaint is made was furnished or performed” 220 ILCS 5/9-252. Section 9-252.1 of the PUA similarly provides that “[a]ny complaint relating to an incorrect billing must be filed with the Commission no more than two years after the date the customer first has knowledge of

the incorrect billing.” 220 ILCS 5/9-252.1. These two year statutory timeframes are not optional, and any complaints about them are misdirected and cannot be addressed in a rulemaking.

GCI wrongly asserts that proposed Section 280.110(b)(2) establishes a new two year refund period. Marcelin-Remé Dir., GCI Ex. 2.0, 14:376-15:378. Proposed Section 280.110(b)(2) requires that utilities “retain billing records and ledgers that would allow determining a refund or credit for a **minimum** of two years.” Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 31 (emphasis added). As this subsection clearly states, it is a simple minimum records retention requirement. Moreover, nothing prevents a customer from retaining its records for as long as he/she desires.

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

“The Commission only has those powers given it by the legislature through the Act.” *BPI I*, 136 Ill.2d 192, 201 (1989); see also *People ex rel. Ryan v. Illinois Commerce Comc’n*, 298 Ill.App.3d 483, 487 (2nd Dist. 1998) (“The Commission derives its power from the statute and only has the authority that is expressly conferred upon it.”). The Courts have held that the Commission has no authority to adjudicate individual property or contract rights, much less the authority to set statutes of limitation on the exercise of such rights at issue here. *Mitchell v. Illinois Cent. R. Co.*, 317 Ill.App. 501, 509 (1943) (The Commission “is not a judicial body and it has no jurisdiction to adjudicate controverted individual property or contract rights.”), citing *People v. Peoria & P. U. Ry. Co.*, 273 Ill. 440 (1916). Nicor Gas argues that the PUA provides no authority for the Commission to place a time limit on collection actions in the circuit courts, and GCI’s proposal to impose such a limit is defective and contrary to law.

Nicor Gas submits that GCI’s recommendation to add a provision that “[t]he utility shall use the oldest records to determine the amount of the refund” at the end of proposed Section 280.110(b)(1) is not needed. As noted above, Section 280.110(b)(1) already requires refunds “for the full period of time during which an overcharge occurred,” and specifically allows use of either party’s “billing records that would allow determining a refund or credit.” Agnew/Howard Sur., Staff Ex. 3.0, Att. A, p. 31. There is nothing in this proposed section that prohibits use of records of a certain age, and a requirement to “use the oldest records” is more confusing than helpful. GCI’s phrasing

seems to indicate that where records of different ages support different results, the “oldest” records are to be used to make a determination. To the extent errors were detected and corrected, would this compel use of the older but erroneous records? GCI’s argument suggests this is not what GCI intended, but this illustrates that the language is confusing and unnecessary and should not be added.

GCI’s recommendation to modify the definition of “past due” should also be rejected. This proposed language change is inequitable and unreasonable, as explained above, and would be harmful to utilities and other customers. This edit has no reasonable relation to the alleged “inequity” cited by GCI and is not needed. Proposed Part 280 grants significant rights based on the existence of “past due” amounts, and GCI’s proposal significantly restricts the definition of “past due” amounts. This edit would have a significant impact on bad debt, as a utility would lose significant rights to deny or discontinue service for delinquent balances more than two years old. Ultimately, this harm would fall on those ratepayers who fund uncollectible expense.

2. Subsection (d)

a) Nicor Gas

Nicor Gas proposes to modify Section 280.110(d) to provide that “refunds and credits shall be accompanied with interest calculated at the rates approved by the Commission for refunds and credits in the utility’s tariffs or, if no such rate has been approved by the Commission for the utility, at the rates set by the Commission for customer deposits.” Nicor Gas also proposes to add: “A credit balance that results from a cancel and re-bill shall not be considered an overpayment for the period of time prior to the date of the cancel and re-bill.” Grove Dir., Nicor Gas Ex. 2.0, 3:59-4:77; Grove Reb., Nicor Gas Ex. 4.0, 7:146-9:206.

