Docket No: 11-0046
Bench Date: 11/2/11
Deadline: 12/18/11

M E M O R A N D U M

TO:	The Commission
FROM:	David Gilbert, Administrative Law Judge
DATE:	AGL Resources Inc., Nicor Inc. and Northern Illinois Gas Company d/b/a Nicor Gas Company
SUBJECT:	Application for Approval of a Reorganization pursuant to Section 7-204 of the Public Utilities Act.
RECOMMENDATION:	Enter Order approving Reorganization with Conditions.

CASE HISTORY

AGL Resources Inc. ("AGL"), Nicor Inc. ("NI"), and Nicor Gas Company ("NG") (collectively, "Joint Applicants" or "JA") seek approval of a reorganization by which NI will merge with and into a subsidiary of AGL and NG will become a wholly-owned subsidiary of AGL. Along with the JA, the principal participants in the case are Staff, the Attorney General ("AG"), CUB, alternative gas suppliers and the IBEW.

As this case progressed, the JA requested that the testimony and exhibits filed in another ongoing proceeding, Docket 09-0301, be considered in this docket. In Docket 09-0301, NG was seeking re-approval of the Operating Agreement ("OA") governing its transactions with affiliates. That docket was initiated to comply with a directive in NG's most recent rate case, 08-0363, to address Staff's concerns about the OA. Staff and several active parties in Docket 09-0301 agreed with JA's request to consider the OA in this merger proceeding, because the merits of the OA are also in dispute in this case. Consequently, consideration of NG's OA - both as a stand-alone document and as an element in the proposed merger – took place in this proceeding (with Docket 09-0301 becoming dormant).

Also as the case progressed, the JA acceded to several Staff proposals and entered into stipulations with Staff and other parties that eliminated a number of contested issues. The most significant results are:

> NG will freeze its base rates during the first three years after merger (unless certain circumstances occur);

If an exception to the foregoing rate freeze does occurs, NG's pre-merger credit rating (not its likely lower post-merger credit rating) will be used to determine its capital costs in any rate case;

No reorganization costs will be presented for recovery by ratepayers at any time; any reorganization-related savings will offset NG's costs in any future rate case;

JA will retain a workforce in Illinois for three years (five years for certain pipeline safety personnel) that is equivalent to the pre-merger workforce, and it will honor its existing union contracts, although some current employees may be reassigned or terminated;

The JA will maintain a separate commercial paper program for NG (unrelated to its affiliates) to fund its cash working capital needs;

NG will be permitted to borrow money from non-utility affiliates but not permitted to advance cash to those entities.

NG will no longer perform repair services on behalf of its affiliate, Nicor Services, in fulfillment of obligations Nicor Services has to its customers under the Gas Line Comfort Guard product.

COMMISSION AUTHORITY

The Commission can reject a proposed merger, approve it as presented, or impose the conditions it finds necessary to protect the interests of the utility and its customers. There are eight substantive areas in Section 7-204 of the Public Utilities Act that require substantive Commission findings before reorganization can be approved.

SUBSTANTIVE ISSUES - REORGANIZATION

The first necessary finding under Section 7-204 is that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service" Before the Proposed Order was issued in this case, two disputed issues had been framed: first, whether the JA presented sufficient evidence to find that NG's pre-merger ability to supply statutorily sufficient service will not be diminished by the proposed reorganization; and, second, whether the JA have, in fact, committed to honor existing union contracts and Illinois employment levels. After reviewing the Proposed Order, and after the IBEW moved to reopen the record, the JA and IBEW settled their dispute and the IBEW withdrew its opposition to reorganization. (The terms of the settlement were not revealed.)

