STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company	**)**	
d/b/a Nicor Gas Company	**)**	
	)	**Docket No. 12-0569**
Proposed Establishment of Rider 17	**)**	
Purchase of Receivables with	**)**	
Consolidated Billing.	**)**	

INITIAL BRIEF OF THE CITIZENS UTILITY BOARD AND THE PEOPLE OF THE STATE OF ILLINOIS

May 17, 2013

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THE CITIZENS UTILITY BOARD ("CUB"), through one of its attorneys, and the People of the State of Illinois by Attorney General Lisa Madigan ("AG"), pursuant to section 200.800 of the Illinois Commerce Commission ("ICC" or "Commission") Rules of Practice, (83 Ill. Admin. Code 200.800) ("Commission Rules"), and the schedule set by the Administrative Law Judge ("ALJ") in this proceeding, hereby submit this Initial Brief. This brief will address the legal and factual bases on which the Commission should reject the tariff filed by Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor" or the "Company") entitled "Nicor Gas Rider 17 Purchase of Receivables with Consolidated Billing" ("POR Tariff" or "Rider 17").

I. INTRODUCTION

The Company filed Rider 17 On September 5, 2012, making it clear that the tariff was being filed pursuant to a Stipulation and Settlement Agreement ("Stipulation") filed in Docket No. 11-0046. In that docket, the Commission approved a reorganization between Nicor Gas, Nicor Inc., and AGL Resources Inc. ("Nicor/AGL"). The Retail Energy Suppliers Association ("RESA") and Interstate Gas Supply, Inc. ("IGS") (collectively referred to as "RESA/IGS") were parties to Docket No. 11-0046 and entered into the Stipulation with Nicor/AGL to resolve issues relating to competitive supply. *See* ICC Docket No. 11-0046, Final Order at 70-1; Nicor

Supplemental Statement at 1, Attachment A. The terms of the Stipulation and Settlement Agreement required those parties to introduce and support legislation that would enable a POR tariff to be approved by the Commission. *Id*. The terms of the Stipulation and Settlement Agreement further require Nicor, in the event that this proposed legislation failed to be enacted, to file this Purchase of Receivables ("POR") Tariff with the Commission. Such legislation was never passed, thus Nicor filed for approval of Rider 17. *Id*.

CUB-AG urge the Commission to reject Rider 17 on two fundamental grounds. First, there is no clear legal authority under which the Commission may approve of a POR rider for a gas utility. Second, Nicor has not alleged, let alone demonstrated, that the potential benefits of POR for customers of gas suppliers outweighs the cost to those customers to justify approval of Rider 17 over the strenuous objections of the Commission Staff ("Staff"), CUB and the AG.

If approved, Rider 17 would "allow a Q-AGS [Qualified Alternative Gas Supplier] the option to have the Company purchase such Q-AGS's Qualifying Receivables," essentially transferring the collection obligations of Q-AGS's customers' bad debt from the suppliers to the utility. Nicor Ex. 2.1, Original Sheet No. 75.9.3. The filed tariff also presents a methodology under which the Company can recover approximately $3.8 million in costs associated with a Purchase of Receivables program. Nicor Ex. 2.0 Rev. at 8:164. Importantly, as proffered by Nicor, Rider 17 would recover all costs of Rider 17 from Q-AGS customers through a monthly adjusting customer charge that would not be identifiable as an additional charge to Q-AGS customers. See Nicor Ex. 2.1, Original Sheet No. 75.9.3. If the Commission were to approve Rider 17, the tariff would not become effective until 24 months after the Commission final order. *Id*.

Qualifying Q-AGS receivables would be purchased by Nicor at a discount of 1.5%, part of which would recover a portion of program costs and provide Nicor a return on any associated capital investment and part of which would be used to offset uncollectibles associated with Q-AGS supply. CUB Ex. 1.0 Rev. at 3:78-80. The 1.5% discount rate was arrived at through negotiations between Nicor and the parties to the aforementioned Stipulation; no evidence was presented to demonstrate the reasonableness of the 1.5% discount rate. Nicor Ex. 1.0 at 11:245-247 ("The Discount Factor of 1.5% was the product of discussions with RESA and IGS and represents an amount that the AGSs determined to be reasonable, including 0.5% for Capital Recovery Costs.")

The total 1.5% discount rate consists of the following: 0.5% (one-third of the total) is allocated to recover capital costs and the remaining 1% (two-thirds of the total) is allocated to uncollectible amounts ("uncollectibles" or "receiveables"). Nicor Ex. 1.0 at 233-235. In addition to any amount retained by the Company through purchasing qualifying receivables at a discount, Nicor would collect a monthly charge from participating Q-AGS customers to cover certain additional costs of operating the program (Administrative and Operational Costs and Intangible Costs). CUB Ex. 1.0 at 4:81-85. Customers would therefore be at risk not only for the administrative costs, intangible costs, and actual uncollectibles in the discount rate, but also for any POR costs above the discount rate.

CUB-AG initially observe that an inconsistency has developed between the proponents of Rider 17, Nicor and RESA/IGS, regarding whether – and in what form – Rider 17 should be approved. Nicor seeks approval of the tariff it initially filed, with certain modifications discussed in Nicor Witness Mudra's Rebuttal Testimony made in response to Staff recommendations. However, Mr. Mudra also made clear that if any other Staff, CUB or AG alternative recommendations were adopted, it "reserves its right to decline to pursue the rider and not make a compliance filing." See Nicor Ex. 2.0 at 2:33-36. In her rebuttal testimony, RESA/IGS witness Ringenbach[1] proposed additional modifications to Rider 17 in response to criticisms from Staff, CUB and the AG regarding the tariff[2], in an attempt to make Rider 17 more appealing to the parties and the Commission. This "fall back" position provides that "all costs of implementing and operating the POR Program would be recovered from participating Q-AGS." RESA Ex. 2.0 (Rev.) at 12:256-258. While not directly addressing this proposed "fall back" position, Nicor witness Mudra responded in Surrebuttal Testimony that Nicor requests approval of Rider 17 as modified in Nicor's rebuttal testimony or that it be rejected altogether. Nicor Ex. 3.0 at 2:23-24. Thus, there appears to be an incompatible scenario where, if the Commission accepts RESA/IGS' "fall back" position or adopts any other modifications to the tariff not already accepted by Nicor, then Nicor would presumably withdraw the tariff, request that the tariff be rejected altogether, or simply not implement it (by not making a compliance filing). Thus, RESA/IGS' fallback recommendation would presumably cause Nicor to either withdraw the tariff, or fail to implement it. This alone warrants rejection of the proposed tariff.