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

Nicor Gas states that Staff responded to the interest rate issue in a cursory fashion by simply concluding that rules should always control over tariffs, and did not give any substantive basis for dismissing the Company’s concern. Agnew/Howard Reb., Staff Ex. 2.0, 57:1312-58:1325. Nicor Gas should be allowed to use its Commission-approved and tariffed interest rate now in place for refunds and credits. Nicor Gas has been paying interest on credit balances for decades, and has established

systems and processes to implement this decision. Grove Reb., Nicor Gas Ex. 4.0, 8:155-65. The proposed rule should accommodate the Company's existing practice in this regard. The Commission's utility specific decisions, having taken into account specific facts and information relative to the utility, should not – absent a significant problem that needs to be remedied -- be discarded and subjected to general, one-size-fits-all guidelines. Further, the Commission approved the Company's current tariffed interest rate notwithstanding that current Part 280 provided for use of the rate on deposits -- the same rate proposed by Staff for credits—for refunds and overcharges. 83 Ill. Adm. Code 280.75(b), 280.76.

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, and the Commission should adopt Nicor Gas' proposed language.

XI. SUBPART H: PAYMENT ARRANGEMENTS

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

1. Nicor Gas

Nicor Gas supports Staff's proposed new language for DPAs. Proposed Section 280.120 is clear and sets forth the duties, obligations and rights of utilities and customers with respect to deferred payment arrangements. Lukowicz Reb., Nicor Gas Ex. 3.0, 44:1016-19. The proposed language allows every customer sincerely interested in doing so a clear, meaningful and beneficial opportunity to enter into a deferred payment arrangement. The rule establishes eligibility, minimum and maximum payment term, and identifies factors to be considered in arriving at a payment term. *Id.* at 44:1022-25.

Response to GCI

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

proposals to expand the eligibility for DPAs by eliminating these common sense and reasonable limitations should be rejected.

GCI proposes the following modifications to Section 280.120:

- 1) Subsection (b)(1): The utility shall inform the customer that it will offer DPAs based on the customers individual circumstance and other customer specific factors.
- 2) Subsection (b)(1): Applicant's ability to pay and other listed factors shall be taken into consideration when offering a DPA.
- 3) Subsection (d) [New]: Utility must send written confirmation of the specific terms of the DPA within 3 business days.
- 4) Subsections (f)((1) and (g)(1): Down payment and length should be determined by customer's ability to pay and other listed factors.
- 5) Subsection (f)(3): Utility discretion to decrease down payment amount deleted.
- 6) Subsection (j): Delete subsection, including provisions providing utility has no obligation to reinstate DPA after service disconnection and allowing reinstatement fee after first reinstatement of defaulted DPA, and insert new reinstatement provisions without these provisions.
- 8) Subsection (k)(2): Customer may renegotiate a DPA within 14 days after defaulting from the original DPA.

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

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

GCI's proposals to micromanage customizable DPA's should be rejected. The rule has reasonable and practical guidelines in this regard. Utilities are not social service organizations or financial counselors, but make every reasonable effort to work with customers. Lukowicz Reb., Nicor Gas Ex. 3.0, 47:1082-86. Utilities are not and should not be in the business of making business decisions based on the proactive examination of individual customer circumstances. *Id.* at 47:1086-87. The variations to be considered under GCI's proposal would be endless and would put an unreasonable burden on utilities and their customer service representatives. *Id.* at 47:1087-89. The

terms and conditions contained in Staff's rule are reasonable and fair to all parties. GCI's proposed modifications are neither needed nor reasonable and should be rejected by the Commission.

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.

A. Section 280.125 Deferred Payment Arrangements for Low Income Customers

Nicor Gas has no objection to Staff's proposed language with the correction of the typographical error in Section 280.125(a) (changing "though" to "through.")

XII. SUBPART I: DISCONNECTION

A. Section 280.130 Disconnection of Service

1. Subsection (b)

a) Nicor Gas

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

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

9) ~~Compliance~~ Non-compliance with an order of the Commission;
Tr., 797:18-798:17.

2. Subsection (c) – Non-deniable charges

a) Heading

(1) Nicor Gas

The title of Subsection (c) – non-deniable charges -- represents a phrase used by Staff and utility consumer service representatives, refers to charges that are ineligible for disconnection, and may not be readily understood by some customers. Tr., 798:18-799:15. Nicor Gas recommends that this heading be changed to “Charges not eligible for disconnection” or “Charges ineligible for disconnection,” but does not formally object to the Staff proposed title

b) Paragraph (4)

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

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

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

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

Response to Staff

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.

c) Paragraph (6) – Response to GCI

(1) Nicor Gas

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

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

(1) Paragraphs (2) and (4)