Regarding evidentiary sufficiency, Staff and AG/CUB contend that the JA's case principally consists of recitations about NG's pre-merger service quality, AGL's track record with previous mergers, declarations of good intentions and a pledge not to reduce NG's aggregate staffing for three years. They therefore conclude that the JA have failed to adequately address how they intend to buy gas, operate storage fields, perform maintenance, procure supplies, or conduct other critical operations. JA respond that prior success with gas utility mergers is fully probative of their ability to sustain NG's current low-cost service quality. JA also underscore the specific measures they propose for maintaining NG's financial strength and operational staffing, as well as their comprehensive program for integrating the operations of the two corporate groups, which is on schedule. The attached Order concludes that the JA's evidence is sufficient to support the necessary finding regarding post-merger service quality.

A caveat - the foregoing conclusion is based as much on judgment as on evidentiary weight. Staff and the intervenors are correct that the JA's evidence is largely general and reliant on previous experience and present aspiration. Its sufficiency is ultimately dependent upon a regulator's degree of confidence that prior experience, self-interest, moderate restraints and relatively general plans will likely produce a satisfactory outcome. Consequently, a different conclusion for the first necessary finding (which would essentially deny the merger application) would not be legally erroneous.

The <u>second necessary finding</u> is that "the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers." The parties principally focused on whether each of the following inter-affiliate agreements and transactions are compliant with this requirement: 1) the OA between NG and its current affiliates; 2) a Service Agreement between NG and AGL Service Company; 3) four existing agreements with Sequent Energy Management (AGL's wholesale gas marketer), as well as capacity release arrangements between NG and Sequent in accordance with FERC's rules; and 4) the Tax Allocation Agreement.

After JA accepted several Staff revisions concerning these agreements, no disputes remained concerning the Service Agreement, the Sequent agreements or the Tax Allocation Agreement. There is a significant dispute concerning the inter-affiliate OA (discussed below). However, the attached Order concludes that, with the inclusion of language proposed by Staff, the OA will not result in unjustified subsidization of NG's post-merger affiliates. Accordingly, the second necessary finding can be made.

The <u>third necessary finding</u> is that "costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes." The JA accepted Staff's recommended adjustments on this issue and there are no disputes to resolve. Therefore, the attached Order concludes that the third necessary finding can be rendered.

The <u>fourth necessary finding</u> is that "the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure." Although Staff expects some post-merger increase in NG's cost of capital, it nevertheless avers that, with certain conditions in place, the effect of reorganization on NG's ability to raise capital on reasonable terms will not be significant. The most important condition is that the JA create and maintain a separate credit facility for NG. JA agrees to that condition. Therefore, the attached Order holds that the fourth necessary finding is warranted.

The fifth necessary finding is that "the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities." After Staff raised several concerns pertaining to NG's post-merger compliance with pipeline safety provisions, the JA agreed to a number of conditions. Thus, for five years, NG will maintain current staffing and management levels in Illinois in certain pipline safety areas, along with current training and quality assurance programs. NG will also meet with Staff to discuss any proposed changes to the job duties of safety personnel, and NG will file a petition, before the five-year period expires, to determine whether NG's pipeline safety performance is comparable to pre-reorganization levels. Given JA's concurrence with these conditions, the attached Order concludes that the fifth necessary finding is supported by the record.

The sixth necessary finding is that "the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction." Staff recommends making the required finding. After negotiations with the JA, the competitive gas suppliers withdrew their direct testimony and asserted that their competition-related concerns had been satisfied. As a result, there are no contested issues and no party contends that the evidence is insufficient to render the sixth required finding. The attached Order therefore makes that finding.

The seventh necessary finding is that "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers." The sole dispute is whether reorganization will cause a diminution of NG's credit rating that, in turn, will adversely impact NG's retail rates. Staff posits that NG's credit ratings will decline when it becomes a subsidiary of AGL, an entity with higher financial risk. The rating cut would engender higher debt costs, leading also to higher equity costs due to elevated risk. The result would likely be a rate increase to account for NG's greater cost of capital. AG/CUB concurs with Staff's analysis.