CUB-AG respectfully request that the Commission reject the tariff identified as "Rider 17," filed by Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor" or the "Company"), as it lacks sufficient legal basis, is not just and reasonable, and neither the Company nor RESA/IGS has offered evidence that it provides any identifiable, quantifiable benefit to customers.

[1] Ms. Ringenbach is Senior Manager of Government and Regulatory Affairs for the Midwest for Direct Energy, LLC, which includes Illinois. RESA/IGS Ex. 1.0 at 1:6-7.

[2] Including that Q-AGS customers should not bear the cost of Rider 17, that below-the-line recovery of revenue collected under Rider 17 will inflate Nicor's earnings, and that the recovery of unquantified "Intangible Costs" is inappropriate and fails to meet the just and reasonable standard required by Illinois law (220 ILCS 9-101).

If, contrary to CUB-AG's recommendation, the Commission finds that it has the authority to approve Rider 17, and finds the tariff to be beneficial to customers and supported by the evidence and the law, then the Commission should – at a bare minimum – provide that all costs of implementing and operating the POR program, as well as any excessive costs of uncollectibles associated with the supply service to Q-AGS customer accounts, are recovered from participating Q-AGS and not their customers. This recommendation appears to be compatible with the RESA/IGS rebuttal fallback position, while incompatible with Nicor's position, as described above.

If, contrary to CUB-AG's recommendation, the Commission finds that POR charges should be imposed on participating Q-AGS customers, important consumer protections must be built into the tariff to provide notification to Q-AGS customers of such charges and protect those customers from excessive charges under the tariff, as discussed in Section IV. *infra*.

II. LEGAL STANDARDS

A. GENERAL COMMISSION AUTHORITY

The Illinois General Assembly has not granted the Commission authority in the Illinois Public Utilities Act, 220 ILCS 5/1-101 *et seq*. ("the Act") to approve a POR tariff for a gas utility and the Company's request fails to describe any valid general authority in the Act under which the Commission could legally approve such a proposal. The Company's Supplemental Statement explained that "This proposed tariff is being submitted by Nicor Gas to fulfill the Company's obligation under the terms of the Settlement Agreement." *Id.* An agreement between a utility and certain other parties, all of whom stand to benefit from the tariff, is not sufficient grounds for its approval. The Commission's authority to approve a POR tariff without statutory authority cannot be inferred. To the contrary, the inaction of the General Assembly should be read to convey its intention to restrict the operation of such a tariff to electric utilities. While Nicor/AGL and RESA/IGS may agree to terms regarding their own obligations, Nicor cannot circumscribe this lack of authority from the General Assembly by simply filing a tariff.

It is well established that the Commission, as a creature of statute, is limited to the legislature's grant of authority, and acts outside of that grant of authority are void. *Business and Prof'l People for the Pub. Interest v. Illinois Commerce Comm'n ("BPI I")*, 136 Ill. 2d 192, 201 (1989); *City of Chicago v. Illinois Commerce Commission*, 79 Ill. 2d 213, 217-8 (1980). The legislature granted specific authority to electric utilities to file tariffs with the Commission in order to purchase receivables from Alternative Retail Electric Suppliers ("ARES"). 220 ILCS 5/16-118(c). The legislature also granted specific authority to the Commission to "review and approve" the discount rate associated with the purchase of receivables in such a tariff. 220 ILCS 5/16-118(c). The Public Utilities Act, however, is markedly silent on the same authority regarding POR tariffs for *gas* utilities. The legislature, despite including in the Act a section titled "Commission oversight of services provided by gas suppliers" (220 ILCS 5/19-120), chose not to ascribe this power to the Commission. In fact, previously submitted bills to establish POR for the gas market have been submitted to the General Assembly and have never advanced.[3] This inaction by the General Assembly regarding gas utility POR tariffs evinces the intent of the legislature to not establish POR for the gas market.

[3] SB3693 was submitted to the General Assembly on February 11, 2010 and never advanced beyond the Energy Committee, see http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3693&GAID=10&DocTypeID=SB&SessionID=76&GA=96 (last accessed February 1, 2013). Senate Floor Amendment No. 2 to SB3766 similarly failed to advance. See http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3766&GAID=11&DocTypeID=SB&LegID=65851&SessionID=84&SpecSess=&Session=&GA=98 (last accessed February 1, 2013).

B. NICOR'S PROPOSAL LACKS A STATUTORY FOUNDATION

Nicor, in its tariff filing in this docket, implicitly acknowledges this legal vacuum. Nicor fails to cite to any statutory authority for the authorization of the proposed tariff, and instead, states that the "tariff is being filed pursuant to the Stipulation and Settlement Agreement dated May 19, 2011 in Docket 11-0046." Supplemental Statement at 1. This stands in stark contrast to POR tariffs filed in the electric dockets, which acknowledge that they are filed "pursuant to Section 16-118(c) of the Public Utilities Act." Docket No. 10-0138, Supplemental Statement (January 19, 2010) at 1; Docket No. 08-0619, Supplemental Statement (September 30, 2008) at 3. The Commission cannot ignore Nicor's failure to cite any statutory authority for approval of its tariff. The Commission's authority to approve a POR tariff with any statutory authority cannot be inferred, especially considering the silence of the Public Utilities Act on this issue. To the contrary, the failure of the General Assembly to act on this matter in any way must factor into the Commission's evaluation of Nicor's proposal. Nicor cannot unilaterally overcome the General Assembly's silence on this issue through a mere regulatory filing.

