

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company)	
)	ICC Docket No. 12-0511
Proposed General Increase for Gas Distribution Services)	
)	
)	consolidated with
The Peoples Gas Light and Coke Company)	
)	
Proposed General Increase for Gas Distribution Services)	ICC Docket No. 12-0512
)	

REPLY BRIEF ON EXCEPTIONS

On behalf of

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**BEFORE THE ILLINOIS COMMERCE COMMISSION
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REPLY BRIEF ON EXCEPTIONS OF IGS ENERGY

Interstate Gas Supply of Illinois, Inc. (“IGS Energy”), by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), respectfully submits this Reply Brief on Exceptions in the above-captioned proceeding regarding a proposed general increase in gas rates of The North Shore Gas Company ("North Shore") and The Peoples Gas Light and Coke Company ("Peoples") (collectively, the "Companies").

I.

INTRODUCTION

The Commission has recognized that in order for a choice program to deliver benefits to customers, it must be properly designed. (*See Ameren Illinois Proposed General Increase in Natural Gas Rates*, January 10, 2012 Final Order at 193, ICC Docket No. 11-0282 (IGS Energy Cross Ex. 2).) The Proposed Order appropriately takes a significant step towards improving the struggling competitive retail market in the Companies' service territory by adopting IGS Energy's recommendation to improve the Choices For You program by spreading the administrative cost among all customers who are eligible to participate in Choices For You. (*See IGS Energy Brief on Exceptions* at 1, 14-15.) The Companies have indicated that they are willing to accept the

Proposed Order's finding on this issue. (*See* Companies Brief on Exceptions at 73.) IGS Energy welcomes the Companies' willingness to adopt that position. Although IGS Energy welcomes and supports the position now advocated by the Proposed Order and accepted by the Companies to spread all Choices For You-related costs to all eligible customers, IGS Energy continues to advocate for the other pro-consumer, pro-competitive changes to the Companies' choice program that it advanced in this proceeding.

X.

TRANSPORTATION ISSUES

A. Uncontested Issues

1. Purchase of Receivables (Withdrawn)

With regard to Purchase of Receivables ("POR"), the Proposed Order properly concludes that "since IGS Energy has withdrawn its POR proposal for CFY suppliers the issue is moot." (*See* Proposed Order at 264.) No party to this proceeding takes exception to that conclusion, and IGS Energy reiterates its support for that conclusion. (*See* IGS Energy Brief on Exceptions at 3.)

2. Commission Authority to Order an Investigation on Provider of Last Resort

The Proposed Order properly concludes that the Commission "clearly possesses broad investigatory authority under the Act and could initiate an investigation of whether the Companies should continue to act as the provider of last resort." (*See* Proposed Order at 265.) No party to this proceeding takes exception to that conclusion, and IGS Energy reiterates its support for that conclusion. (*See* IGS Energy Brief on Exceptions at 4.)

B. Contested Issues

Introduction to Contested Issues

The Proposed Order appropriately concludes that the administrative costs associated with the Choices For You program should be spread among all customers who have been given the option to take service under that program:

The Commission reiterates its view that that all customers benefit from being given the opportunity to participate in a well-designed competitive market. The benefits of customer choice extend beyond just those customers who actually switch suppliers. All eligible customers benefit from a well-designed competitive program, whether they choose to participate in the competitive market or remain customers of the Companies. Because all eligible retail customers benefit from a competitive program, the costs for running that program should be recovered from all of those eligible customers. Given the cost spreading approach taken in a variety of other analogous contexts -- such as energy efficiency and peak time rebates programs -- this would seem to be a non-controversial position at this point. The Companies are directed to modify their cost recovery methodology for the Choices For You program accordingly.

(Proposed Order at 277.) In their Brief on Exceptions, the Companies accept the Proposed Order's conclusion that the costs associated with the Choices For You program should be spread among all eligible customers. (See Companies Brief on Exceptions at 73.) The Companies' acceptance of this position is a positive development that is consistent with the Commission's historic pro-competitive, balanced approach to encouraging well-designed choice programs for Illinois consumers. (See, e.g., *Ameren Illinois Proposed General Increase in Natural Gas Rates*, January 10, 2012 Final Order at 193, ICC Docket No. 11-0282; *Peoples/North Shore General Increase in Natural Gas Rates*, February 5, 2008 Final Order at 304, ICC Docket Nos. 07-0241/-0242 (cons.); Annual Report on the Development of Natural Gas Markets in Illinois, July 2007, at 5, available at <http://www.icc.illinois.gov/reports/Results.aspx?t=4>.)