JA reply that a rating reduction is far from likely, particularly in view of measures they have proposed to bolster NG's risk status. JA further argue that, even if a downgrade is imposed, a resulting increase in credit costs is uncertain and may, in any event, have no discernible rate impact. Moreover, NG claims, Section 9-230 of the Act obliges the Commission to remove, in any future NG rate case, the effect of non-regulated affiliated entities on the utility's capital costs, thus precluding the adverse rate impact NG's opponents predict.

The attached Order finds that S&P will likely lower NG's post-merger credit rating, which would increase NG's capital costs by some magnitude. However, the attached Order also concludes that proper application of Section 9-230 will remove any capital cost increase from NG's rate of return. Although Staff acknowledges this, it warns that applying Section 9-230 to eliminate *all* affiliate-related impact on capital costs is difficult. Staff therefore recommends deciding now that in any future rate case, NG's capital structure will be adjusted until total capital cost would equal what it would have been had no credit rating downgrade been imposed. The JA oppose Staff's recommendation and propose instead to use NG's *pre-merger* credit rating to determine NG's debt and equity costs in any rate-setting proceeding during the next three years. The attached Order finds that Staff's recommendation does not simplify either the implementation of Section 9-230 or, more generally, the process of setting NG's rate of return. NG's proposal is preferred because it does not pre-decide the utility's future capital structure, which is better determined when future circumstances are known.

If NG undergoes a rate case *after* the next three years, the Commission will still have to implement Section 9-230. Therefore, NG commits to providing a study, for use in that rate case, showing the impact of NG's affiliation with AGL on its cost of capital. Although both Staff and NG question the efficacy of a study more than three years after merger, such study will inherently include information pertaining to the initial three years. Moreover, NG states that trustworthy debt-related data will be available for a period beyond three years. Accordingly, the attached Order will hold the JA to their commitment to file the study, and the Commission will determine its value at that time.

With NG's commitments concerning future rate cases, and with the assumption that the Commission will successfully apply Section 9-230 to remove affiliate-related capital costs, the attached Order holds that the seventh required finding is sustained.

The <u>eighth necessary finding</u> arises from Section 7-204(c) of the Act, which precludes reorganization approval without ruling on, first, "the allocation of any savings resulting from the proposed reorganization" and, second, whether the applicants should be allowed "to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated." The courts afford the Commission" great discretion" in implementing the statute. Staff and the JA entered into a stipulation that ended their disagreements on costs/savings allocations. AG/CUB did not join the stipulation and disagree with JA regarding savings.

Under the stipulation, the JA agree that any achieved savings at NG resulting from the proposed Reorganization shall flow through to NG customers as an offset against costs in a future rate case *filed by NG*. The attached Order finds that merger savings must be allocated to customers in *any* rate case, whether initiated by NG or the Commission. With that proviso, any savings in any rate case will be apportioned to ratepayers, thus mooting AG/CUB's contention that JA must quantify NG's merger-related savings before the merger can be approved. The statute requires only a savings *allocation*, not quantification. Since all savings will be allocated to customers, quantification is unnecessary (and would likely involve guesswork now, before the merger takes effect).

Regarding reorganization *costs*, the JA agree in the stipulation that no such costs can be recovered through Illinois jurisdictional regulated rates in any future proceeding.

The attached Order approves that agreement. Thus, the attached Order produces the same results (no reorganization cost recovery and allocation of all savings to ratepayers) as previous Commission decisions in reorganization proceedings.

SUBSTANTIVE ISSUES – INTER-AFFILIATE OPERATING AGREEMENT (OA) AND REORGANIZATION

The OA is discussed separately because it must be evaluated both as a merger element and as a stand-alone document (since, even if the merger application were rejected, the Commission would still have to approve or reject NG's OA).

Initially, there were multiple disputes among the parties regarding the OA. However, JA and Staff ultimately reduced their disagreements to a single contested issue - whether NG would be permitted to provide call center services to, or receive such services from, its corporate affiliates, particularly Nicor Energy Services ("NS").