C. THE DIFFERENCES BETWEEN THE GENERAL ASSEMBLY'S TREATMENT OF GAS AND ELECTRIC MARKETS INDICATES THAT THE LEGISLATURE INTENDS THAT THESE MARKETS REQUIRE SEPARATE LEGISLATIVE SCHEMES

The gas and electric supply markets in Illinois are different retail markets, selling different commodities, served by different suppliers, and subject to distinct regulatory requirements. The Illinois legislature recognized the inherent differences among these markets by drafting different sets of statutes to govern the activities in those markets. *See Strategic Energy, LLC v. Illinois Commerce Commission*, 369 Ill. App. 3d 238, 253-4 (2006) (noting that changes to a statute to reflect market realities must be made by legislature). The Act contains specific and distinct regulations for water and natural gas utilities (220 ILCS 5/15), electric utilities (220 ILCS 5/16), alternative gas suppliers ("AGS") (220 ILCS 5/19), and alternative retail energy suppliers ("ARES") (220 ILCS 5/20). Five additional distinctions under the Public Utilities Act demonstrate the differentiation between gas and electric General Assembly's

First, pursuant to a specific grant of legislative authority, the Commission has approved POR tariffs for the two largest *electric* utilities in Illinois. *See, generally,* Docket No. 08-0619 (Ameren Illinois Company) and Docket No. 10-0138 (ComEd). In reviewing these proposed tariffs, the Commission recognized the statutory creation of purchase of receivables programs, noting that "Section 16-118(c) provides for POR services." Docket No. 10-0138, Final Order (December 15, 2010) at 5; Docket No. 08-0619, Final Order (August 19, 2009) at 1. Given these differences and the General Assembly's failure to adopt legislation enabling POR for gas utilities, it can fairly be inferred that the legislature intended for the Commission to treat ARES differently than AGS.

Second, while the General Assembly has made effective electricity competition a goal of state policymakers since 1997 ("The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.")(220 ILCS 5/16-101A (a)), the General Assembly has not enacted a corresponding state goal regarding the competitive gas market.

Third, in 2006, the General Assembly expanded on its electricity competition policy by creating the Office of Retail Market Development ("ORMD"), finding that:

> A competitive wholesale electricity market alone will not deliver the full benefits of competition to Illinois consumers. For Illinois consumers to receive products, prices and terms tailored to meet their needs, a competitive wholesale electricity market must be closely linked to a competitive retail electric market.

220 ILCS 5/20-102 (a). The General Assembly has not made a similar finding regarding the natural gas market.

Fourth, ORMD was required by the General Assembly to: "…develop and present to the Commission, the General Assembly and the Governor a detailed plan designed to promote, in the most expeditious manner possible, retail electric competition for residential and small commercial electricity consumers…" (220 ILCS 5/20-120). The General Assembly has not required ORMD to develop such a plan for the natural gas market. Instead, the General Assembly has required ORMD to prepare a report regarding the development of competitive retail natural gas markets in Illinois, which has not yet been issued (*see* 220 ILCS 5/19-130).

Fifth, the General Assembly has enacted municipal aggregation of electricity supply, whereas no similar vehicle to facilitate retail customer switching is in place for gas supply.

When interpreting a statute, words that are not within the intention of the legislature cannot be read into the statute, and the meaning of the statute cannot be enlarged or restricted. *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1047 (1999). Similarly, the intent of the legislature can be derived not only from the language adopted, but from the language that was not adopted. *Laborer's Int'l Union of North America, Local 1280 v. State Labor Relations Board*, 154 Ill. App. 3d 1045, 1050 (1987). Here, the legislature adopted nearly identical language in section 16-118 of the Public Utilities Act (the Act), which addresses electric providers, and section 5/19-115 of the Act, which addresses gas providers. While the legislature granted the Commission authority to approve *electric* POR programs, it did not grant it authority to approve *gas* POR programs. Therefore, the Commission, a creature of statute, has no authority to approve a gas POR tariff.

D. THE TARIFF MUST BE JUST AND REASONABLE AND NICOR'S EXPENDITURES PRUDENT IF THE COMMISSION IS TO APPROVE RIDER 17

In addition to the absence of any statutory foundation for gas POR, the lack of specific customer benefits seriously undermines the Commission's ability to determine that Rider 17 is just and reasonable. The Public Utilities Act mandates that all tariffs approved by the Commission must be "just and reasonable":

> All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.

220 ILCS 5/9-101. A rate must be just and reasonable to both the utility and customers, alike. *BPI I*, 146 Ill.2d 175, 208, *quoting* 220 ILCS 5/9–201(c)("The Commission is charged by the legislature with setting rates which are "just and reasonable" * * * to the ratepayers [and] to the utility and its stockholders.") Moreover, the Illinois Appellate Court pronounced the following with regard to weighing the impact of a proposed rate:

> The Commission has the responsibility of balancing the right of the utility's investors to a fair rate of return against the right of the public that it pay no more than the reasonable value of the utility's services. While the rates allowed can never be so low as to be confiscatory, within this outer boundary, **if the rightful expectations of the investor are not compatible with those of the consuming public, it is the latter which must prevail**.

Camelot Util's, Inc. v. Illinois Commerce Comm'n, 51 Ill.App.3d 5, 10 (1977)(emphasis supplied). Furthermore, the Commission cannot fulfill its statutory duty to balance the competing interests of stockholders and ratepayers without taking into account the interests of ratepayers by considering the impact of proposed rates on ratepayers. *Citizens Utility Board v. Illinois Commerce Comm'n.,* 276 Ill.App.3d 730, 737 (1995). If the costs to ratepayers significantly outweigh the benefits of the tariff, as is the case here, then the Commission must find in favor of ratepayers. Without any evidence on whether the imposition of these new charges will result in just and reasonable burdens on all ratepayers, the Commission has no basis for finding these charges to be just and reasonable. 276 Ill.App.3d 738.

Furthermore, all investment included in a utility's rates must be prudently incurred:

> The Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.