(a) Nicor Gas

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

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

* * *

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

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

As with other areas, the advancement of electronic communications is developing rapidly. Lukowicz Dir., Nicor Gas Ex. 1.0, 18:408-20. Customers today often request electronic communications only. Nicor Gas’ customers are becoming very accustomed to doing business electronically. In fact, almost 50% of payments received in 2009 by Nicor Gas were electronic, instead of a paper check. *Id.* The United States Post Office itself offers electronic communication that not only is less expensive, but provides confirmation of delivery. *Id.* Encouraging electronic communication is considered a “green” initiative and is consistent with energy efficiency measures that the State of Illinois advocates. To allow for those situations where a customer requests that

a utility communicate via electronic means, Staff's proposed language should be amended to accommodate such a situation. *Id.*

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

Staff opposes Nicor Gas' proposal to allow electronic disconnect notices if electronic notices are elected by the customer. Agnew/Howard Reb., Staff Ex. 2.0, 73:1678-86. Staff would require a physical disconnection notice regardless of customer choice to receive notice electronically. Staff states that "disconnection represents such a serious escalation that it must be accompanied by a physical notice." Agnew/Howard Reb., Staff Ex. 2.0, 73:1684-86. Nicor Gas believes customers should be allowed to choose if they prefer to receive their disconnect notice electronically or by U.S. Mail, provided the appropriate process is in place to assure customer understanding of their choice. Lukowicz Reb., Nicor Gas Ex. 3.0, 36:844-47. Indeed, for customers who prefer, select and receive all their communications electronically, mailed communication may be reviewed only intermittently and easier to overlook or miss. The Commission should accommodate all electronic communications, allow the rule to adapt to the growing use of electronic communication, and allow for customer choice.

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. Nicor Gas contends the Commission should adopt its language and allow customers desiring to receive all communications electronically, including disconnection notices, to do so.

(2) Paragraph (5)

(a) Nicor Gas

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

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

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

4. Subsection (h)

a) Nicor Gas

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

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

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

5. Subsection (j)

a) Nicor Gas

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

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

Staff Ex. 3.0, Att. A, p. 40; PH Outline, p. 105. Nicor Gas originally objected to this provision as imposing a redundant notification that raised safety concerns (Lukowicz

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

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

Response to AARP

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

Response to GCI

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

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

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

GCI also proposes to insert an additional paragraph as follows:

k) Contact at the time of disconnection of service.

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

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

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.

6. Subsection (I) – Response to GCI

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

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.

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

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.

8. Subsection (m)

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 280.140 Disconnection for Lack of Access to Multi-Meter Premises

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.

XIII. SUBPART J: MEDICAL CERTIFICATION

A. Section 280.160 Medical Certification

1. Subsections (a) and (g)

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

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

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

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

- g) Duration of certificate: The certificate shall protect the account from disconnection for ~~60~~ 30 days from the date of certification. If the customer was disconnected prior to certification, then the ~~60~~ 30 day

period shall not begin until the utility restores the customer's service.

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

Nicor Gas opposes the proposal to increase certification duration to a flat 60 days. There was no need to revise the proposed rule in this regard. By extending the total certification time to 60 days or longer, the rule would merely prolong the debt owed on the account to be paid. Grove Reb., Nicor Gas Ex. 4.0, 12:261-63. The proposed rule provides for automatic medical payment arrangements (“MPAs”), and customers will be allowed to have multiple regular DPAs under other provisions of the proposed rule. The need for MPAs is unclear, and the need for yet another extension on top of all the other protections already provided is unnecessary and unreasonable. *Id.* at 12:263-67. Care must be taken to ensure that protections are focused and limited, and do not needlessly facilitate or create chronic and perpetual re-certifications and disconnect deferrals without payments. *Id.* at 12:268-70. As shown in Nicor Gas Exhibit 4.1, this is exactly what Staff’s proposal would create—a perpetual process that prevents disconnection notwithstanding a failure to make payment. This result is bad for utilities and ratepayers alike, and should be rejected by the Commission.

Response to GCI

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

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

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

2. Customer Self Declaration of Medical Emergency

a) Nicor Gas

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

already provides that medical professionals may establish the initial certification by phone call.

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.

3. Subsection (c)

a) Nicor Gas

Response to GCI

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

c) Method of certification by the licensed physician or local board or health:

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

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

4. Subsection (e)

a) Nicor Gas

Response to GCI

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

e) Certificate timing:

- 1) Certificate presentation prior to disconnection earns a Medical Payment Arrangement term, as described under subsection (h)(1) below.
- 2) ~~Certificate may be presented up to 14 days after disconnection, with utility discretion as to whether it shall~~

~~accept a certificate after more than 14 days from disconnection have passed. Any certificate submitted by a customer whose service has been disconnected within the previous 14 days shall require the utility to reconnect service promptly on the same day as the receipt of the certification, but no later than 48 hours after such receipt. In appropriate circumstances, the utility may accept a certification after 14 days.~~ Certification presented after disconnection earns a medical payment arrangement term, as described under subsection (h)(2) below.