NG maintains call centers for customer contacts regarding gas leaks, billing questions, start/stop service requests and other inquiries. After addressing a caller's inquiry, NG's call center representatives try to sell NS's service. The representatives earn monetary commissions, paid by NS. NG personnel monitor call center activities, including solicitations, and review and approve sales scripts. NG representatives do not solicit the products or services of NS's competitors. NS pays NG a fee, in an amount ostensibly equal to NG's fully distributed costs ("FDC"), for the portion of a call devoted to marketing NS services.

NS also has a call center, which is operated by IBT (a wholly-owned subsidiary of NS), which handles a percentage of NG's "moving calls" - requests to initiate new NG gas service. Representatives at the NS/IBT center also attempt to sell NS services after completing the initial purpose of a call. NG pays IBT a fee to handle the customer's new service request, and IBT purportedly pays a fee to NG for the use of the phone line for the period of time it markets NS products. (There is no evidence of the payment method and amount of this fee.)

Staff recommends revising the OA to preclude NG solicitation on behalf of its affiliates and to prohibit NG from receiving any service from an affiliate that facilitates marketing affiliate products to NG customers. This would end the NS Solicitations. AG/CUB focuses specifically on NS's Gas Line Comfort Guard ("GLCG") service, recommending that either NG be excluded from GLCG solicitation or that GLCG be treated as a utility service and sold at a regulated price. NG opposes any prohibition on inter-affiliate call center solicitation under the OA, stressing that NS and IBT pay FDC for solicitation opportunities, which ostensibly helps ratepayers by reducing the fixed costs recovered through rates.

The parties' evidence and briefings principally addressed NS's GLCG (although other NS services are also sold through the call centers). GLCG involves a $4.95 monthly charge, for which NS provides parts and labor (up to $600 per service call) to repair "leaks to completely exposed interior gas pipes or connectors" resulting from specified circumstances. NS will also replace "non-leaking uncoated brass connectors" as requested, but adds a trip charge for dispatching a technician. GLCG applies only to piping and connectors on the "customer side" of the gas meter, not the "utility side" (where NG bears repair responsibility). Almost all (98%) of NS repairs are actually performed by NG technicians (although NG has agreed, after negotiations with Staff, to terminate this arrangement after merger closes). GLCG service is renewed annually, but the customer can cancel at any time. Under the state Service Contract Act, GLCG is a repair/replacement service contract.

The attached Order concludes that NG must cease all call center solicitation of its affiliate's services, particularly GLCG. There are three reasons – unwarranted subsidy, misleading solicitation, and anti-competitive impact antithetical to the public interest.

<u>Subsidy</u>. The Order holds that call center solicitation bestows an unjustified subsidy on NS, within the meaning of subsection 7-204(b)(2). Although NS pays NG's basic costs for the employee time and telephone usage devoted to marketing NS's products, it pays nothing for the exclusive, timely and assured - and, therefore, commercially valuable - right to sell non-utility services during inbound utility calls.

It is an *exclusive* right because no competing service provider is accorded a comparable opportunity. It is a *timely* right because NS gets the first pass at prospective customers, during calls initiated by customers, who are inherently prepared to discuss their gas service. In contrast, a provider making a "cold call" will likely have to persuade a customer to even remain on the phone. The call center arrangements also afford NS *certainty* in reaching utility customers. Unlike other marketers, personnel selling NS services never waste time with unanswered calls and seldom speak with someone who is not a customer of record (or other household occupant) or who is disinterested in gas service issues.

Also, as a matter of customer *convenience*, NS enjoys the advantage of eliminating the necessity for additional customer phone calls (presumably preceded by internet research or similar efforts by the customer) to other gas line service providers. NG thus proclaims that "[t]his support [*i.e.*, NG's customer solicitation on NS's behalf] results in lower search and information costs to consumers."