220 ILCS 5/9-211. Considering Nicor has identified approximately $3.8 million in capital costs associated with the POR tariff, and stated that these costs will be borne by ratepayers, these costs must be demonstrated to be prudent in order to be included in Nicor's rate base. If customers are not receiving a benefit for the proposed service under Rider 17 and the customer rate impacts cannot be examined, the $3.8 million in capital costs for this program cannot be considered prudent. Staff witness Reardon concluded that, because Nicor (nor any other party) has not demonstrated that the benefits of Rider 17 outweigh the costs, the Commission cannot conclude that the expenditures for the POR program are prudent. Staff Ex. 5.0 at 5:103-107. Mr. Reardon also testified that the Commission can reasonably conclude that Rider 17 is not in the public interest if it decides that benefits do not exceed costs. *Id*. at 6:110-111.

III. OPERATION OF RIDER 17

As initially proposed, Rider 17 includes a "Purchase of Receivables Customer Adjustment" ("PORA") that would apply to the Monthly Customer Charge of individual customers of participating Q-AGS. The PORA, calculated separately for residential and non-residential customers, would be comprised of the following components, in addition to a reconciliation amount:

1) Monthly per-customer charges would include incremental Administrative and Operational Costs ("AOC") incurred in conjunction with operation of Rider 17. AOC would include Nicor's costs of participating in Commission proceedings, its data

processing costs, staff costs, legal costs, auditing, consulting and other ongoing costs associated with operating Rider 17.

2) Monthly customer charges would also include "Intangible Costs" ("IC") totaling up to 0.5% (one-half of one percent) of participating Q-AGS total receivables by customer class.

3) In addition to AOC and IC, monthly customer charges would include a "Supply Uncollectible Adjustment" ("SUA") to recover any Net Actual Uncollectible Costs ("NAUC") to the extent they are above or below the amount recovered from Q-AGSs through the Discount Factor.

CUB-AG Ex. 1.0 Rev. at 6:135-157.

Of the 1.5% discount rate paid by the Q-AGSs, 1% is dedicated to recovery of uncollectibles associated with the supply portion of Nicor bills to Q-AGS customers. *Id*. To the extent that the actual total amount of uncollectibles is higher or lower than 1% of the total Q-AGS receivables, the PORA is adjusted up or down, on a per customer basis by class of service. *Id*. AOCs and ICs are included in the SUA, which can total a maximum of 0.5% of the discount rate. *Id*.

Rider 17 contains no limit on the PORA paid by a customer or its proportion of the monthly bill. *Id*. at 7:180-183. The total PORA is the sum of the costs of its components, and the amount would rise with higher AOC and higher SUA, putting small volume customers at risk of paying significant portions of their bills in PORA costs. *Id*. There is no evidence in this record that provides any guidance whatsoever as to what charges customers of participating Q-AGS could expect to see. Mr. Mudra acknowledges that Nicor does not know how much AOC will total and does not know among how many customers it will be spread. *Id*. at 7-8:183-186. Nor does the Company forecast how high the SUA may become. *Id*.

The charge for being a Q-AGS customer would not appear as a separate line item or series of line items on the monthly consolidated bill. Instead it would show up as a stealthy "adjustment" to Nicor's Monthly Customer Charge, which would not be itemized or separately shown to the customer. Nicor Ex. 2.1. With a varying Monthly Customer Charge as the only evidence of charges related to POR, it is very unlikely a customer would be aware of their existence or magnitude. CUB-AG Ex. 1.0 Rev. at 7:171-177. The tariff hides POR charges from the customers who are paying them every month.

IV. ARGUMENT

Rider 17 is problematic for several reasons. First, as discussed in Section II *infra*, the Commission does not have, nor has Nicor cited, any statutory authority to approve a POR tariff for a gas utility. Second, any benefits that could allegedly result from tariff have not been quantified, and there has been no showing that the benefits outweigh the costs that will be passed on to customers of participating Q-AGS. No party has presented evidence that demonstrates that retail gas competition has resulted in lower prices in Illinois to date, or by what amount or in what fashion such prices would decrease as a result of a POR tariff. Third, the construction of the tariff puts customers at risk of potentially unlimited charges, without disclosure of such risk. Each of these reasons justifies rejecting Rider 17, in addition to the reasons articulated below.

A. NO CUSTOMER BENEFITS HAVE BEEN QUANTIFIED OR SHOWN TO OUTWEIGH THE COSTS ASSOCIATED WITH RIDER 17

1. No Evidence Was Presented to Quantify Any Alleged Future Rate Benefit to Customers

Nicor witness Mudra primarily addresses the mechanics of the rider, as well as cost recovery. Mr. Mudra does not attempt to suggest or imply that Rider 17 is beneficial to customers. See, generally, Nicor Ex. 1.0 and 2.0. RESA/IGS, on the other hand, allege customer benefits will be realized in the form of increased competitive pressure on prices. RESA/IGS Ex. 2.0 at 6:117-119. RESA/IGS witness Ringenbach relies largely on unsubstantiated statements regarding this supposed customer benefit of Rider 17. Ms.

Ringenbach repeatedly alludes to the only identified customer benefit – lower competitive prices – but fails to demonstrate with any empirical evidence that this result is likely to occur. Ms. Ringenbach claims that Rider 17 will result "in a broader segment of consumers enjoying the benefits of retail competition, including lower prices…." RESA/IGS Ex. 1.0 at 5:91-92. However, no evidence has been supplied to quantify this rate impact. See CUB Cross Ex. 1.

Ms. Ringenbach also suggests that, because supplier's collection costs will be lower, those lower costs will translate into lower rates for customers. RESA/IGS Ex. 1.0 at 9:189-191. Here, again, the record is void of data: RESA/IGS could provide no data on the suppliers' actual collections costs. Nor would RESA/IGS provide data regarding how much their rates would decrease as a result of the availability of Rider 17. CUB Cross Ex. 1. RESA/IGS would not commit to any reduction in rates as a result of Rider 17, and stated that "it is not possible to quantify future savings at this time." CUB Cross Ex. 1. Thus, any alleged customer benefit in the form of lower rates – the *only* customer benefit alleged – is unquantifiable and dubious at best. In fact, Ms. Ringenbach admits in her Rebuttal Testimony that the benefits are "largely qualitative." RESA/IGS Ex. 2.0 at 5:78-79.