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

5. Subsection (g)

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.

6. Subsection (h)

a) Nicor Gas

Response to GCI

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

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

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

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).

7. Subsection (i)

a) Nicor Gas

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

- i) New certification of previously certified accounts: Accounts that received a prior valid medical certificate shall be eligible for new certification any time after ~~either~~:

- 1) The total account balance has been brought current; ~~and~~
- 2) 12 months from the beginning date of the prior certification has passed.

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

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

The rebuttal testimony of Staff witnesses Mr. Agnew and Ms. Howard noted that a number of parties raised concerns regarding the new certification of previously certified accounts provisions, declared they were open to some movement on this issue, openly sought some level of support for modification of these provisions from consumer advocates, and sought comment from the parties in rebuttal before deciding to support or oppose this change. Agnew/Howard Reb., Staff Ex. 2.0, 84:1927-85:1942. However, to date, Staff has not adopted Nicor Gas' proposed language. Nicor Gas urges Staff and the Commission to adopt the Company's proposed revisions. Medical certificates are the most abused process currently in effect and are a source of concern for both utilities and Staff. Grove Reb., Nicor Gas Ex. 4.0, 10:227-11:234. On the other hand, medical certificates serve a legitimate purpose for households experiencing true medical emergencies. *Id.* If the rule is going to accommodate the desire of some for liberal provisions with respect to obtaining and implementing medical certification protections, this needs to be balanced with reasonable but definite limits on the repeated use of medical certificates. Otherwise, stricter controls would be needed to address the misuse of medical certificates at the front end of the process.

Response to GCI

Ms. Marcelin-Remé testifies she supports changing the rule to accommodate a yearly certification procedure. Marcelin-Remé Reb., GCI Ex. 4.0, 8:180-7. If this means that GCI supports Nicor Gas' proposal to limit recertifications in all cases to situations where both (a) 12 months from the beginning date of the prior certification has passed and (b) the total outstanding balance is brought current, then Nicor Gas concurs. Lukowicz Sur., Nicor Gas Ex. 6.0, 4:81-5:100. If Ms. Marcelin-Remé means something else, Nicor Gas disagrees. A considerable amount of effort has been placed into this section. *Id.* Most of the language of Section 280.160 was derived from discussions

where there was agreement on the intent, method, timing, restoration, duration of the certification, and the medical payment arrangement. All parties had made concessions regarding how the proposed language should be written. *Id.* The currently proposed Section 280.160 has introduced the concept of recertification of a medical customer section. The language for the recertification process as written will be abused because it would purport to allow recertification after 12 months regardless of whether the total outstanding balance has been brought current. *Id.* This would allow a perpetual cycle of non-payment. This simply is unacceptable. Nicor Gas' proposed language should be adopted to control uncollectible costs for utility ratepayers. *Id.*

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 recertification. 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.

XIV. SUBPART K: RECONNECTION

A. Section 280.170 Timely Reconnection of Service

1. Subsection (b)

a) Paragraphs (3) and (4)

(1) Nicor Gas

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

- 3) A disconnected electric, water or sewer customer who remedies the reason for the disconnection, and is not required by the utility to provide information as a new applicant for service, shall be

reconnected as soon as reasonably possible, but no later than two within four calendar days.

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

PH Outline, p. 133. Nicor Gas opposes GCI's proposed revisions because they are unreasonable. Nicor Gas has already explained, and GCI has acknowledged, the need for more reasonable time frames for service activation. Staff's proposed language is reasonable and should be adopted by the Commission.

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 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.*

XV. SUBPART L: UNAUTHORIZED SERVICE USAGE

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

1. Nicor Gas

Background

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

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

[W]e propose that the simplified standard of proof of PAL should be co-habitation of the former customer and the new applicant during both the accrual of the former customer's debt and the new application for service. With this we propose a single remedy: a refundable deposit that must be paid in full before service is granted to the new applicant.

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

Nicor Gas Position

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

Nicor Gas' also notes that Section 280.210 of Staff's proposed rule has two subsections numbered "d", and the second subsection (d) should be renumbered to subsection (e) and subsequent subsections renumbered accordingly. Agnew/Howard Sur., Staff Ex. 3.0, Att. A, pp. 57-60.