The foregoing advantages provided to NS have exceptional commercial value for which enterprises typically pay some margin over the provider's bare cost of service. NG itself requires profitable compensation for placing advertising inserts in utility billings - and businesses in general demand fees for their customer lists and mine internet traffic for customer leads. The targeting, convenience and certainty afforded by the call center contacts here are *more* valuable, because bill inserts can be discarded unread and customer leads do not guarantee customer contact. Moreover, the value NS receives is magnified by the Nicor brand identity, a value derived from *utility* business. Of course, NS, by virtue of its name, shares the reputation of the Nicor brand in any context. However, in a seamless, dual-purpose telephone conversation, in which the corporate commonality of the two Nicor entities is strongly emphasized by the salesperson, Nicor's brand reputation takes on even greater weight.

The exceptional commercial value of solicitation during dual-purpose, inbound utility calls is reflected in, and confirmed by, NS's sales performance. Regarding moving calls in particular, NS declares that it achieves "unheard-of scale" through a consistent "*25* percent acceptance rate versus two percent in a typical direct mail program." As a comparison, a competing gas line service contract provider in NG's service area realized a 2% success rate through cold-call phone solicitation - the same rate NS attributes to a "typical direct mail program."

The commercial value of selling NS products during inbound utility calls is similarly evidenced by the market dominance of GLCG. Over 99% of the customers selecting a gas line service contract in Nicor's service territory have chosen GLCG. The two other providers of a comparable gas line service contract have, combined, fewer than 2000 of the 451,500 gas line warranty customers in NG's territory. Each provider has now given up marketing its gas line product in that territory.

The commercial value of NS's participation in utility calls is also reflected in NS's inferior sales results without that participation. Peoples Gas and North Shore Gas ("PG/NoS") allow their mutual affiliate to solicit its Pipeline Protection Plan ("PPP") during consumer-initiated calls to the utilities. NG characterizes PPP as "a similar product to GLCG" and describes the support services (including telephone solicitation) that PG/NoS furnish for PPP as "quite similar" to the services NG supplies for GLCG. As of June 2010, NS had 441,366 GLCG customers in Nicor service territory and 2655 customers in the combined service territories of PG/NoS. NS thus realizes vastly greater success in NG's territory, where it joins utility customer conversations, than in the PG/NoS service territories, where it competes against a utility affiliate with its own phone solicitation privileges. The results for GLCG in other states are similar.

In addition to the value NS receives from its exclusive involvement in NG's utility calls, NS derives additional subsidy from the scope and scale of NG's ratepayer-funded utility operations. As NG's own witness explains, "there are economies of scope and scale in centralizing certain functions of a business entity which lower unit costs…The [OA] allows [NG] and *its affiliates* to take advantage of these economies." The scope of scale of NG's call centers is large enough to lower unit costs of solicitation, for utility and *non-utility* business alike, because of *utility* distribution operations. Consequently, when it pays NG's full FDC for solicitation, NS still gets the lower unit cost attributable to a utility operation with more than two million customers. No other service provider can achieve the lower solicitation costs associated with NG's ubiquitous operations.

On exceptions, and for the first time in the case, JA assert that certain stipulated changes in the OA will alter the prices NS pays for GLCG solicitation during utility calls. Without delving into more detail than is appropriate for this memorandum, suffice it to say that the JA assertion is entirely incorrect. Even if public interest considerations (addressed below) would not preclude the Commission from allowing continued solicitation of non-utility services during utility calls, the revised OA provisions will either not apply to such solicitation or not remove the improper subsidy.

Misleading Solicitation. NG and NS share responsibility for the GLCG sales messages communicated through the NG and NS/IBT call centers during utility business calls. NS's sales scripts are submitted to NG for review and approval. The result, according to Staff and AG/CUB, is both affirmatively misleading and marred by the omission of material facts, principally because salespersons convey the impression that NG does not perform (on an as-needed basis) the same pipe and connector work NS offers with GLCG. Staff and CUB/AG therefore urge the Commission to protect the public interest by prohibiting further solicitation under the OA.

In prior proceedings involving allegations of misleading marketing, the Commission has applied the "net impression test," developed by the U.S. Federal Trade Commission and incorporated into Illinois law. That test forbids "misrepresentation or omission that is likely to mislead customers acting reasonably under the circumstances about a material fact. Material facts are those that are important to a consumer's decision to buy or use a product." The test examines both "express and implied claims" to determine the "net impression conveyed to the consumers - often described as `the entire mosaic, rather than each tile separately.'" A sales presentation "may be deceptive by omission. For example, an ad may be deceptive if it fails to disclose qualifying information that, in light of the representations made, would be necessary to prevent consumers from being misled." The Commission has stated that it "will apply those principles to *all* of the communications media (*e.g.*, billing inserts and telemarketing) by which [the utility] conveys information to customers."

NG - on its own and not on behalf of NS - performs inspection and repair of its customers' gas lines and connectors. NG acknowledges that "there is no difference in the services available to the customer," whether the NG technician is performing work for an account with or without GLCG. It would thus be deceptive to convey the net impression that GLCG is the only available Nicor gas line repair service for customer-owned facilities.

The attached Order finds that Nicor's sales scripts do communicate that net impression during customer calls to the utility. NG is mentioned only in a manner that implies NG does *not* perform customer-side repairs. That impression is strengthened by stating that "with" GLCG, a *Nicor* technician will repair or replace gas lines, connectors and valves. The customer is left to assume that *without* GLCG there will be no service from Nicor, who, the representative has emphasized, is only responsible for gas leaks "outside your home."

With reluctant customers, Nicor personnel use scripted rebuttals that reinforce the misimpression that NG does not repair customer facilities. "Remember, the utility is only legally responsible to make the situation safe or make repairs to *its own* facilities." Customers are further advised that, with GLCG, they "won't have to worry about *who* *you should call* to perform the repairs in a gas leak emergency." Requesting service *directly from NG* is not included as an option and, impliedly, a request would be futile, since "Nicor technicians" are associated solely with GLCG during the sales presentation. Customers are further informed that, with GLCG, they can "make just one call *to the utility*" for GLCG service, again reinforcing the message that "Nicor technicians" are deployed only for GLCG subscribers. NG's own consulting witness acknowledges that a customer receiving the GLCG sales presentation might derive the inference that Nicor technicians are available only to GLCG customers.

The attached Order holds that this is a material fact - a fact "important to a consumer's decision to buy or use" the GLCG product. Assuming that NG customers associate their local gas distribution utility with gas safety, the availability of services directly from NG is "information pertaining to the central characteristics of the product or service," which is "presumed material" under the net impression test. When the customer believes GLCG is the only source of Nicor repair service, the purchase decision becomes "GLCG versus outside contractor." In contrast, if the customer knows that NG is also available for emergency repairs, and that there is "no difference in the services available to the customer," except "differences in the cost to the customer," then the purchase decision focuses on cost and likelihood of trouble. Moreover, since the customer is given the incorrect impression that Nicor repair service is unavailable without GLCG, the customer gets no cost information for NG's own service - and, under the net impression test, cost information is presumed material to the purchase decision.

<u>Anti-Competitive Impact</u>. Staff and AG/CUB also contend that NG, through solicitation of NS services during utility calls, gives NS an insurmountable anti-competitive advantage that drives other gas line service contractors from the market, for the benefit of the Nicor corporate family. No gas line service contractors still market their services in NG's territory, and even if estimates of *whole-home* service contractors in NG's territory were reliable (the attached Order doubts this), they do not meaningfully diminish GLCG's near-complete market dominance. No other gas line service provider has the direct contact with consumers that NS enjoys during calls to the public utility. It is that difference in customer access, rather than any difference in service quality or innovation, that accounts for the paucity of non-Nicor service contracting in Nicor's service area. The attached Order therefore concludes that NS's solicitation privileges have substantial anti-competitive impact, which is antithetical to the public interest.

<u>Other claims and NG's Defenses</u>. Staff and AG/CUB presented several other arguments against continued solicitation of NS services by NG, and the JA and NG presented several defenses, both against those additional arguments and against the conclusions described above. Most are rejected in the attached Order. Those claims and defenses are not summarized in this memorandum, with the following exception.

JA assert that NS's call center activities benefit ratepayers, because NS absorbs a portion of NG's call center FDC. However, even if the Commission could lawfully ignore unjustified subsidy, misleading marketing and suppression of competition, the financial benefit to ratepayers from call center solicitation is, at most, inconsequential

($50,370). Almost all of NS's approximately $1 million contribution to NG in 2009 was associated with NG's performance of GLCG inspections/repairs (and NG's billing for NS services). The JA have now voluntarily agreed to cease GLCG inspections and repairs by NG. Thus, the JA themselves have elected to dramatically reduce the FDC contribution from NS to NG.

Additionally, the record does not show that ratepayers actually reap net financial contribution from NS solicitations. When determining call center personnel requirements, NG projects both the number of inbound calls for utility business and the total time, per call, that will be spent on the combination of utility *and non-utility* business. It follows that some greater increment of personnel is needed to handle that combination, unless the time devoted to solicitation is trivial. The evidence does not suggest triviality, however. A confidential internal NS/IBT analysis demonstrates that a significant portion of average call time is devoted to NS sales. That is predictable, since the scripts contain time-consuming rebuttals to a variety of anticipated customer reasons for refusing to purchase NS's products.

<u>Remedies</u>. The attached Order prohibits future solicitation of NS services (especially GLCG) via call centers receiving utility telephone requests. Accordingly, Staff's proposed text for the Nicor OA is adopted and NG's is rejected.

Other remedies are unavailable. Regarding subsidy, the utility provided no evidence or advocacy for raising the price NS pays for solicitation, in order to reflect the enhanced value NS actually receives. Consequently, even if there were no public interests concerns compelling termination of solicitation, the Commission would have no evidentiary basis for adjusting the price NG charges.

Similarly, the JA could, in theory, cure the misleading nature of the NS solicitations by revising their sales scripts to eliminate the false impressions currently conveyed. However, as NG has adamantly maintained, the Commission has no authority over NS.

Also, the anti-competitive advantage NS enjoys from its exclusive solicitation rights during utility calls could theoretically be nullified by requiring NG to accord comparable rights to other gas line repair providers. NG opposes this, however, maintaining that it does not want to risk its brand reputation by involving unaffiliated service providers in its customer service calls. Moreover, it is not apparent that there is a practical and efficacious way to transition customer calls to multiple alternative service providers. There is no record evidence on this.

AG/CUB also request that all current customer enrollments in GLCG be terminated and that NG be required to communicate certain disclosures to existing GLCG customers, who would then have to affirmatively indicate that they want to resume GLCG enrollment. However, since the Commission has no authority over NS, it has no power to terminate NS's customer enrollments or establish conditions for continued enrollment. With regard to mandating disclosures, the Commission can require the utility to communicate with its own customers. However, the Commission's power to command the utility to, in essence, challenge the value of another company's services is unclear. The attached Order notes that since there are no GLCG termination fees, GLCG customers that acquire relevant information by other means can act on it as they see fit.

CONCLUSION & RECOMMENDATION

The attached Order concludes that the requested Reorganization be approved, subject to all of the conditions accepted by the JA or imposed in the Order. Irrespective of reorganization, the attached Order concludes that NG's inter-affiliate OA be approved, subject to all of the conditions accepted by the JA or imposed in the Order.

I recommend that the attached Order be entered by the Commission.