In contrast to the assertion that the competitive gas market in Northern Illinois requires Rider 17 to expand market participation, the record shows that the absence of a POR tariff has not impeded market participation. On the Illinois Commerce Commission's website are listed 26 certificated Alternative Gas Suppliers in Nicor's "Customer Select" program, serving approximately 232,568 Nicor residential customers and 37,142 commercial customers, or approximately 13% of Nicor's customer base, as of January 14, 2012. CUB-AG Ex. 1.0 Rev. at 5:122-126. In fact, the last year has shown an upward trend in customers participating in Nicor's Customer Select program. Staff Ex. 5.0 at 2:24-25. Thus, as Staff witness Reardon testified, the lack of a POR is not causing customers to leave Customer Select. *Id*.

2. The "Benefits" Analysis Provided by RESA/IGS Focuses on Their Ability To Market To Less Credit-Worthy Customers, Which Could Have the Effect of Raising Q-AGS Uncollectibles

Ms. Ringenbach testifies that "Without a POR, AGS have to focus on enrolling only the most credit-worthy individuals…leaving the more credit-challenged customers with the utility." RESA/IGS Ex. 1.0 at 11:233-235. This suggests that POR would allow AGS to enroll less credit-worthy customers, because the AGS would no longer be concerned with collections on delinquent accounts. It is axiomatic that less credit-worthy customers are less credit worthy because they have a greater tendency to pay bills delinquently or not at all. To the extent that customers with bad or "less worthy" credit are more likely to default on their utility bill, this would have the tendency to increase total Q-AGS uncollectibles. Furthermore, **t**o the extent that some customers of AGS are charged higher rates than they would pay for utility supply, they are more likely to find their bills unaffordable, resulting in higher uncollectibles. CUB-AG Ex. 1.0 Rev. at 12:298-300. In this case, even if the supply uncollectibles were recovered from AGS and their customers through operation of the Discount Rate and PORA, the delivery-related uncollectibles would also increase, thus raising the uncollectible amounts to be recovered from all Nicor customers, not just Q-AGS customers. CUB-AG Ex. 2.0 2nd Rev. at 4:78-87. In other words, under Rider 17, although higher unregulated uncollectibles would be paid by Q-AGS customers, a corresponding increase in regulated uncollectibles would be paid also by utility supply customers. *Id*. Neither of these outcomes is fair to customers.

3. The Same Risks Nicor Identifies To Support a Higher ROE on Rider 17 Assets Are Risks That Customers Will Bear Under Rider 17

Nicor discusses numerous risks of cost recovery through Rider 17 as justifying a higher rate of return on Rider 17 investments than Staff found warranted. Nicor Ex. 2.0 Rev. at 27:590-614. Among Nicor's identified risks that threaten Nicor's full cost recovery are: low Q-AGS participation/low customer participation; unknown future levels of receiveables; recovery from a smaller pool of retail choice customers; and the fact that third-party commodity related receivables are significantly large than utility delivery service receiveables. *Id*. These same risks would also pertain to participating Q-AGS customers who must pay the costs of Rider 17, because in addition to the 1.5% discount rate, customers of participating Q-AGS will be on the hook for any charges above the 1.5% discount rate.

4. Rider 17 is Not Optional For Customers

Both Nicor and RESA/IGS describe Rider 17 as an "optional service." Nicor Ex. 2.0 at 7:138; RESA/IGS Ex. 2.0 at 3:34. The proponents of Rider 17 fail to acknowledge that the service is not optional for customers of Q-AGS. Considering the charges are buried in the customer charge with no notification requirements, a Q-AGS customer would not even be aware of the additional charges on their bill resulting from Rider 17 and would therefore be functionally foreclosed from switching back to utility service to avoid such charges.

B. THE DIFFERENCES IN STRUCTURE, MARKETS, AND REGULATION OF THE ILLINOIS GAS AND ELECTRIC INDUSTRIES SUPPORT REJECTION OF RIDER 17

Mr. Cohen presented unrebutted testimony regarding the specific business barriers inherent in the competitive gas market, which undermine the presumption that a POR program "will level the playing field so that AGSs can effectively compete against Nicor Gas to supply gas to customers." RESA/IGS Ex. 1.0 at 6:116-118. Mr. Cohen testified that it is difficult for an AGS to compete with the utility for the supply business of residential and small commercial customers because of a series of AGS disadvantages, of which the lack of POR is but a small factor. CUB-AG Ex. 2.0 2nd Revised at 7-8:161-175. Among these disadvantages are the following:

- A utility incurs no cost in acquiring and retaining customers, whereas an AGS must incur significant marketing costs to grow and maintain its business.
- A utility does not incur significant incremental administrative and overhead costs related to its gas supply procurement and sales, whereas these costs may represent a relatively high proportion of AGS costs.
- A utility's Purchased Gas Adjustment costs do not include amounts for customer service, whereas an AGS must incur significant costs to address its customers' needs, including operation of a customer call center as required under 220 ILCS 5/19-115 (b)(5).
- A utility passes through its supply costs at no markup, whereas, after covering all the aforementioned costs in addition to its supply costs, an AGS must make a profit.

Id.

The only way an AGS can compete with the supply price of a utility is to acquire gas at a cost which is lower than the utility supply cost, less the AGS' operating costs described above. *Id*. at 8:181-183. RESA/IGS did not provide evidence as to any supplier's actual costs related to collections or how these costs compare to those listed above. Nonetheless, what is clear from the record evidence is that, considering the multitude of business barriers in the retail gas market, POR, by itself, will not allow suppliers to beat utility gas price.

Although the competitive electricity market has very recently been active in Illinois and electric suppliers have been successful in offering competitive rates, this short-term success was not driven by the advent of POR on the electric side, but rather results from circumstances unique to that market and commodity. CUB-AG Ex. 2.0 2nd Rev. at 9:198-207. The retail electricity market has been open to residential and small commercial customers since 2002 but did not attract significant participation until late 2011, after municipal aggregation was implemented. *Id*. Under municipal aggregation, the default provider switches from the electric utility to a provider chosen by the municipality. *Id*. Municipal aggregation has been a boon to the retail market in part because it allows retail electricity suppliers to acquire large groups of customers without incurring any incremental marketing costs. *Id*. As acknowledged by Ms. Ringenbach, municipal electricity aggregation has been bolstered by relatively high utility supply prices. RESA/IGS Ex. 1.0 at 13:268-276. These prices will shrink as the utilities' above-market long-term contracts expire, reducing or eliminating the "headroom" available to retailers, making the long-term viability of Illinois' residential and small commercial retail electricity market uncertain. CUB-AG Ex. 2.0 2nd Rev. at 9:209-212.

