

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a)	
Nicor Gas Company)	
)	Docket No. 10-0567
Petition pursuant to Rider 29 of Schedule of)	
Rates for Gas Service to Initiate a Proceeding to)	
Determine the Accuracy of the Rider 29)	
Reconciliation Statement)	

**REPLY BRIEF ON EXCEPTIONS OF
THE CITIZENS UTILITY BOARD AND
THE PEOPLE OF THE STATE OF ILLINOIS**

NOW COME the Citizens Utility Board (“CUB”), through one of its attorneys, and the People of the State of Illinois, through Lisa Madigan, Illinois Attorney General (“AG”), and hereby file their Reply Brief on Exceptions in response to the Brief on Exceptions (“BOE”) of Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor” or “the Company”) to the Administrative Law Judge’s (“ALJ”) Proposed Order. The Proposed Order correctly disallowed expenditures that were not approved by the stakeholder Advisory Board (“Board”), the body established by the Illinois Commerce Commission (“ICC” or “Commission”) to oversee Nicor’s 2009 Energy Efficiency Program expenditures. The Commission was clear that the Board “shall have total financial responsibility for any expenditure made pursuant to [Nicor’s] Energy Efficiency Plan” in 2009. ICC Docket 08-0363 Final Order at 162-63. As the Proposed Order properly concluded, Board approval was required for recovery of Energy Efficiency Plan expenses in 2009, and the Board did not approve the Request for Proposals (“RFP”) consultant expenses at issue. Proposed Order at 15. As a result, these expenses are presumed imprudent and unreasonable. The only evidence in the record in fact shows that even without a presumption of imprudency and unreasonablenss, the expenses associated with Nicor’s RFP were in fact unreasonable.

ARGUMENT

In its BOE, Nicor's claims that the Board was not intended to have oversight on expenditures during 2009. Nicor BOE at 3, "No Approval of the Expenditures Was Required." Nicor further argues that the Board did not have to approve "individual" expenses, just an "overall budget." *Id.* at 4. The plain language of the 08-0363 Order, that the Board "shall have total financial responsibility for any expenditure made pursuant to [Nicor's] Energy Efficiency Plan" in 2009, clearly contradicts those assertions. *See* 08-0363 Final Order at 162-63. Nicor's position that "there is nothing in the record showing that the Advisory Board must approve EEP-related expenditures" and that there is no requirement that the Board approve EEP expenses in order for them to be recoverable, contravenes the Commission's express intent in that Order.

Nicor asks the Commission to ignore the clear language of the Commission's 08-0363 directive on the issue of Board approval and requests that the Commission approve the RFP consultant expenses, regardless of Board disapproval, because they were supposedly otherwise prudent and reasonable. Nicor BOE at 4-7, Nicor BOE Exhibit A at 15-16. The Proposed Order correctly identifies the true issues related to this expense – whether the Board had authority to disapprove expenditures, and whether the Board exercised that authority. In this case, the Board had explicit authority to approve and disapprove of energy efficiency program expenditures, and proceeded to use that authority to vote no on the RFP expenses at issue here.

The Board's explicit rejection of these expenses makes those expenses presumptively imprudent and unreasonable. As discussed above, the Proposed Order is correct that the Board had the authority to reject those expenses, and it exercised that authority. When the Board voted on the RFP expense, the motion did not pass. CUB/AG Ex. 1.06. Additionally, CUB/AG witness Rebecca Devens presented evidence that the expenses were not prudent and reasonable

due to significant program delays. CUB/AG Ex. 2.0 at 4-5. She testified that KO and Bass were hired specifically to make Nicor's Energy Efficiency programs available to customers for the 2009/2010 winter heating season, but the program launch was delayed well past the heating season. *Id.* at 5. Rather than being available October 1, they were not available until May 1, seven months after the date the Commission ordered the programs to become available. *Id.* The Commission itself stated that a delay which caused the programs to launch after the heating season would compromise the efficacy of the program. 08-0363 Final Order at 162.

CUB/AG further disagrees with Nicor's statement that the PO "refuses to adopt CUB/AG's proposal" that the expenses at issue are imprudent or unreasonable in part because of the program delays. *See* Nicor BOE at 6. The Proposed Order makes no such statement or even insinuation. In addition, Nicor's accusation that it was CUB and the AG who caused the delays in the first place is baseless. *See* Nicor BOE at 7. It is certainly true that even as Board members, CUB and the AG expressed concern over the prudence and reasonableness of these expenses. *See* CUB/AG Ex. 1.5. However, simply exercising the authority given them by the ICC is not reason for Nicor to blame its own board members for the program's delays. Nicor has twice now failed to convince those in a position to judge that these RFP expenses are reasonable: neither its own Board nor the Administrative Law Judge have seen any evidence contrary to the positions taken by CUB and AG. In its Final Order, the Commission should hold Nicor – not the Board members trying to ensure cost-effectiveness -- accountable for the seven-month program delay.

The Proposed Order properly determined that the Commission delegated authority to the Advisory Board to approve or reject 2009 expenses, and the Board did not approve the RFP consultant expense. The Commission should maintain its previous decision to delegate that

authority, and should adopt the Proposed Order's conclusion to reject consultant expenses that were not approved by the Board.

Respectfully Submitted,

CITIZENS UTILITY BOARD



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