Staff, unfortunately, opposes the Proposed Order's finding on spreading costs among all eligible customers. (See Staff Brief on Exceptions at 58-60.) As an initial matter, the fact that

the Companies now embrace the concept of approach cost spreading among eligible customers -- a concept that the Proposed Order accurately notes is "a non-controversial position at this point" -- weighs strongly in favor of allowing the Companies to proceed in accordance with the Proposed Order's finding. (Proposed Order at 277.)

The sole line of argument that Staff advances to oppose the "non-controversial" cost spreading position rests upon an unpersuasive comparison of language in the Proposed Order to language in the Commission's Final Order in the last Ameren Rate Case (Docket No. 11-0282). (See Staff Brief on Exceptions at 59.) In point of fact, the Proposed Order is entirely consistent with the Commission's Final Order in that Ameren Rate Case, and Staff's attempt to distinguish the two cases based on the comparison of two very similar statements actually proves that the Proposed Order is on very solid ground in calling for appropriate cost spreading among all eligible customers. Accordingly, the Proposed Order's conclusion on that point should stand.

1. Cost Allocation Between Sales Customers and Small Volume Transportation Customers

The Proposed Order's finding in this section adopts verbatim the Companies' proposed Commission analysis and conclusion, as follows:

IGS Energy raises no new issues and presents no new evidence that was not addressed thoroughly in the Utilities' 2011 rate cases. As Staff explained, cost causation is not a simple issue. Moreover, the Commission agrees with the Staff that participation levels in a program are not necessarily indicative of whether the program is well-designed. The Commission finds that it was reasonable for the Utilities to make no changes to the administrative charges that the Commission so recently reviewed and approved. The Commission makes no other findings about the design of or other aspects concerning the Utilities' programs.

(Compare Companies' Draft Proposed Order at Page 125 with Proposed Order at 270.)

As IGS Energy explained in its Brief on Exceptions, the manner in which the Companies track and allocate administrative costs between Sales customers and Choices For You customers

should be changed to more accurately assign the costs to the cost-causers, and IGS Energy maintains that position. (See IGS Energy Brief on Exceptions at 5-9.) The Companies' current allocation of administrative costs is harmful to consumers and the competitive market because: (1) Choices For You customers are being charged for costs they do not cause; and (2) certain costs have been identified by the Companies as being attributed solely to Choices For You customers, even through the Companies have not properly reviewed and allocated all other base rate costs to the proper cost causers. (See *id.* at 5-6.) The Proposed Order's reliance on the Commission's conclusion in the Companies' 2011 rate case is unpersuasive; the complexity of cost causation analysis does not mean the Commission should do nothing; and Choices For You participation levels are relevant to determining whether revisions are appropriate. (See *id.* at 6-9.)

Reply to Staff

Staff asserts that the Proposed Order's finding under this Section X.B.1 and Section X.B.3 are "not compatible." (Staff Brief on Exceptions at 58.) However, Staff's Brief on Exceptions does not offer any explanation beyond a conclusory statement that "Since the administrative charges recover Choices For You ('CFY') program costs, these two conclusions conflict." (*Id.*) In fact, IGS Energy offered three related, but independent, alternative reasons (each supported by evidence) that each separately lead to the conclusion that Choices For You-related costs should be recovered from all eligible customers: (1) the Companies should comprehensively track all costs caused by Choices For You and Sales customers, but if they cannot do so, it would be appropriate to charge all administrative costs to both the Sales and Choices For You Customers; (2) the Companies charge Choices For You customers costs associated with the Companies supply-related costs, even though Choices For You customers do

not cause those costs or benefit from them; and (3) all customers have the opportunity to access the Choices For You program and all eligible customers benefit from the opportunity for participate in that program, such that program costs should be spread among all customers who have the option to switch supplier through the Choices For You program. (*See* IGS Energy Initial Brief at 13-27; IGS Energy Brief on Exceptions at 4-14.)