The nature of the gas market in Illinois does not allow significant opportunity for retail suppliers to profit from selling gas commodity to residential and small commercial customers at prices that are competitive with utility-supplied gas. A key distinction between gas and electric commodities is the fact that gas utilities must design and execute procurement strategies that are subject to Commission prudence review and potential disallowances. CUB-AG Ex. 2.0 2nd Rev. at 10:222-234. Gas utilities are responsible for acquisition of gas supply in a manner that provides the lowest possible price to customers consistent with adequacy, reliability, security, safety, and mitigation of price volatility. *Id*. To fulfill this responsibility, gas utilities craft procurement programs utilizing firm supply contracts selected through competitive bidding, spot market purchases, injections and withdrawals from company-owned storage facilities, and contracts for pipeline storage. *Id*. In addition, gas utilities often use financial instruments to hedge their supply costs by locking in a portion of anticipated gas supply needs at fixed prices. *Id*. In contrast, electric utilities in Illinois procure electricity as instructed by procurement plans designed by the Illinois Power Agency and approved by the Commission. *Id*., 20 ILCS 3855. These electric utilities do not make independent procurement decisions and incur no associated regulatory risk.

Another important difference between utility supply of gas and electricity is the manner in which supply costs are recovered. *Id*. at 10:235-240. Gas acquired by utilities is sold to supply customers at dynamic rates, which change monthly to reflect fluctuating gas costs, as affected by wholesale market conditions, hedging strategies, and other utility procurement practices. *Id*. In contrast, default rates for electric utilities Commonwealth Edison Company and Ameren Illinois Company are fixed, reflecting average costs as allocated through regulated rate designs. *Id*.

C. RIDER 17 IS INEQUITABLE, NOT TRANSPARENT AND EXPOSES Q-AGS CUSTOMERS TO UNREASONABLE RATE RISK

Even if the Commission agrees that a monthly amount for POR costs should be charged to end-use customers of AGS, the monthly customer charge adjustment established in Rider 17 is inequitably designed in several respects, by including costs that are not allocated volumetrically and including an unwarranted below-the-line earnings supplement to Nicor. CUB-AG Ex. 1.0 Rev. at 8-9:208-214. Furthermore, a fixed customer charge that changes based on a varying uncollectibles amount violates basic rate design principles of assigning fixed costs to fixed charges, and variable costs to variable charges. *Id*. The fact that this charge is not transparent to customers further aggravates an already defective proposal.

1. Rider 17 Is Designed To Be Hidden From Customers

As designed, customer charges arising out of Rider 17 would be buried in the customer charge and not separately identified on the customer's bill. Nicor Ex. 2.1, Original Sheet No. 75.9.3. Mr. Cohen testified that neither the PORA charge itself, nor its projected amount, would be likely to be recognized by the customer, as any description of this charge is likely to be buried in the fine print of a sales contract from a Q-AGS and unlikely to be disclosed in a manner understood by the customer. CUB-AG Ex. 1.0 at 7:161-167. In fact, the monthly utility charges associated with receiving Q-AGS service might not be specifically disclosed to the customer by the supplier at all, as they would be subsumed in charges from Nicor for costs related to tariffed utility services. *Id*. Basic notification and identification of the charges being assessed to customers should be a pre-requisite for approval of a tariff that has unknown economic consequences for such customers.

2. Intangible Costs Should Be Eliminated From the Tariff

Intangible costs are not actual costs incurred by Nicor, but rather are unquantifiable costs that may or may not be incurred by Nicor. The sources of Intangible Costs are not described in the tariff, but they are explained by Mr. Mudra to include "reputational risk, reduced employee morale or loss of productivity associated with collecting Q-AGS's receivables…" CUB-AG Ex. 1.0 at 10:246-256. While Mr. Cohen does not disagree that Rider 17 may have such negative consequences for Nicor, the idea that these risks should be monetized and the Company should be compensated by customers for them is novel and unjustifiable. *Id*. Moreover, Rider 17 provides for Capital Cost Recovery of amounts invested in POR implementation, including a projected return of 8.09%. *Id*. at 10:260-161. Because Nicor is already receiving a generous return on its investment in Rider 17, recovery of IC would over-compensate Nicor for unsubstantiated risks created by the Company itself through its proposed tariff.

Additionally, ICs are defined in Rider 17 as amounts to be accounted for "below the line" that would increase Nicor earnings without counting as regulated revenue in a ratemaking proceeding. CUB-AG Ex. 1.0 at 6:144-153. In other words, these intangible costs would become tangible additions to Nicor earnings. These extra contributions to boost Nicor earnings, beyond otherwise authorized levels and paid by Q-AGS customers, would be in addition to the return on invested capital recovered by Nicor directly from Q-AGSs as a portion of the 1.5% discount on purchased receivables. *Id*.

Mr. Mudra stated in Rebuttal Testimony that Nicor is not opposed to recovering the intangible costs directly from Q-AGS. Nicor Ex. 2.0 Rev. at 47:1055. Thus, if the Commission does not eliminate Intangible Costs from Rider 17, it should require that these costs are recovered from Q-AGS, and not customers. Furthermore, these revenues should be accounted for above the line in Nicor's revenue requirement.

3. PORA Customer Charges Must Be Capped

Mr. Cohen recommended that, if any portion of the costs associated with Rider 17 is charged to customers, it should, at the very least, be limited to a reasonable amount of 50 cents per month for residential customers and $2 per month for commercial customers. CUB-AG Ex. 1.0 Rev. at 8:188-197. To ensure that small volume customers do not pay an unreasonably high proportion of their bills toward POR costs, a further limit of 1% on any monthly supply costs should also be included in the tariff, resulting in a maximum charge to a residential customer of $.50 per month or 1% of the customer's supply charges for the month, whichever is lower. *Id*. Any costs reasonably incurred by Nicor above that amount should be paid by the Q-AGSs, effectively allocating at least a portion of these Q-AGS costs to the Q-AGS themselves instead of their customers. *Id*. While RESA/IGS witness Ringenbach called these caps on customer charges "arbitrary" (RESA/IGS Ex. 2.0 Rev. at 13:272), they are no more arbitrary than the 1.5%

discount rate formulated through agreement by the parties, using the same type of expertise and judgment used by Mr. Cohen.

Q-AGSs, not their paying customers, should be responsible for excessive uncollectible amounts associated with their supply service. It would be unjust and unreasonable to charge a customer a higher amount for uncollectibles because they happen to be a customer of a company with higher than average uncollectibles. If Rider 17 is approved, which it should not be, excessive uncollectibles should be recovered directly from Q-AGS by using a Discount Factor containing an individualized uncollectibles component based on Nicor's actual uncollectibles experience with customer accounts of each Q-AGS. CUB-AG Ex. 1.0 Rev. at 13:319-323.

4. AOC Charges Are Not Fairly and Appropriately Allocated

Under Rider 17, Administrative and Operational Costs are split evenly among all Q-AGS customers each month, regardless of customer class or volume or amount. CUB-AG Ex. 1.0 Rev. at 9:219-229. This effectively means that lower usage customers, such as residential customers, would pay the same amount as higher usage commercial customers. *Id*. Moreover, within a customer class, relatively lower usage customers would be charged the same monthly amount for AOC as customers with higher volumes. *Id*. As proposed under Rider 17, a residential customer with a supply charge from a participating Q-AGS of $20 would pay the same amount in that month towards AOC as a commercial customer with a supply charge of $20,000. *Id*. Mr. Cohen referenced a Nicor discovery response that demonstrating the average residential account shows about ¼ of the annual gas costs as the average commercial account, yet each are paying the same amount toward AOC. *Id*.

Even if the amounts were not directly volume related, the costs described as AOC would not be incurred on a per customer basis. *Id*. at 9-10:233-241. To charge a very small volume customer, such as a residence using gas only for water heating and cooking, the same fixed monthly amount as a large commercial customer is unreasonable. *Id*. The appropriate way to address this potential inequity is to charge AOC directly to Q-AGSs, rather than allocate these costs among customers and customer classes. *Id*. The Q-AGS can make their own decisions as to how (and whether) to include these normal costs of business in their unregulated charges to customers. *Id*. Nicor should recover AOC as a component of the Discount Factor, not as a charge on an individual customer's bill. *Id*.

5. The Discount Rate Is Set Too Low

Under the Rider 17 tariff, the 1% portion of the discount that remains after Capital Recovery Costs are accounted for is the maximum contribution toward uncollectibles by Q-AGSs. *Id*. at 11:275-283. Any uncollectible amounts beyond that are recovered from Q-AGS customers through the PORA. *Id*. Mr. Cohen concluded that, based on information he reviewed, this 1% amount is likely to be insufficient to match the average Nicor uncollectible rate, let alone cover the possibly larger proportion of Q-AGS receivables that become uncollectible. *Id*. Nicor itself uses a 1.7% Future Bad Debt Rate. *Id*. The Discount Factor applied to purchased receivables should contain an uncollectibles component set high enough to cover the estimated Q-AGS uncollectibles. *Id*.

Instead of an arbitrary discount rate of 1.5%, the percentage paid by Q-AGS toward uncollectibles through the discount rate should equal the estimated actual percentage of uncollectibles experienced by Nicor from the accounts served by Q-AGS. *Id*. at 11-12:286-294. Such treatment would minimize the SUA component of the PORA. *Id*. At a minimum, if the Commission determines that a uniform discount rate should be applied to all Q-AGS, in order to minimize excessive customer payments toward uncollectibles, the uncollectibles component of the Discount Factor should be set based on Nicor's average uncollectibles associated with Q-AGS accounts, rather than the insufficient and arbitrary 1% amount. *Id*.

6. The Discount Rate Should Be Calculated Separately For Each Q-AGS

The level of uncollectible receivables associated with Q-AGS supply may differ from one Q-AGS to another because of different marketing strategies and retail prices, terms and conditions of service provided to their customers. The costs to Q-AGS for uncollectibles are limited to the discount rate, and therefore the risk of uncollectibles above this arbitrary percentage is then shifted to all Q-AGS customers. Consequently, the tariff as proposed does not discourage – and in fact may encourage – Q-AGSs to engage in marketing that may increase the level of Q-AGS uncollectibles associated with its customer accounts. CUB-AG Ex. 1.0 Rev. at 13:319-323. Ms. Ringenbach admits as much in suggesting that Rider 17 would enable Q-AGS to "go after a broader base of customers," (RESA/IGS Ex. 2.0 Rev. at 3:48-49), *i.e.* customers who are less credit-worthy. As pointed out above, less credit-worthy customers are more likely to produce uncollectibles, thereby raising overall Q-AGS uncollectibles.

Furthermore, Mr. Cohen suggested, for example, that a Q-AGS could target neighborhoods with large numbers of high credit risk customers or neighborhoods with a high proportion of non-English speaking residents who might be less likely to fully comprehend the marketing offers or their bill implications. CUB-AG Ex. 1.0 Rev. at 12-13:303-315. Q-AGS salespeople, especially when paid by commission, have incentives to sign customers to lengthy sales contracts at maximal rates. *Id*. Salespeople could leave the impression with potential customers who are having trouble paying their bills that they may be at less risk of disconnection or penalty, or that they will save money, if they switch to an alternative supplier. *Id*. A Q-AGS could intensify its marketing of fixed-rate long-term supply contracts during periods of relatively high short-term market prices, thus locking in rates for its customers that may be higher than average. *Id*.