Response to GCI

Nicor Gas asserts that 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 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. 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 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. Nicor Gas concludes that GCI's argument is irrelevant, based on mischaracterizations of Staff's current proposal, and must be denied.

XVI. SUBPART M: COMPLAINT PROCEDURES

A. Section 280.220 Utility Complaint Process

1. Subsection (e)

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) Nicor Gas

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

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

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

Nicor Gas asserts that the notification requirement in Section 280.220(i)(1) of Staff's proposed rule is a "solution seeking a problem" that would micromanage utility processes in a manner that leads to inefficiency and increased costs. Grove Reb., Nicor Gas Ex. 4.0, 13:298-14:300. Only a very small number of Nicor Gas customer

complaints (.05 percent) escalate to the point where the customer calls the Commission. *Id.* at 14:300-02. Staff's proposed language would likely undermine the ability of the Company's customer service representatives to manage the customer concern, could needlessly double the number of customers seeking an escalation of the matter, and, ultimately, further frustrate the customer when they receive the same answer from a supervisor. *Id.* at 14:302-06. Staff's proposal likely will also require the Company to incur additional expense to have the necessary "supervisory" personnel available to identify and address a greater volume of requests to speak to a supervisor. *Id.* at 306-08; *see also* Grove Dir., Nicor Gas Ex. 2.0, 5:106-7:143.

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

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

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

Response to GCI

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

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) Nicor Gas

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

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

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

In response to a recommendation by GCI, Staff added a new paragraph (j) to proposed Section 280.220. GCI Ex. 2.0, 20:530-35; Staff Ex. 2.0, 91:2092-92:2097. That new paragraph provides that “[a]ll customer complaints must be assigned a complaint number which is retained by the utility for a period of two years.” Staff Ex. 2.0, Att. J, p. 61.

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

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 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.

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.

XVII. SUBPART N: INFORMATION

A. Section 280.260 Customer Information Packet

1. Subsection (b)(2)

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.

VIII. GCI REQUEST FOR PERIODIC DATA REPORTING

A. Nicor Gas

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

The Commission is the entity that regulates Nicor Gas and other Illinois utilities. Nicor Gas regularly works with Staff and the Commission to respond to information requests. Lukowicz Reb., Nicor Gas Ex. 3.0, 55:1277-1279. GCI has not identified any information problem experienced by the Commission. To the extent any party seeks relevant information in connection with a Commission proceeding, there are discovery processes in place to address the exchange of information. The Commission issues various reports based on information supplied by utilities, including the Commission’s Annual Report on Electricity, Gas, Water and Sewer Utilities. Commission reports, and the information contained therein, are generally available to the public. With respect to GCI witness Ms. Alexander’s reference to a report issued by the National Association of Regulatory Utility Commissioners’ (“NARUC”) Consumer Affairs Subcommittee, the report she quotes “recommend[s] a collections survey as the tool to gather the data.” Alexander Dir., GCI Ex. 1.0, 15:369-70. The NARUC report cited by GCI also discusses high level aggregate data on billings and uncollectible amounts much different from the detailed information she recommends be reported. Lukowicz Reb., Nicor Gas Ex. 3.0, 55:1288-91. There is no demonstrated need for the reporting requirements proposed by GCI, and Staff has not sought such information requirements in the rule. GCI’s proposal should be rejected.

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.

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 above 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.

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.

XIX. APPENDICES TO RULE

A. Section 280 Appendix A: Disconnection Notice

1. Nicor Gas

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 form format.” Staff IB, p. 84. Thus, this issue is no longer contested.

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

1. Nicor Gas

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.

XX. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter of this proceeding;
- (2) the recitals of fact and the conclusions reached in the prefatory portion of this Interim Order are supported by the record and are hereby adopted as findings of fact;
- (3) the proposed amendment of 83 Ill. Adm. Code 280, as reflected in the attached Appendix, should be submitted to the Secretary of State to begin the first notice period.

IT IS HEREBY ORDERED by the Illinois Commerce Commission that the proposed amendment of 83 Ill. Adm. Code 280, as reflected in the attached Appendix A, be submitted to the Secretary of State, pursuant to Section 5-40(b) of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that this Order is not final and is not subject to the Administrative Review Law.

DATED:

BRIEFS ON EXCEPTIONS DUE:

REPLY BRIEFS ON EXCEPTIONS DUE: