STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a Nicor Gas Company	:	
Application for consent to and approval of waiver of certain provisions of Section 7-102 of the Illinois Public Utilities Act to permit the offering of energy support services on a competitive basis to United States governmental agencies.	:	**98-0151**

ORDER

By the Commission:

On February 19, 1998, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or "Company" or "Petitioner") filed a verified Petition with the Commission requesting consent to and approval of (i) a variance from Section 7-102, subsections (f), (g) and (h) of the Illinois Public Utilities Act ("Act") to bid for and offer, on a competitive basis, energy support services to United States government agencies under contracts of up to $20 million total, without prior Commission approval, (ii) the Company's proposed accounting treatment of all associated revenues and expenses, and (iii) such other relief as may be just, reasonable and appropriate. In addition, the Company requests approval of the Company's Petition within 45 days to allow it to effectively compete with other public utilities providing, or seeking to provide, energy support services to United States government agencies. Petitioner was granted leave to amend its Petition to seek approval of a variance from subsection (i) of Section 7-102 of the Act.

Pursuant to notice given in accordance with law and the rules and regulations of the Commission, a hearing was held before a duly authorized Hearing Examiner of the Commission at its offices in Chicago, Illinois on March 27, 1998. Appearances were entered by counsel on behalf of Nicor Gas and by Karen Goldberger of the Financial Analysis Division of the Commission. At the conclusion of the hearing, the record was marked "Heard and Taken". Subsequently, at the direction of the Commission, the record was reopened and a hearing was held on April 10, 1998. Appearances were entered by counsel on behalf of Nicor Gas and by Harry Stollar of the Energy Division of the Commission. Albert Harms of Nicor Gas testified on behalf of the Petitioner. Karen Goldberger and Alan Pregozen of the Financial Analysis Division and Eric Schlaf of the Energy Division testified on behalf of the Commission. At the conclusion of this hearing the record was marked "Heard and Taken."

In its Petition, Nicor Gas states that the United States Department of Energy ("DOE") has implemented regulations that provide incentives for certain government agencies to increase their efficiencies by entering into contracts with energy services providers. The regulations, 42 U.S.C. § 8256, allow such agencies to reduce the level of review necessary to enter into contracts with public utilities. In light of these incentives, Petitioner states that it has been asked to respond to a Request For Proposal ("RFP") from the Department of Energy, Fermi Group, in Batavia, Illinois ("Fermi"), to bid on an electric energy support services contract. The Company states that it expected to receive the RFP in mid-February 1998, and that a response from Petitioner would be required within 45 days. Petitioner also states that the potential value of an energy support service contract with Fermi could exceed $5 million, the applicable threshold for Commission approval of such a contract under Section 7-102(i) of the Act. In addition to the potential contract with Fermi, Petitioner states that a potential exists for it to enter into other energy support services contracts with United States government agencies subject to the DOE's relaxed review provisions.

Petitioner states that, in order to have the ability to respond in a timely fashion to the Fermi RFP and other RFPs, it must be granted the requested variance from the requirements of Section 7-102 of the Act. Petitioner points out that that the recently enacted Section 16-116(b) of the Act provides that "an electric utility may offer any competitive service to any customer or group of customers without filing contracts or seeking approval of the Commission, notwithstanding any rule or regulation that would require such approval." Petitioner explains that this provision places natural gas utilities at a decided disadvantage when attempting to respond in a timely manner to RFPs to perform certain energy services in competition with electric utilities; i.e., gas utilities must seek Commission approval of such contracts pursuant to Section 7-102 of the Act, while electric utilities need not file or seek approval of such contracts from the Commission. Accordingly, Nicor Gas requests that the Commission grant Petitioner a variance from the requirements of Section 7-102, subsections (f), (g) , (h) and (i), insofar as that provision would require Commission approval of energy services contracts with United States government agencies resulting in revenues to the Company of up to $20 million total total.

The Company states that, in providing energy support services to United States government agencies, Petitioner may enter into subcontracts with third party service providers who would perform some of the necessary work. In the event that subcontractors are employed, they would be bound by the same terms and conditions as the Company would be with the government agency. In addition, additional warranties and indemnifications would be included in the subcontract to protect Nicor Gas from the risk of legal claims.

Further, Petitioner describes a number of the benefits that would result from the Commission's grant of the Company's Petition. The Company states that it intends to fully recover directly from contracting government agencies any costs of purchases, installations and financial investments, including a fair return on its investment, necessary to perform its energy support services, and that provision of these services would contribute to fixed cost recovery, thus benefiting all of Nicor Gas' customers. In addition, Petitioner states that, by

allowing Nicor Gas the opportunity to provide energy support services to government agencies, the development of government installations in Illinois would be promoted, and federal mandates with respect to energy efficiency and cost reductions would be met.

Moreover, Petitioner states that the Commission's grant of its Petition would allow the Company to gain valuable knowledge and experience in providing competitive, cost-efficient energy support services. In addition, Nicor Gas' would be allowed to compete for new business with electric utilities, thus allowing the Company to defer potential rate cases. Petitioner also explained that competitive bidding for government contracts would undoubtedly lower the cost of these services to government agencies, and to taxpayers. The Company states that, as a result of all of these benefits, the public would be convenienced by the Commission's grant of Nicor Gas' Petition.

Petitioner also states that the Commission's grant of its Petition, and the Company's provision of energy support services with a value of up to $20 million total, would have no adverse financial impact on the Company or Petitioner's ability to continue to provide adequate, safe, reliable and cost-effective energy services to its customers, or to meet any of its other obligations under the Act.

The Company requests approval of its proposed accounting treatment for revenues and expenses (including direct and allocated fixed and other indirect costs) associated with the provision of the energy support services contracts. Specifically, Petitioner proposes to record all revenues and expenses in below-the-line accounts, with revenues being recorded in Account 417, Revenues from Non-Utility Operations, and expenses recorded in Account 417.1, Expenses from Non-Utility Operations.

At the conclusion of the March 27, 1998 hearing, the Staff of the Commission stated that it did not oppose the Company's Petition. At the April 10, 1998, hearing, pursuant to the Commission's direction, the Staff of the Commission provided clarification of the Staff's position in this docket.

Ms. Karen Goldberger testified that the emergency accounting rules authorized by the Commission's Order in Docket 98-0014 on March 25, 1998 allows for the Company's proposed accounting treatment. Ms. Goldberger also noted that the 98-0014 Order provides that utilities will conduct biennial internal audits of their accounting records for non-public utility operations, and that the first such audit should be submitted to the Commission's Director of Accounting on or before December 1, 1998.

Mr. Alan Pregozen testified that he reviewed the risks and costs of capital implications of the Company's petition in light of the fact that, as a matter of policy, the Commission believes that the risks associated with unregulated, non-tariffed services should not be borne in whole or even in part by consumers of tariffed utility services. Mr. Pregozen stated that when a utility provides unregulated, non-tariffed services directly or through a utility subsidiary, under most circumstances, it is impossible to measure the risks and capital costs associated with tariffed utility services precisely enough to be assured

that the capital costs of unregulated, non-tariffed services are not included. He then reasoned that this this is equally true even when utilities do not provide any unregulated, non-tariffed services, cost of capital measurement is imprecise. Therefore, he concluded that although the provision of unregulated, non-tariffed services theoretically affects the utility's cost of capital; as a practical measure, such non-tariffed services could have no measurable affect on the utility's cost of capital when those non-tariffed services are limited in scope and size.

Mr. Pregozen testified that his review of the Company's petition indicates that the Petitioner's proposal is sufficiently limited in scope and size to prevent its provision of unregulated, non-tariffed services from measurably affecting its cost of capital. In terms of scope, Nicor has limited its request to the provision of energy support services to U.S. governmental agencies. In terms of its size, it has limited its request to $20 million total total in revenue, which is slightly more than 1% of the Company's $1.73 billion revenue in 1997. Mr. Pregozen testified that the Company's cost of capital should be protected and the potential harm to ratepayers should be minimized for the foregoing reasons.

Mr. Pregozen also testified that the Commission could establish monitoring procedures for any future requests by the Company for approval of contracts over the $20 million total limit in order to protect the cost of capital. The least cumbersome of the alternative procedures suggested by Mr. Pregozen was the Commission's undertaking to require the Company to report all prior approved unregulated, non-tariffed services contracts in any subsequent dockets.

Mr. Eric Schlaf testified as to the Staff's current position on utilities performing non-regulated services in light of the Commission's recent denial of Commonwealth Edison Company's 7-102 petition in Docket 96-0229. Mr. Schlaff stated that Nicor's petition in this case is substantially different from Commonwealth Edision Company Petition in Docket 96-0229 for the same reasons enunciated by Mr. Pregozen—i.e., Nicor's proposal is limited in scope and size. The Commonwealth Edison petition did not have any limitations on the market for which it sought to provide services, and it did not contain any monetary ceiling for the waiver of Commission approval.

Furthermore, Mr. Schlaf testified that the enactment of the Electric Service Customer Choice and Rate Relief Law of 1997 ("1997 Law") necessitates a slight departure from previous Commission considerations on this issue of utilities providing non-regulated services. Mr. Schlaf agreed with the allegation made in Nicor's Petition that this 1997 Law provides a competitive advantage for electric utilities over gas utilities in situations where both gas and electric utilities seek to provide competitive services. This 1997 was enacted after the Commission's Order in Docket 96-0229 was rendered. Thus, Mr. Schlaf stated that the position taken by the Commission in that docket is no longer feasible, particularly in light of the scope of Nicor's request for services rendered under U.S. government contracts. Mr. Schlaf, as well as Mr. Pregozen, testified to the fact that certain federal regulations and programs mandate that only public utilities which provide services to a U.S. governmental agency can provide energy support services to that U.S. governmental

agency. Thus, in this case, the only competitors for the Fermilab contract are Commonwealth Edison Company and the Petitioner, and of the two only Petitioner would be required under the 1997 Law to seek Commission approval.

Last, Mr. Schlaf indicated that the concerns voiced by the Commission in its 96-0229 Order are not relevant in this case. Due to the scope and size limitations of the Company's petition, Section 9-230 of the Act, which precludes the Commission from allowing any increased non-utility services risk to be reflected in the Company's rate of return on rate base, is not applicable to this case. Since the energy services in question here are related to the use of electricity, Nicor (unlike Commonwealth Edison Company) would not be able to exploit its monopoly over its gas distribution system and take significant advantage over rival energy service suppliers. As stated above, federal regulations preclude a Nicor affiliate from providing the same service to governmental agencies.

At the conclusion of the April 10, 1998 hearing, the Staff of the Commission again stated that it did not oppose the Company's petition.

The Commission, having reviewed the Petition and the record, is of the opinion and finds that:

(1) Northern Illinois Gas Company is an Illinois corporation engaged in the business of furnishing natural gas service to the public within the State of Illinois, and is a public utility within the meaning of Section 3-105 of the Act;

(2) the Commission has jurisdiction over Petitioner and the subject matter herein;

(3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by evidence of record and are hereby adopted as findings of fact;

(4) Petitioner's proposed variance from Section 7-102, subsections (f), (g), (h) and (i) of the Act to allow Petitioner to enter into energy support services contracts with United States government agencies in amounts of up to $20 million total is reasonable and will promote the public interest, and should be approved; and

(5) Petitioner's proposed below-the-line accounting treatment for revenues and expenses associated with the provision of energy support services contracts to United States government agencies is reasonable and should be approved.

IT IS THEREFORE ORDERED that the consent to and approval of a variance from Section 7-102, subsections (f), (g), (h) and (i) of the Public Utilities Act for energy support

services contracts with United States government agencies in amounts of up to $20 million total be, and hereby is, approved.

IT IS FURTHER ORDERED that, with respect to revenues and expenses associated with the energy support services contracts described herein, Petitioner should record all revenues in Account 417, Revenues from Non-Utility Operations, and all expenses in Account 417.1, Expenses from Non-Utility Operations.

IT IS FURTHER ORDERED that Petitioner is hereby granted any other relief as may be just, reasonable and appropriate, consistent with the Commission's approval herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Act.

By Order of the Commission this 13th day of April, 1998.

(SIGNED) DAN MILLER

Chairman

(S E A L)

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a Nicor Gas Company	:	
Application for consent to and approval of the waiver of certain provisions of Section 7-102 of the Illinois Public Utilities Act to permit the offering of energy support services on a competitive basis to United States governmental agencies.	:	98-0151

Concurring Opinion

April 13, 1998, Opinion of Commissioner Brent Bohlen Concurring with the Order Entered by the Commission on April 13, 1998:

Two points in support of the waiver request of Nicor Gas Company (Company) are accepted as fact in the Order although the evidence to support factual conclusions on those issues appears insufficient. First is the proposition that the provision of energy services is limited to electricity and therefore the Company would not be able to exploit its monopoly over its gas distribution system. Neither the Petition nor this Order limits the Company to provision of energy support services related to electricity. It appears the Company may provide gas energy support services under contract to governmental agencies with no Commission oversight within the parameters of the Order. It may be true that the Company would be unable to exercise any advantage in provision of gas energy services, but there was no testimony provided that discussed this issue.

Second, according to the Order, federal regulations specifically preclude a Company affiliate from provision of this service. The Federal authority cited, 42 USC 8256, does not specifically prohibit the provision of these services by an utility affiliate but states the following in relation to utility incentive programs:

(1) Agencies are authorized and encouraged to participate in programs to increase energy efficiency and for water conservation or the management of electricity demand conducted by **gas, water, or electric utilities** and **generally available to customers of such utilities.**
(2) Each agency may accept any financial incentive, goods, or services **generally available from any such utility**, to increase energy efficiency or to conserve water or manage electricity demand.
(3) Each agency is encouraged to enter into negotiations with **electric, water, and gas utilities** to design cost-effective demand management and conservation incentive programs to address the unique needs of facilities utilized by such agency.
(4) If an agency satisfies the criteria which **generally apply to other customers of a utility incentive program**, such agency may not be denied collection of rebates or other incentives. (Ex. A, p. 1 of 2, emphasis added.)

This language raises questions which were not specifically addressed by the testimony in this proceeding. First, what is the definition of "utility" in the federal regulations? Would a Company affiliate or QST or perhaps Enron or any other competitive energy services company be considered utilities for the purpose of increasing energy efficiency or conserving water or managing electricity demand under the federal regulations? Second, how does **generally available to customers of such utilities** comport with the Order In this case since energy support services are not generally available to Company customers? Subsection (3) above appears to allow negotiation for services not generally available to others but also appears to be limited to "demand management and conservation incentive programs." Does that place any limitation on the provision of energy support services, or do the terms "demand management" and "conservation incentives" encompass every possible category of energy support services?

While these questions were not asked and answered in this proceeding, the outcome appears consistent with the Commission's position in Docket No. 96-0310 (Commonwealth Edison contract with U.S. Naval Training Center at Great Lakes) and Docket No. 96-0411 (Commonwealth Edison contract with Walgreen Company) and distinguishable from the Commission's decision in Docket No. 96-0229 (Commonwealth Edison petition for general authority to provide energy support services without any limitation on value of those services). Therefore I concur in the Commission's Order.

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ORIGINAL

Draft Proposed Order of
Northern Illinois Gas Company

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

NORTHERN ILLINOIS GAS COMPANY	)	
	)	
Application for consent to and approval of the waiver of certain provisions of Section 7-102 of the Illinois Public Utilities Act to permit the offering of energy support services on a competitive basis to United States governmental agencies.	)	No. 98-0151

ILLINOIS COMMERCE COMMISSION
MAR 25 12 14 PM '98
CHIEF CLERK'S OFFICE

ORDER

By the Commission:

On February 19, 1998, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or "Company" or "Petitioner") filed a verified Petition with the Commission requesting consent to and approval of (i) a variance from Section 7-102, subsections (f), (g) and (h) of the Illinois Public Utilities Act ("Act") to bid for and offer, on a competitive basis, energy support services to United States government agencies under contracts of up to $20 million, without prior Commission approval, (ii) the Company's proposed accounting treatment of all associated revenues and expenses, and (iii) such other relief as may be just, reasonable and appropriate. In addition, the Company requests approval of the Company's Petition within 45 days to allow it to effectively compete with other public utilities providing, or seeking to provide, energy support services to United States government agencies.

Pursuant to notice given in accordance with law and the rules and regulations of the Commission, a hearing was held before a duly authorized Hearing Examiner of the Commission at its offices in Chicago, Illinois on March 27, 1998. Appearances were entered by counsel on behalf of Nicor Gas and by the Staff of the Public Utilities Division of the Commission. At the conclusion of the hearing, the record was marked "Heard and Taken".

In its Petition, Nicor Gas states that the United States Department of Energy ("DOE") has implemented regulations that provide incentives for certain government agencies to increase their efficiencies by entering into contracts with energy services providers. The regulations, 42 U.S.C. § 8256, allow such agencies to reduce the level of review necessary to enter into contracts with public utilities. In light of these incentives, Petitioner states that it has been asked to respond to a Request For Proposal ("RFP") from the Department of Energy, Fermi Group, in

Batavia, Illinois ("Fermi"), to bid on an energy support services contract. The Company states that it expected to receive the RFP in mid-February 1998, and that a response from Petitioner would be required within 45 days. Petitioner also states that the potential value of an energy support service contract with Fermi could exceed $5 million, the applicable threshold for Commission approval of such a contract under Section 7-102(i) of the Act. In addition to the potential contract with Fermi, Petitioner states that a potential exists for it to enter into other energy support services contracts with United States government agencies subject to the DOE's relaxed review provisions.

Petitioner states that, in order to have the ability to respond in a timely fashion to the Fermi RFP and other RFPs, it must be granted the requested variance from the requirements of Section 7-102 of the Act. Petitioner points out that that the recently enacted Section 16-116(b) of the Act provides that "an electric utility may offer any competitive service to any customer or group of customers without filing contracts or seeking aproval of the Commission, notwithstanding any rule or regulation that would require such approval." Petitioner explains that this provision places natural gas utilities at a decided disadvantage when attempting to respond in a timely manner to RFPs to perform certain energy services in competition with electric utilities; i.e., gas utilities must seek Commission approval of such contracts pursuant to Section 7-102 of the Act, while electric utilities need not file or seek approval of such contracts from the Commission. Accordingly, Nicor Gas requests that the Commission grant Petitioner a variance from the requirements of Section 7-102, subsections (f), (g) and (h), insofar as that provision would require Commission approval of energy services contracts with United States government agencies resulting in revenues to the Company of up to $20 million.

In its Petition, the Company states that, in providing energy support services to United States government agencies, Petitioner may enter into subcontracts with third party service providers who would perform some of the necessary work. In the event that subcontractors are employed, they would be bound by the same terms and conditions as the Company would be with the government agency. In addition, additional warranties and indemnifications would be included in the subcontract to protect Nicor Gas from the risk of legal claims.

Further, Petitioner describes a number of the benefits that would result from the Commission's grant of the Company's Petition. The Company states that it intends to fully recover directly from contracting government agencies any costs of purchases, installations and financial investments, including a fair return on its investment, necessary to perform its energy support services, and that provision of these services would contribute to fixed cost recovery, thus benefitting all of Nicor Gas' customers. In addition, Petitioner states that, by allowing Nicor Gas the opportunity to provide energy support services to government agencies, the development of government installations in Illinois would be promoted, and federal mandates with respect to energy efficiency and cost reductions would be met.

Moreover, Petitioner states that the Commission's grant of its Petition would allow the Company to gain valuable knowledge and experience in providing competitive, cost-efficient energy support services. In addition, Nicor Gas' would be allowed to compete for new business with electric utilities, thus allowing the Company to defer potential rate cases. Petitioner also explained that competitive bidding for government contracts would undoubtedly lower the cost of these services to government agencies, and to taxpayers. The Company states that, as a result of all of these benefits, the public would be convenienced by the Commission's grant of Nicor Gas' Petition.

Petitioner also states that the Commission's grant of its Petition, and the Company's provision of energy support services with a value of up to $20 million, would have no adverse financial impact on the Company or Petitioner's ability to continue to provide adequate, safe, reliable and cost-effective energy services to its customers, or to meet any of its other obligations under the Act.

In its Petition, the Company requests approval of its proposed accounting treatment for revenues and expenses (including direct and allocated fixed and other indirect costs) associated with the provision of the energy support services contracts. Specifically, Petitioner proposes to record all revenues and expenses in below-the-line accounts, with revenues being recorded in Account 417, Revenues from Non-Utility Operations, and expenses recorded in Account 417.1, Expenses from Non-Utility Operations.

At the conclusion of the March 27 hearing, the Staff of the Commission stated that it did not oppose the Company's Petition.

The Commission, having reviewed the Petition and the record, is of the opinion and finds that:

(1) Northern Illinois Gas Company is an Illinois corporation engaged in the business of furnishing natural gas service to the public within the State of Illinois, and is a public utility within the meaning of Section 3-105 of the Act;

(2) the Commission has jurisdiction over Petitioner and the subject matter herein;

(3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by evidence of record and are hereby adopted as findings of fact;

(4) Petitioner's proposed variance from Section 7-102, subsections (f), (g) and (h) of the Act to allow Petitioner to enter into energy support services contracts with United States government agencies in amounts of up to $20 million is reasonable and will promote the public interest, and should be approved; and

(5) Petitioner's proposed below-the-line accounting treatment for revenues and expenses associated with the provision of energy support services contracts to United States government agencies is reasonable and should be approved.

IT IS THEREFORE ORDERED that the consent to and approval of a variance from Section 7-102, subsections (f), (g) and (h) of the Public Utilities Act for energy support services contracts with United States government agencies in amounts of up to $20 million be, and hereby is, approved.

IT IS FURTHER ORDERED that, with respect to revenues and expenses associated with the energy support services contracts described herein, Petitioner should record all revenues in Account 417, Revenues from Non-Utility Operations, and all expenses in Account 417.1, Expenses from Non-Utility Operations.

IT IS FURTHER ORDERED that Petitioner is hereby granted any other relief as may be just, reasonable and appropriate, consistent with the Commission's approval herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Act.

By Order of the Commission this ___ day of _____, 1998.

(SIGNED) DAN MILLER

Chairman

(S E A L)

Nicor Gas Company
Response to Illinois Commerce Commission
Ill.C.C. Docket No. 12-0325
JMO First Data Request

JMO 1.03 Q. Please provide since inception through May 2012, a breakdown of the revenue and costs, by contract, by year, and in total of the Company's provision of energy support services to government agencies authorized in Docket No. 98-0151.

JMO 1.03 A. Please see attached confidential Exhibit JMO 1.03.

Company Witness: Robert R. Mudra

PUBLIC

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Peoples Gas, Light and Coke Company	:	
	:	
Petition for consent to and approval of the waiver of certain provisions of Section 7-102 of the Public Utilities Act to permit the offering of energy support services on a competitive basis to United States governmental agencies and for approval under Section 7-101 to perform such services through an affiliated interest.	:	**99-0345**

ORDER

By the Commission:

On June 22, 1999, The Peoples Gas, Light and Coke Company ("Petitioner" or "Peoples") filed a verified Petition requesting the Commission's consent and approval, pursuant to Sections 7-101 and 7-102 of the Illinois Public Utilities Act (the "Act"), of Petitioner's provision of energy support services to increase the energy efficiency of federal buildings located in Petitioner's service territory. Petitioner's provision of energy support services would be effected through agreements with Peoples Energy Services Corporation ("PE Services"), an affiliated interest of Petitioner within the meaning of Section 7-101 of the Act.

Pursuant to notice given in accordance with the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Hearing Examiner of the Commission at its offices in Chicago, Illinois on August 18 and September 24, 1999. Petitioner was represented by counsel and presented the testimony of Katherine A. Donofrio, Vice-President of Marketing, Business Development and Rates. Staff was represented by counsel and presented the testimony of Ed Bliler and Garrett Gorniak of the Financial Analysis Division and Peter Wagner of the Energy Division. At the conclusion of the hearing on September 24, 1999, the record was marked "Heard and Taken".

Position of Peoples

Testimony of Katherine A. Donofrio

Ms. Donofrio testified that Petitioner seeks a variance from Section 7-102, subsections (f), (g) and (h) of the Act, which require public utilities to file for Commission approval, any contracts the utility may enter into which are not directly related to the utility's business. She testified that Petitioner is an Illinois corporation engaged in the business of purchasing, storing, distributing, selling and transporting gas to approximately 840,000 customers in Chicago, Illinois. PE Services is also an Illinois corporation principally in the business of providing energy services to retail customers, including the sale of natural gas, natural gas management services and energy efficient services to Illinois commercial, industrial and governmental end users. Peoples Energy Corporation is a holding company with wholly-owned subsidiaries, including Petitioner and PE Services. Ms. Donofrio testified that it was her understanding from her legal counsel that Petitioner and PE Services were affiliated interests within the meaning of the Act.

Ms. Donofrio testified that Section 16-116(b) of the Electric Service Customer Choice and Rate Relief Law of 1997 provides that "an electric utility may offer any competitive service to any customer or group of customers without filing contracts with or seeking approval of the Commission." She testified that this provision places natural gas utilities at a decided disadvantage when attempting to respond in a timely manner to requests for proposals to perform certain services in competition with electric utilities. Gas utilities must still seek Commission approval of such contracts under Section 7-102, subject to certain exemptions, whereas filing of such contracts is no longer required of electric utilities. She stressed, however, that Petitioner is seeking a waiver of Section 7-102 only related to energy services provided to federal agencies.

Ms. Donofrio testified that the U.S. Department of Energy has implemented incentives for U.S. Government agencies to increase their energy efficiency by entering into contracts with energy service providers. 42 U.S.C. §8256 allows agencies to reduce bureaucratic review of such service contracts if the contracting party is a public utility. Also, Presidential Executive Order 113123 released in June 1999 for federal energy efficiency, increased conservation mandates for federal facilities and further encouraged use of these types of utility service contracts. She testified that, as a result of these incentives, Peoples voluntarily conducted an Investment Grade Audit for the Veterans Administration Chicago Health Care System ("VA"), to assess energy efficiency at their Westside and Lakeside medical centers. The result of the Audit is expected to lead to a project opportunity valued at between $3.6 million and $6.2 million. She further testified that there are opportunities for the Petitioner to offer energy support services to other government agencies. A project of greater than $5 million, however, would require Commission approval under Section 7-102. Section 7-102 filing requirements would interfere with Petitioner's ability to respond in a timely manner to the VA, if the contract is

in excess of $5 million, and with its ability to respond to other agencies and to compete with other providers.

Ms. Donofrio testified that Petitioner cannot commit more than $20 million of capital under such contracts at one time. She testified that permitting Petitioner to provide energy support services to government agencies would promote the development of government installations in Illinois and meet Federal mandates regarding energy efficiency and cost reductions. Furthermore, providing such services with up to $20 million capital would not adversely affect Petitioner financially or its ability to provide safe, reliable and cost effective service. Also, Petitioner will not necessarily experience a decrease in sales revenues from the installation of energy conservation measures, because some of the conservation projects could involve conversions to gas.

Ms. Donofrio testified that Petitioner is also seeking approval under Section 7-101 of the Act to offer the energy services to federal agencies through subcontracts with its affiliated interest, PE Services. Under 42 U.S.C. §8256, federal agencies can only obtain the energy services contemplated in this Docket from one their local public utilities. Federal Acquisition Regulation 52-244-5, however, would allow Petitioner to subcontract such services to an unregulated affiliated interest. PE Services will be bound by the contractual terms of Petitioner's agreements with federal agencies and those contracts will contain all warranties and indemnifications from PE Services necessary to protect Petitioner from risk. Additionally, there will be no adverse impact on Petitioner's cost of capital, because PE Services will insulate Petitioner from any loss and there is no reasonable likelihood of adverse impact on Petitioner's ratepayers because of PE Services warranties and indemnifications.

Ms. Donofrio testified that the Commission recognized the public convenience to be promoted in Section 7-101 and 7-102 proceedings contained in Dockets 92-0404 and 93-0039. Furthermore, the Commission granted authority to a gas utility to provide energy support services to federal agencies in Docket 98-0151.

Testimony of Staff Witnesses

Mr. Bliler testified that the energy support services proposed in this Docket would have no measurable effect on Petitioner's cost of capital, because they are so limited in size and scope. The total amount of capital to be committed at any one time is $20 million, approximately 1.1% of Petitioner's total utility plant for gas operations and 2.4% of its total utility revenues for gas operations. Furthermore, the scope of the proposed services will be limited to federal agencies.

Mr. Gorniak testified that he had reviewed Petitioner's responses to requests for information, particularly with regard to the accounting treatment proposed by Petitioner, and that it appeared to be appropriate for the transactions contemplated.

Mr. Wagner testified that he had reviewed the Petition, testimony and exhibits and did not oppose granting the Petition, insofar as the data indicated that the benefits were likely to exceed the costs or risks to Petitioner and its ratepayers.

Commission Analysis and Conclusions

The Commission agrees with Petitioner's assertion that committing up to $20 million in capital would not affect Petitioner's financial stability or its capability to provide safe, reliable and cost effective service. The testimony from Petitioner and Staff witnesses makes it clear that the proposed services are limited in size and scope. The maximum amount of capital, if committed, would constitute a mere 1.1% of Petitioner's total utility plant and only 2.4% of its total utility revenues for gas operations. Furthermore, Petitioner's witness also made it clear that the waiver from the dictates of subsections (f), (g) and (h) of Section 7-102 will pertain to energy services provided only to federal agencies.

Furthermore, the Commission does not dispute Petitioner's assurance that, in subcontracting the services to an affiliated interest, the subcontractor will be bound by Petitioner's agreements with federal agencies and that such contracts will contain all necessary warranties and indemnities to protect Petitioner from risk.

Based upon the foregoing, the Commission concludes that Subsections (f), (g) and (h) of Section 7-102 of the Act should be waived to permit Petitioner to offer energy support services to U.S government agencies on a competitive basis, and that such services should be offered through an affiliated interest, pursuant to Section 7-101.

Findings and Ordering Paragraphs

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) The Peoples Gas, Light and Coke Company is an Illinois corporation engaged in the business of purchasing, storing, distributing, selling and transporting gas to approximately 840,000 customers in Chicago, and is a public utility within the meaning of the Illinois Public Utilities Act;

(2) the Commission has jurisdiction over Petitioner and the subject matter herein;

(3) PE Energy Services is an Illinois corporation engaged principally in the business of providing energy services to retail customers, including the sale of natural gas, natural gas management services, and energy efficiency services to Illinois commercial, industrial and governmental end users;

(4) Peoples Energy Corporation is a holding company with wholly-owned subsidiaries, including Petitioner and PE Services;

(5) Petitioner and PE Services are affiliated interests within the meaning of Section 7-102 of the Act;

(6) the recitals of fact and law set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact and law herein;

(7) pursuant to Section 7-101 of the Act, Petitioner should be permitted to provide energy support services to federal agencies through its affiliated interest, PE Services;

(8) Petitioner should not be required to adhere to the provisions of subsections (f), (g) and (h) of Section 7-102 of the Act in providing energy support services to federal agencies.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that The Peoples Gas Light and Coke Company is granted authority pursuant to Section 7-101 of the Act to provide energy support services to federal agencies through its affiliated interest, PE Services.

IT IS FURTHER ORDERED that the Petitioner shall not be required to adhere to the provisions of subsections (f), (g) and (h) of Section 7-102 of the Act in providing the above described services.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 9th day of February, 2000.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Petition pursuant to Section 7-102 of the Illinois Public Utilities Act for consent to and approval of the provision of energy support services.	:	96-0229

ORDER

By the Commission:

On April 1, 1996, Commonwealth Edison Company ("Petitioner" or "ComEd") filed a verified petition with the Illinois Commerce Commission (the "Commission") seeking the Commission's consent and approval under Section 7-102 of the Public Utilities Act, subparagraphs (f), (g), and (h) (220 ILCS § 5/7-102 (f), (g) and (h)), to provide energy support services to energy users. Subsequently, ComEd filed an amended petition on August 23, 1996 explaining its proposal in greater detail.

Pursuant to notice given in accordance with law and the rules and regulations of the Commission, hearings were held on October 16 and 24, 1996, before a duly authorized Hearing Examiner of the Commission at its offices in Chicago, Illinois. ComEd and the Staff of the Commission each appeared, were represented by counsel, and presented evidence. Central Illinois Light Company ("CILCO") filed a Petition To Intervene, which is granted herein. The Northern Illinois coalition for Fair Competition ("NIFC") also appeared at the hearing and subsequently filed a Petition to Intervene which is granted herein. Neither CILCO nor NIFC presented evidence at the hearing. At the conclusion of the hearing on October 24, 1996, the matter was marked "Heard and Taken."

Initial and Reply Briefs were filed by ComEd and Staff. A copy of the Hearing Examiner's Proposed Order was duly served on the parties. Both ComEd and Staff filed Briefs on Exceptions and ComEd filed Reply Brief on Exceptions.

TESTIMONY OF THE PARTIES

ComEd Direct Testimony

At the hearings on October 16 and 24, 1996, ComEd presented the direct testimony of Jerry L. White, Marketing Vice President, and Thomas M. Panfil, Comptroller's Staff Manager.

Mr. White testified that ComEd proposes to offer energy support services including: the furnishing, design, engineering, construction, operation, analysis, and management of energy systems; the selection, evaluation, acquisition, installation, maintenance and testing of equipment, including energy efficiency and conservation equipment used in such systems; and the auditing of energy systems. In addition, energy support services may include training with respect to the use of such systems, contracting with other firms to provide equipment, the monitoring and verification of savings as well as testing services for all equipment, fuel and materials used in energy systems. He further testified that ComEd plans to negotiate with each entity requesting energy support services. The customer would bear the cost for the purchase and installation of any necessary equipment, but in certain circumstances, ComEd may elect to finance the customer's purchase. He also stated that ComEd may guarantee a specified level of reduction in energy and demand.

Mr. White stated that ComEd proposes to offer energy support services to meet emerging business needs and that its customers and others have expressed interest in having ComEd provide such services. He further testified that provision of these services would yield a number of benefits including the following: (1) provide a service that customers currently are requesting; (2) promote the more efficient and safe operation and use of electrical and other equipment; (3) provide customers with access to energy support services from an entity they know they can rely on; and (4) enhance the skills of ComEd personnel providing such services.

Mr. Panfil testified about ComEd's proposed accounting for the revenues and expenses associated with the proposed services. He stated that all expenses, both direct and allocated fixed and other indirect costs, associated with the proposed services would be recorded below-the-line in Account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work. All revenues from the services would be recorded below-the-line in Account 415, Revenues from Merchandising, Jobbing and Contract Work.

Staff Direct Testimony

Staff presented the direct testimony of two witnesses: Scott Rungren, Senior Financial Analyst in the Finance Department of the Public Utilities Division ("PUD"), and Garret E. Gorniak, Audit Supervisor in the Auditing Section of the Accounting Department of PUD.

Mr. Rungren expressed concern that providing non-utility services could increase the business risk of regulated utilities and that any incremental risk or increased cost of capital relating to non-utility services could not be segregated and removed from

utility risk in a rate-making proceeding as required by Section 9-230 of the Public Utilities Act. In particular, he testified that he did not know of a way accurately to quantify the impact, if any, of such incremental business risks or of any means by which ComEd could remove any such risk from its cost of capital. Mr. Rungren did not disagree with ComEd's application of the public convenience standard in this case. However, he did believe that the provision of energy support services may have an adverse impact on ratepayers if the effect on ComEd's cost of capital outweighed the expected benefits of providing the services. He further testified that if ComEd could quantify and remove the risk of providing non-utility services, then he would have no concern about ComEd violating Section 9-230. Mr. Rungren stated that ComEd's financing and guarantee proposals might create some level of incremental risk. He also expressed concern that approval of the Petition could "open the door" for ComEd to seek approval to provide additional non-utility services. Finally, Mr. Rungren testified that he would not be concerned about ComEd's risk if the proposed energy services were to be provided by an unregulated Unicom subsidiary.

Mr. Gorniak addressed ComEd's suggested accounting treatment for the proposed services. He testified that, since the proposed services are not necessary to provide utility service, the costs incurred and revenues received for providing these services should be considered non-operating expenses and revenues. Accordingly, he concluded that, if ComEd's petition is granted, expenses and revenue associated with offering energy support services should be recorded below-the-line. Mr. Gorniak also testified that such an accounting treatment would better enable the Commission to prevent cross-subsidization of the provision of energy support services by ratepayers.

ComEd Rebuttal Testimony

ComEd presented the rebuttal testimony of the following witnesses: Mr. Panfil; Mr. White; Willard T. Carleton, the Karl Eller Professor of Finance at the University of Arizona; and Morton I. Kamien, the Joseph and Carole Levy Professor of Entrepreneurship at the Kellogg Graduate School of Management, Northwestern University.

Mr. Panfil explained that ComEd's proposed below-the-line accounting treatment for energy support services meets with Mr. Gorniak's accounting requirements and prevents cross-subsidization of energy support services by utility ratepayers. Under the proposed accounting treatment, matching revenues from non-utility services with fully-costed expenses below-the-line is an appropriate means of ensuring that shareholders, rather than ratepayers, bear the risk of such non-utility services. Mr. Panfil explained that ComEd's proposed accounting treatment is consistent

with the accounting treatment directed by the Commission for ComEd and other utilities in circumstances where both above-the-line and below-the-line accounting were appropriate.

Mr. White responded to Mr. Rungren's concerns about risk. Mr. White testified that, if anything, permitting ComEd to provide the energy support services would decrease ComEd's risk. In order to remain competitive, ComEd must be able to respond to its customers' demands that it provide them with a range of energy support services. He explained that a utility that cannot offer energy support services will be at a greater risk of losing customers than a utility that can.

Mr. White further stated that the proposed financing arrangements pose no material risk to ComEd. First, the majority of arrangements would be with federal agencies which are not risky borrowers. Secondly, for the few loans ComEd may make directly to private customers, any small amount of risk can be anticipated and addressed through established credit management and pricing policies. He also testified that the proposed performance guarantees are not risky because ComEd's prudent engineering practices will greatly reduce any risk.

Mr. White's testimony also addressed the benefits of ComEd's provision of energy support services. In addition to meeting customer needs and increasing energy efficiency, ComEd's provision of energy support services would assist federal, state, and local entities in meeting state and national policy goals with respect to energy efficiency and cost reduction. He also testified as to why ComEd, and not a Unicom subsidiary, should provide the proposed services. First, customers simply prefer having a single source ("one-stop shopping") for both energy and energy support services. Second, federal agencies can obtain energy support services from a utility, such as ComEd, through a streamlined procedure. Third, combined energy and energy support services packages can promote customer retention. Finally, prohibiting ComEd from offering such services would limit the market and unfairly prevent ComEd from gaining necessary experience. Mr. White testified that approval of the petition would not "open the door" for ComEd to provide other non-utility services because the need for ComEd to offer these services is driven by customer demand, as expressed through the market.

Professor Kamien testified that ComEd's providing energy support services will not increase the risk premium on ComEd's debt nor its cost of capital. He explained that providing energy support services is a business complementary to but also different and distinct from, ComEd's core business. Prof. Kamien testified that providing these services would permit ComEd to diversify its business, lessen its overall business risk, and obtain capital at

more favorable rates and conditions. He stated that ComEd's proposal to finance certain energy support services would not pose any material risk because loans to federal agencies are virtually risk free and loans to private entities would be diversified over customers in different lines of business and priced so as to reflect the credit worthiness of each individual customer. The ongoing relationship between ComEd and the customer as well as the partial security from tangible assets would further limit any risk of loss to ComEd. Prof. Kamien stated that ComEd's proposal to guarantee the performance of certain equipment would not increase ComEd's risk because the proposed guarantees are very prudent and conservative and because any risk of loss on any single guarantee would be diversified. Finally, he stated that providing the energy support services only through a Unicom subsidiary would prevent ComEd from competing for the most attractive customers, namely federal agencies, which would put ComEd at a comparative disadvantage.

Professor Carleton responded to Mr. Rungren's concerns that ComEd's proposed services would impact its cost of capital. He testified that the risk, and hence the cost, of corporate financial capital that is not supporting rate base assets neither raises nor lowers the allow rate of return on rate base. Therefore, Prof. Carleton testified that the risk, if any, of ComEd's providing energy support services would not affect the cost of capital supporting ComEd's rate base assets. He also pointed out that Mr. Rungren's argument that the risk of unregulated businesses cannot be segregated effectively would prohibit ComEd and every other Illinois utility from participating in any unregulated business. Prof. Carleton testified that such risks can be segregated. He explained that estimates of the cost of capital for divisions of companies can be, and regularly are, undertaken. Moreover, he described a methodology to perform the requisite analysis which involves identifying financial characteristics of the regulated unit that define its risk and comparing that unit with other corporations that have similar types of financial characteristics. He stated that the determination of ComEd's cost of regulated capital in future rate proceedings will have to be based on opportunity costs, regardless of whether or not this Petition is approved.

Staff Rebuttal Testimony

Staff presented the rebuttal testimony of Mr. Rungren and Dr. Eric P. Schlaf, Senior Economist in the Electricity Program, Office of Policy and Planning.

Mr. Rungren stated that characterizing energy support services as competitive implies that these services increase risk. He disputed Mr. White's testimony that ComEd would lose customers if

not allowed to provide energy support services, stating that most retail customers cannot purchase their electricity elsewhere and, thus, would not bypass ComEd. Mr. Rungren testified that although he has not taken a position on the specific level of risk involved with the proposed financing, he is concerned that these arrangements expose ComEd to some unspecified level of risk. He also expressed concern regarding the potential default on loans to federal agencies if the agency's budget decreases or the agency closes down. He also disagreed with Prof. Kamien's conclusion that ComEd's entry into the energy support business would reduce risk because Prof. Kamien did not provide evidence that diversification would occur. Even if the proposed energy support services reduce ComEd's risk, he stated that subsidizing ratepayers would violate Section 1-102 of the Act. Mr. Rungren stated that it will be extremely difficult to know if the risk of providing non-utility services has been measured accurately and excluded when determining ComEd's cost of capital in a future rate proceeding. Although on cross examination Mr. Rungren noted that the assets, expenses and revenues from non-utility services can be segregated, he also noted that doing so is very difficult. He further noted that separating ComEd's common equity balance between utility and non-utility operations would be virtually impossible, and that separating items that represent cash flow would be difficult, if not impossible.

Dr. Schlaf testified that each of the results set forth by Mr. White supporting the public convenience standard could be accomplished if the services were provided by a Unicom subsidiary. He also stated that the Commission's Order in Docket 94-0274, which authorizes Unicom to utilize ComEd personnel for administrative and management activities, permits a Unicom subsidiary to utilize ComEd personnel to provide energy support services. Finally, he stated that approval of the Petition would allow ComEd to exploit its monopoly over the transmission system and would give ComEd an unfair competitive advantage in providing energy support services.

ComEd Surrebuttal Testimony

ComEd presented the surrebuttal testimony of the following witnesses: Mr. Panfil; Mr. White; Prof. Carleton; and Prof. Kamien.

Mr. Panfil testified that Mr. Rungren's claim that the Commission could not remove the incremental effect of an unregulated business on the utility cost of capital is inconsistent with the Uniform System of Accounts. The Commission's inclusion of accounts to record both costs and revenues related to non-operating activities below-the-line recognizes the expectation that utilities would engage in non-utility activities and that the effect, if any, of such non-operating revenues and expenses can be measured and removed from utility cost-of-capital in a ratemaking proceeding.

loans to federal agencies are backed by the full faith and credit of the U.S. government, so that budget cuts or the dissolution of a particular agency would not affect the risk of the loans. Prof. Kamien testified that while the risk of loss on any particular business project exists, that does not mean that the market will perceive ComEd's entry into the business of providing energy support services as risky, or as increasing ComEd's business risk. Furthermore, he stated that Mr. Rungren's concerns regarding performance guarantees, again, incorrectly focus on risk at the individual customer level, rather than the business in total.

COMMISSION ANALYSIS AND CONCLUSIONS

This proceeding is governed by Section 7-102 of the Act. Section 7-102 provides that public utilities may engage in unregulated business activities (Subsection (g)), may make contractual guarantees (Subsection (f)), and may offer financing (Subsection (h)), if after petition to the Commission and after conclusion of a hearing on the petition, "the Commission is satisfied that such petition should reasonably be granted, and the public will be convenienced thereby." The Commission recently revisited this public convenience standard in Commonwealth Edison Company ("ComEd") (Docket No. 95-0615, March 12, 1997). In ComEd, the Commission reiterated its broad discretion to decide whether a proposed transaction should be approved under the public convenience standard. For the purposes of Docket 95-0615 we found that approval of a transaction should be granted if the evidence indicates that the benefits to ratepayers are reasonably likely to exceed the costs or harms to ratepayers. The Commission is applying the ComEd standard in this case and we find that this petition is not in the public interest and should be denied.

Additionally, the Petitioners have argued that the appropriate standard to apply is that found in Illinois Power Company ("Illinois Power") (Docket 93-039 (May 19, 1993)) ComEd In. Br. at 2-3. In Illinois Power we found that, given the evidence in that case, it was reasonable to allow a utility to invest in an unregulated affiliate if the ratepayers were left indifferent. While the Commission's preferred standard is that found in ComEd we note that the Petitioner has not met the lesser Illinois Power standard either. Below we examine the reasoning behind our decision.

Section 9-230 of the Act precludes the Commission from allowing any increased risk from providing non-utility services to be reflected in ComEd's allowed rate of return on rate base. While it is apparent that Section 9-230 requires specific action by the Commission only in the context of a rate case in which a utility's allowed rate of return is determined, the Commission cannot ignore the obligations imposesed by Section 9-230 at any time when its

Mr. White disagreed with Messrs. Rungren and Schlaf regarding ComEd's entry into a competitive market. He testified that there is nothing inherently inappropriate, undesirable, or risky about a utility providing competitive services. Moreover, ComEd is not proposing to provide energy support services instead of energy; rather, the energy support services would be offered in addition to energy services to avoid losing both customers and revenue. Mr. White also testified as to a number of customers that already have bypassed ComEd because other entities offered combined energy and energy support service packages. He stated that, despite Staff's assertions to the contrary, ComEd must currently compete with energy supply alternatives such as fuel switching, relocation and cogeneration. Furthermore, he testified that ComEd will not and cannot take advantage of its "monopoly" in the transmission market to sell energy support services.

Mr. White disagreed with Staff's opinion that all unregulated services can and should be undertaken through an unregulated Unicom subsidiary. Where lines of business are not highly risky and where they can benefit the regulated company, there is no reason why a utility should not be allowed to engage in them. In any event, ComEd currently could not provide energy support services through an unregulated subsidiary of Unicom because, among other reasons, the existing cost allocation agreement approved in Docket 94-0274 does not permit Unicom to use ComEd engineering and design services. Moreover, a Unicom subsidiary would take some time to set up even after approval of a cost allocation contract and ComEd would have to provide such services in the interim. Mr. White reiterated why the public is served best by ComEd being allowed to offer these services regardless of whether an unregulated Unicom affiliate also could market these or other services.

Prof. Carleton testified that permitting ComEd to offer energy support services would not affect the Commission's ability to determine its cost of regulated capital. He pointed out that ComEd and numerous other utilities long have engaged in unregulated businesses and yet their cost of regulated capital continues to be determined in rate cases. Prof. Carleton also stated that Mr. Rungren's solution of offering the services through a subsidiary would not eliminate any risk measurement problem. Any material risk of providing energy support services would impact Unicom's stock price, regardless of whether those services are provided by an unregulated Unicom subsidiary or by ComEd.