The Proposed Order finds the evidence and rationale of the third argument convincing, while declining to endorse the first two arguments. (*See* Proposed Order at 270, 274, 277.) There is nothing incompatible about the Proposed Order's approach. Of course, it is a basic tenet of civil procedure that a party may plead in the alternative, and when a party does so the Code of Civil Procedure specifically provides that "[a] bad alternative does not effect a good one." (735 ILCS 5/2-613(b).) Thus, while IGS Energy respectfully believes that the Proposed Order should be modified to embrace each of the three alternative arguments that IGS Energy advanced, the Proposed Order is on solid legal ground in accepting one alternative rationale regarding spreading Choices For You-related costs among all eligible customers without accepting all three.

2. Recovery of Supply-related Costs from Small Volume Transportation Program (Choices for YouSM or "CFY") Customers

The Proposed Order's finding in this section adopts verbatim the Companies' proposed Commission analysis and conclusion, as follows:

As the Commission concluded in the preceding section, it was reasonable for the Utilities to make no changes to the administrative charges that the Commission so recently reviewed and approved. The Commission agrees that CFY customers and suppliers benefit from the Utilities' gas supply functions. The fact that CFY customers purchase their gas from an alternative supplier does not mean that no company gas supports the service those customers receive. The Utilities' gas supply function, including hedging, benefits those customers by helping to enable the Utilities to provide a small volume transportation program. The Commission rejects IGS Energy's proposal to remove gas supply functions from rates that CFY customers pay.

(Compare Companies' Draft Proposed Order at Page 126 with Proposed Order at 274.) In its Brief on Exceptions, IGS Energy explained that this finding is inconsistent with the evidence, which shows that the Companies' supply-related costs are being charged to Choices For You customers, even though Choices For You customers do not cause such costs and do not benefit from them. (See IGS Energy Brief on Exceptions at 9-14.) IGS Energy maintains its position. No other party to the proceeding takes exception to this section's finding.

As IGS Energy has explained throughout this proceeding, the Companies do not track and allocate costs between choice and non-choice programs accurately. (See *id.* at 9-14.) As a result, at least two categories of supply-related costs are being improperly collected from Choices For You customers: (1) costs associated with the procurement of the commodity of natural gas and (2) costs associated with bad debt collection. (See *id.* at 11.) To avoid the perpetuation of such an approach, IGS Energy respectfully renews its request that the Commission modify the Proposed Order with the Replacement Language supplementing IGS Energy's Brief on Exceptions.

3. Recovery of Small Volume Transportation Program (Choices for YouSM or "CFY") Administrative Costs

The Proposed Order takes a significant step towards improving the unhealthy competitive retail market in the Companies' service territory by adopting IGS Energy's recommendation that the costs associated with the Choices For You program be spread among all customers eligible to participate in Choices For You. (See Proposed Order at 277.) IGS Energy applauds this conclusion, as it is consistent with Commission and utility positions in analogous circumstances and the pro-competitive, pro-consumer principles that the Commission has long embraced. (See IGS Energy Brief on Exceptions at 14.)

Reply to the Companies

IGS Energy welcomes the Companies' willingness to accept the Proposed Order's finding on the issue of recovering Choices For You costs from all eligible customers. (*See* Companies Brief on Exceptions at 73.) The Companies' current position is a very positive step toward moving the Choices For You program toward the type of well-designed competitive market program that benefits all customers.