Prof. Kamien explained why diversification will occur where, as here, the regulated and unregulated businesses are not identical. He also testified that it is not necessary to quantify the "risk reduction" associated with these services to know that there will be a benefit. In response to Mr. Rungren's concerns about lending money to federal agencies, Prof. Kamien stated that

loans to federal agencies are backed by the full faith and credit of the U.S. government, so that budget cuts or the dissolution of a particular agency would not affect the risk of the loans. Prof. Kamien testified that while the risk of loss on any particular business project exists, that does not mean that the market will perceive ComEd's entry into the business of providing energy support services as risky, or as increasing ComEd's business risk. Furthermore, he stated that Mr. Rungren's concerns regarding performance guarantees, again, incorrectly focus on risk at the individual customer level, rather than the business in total.

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Additionally, the Petitioners have argued that the appropriate standard to apply is that found in Illinois Power Company ("Illinois Power") (Docket 93-039 (May 19, 1993)) ComEd In. Br. at 2-3. In Illinois Power we found that, given the evidence in that case, it was reasonable to allow a utility to invest in an unregulated affiliate if the ratepayers were left indifferent. While the Commission's preferred standard is that found in ComEd we note that the Petitioner has not met the lesser Illinois Power standard either. Below we examine the reasoning behind our decision.

Section 9-230 of the Act precludes the Commission from allowing any increased risk from providing non-utility services to be reflected in ComEd's allowed rate of return on rate base. While it is apparent that Section 9-230 requires specific action by the Commission only in the context of a rate case in which a utility's allowed rate of return is determined, the Commission cannot ignore the obligations imposesed by Section 9-230 at any time when its

actions may impact its future ability to discharge its obligations under Act. In this case, granting ComEd's petition will permit ComEd to add the range of non-utility and unregulated activities in which it already engages. That expansion of activity will incrementally increase the difficulty for the Commission in excluding the risk of ComEd's non-utility activities in any future rate case, as required by Section 9-230.

The testimony of Staff witness Rungren indicates that permitting ComEd to increase its level of non-utility and unregulated activities will increase the difficulty of the Commission's accurately determining the proper rate return on ComEd's rate base. The Commission notes that ComEd witness Carleton argued that the risk of providing non-utility services can be segregated, and that any incremental risk impact would be on Unicom's stock price, regardless of whether the non-utility services are provided by an unregulated Unicom subsidiary or by ComEd. However, the risk in any future ComEd rate case to which Section 9-230 relates would be that of ComEd's non-utility activities, not those activities of Unicom. More to the point, it is ComEd's risk, not Unicom's risk, that must be determined in ComEd's future rate proceedings. Mr. Rungren's concern about the application of Section 9-230 is entirely valid and is recognized by the Commission.

The Commission is mindful, in this respect, of the holding in the recent appellate court decision in Illinois Bell Telephone Co. v. Illinois Commerce Commission, 218 Ill. Dec. 598, 669 N.E. 2d 919 ((Ill. App. 2 Dist 1996) ("Illinois Bell"). The Appellate Court in that case concluded that the Commission is not permitted to simply make a determination of a reasonable amount of incremental risk of increased cost of capital which might be included for the ratepayers to bear in a utility's rate of return. The court concluded that the legislature imposed an "absolute" standard and the Commission may include no risk or increase "whatsoever" in making a rate of return determination., (Illinois Bell at 218 Ill. Dec. 612)

The Illinois Bell decision obligates the Commission to carry a singularly imposing burden. In meeting that burden, the Commission is obligated to comply with Section 9-230 in the most literal sense. The Commission's standard cannot merely be one of reasonableness. The Commission may not permit any incremental risk or increased cost of capital resulting from a utility's unregulated or non-utility activities to be reflected by ratepayers. The Commission will not take actions in this proceeding which will increase the difficulty the Commission will experience in discharging its future obligations under Section 9-230, especially in the light of the additional objectionable characteristics of ComEd's proposal described below.

The Commission notes the testimony of Staff witness Schlaf that permitting ComEd to enter into the energy services business will give ComEd an unfair advantage over potential competitors in that business. The record establishes that the current ComEd customers desire energy services and that ComEd has competitors for the energy services business of ComEd's customers.[1]

ComEd claims that its customers desire what it has described as "one stop" shopping for energy services and energy. There is no evidence that any of ComEd's potential competitors are offering bundled services--that is, energy from remote generating sources and energy services-- to ComEd customers. Energy services suppliers can offer only a combination of power generated at a customer's location and energy services because ComEd has no tariffs in place which permit non-regulated energy service providers to offer to their customers, generation system energy along with energy services.

ComEd's ability to offer bundled energy and energy services will provide ComEd the monopolist's advantage in the energy services business. Permitting ComEd to enter the energy services market with a monopolist's advantage over an important element of potential services, remotely generated energy, in that market will not convenience in the public. In fact, the public will be harmed by such permission.

Permitting ComEd to enter the energy services market with the monopolist's ability to provide a significant portion of the services for which customers are shopping will seriously disadvantage other competitors, no matter how well-capitalized those competitors may be. Granting ComEd unlimited access to the energy services market, with the monopoly power it will be able to exercise, will adversely affect the development of that market, and will therefore harm ComEd's ratepayers.[2]

The record supports a conclusion that there currently may be numerous energy services providers. However, any provider able to dominate the market by virtue of its position as a monopolist of

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[1] ComEd claims it has lost customers to those competitors. However, ComEd neither specifically identified those customers nor determined that they were lost specifically because ComEd cannot offer energy support services.

[2] The energy services market consists mainly (or solely) of current and future ComEd customers. Thus, ComEd ratepayers and the public in this instance can be seen as the same group that would be harmed if ComEd were permitted to take advantage of its position as a monopolist.

one service in that market--as ComEd is--will inevitably drive many, or all, competing firms from the market. When ComEd attains a dominant market position, it can reasonably be expected to exercise market power by exploiting the market through raising prices and/or restricting the provision of service. Moreover, ComEd can flourish in the market even though it may not be the lower-cost supplier of energy services. Thus, ComEd customers desiring energy services will not receive a competitive price for energy services because there will be no competitive price.

Aside from the traditional monopolist's motive to drive competitors from the market, ComEd will have an additional motive to degrade the energy services market. ComEd will be in the anomalous situation of marketing energy services which can only help its customers reduce the energy they buy from ComEd. ComEd will have to decide if it is more profitable to charge energy services customers the monopolistic rate it can charge as the sole energy services supplier or to withhold energy services entirely. Neither outcome can possibly convenience the public.

Denying ComEd's petition will not exclude Unicom from the energy services market. As an unregulated entity, Unicom may enter the energy services market at its pleasure. Moreover, as Dr. Schlaf pointed out, Unicom may also employ ComEd personnel to perform the services. Furthermore, ComEd will retain the ability to seek permission from the Commission to provide energy services on a case-by-case basis.

The Commission notes that in a prior proceeding approving the provision of energy services by ComEd on a customer specific basis(i.e., Docket 96-0411), it concluded:

> Although the instant proceeding is not a rate case, the public would clearly not be served by our approval of a non-utility service contract that adds risk that could not be removed from calculations of the appropriate cost of capital during a rate case. However, no witness quantified the additional risk ComEd would be exposed to by entering into this agreement, whether doing so on its own or through a non-regulated Unicom subsidiary. Since the record evidence suggests that it is unlikely that a single $15,000 contract would have a detectable impact on ComEd's cost of capital (<u>as several may have</u>), it is the Commission's opinion that the approval of the agreement between ComEd and Walgreen will not adversely affect the public in this regard. (Order, 96-0411, p.7, emphasis added)

> The Commission further concluded in Docket 96-0411;
>
> Such business operating and other services we believe fall within the scope of Docket 95-0615, which is currently pending before the Commission and which seeks approval of comprehensive policies and procedures for cost-allocation between ComEd and Unicom. Accordingly, at the present time there is no cost allocation agreement in place between Unicom and ComEd that permits the provision of the type of services which are the subject of the Agreement at issue in this Proceeding. (Id)

The Commission has since approved the comprehensive policies and procedures for cost allocation between ComEd and Unicom in Docket 95-0615 that prevented an unregulated affiliate of ComEd from the provision of these services. The Commission also notes that the limited protection against adverse ratepayer effects that a single $15,000 contract offered (as noted in 96-0411) dissolves with blanket approval for numerous contracts as proposed in the instant docket.

The only issue before the Commission is whether the proposed services identified in ComEd's petition should be authorized under Section 7-102 because they meet the public convenience standard of that section of the Act. Based upon review of the amended petition and the entire record in this proceeding, the Commission finds that ComEd has not demonstrated that its proposal to provide energy support services satisfies the requirements of Section 7-102 of the Act. Permitting ComEd to provide energy support services as requested in its petition will not convenience the public and will adversely affect ComEd's ratepayers.

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

(1) Commonwealth Edison Company, an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois, is a public utility within the meaning of the Public Utilities Act;

(2) the Commission has jurisdiction over ComEd and the subject matter herein;

(3) the recitals of fact and law heretofore set forth in the prefatory portions of this Order are supported by the

evidence and are hereby adopted as findings of fact and conclusions of law herein;

(4) ComEd's proposal to provide energy support services will not promote the public convenience and is rejected;

(5) the amended petition is not approved;

(6) any objections, petitions and motions which remain undisposed of should be disposed of in a manner consistent with the conclusions contained in this Order.

IT IS THEREFORE ORDERED that the petition of Commonwealth Edison Company to use, appropriate and divert its money, property and resources into the business of providing energy support services is denied.

IT IS FURTHER ORDERED that any objections, petitions and motions which remain undisposed of shall be disposed of consistent with conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provision of Section 10-113 of the Public Utilities Act and 83 Ill. Ad. Code 200.880 this Order is final; it is not subject to the Administrative Review Law.

By the Order of the Commission this 31st day of March, 1997.

(SIGNED) DAN MILLER

Chairman

(S E A L)

Nicor Gas Company
Response to Illinois Commerce Commission
Ill.C.C. Docket No. 12-0325
DAS First Set of Data Requests

DAS 1.02 Q. Regarding Mr. Mudra's direct testimony regarding the maximum amount allowed by the Commission in total expenditures (Nicor Gas Ex. 1.0, p. 3), please provide the following information.

a. What is the "potential ambiguity" of which the witness speaks?

b. Is it the witness' opinion that the Order from Docket No. 98-0151 limits the amount spent up to $20 million total?

c. Would Nicor Gas be willing to propose a limit of up to $20 million revenues for active projects at a single time (i.e. that the sum of contracts for projects not complete would be $20 million)?

DAS 1.02 A. a. Mr. Mudra stated that "Nicor Gas seeks approval of the Petition to avoid any potential ambiguity that may exist within the 1998 Order." Nicor Gas Ex. 1.0, 3:56-57. That statement refers to the Commission's finding paragraph (4) in the Order in Docket No. 98-0151, which in its entirety states as follows:

> (4) Petitioner's proposed variance from Section 7-102, subsections (f), (g), (h) and (i) of the Act to allow Petitioner to enter into energy support services contracts with United States government agencies in amounts of up to $20 million total is reasonable and will promote the public interest, and should be approved;

In this finding, the Commission authorized Nicor Gas to enter into multiple contracts with multiple United States government agencies in multiple amounts of up to $20 million total, yet it is somewhat unclear as to whether that means $20 million per contract or $20 million total for all such contracts.

b. In Mr. Mudra's non-legal opinion, the language in the Commission's finding paragraph (4) in the Order in Docket No. 98-0151 is unclear. Nicor Gas further refers to its response to subpart (a) above.

c. No, Nicor Gas has proposed that the consideration or sale price of each individual contract be less than $20 million.

Company Witness: Robert R. Mudra

SECTION 285.3600
SCHEDULE C-32
NON-UTILITY OPERATIONS

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

Test Year: 12 Months Ended 12/31/09

Line No.	Description of the Operation (A)	Date Utility Began Engaging in Operation (B)
1	**"Above the line" activities:**	
2	Direct Mail Marketing (50%) - Advertisement inserts from vendors in the Nicor	1990
3	Gas bills.	
4	Transportation to other LDC's - Utilization of Nicor Gas' transmission facilities	early 1990's
5	to take gas from an interstate pipeline and deliver it to another local distribution company.	
6	Gas Exchange - Software that enables a supplier to monitor the storage, delivery	1991
7	and usage of gas for its customer. Nicor Gas is the administrator of this software	
8	and the user purchases a monthly subscription to have access to the software.	
9	Revenue consists of subscription and administrative fees, connection fees, and	
10	electronic billing fees.	
11	Gas Trac - Royalty payments on the sale of Gas Trac, a device capable of locating	1990
12	and measuring low-level concentrations of different gases.	
13	**"Below the line" activities:**	
14	Farm Rents - Income from tenants farming on property owned by Nicor Gas	Prior to 1970
15	Farm Agent Expense - Expenses incurred for having an agent that oversees	Prior to 1970
16	the tenant farm operations. (e.g. negotiating lease arrangements and collecting rents)	
17	Direct Mail Marketing (50%) - Insertion of advertisements from vendors into Nicor	1990
18	Gas bills.	
19	Easement lease - Lease of an easement to Horizon Pipeline LLC.	2001
20	Sales of meters	2003
21	Pipeline facilities lease- Lease of facilities to Aux Sable Liquid Products LP	2008

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DAS 1.01 Q. Regarding Mr. Mudra's direct testimony regarding Nicor Gas's proposed use of subcontractors to provide energy support services (Nicor Gas Ex. 1.0, p. 5), please provide the following information.

a. Will these sub-contractors utilized include any affiliated interests of Nicor as defined by the Act?

b. If so, under what provision of the Service Agreement or the Operating Agreement would such transactions be allowed? Provide a citation.

c. Did Nicor Gas use any subcontractors in its previous projects?

d. If so, provide a list of all sub-contractors and the amount of revenues and costs associated with each.

e. Did any sub-contractors utilized include any affiliated interests of Nicor as defined by the Act?

f. If so, were these affiliate transactions approved or authorized by the Commission. If so, provide a citation. If not, why not?

DAS 1.01 A. a. It has not yet been determined if any potential future subcontractors would be affiliated interests of Nicor Gas.

b. Nicor Gas refers to its response to subpart (a) above.

c. Yes.

d. Nicor Gas no longer has any records reflecting the subcontractors used in its previous projects and, accordingly, is unable to provide a response.

<u>SUPPLEMENTAL RESPONSE</u>:

Subsequent to providing its original response on July 11, 2012, Nicor Gas located information regarding the subcontractors used in connection with the projects listed on Confidential Exhibit JMO 1.03, which were as follows:

Advanced Compressor Systems
AMS Mechanical Systems, Inc.
Borg Mechanical Contractors Inc.
Centimark Roof Systems
Cini-Little International, Inc.
Clean Fuel Services
Dreisilker Electric Motors

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DAS 1.01 A.
Continued

Elevator Consultants
EnergyUSA, Inc.
Fox Valley Fire & Safety Inc.
GKC/EME LLC
Hannon Armstrong & Company
Hy-Safe Technology
Johnson Controls, Inc.
Kroeschell Engineering Co.
Mechanical Services Associates
Midwest Energy Resources
Morse Electric
Nuline Technologies
Retro-Tech Systems, Inc.
Schweppe Inc.
Youngren's Inc.

Nicor Gas objects to this request to the extent it seeks information regarding "revenues and costs" associated with the subcontracts on the basis that it is not relevant to the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Nicor Gas states that it no longer has records reflecting the amount of revenues and costs associated with each subcontract.

e. Nicor Gas refers to its response to subpart (d) above.

SUPPLEMENTAL RESPONSE:

Nicor Gas objects to this request on the basis that it is not relevant to the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Nicor Gas states that one of the subcontractors used in connection with the projects listed on Confidential Exhibit JMO 1.03—Clean Fuel Services—was an affiliate of Nicor Gas as defined by the Public Utilities Act. Nicor Gas further refers to attached Confidential DAS 1.01 Supplemental Exhibit 1.

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DAS 1.01 Continued A.

f. Nicor Gas refers to its response to subpart (d) above.

SUPPLEMENTAL RESPONSE:

Nicor Gas objects to this request on the basis that it is not relevant to the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Nicor Gas states that the response to the data request is contingent upon information that is no longer within its possession or control and, accordingly, Nicor Gas is unable to provide a response.

Company Witness: Robert R. Mudra