The Companies offer some clarifying language regarding its preferred method for implementing the new approach to recovering Choices For You-related costs. (*See id.*; *see also* Companies Exceptions to the Proposed Order at 290.) IGS Energy appreciates the Companies' productive interest in seeking to bring clarity to the mechanics of the cost recovery methodology endorsed by the Proposed Order. IGS Energy does not object to the language that the Companies have suggested, with one caveat: whatever methodology is adopted, it should avoid a double charge to any particular customer. In this regard, IGS Energy notes that the Companies themselves have recognized the possibility for a double charge to certain customers. (*See* NS-PGL Ex. 48.0 Rev. at 18:410-412 (Companies witness Ms. Grace) ("If transportation administrative charges are billed to all customers who are eligible for Rider CFY, then S.C. Nos. 2 and 8 FST and SST customers would be billed twice for transportation administrative charges.") It is obvious that a double charge would be inappropriate. Accordingly, IGS Energy suggests that if the Commission accepts the modified language offered by the Companies at page 290 of the Companies Exceptions, it should also include the following statement at the end of that language:

" , provided that any S.C. No. 2 or S.C. No. 8 customers taking service under Rider FST or Rider SST shall not be subject to any double charge for choice-related administrative costs."

Accordingly, if the clarifying language proposed by the Companies and the IGS Energy were adopted, the language on page 277 of the Proposed Order under "Commission Analysis and Conclusions" would state as follows:

The Commission reiterates its view that ~~that~~ all customers benefit from being given the opportunity to participate in a well-designed competitive market. The benefits of customer choice extend beyond just those customers who actually switch suppliers. All eligible customers benefit from a well-designed competitive program, whether they choose to participate in the competitive market or remain customers of the Companies. Because all eligible retail customers benefit from a competitive program, the costs for running that program should be recovered from all of those eligible customers. Given the cost spreading approach taken in a variety of other analogous contexts -- such as energy efficiency and peak time rebates programs -- this would seem to be a non-controversial position at this point. The Companies are directed, in their compliance filing, to eliminate from Rider AGG the Aggregation Charge, which consists of a per Pool and a per customer component, and recover through the customer charges the test year costs associated with the Aggregation Charge from all S.C. Nos. 1 and 2 customers, and also for Peoples Gas, from all S.C. No. 8 customers, provided that any S.C. No. 2 or S.C. No. 8 customers taking service under Rider FTS or Rider SST shall not be subject to any double charge for choice-related administrative costs ~~modify their cost recovery methodology for the Choices for You program accordingly.~~

Reply to Staff

Staff takes exception to the Proposed Order's finding in this section, focusing solely on a comparison between language in the Proposed Order and language in a prior Commission Order. (See Staff Brief on Exceptions at 59.) In so doing, Staff fails to address the fact that the Companies and Staff itself have advocated for the very cost recovery methodology embraced by the Proposed Order's finding here. (See Proposed Order at 277; IGS Energy Brief on Exceptions at 14.)

The notion of spreading the Choices For You-related costs to all customers eligible to take Choices For You service finds direct support in the perfectly rational statements contained in this section of the Proposed Order's Commission Analysis and Conclusions:

The Commission reiterates its view that all customers benefit from being given the opportunity to participate in a well-designed competitive market. The benefits of customer choice extend beyond just those customers who actually switch suppliers. All eligible customers benefit from a well-designed competitive program, whether they choose to participate in the competitive market or remain customers of the Companies. Because all eligible retail customers benefit from a competitive program, the costs for running that program should be recovered from all of those eligible customers. Given the cost spreading approach taken in a variety of other analogous contexts -- such as energy efficiency and peak time rebates programs -- this would seem to be a non-controversial position at this point. The Companies are directed to modify their cost recovery methodology for the Choices For You program accordingly.

(Proposed Order at 277, quoted in part in Staff Brief on Exceptions at 59.)

Somewhat oddly, however, Staff's Brief on Exceptions takes the third and fourth sentences from that paragraph of the Proposed Order and attempts to distinguish them from an excerpt from the Commission's January 10, 2012 Final Order in the Ameren Rate Case, Docket No. 11-0282, which states:

The Commission notes that it has long had a policy favoring competition in energy markets, and the Commission believes that customers will generally benefit from being given the opportunity to participate in a well-designed competitive market.

(Ameren Illinois Proposed General Increase in Natural Gas Rates, January 10, 2012 Final Order at 193, ICC Docket No. 11-0282, quoted in Staff Brief on Exceptions at 59.)

Staff recognizes that both quoted statements reflect a view "that customers generally benefit from the ability to buy gas from competitive suppliers in a well-designed market." (Staff Brief on Exceptions at 59.) However, Staff suggests, without explanation, that the Proposed Order's statement is a "stronger version of this principle" and the Commission's statement in the Ameren Final Order is "a much more general statement." (*Id.*) Staff's attempted distinction fails to withstand scrutiny:

- Both statements emphasize the importance of a "well-designed" competitive program;

- Both statements emphasize that customers benefit from a well-designed program, regardless of whether customers switch or stay with the utility; and
- Both statements recognize the value inherent in the opportunity to switch, regardless of whether any given customer actually does switch.

These two statements are entirely on all fours with one another, and Staff offers no explanation or attempted parsing of the language that suggests otherwise. Indeed, to be fair, it is actually unclear which one might be the "stronger version" or the "more general" version. The Commission's explicit reference in the Ameren Order to its long-held "policy favoring competition in energy markets" might well support the view that the Ameren Order's statement is slightly stronger than the Proposed Order's statement. In any event, this debate need not be resolved: the two statements are entirely consistent, reflect the Commission's unambiguous endorsement not only of competition but also of the associated benefits for all eligible customers, and provide no basis to suggest that the Proposed Order has somehow gone beyond the prior dictates of the Commission's views on the value of competitive markets for customers. In short, the entire premise of Staff's argument is unpersuasive.

Staff's discussion about the state of the Companies competitive program is similarly unconvincing. (*See* Staff Brief on Exceptions at 60.) IGS Energy offered straightforward information that demonstrates that the Companies' Choices For You program has seen substantial declining participation over the last three years and that it is not a healthy program. (*See* IGS Energy Reply Brief at 6-7, 11.) Those facts are unrebutted. Indeed, neither Staff nor any other party presented evidence suggesting that the Companies Choices For You program currently is designed in a manner that maximizes customer benefits.

By continuing to claim that Choices For You-related costs are "tracked" and "caused" by transportation customers, Staff completely misses the relevant point. (Staff Brief on Exceptions

at 60-61.) It is not appropriate to allocate only the Choices For You customers' costs, unless and until it is clear that the Choices For You customers are not paying for Sales customers' costs. The Companies have **admitted** that they do not accurately track and allocate costs between Choices For You and Sales customers. (*See* IGS Energy Brief on Exceptions at 8; IGS Energy Cross Ex. 16; IGS Ex. 2.3.) Thus, it is not a credible position to state in conclusory fashion that the cost allocation taken by the Companies is accurate.

As IGS Energy has explained throughout this proceeding, Choices For You costs should be spread across *all customers* who are eligible to switch suppliers through the Choices For You program because all customers benefit from the program, regardless of whether they choose to participate in the competitive market. (*See* IGS Energy Brief on Exceptions at 14.) The Companies now are accepting that position. Accordingly, Staff's position should not change the Proposed Order's conclusion.

4. Provider of Last Resort Investigation

The Commission Should Investigate Whether The Companies Should Remain The Provider Of Last Resort

The Proposed Order declines to adopt IGS Energy's request for a Commission-led investigation into provider of last resort issues. (*See* Proposed Order at 279.) No party other than IGS Energy takes exception to that finding. In its Brief on Exceptions, IGS Energy renewed its request that the Commission initiate such an investigation, particularly given that (1) the Commission's legal authority to conduct a provider of last resort investigation is not in dispute; and (2) no party objects to such an investigation. (*See* IGS Energy Brief on Exceptions at 15.) IGS Energy maintains that position, and respectfully requests that the Commission modify the Proposed Order consistent with the Proposed Replacement Language that IGS Energy offered in its Brief on Exceptions.

XI.

CONCLUSION

For the reasons stated herein, IGS Energy respectfully requests that the Commission:

1. Accept the Proposed Order's finding that all eligible retail customers benefit from a competitive program, and, therefore, the Choices For You-related costs must be recovered from all of those eligible customers;
2. Adopt the proposed modifications to the Proposed Order as requested herein and in IGS Energy's Brief on Exceptions, and as reflected in the Attachment to the Brief on Exceptions; and
3. Order such other relief as the Commission deems just and reasonable.

Respectfully submitted:

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