The potential for misleading and/or aggressive marketing strategies is borne out by past Commission experience in the competitive gas market. In the early days of natural gas competition, CUB filed a complaint against Santanna Natural Gas Corporation ("Santanna"), alleging misleading marketing practices. *Citizens Utility Board v. Santanna Natural Gas Corporation*, Complaint regarding billing and marketing practices of alternative gas supplier Santanna Energy Services, ICC Docket No. 02-0425 ("*Santanna Order*"). While this Complaint was dismissed, the issues relating to Santanna's marketing practices were litigated in Docket No. 02-0441, Santanna's "Application for Certificate of Service Authority under Section 19-110 of the Public Utilities Act." In conditionally granting Santanna a Certificate of Service Authority under Section 19-110 of the Act, the Commission concluded that:

> The Commission is deeply troubled by Santanna's marketing practices earlier this year. Full disclosure of all applicable prices, terms, and conditions is crucial in a market that only recently came to enjoy the benefits of competition. Residential customers, just like business and industrial customers, need to know what to expect from a provider before signing a contract. CUB and the AG provide ample evidence that Santanna, at least in the early months of its offerings, did not let their residential customers know what to expect. In a rush to sign up new customers by the thousands, Santanna appears to have violated several applicable statutory provisions. It is somewhat disappointing to note that apparently only a formal complaint by CUB and the AG changed Santanna's course.

Santanna Order at 27.

This type of misleading marketing activity was not, however, limited to the early years of gas marketing. More recently, in *Citizens Utility Board, Citizens Action/Illinois and AARP vs. Illinois Energy Savings Corp. d/b/a U.S. Energy Savings Corp*., Complaint pursuant to 220 ILCS

5/19-110 or 19-115, ICC Docket No. 08-0175, (*Just Energy Complaint Order*), the Commission found that Just Energy (f/k/a U.S. Energy Savings Corp.) (coincidentally, a member of RESA) committed eight incidences of slamming in violation of Section 19-115(c); a single instance of disseminating of "marketing material that distorts the required disclosure of the price of its services," in violation of Section 19-115(f); and a single violation of subsection (m) of Nicor's Standards of Conduct tariff. *Just Energy Complaint Order* at 46-47. The Commission found:

> As a result of the number and seriousness of complaints against the company and its violations of the AGSL, the Commission requires USESC to undergo an independent audit of its sales program, with a focus on hiring, training, solicitation procedures and performance, targeting of specific communities and demographics (including but not limited to socioeconomic status, household language, and race), compensation, sales verification, complaint tracking and reporting, discipline, and other compliance practices.

Id. Just Energy continues to be subject to the requirements in the Audit, including daily complaint reporting to the Commission, as that docket (Docket No. 10-0398) has not yet been closed. *Just Energy Complaint Order* at 53, para. 11.

Mr. Cohen also discussed his recent personal experience being approached numerous times by door-to-door sales representatives from suppliers. CUB-AG Ex. 1.0 at 15:364-369. Mr. Cohen testified that in these interactions, he asked the sales representatives questions about their offers and "in every case their answers have been false or misleading." *Id*. CUB-AG Ex 1.2 is a letter to Chairman Flores and Commissioners dated April 21, 2010, describing one such experience by the supplier Just Energy. Mr. Cohen testified that, "had I signed up for the supply offer, my gas costs would have shot up relative to utility supply and made my gas service less affordable. That fact alone would make it more likely that my account would become uncollectible." *Id*. at 15:372-384.

Customers of alternative gas suppliers already have significantly higher gas supply uncollectibles, a point confirmed by Nicor witness Mudra, who cited the fact that third-party commodity-related receivables are currently about twice utility delivery receiveables. Nicor Ex. 2.0 at 27:602-603. Marketing to more "credit-challenged" customers, (cited as a "benefit" of Rider 17 by RESA/IGA), is likely to increase gas supply uncollectibles of Q-AGS even further, for the reasons cited in Section A.2. *supra*. Customers with relatively high bills would be more likely to find them unaffordable and their accounts would be more likely to become uncollectible. A uniform uncollectibles component will provide little deterrent for the type of marketing practices described above, which would tend to increase uncollectible amounts associated with a Q-AGS's customer accounts.

Because the uncollectible percentage may vary significantly between Q-AGSs, due at least in part to the type of marketing practices employed, the uncollectibles factor in the discount rate should be calculated separately for each Q-AGS, to further protect customers and to avoid anti-competitive effects. CUB-AG Ex. 1.0 Rev. at 12:289-294. For Q-AGSs without an uncollectibles factor established through at least one year of customer payment history, the uncollectibles factor in the discount rate should be initially set at the Q-AGS average. *Id*.

7. Rider 17 Allows for Nicor to Earn More Than Its Authorized Return

Rider 17 specifically requires that Intangible Costs be recovered "below the line." Nicor Ex. 2.1, Original Sheet No. 75.9.4. Below-the-line treatment by definition would provide an earnings supplement to the Company that would not be included in its rate of return reflected in its revenue requirement, despite the fact that the investment is used for utility operations. CUB-AG Ex. 2.0 2nd Rev. at 6:1456-146. This would have the effect of artificially inflating Nicor's return. *Id*. If, contrary to CUB-AG's recommendation, Rider 17 is determined by the

Commission to be just and reasonable, and if it is designed to provide recovery by Nicor of prudently incurred reasonable costs, there is no reason to include further incentive for Nicor's participation by allowing below-the-line cost recovery. *Id*. at 6-7:147-156. Furthermore, there is no corresponding below-the-line recovery "incentive mechanism" in POR tariffs approved for Illinois electric utilities. *Id*.

V. CONCLUSIONS AND RECOMMENDATIONS

As a result of the legal and mechanistic infirmities of Rider 17 identified above, the Commission should reject Rider 17. Even if the Commission finds it has authority to approve a POR tariff for gas utilities, the tariff that has been proposed in this proceeding lacks the requisite evidentiary basis to meet the just and reasonable standard under the Act, because it fails to show customer benefits outweigh the costs of the program. Furthermore, the fact that this tariff does not take effect until 24 months after a Commission order approving it, and considering the significant defects of the tariff identified by Staff, CUB and the AG, renders this docket premature. Staff witness Ebrey likewise concludes that the tariff is not "is not sufficiently developed for the Commission to act upon." Staff Ex. 2.0, 3:60-64. Considering the Commission's own Staff along with CUB and the AG each recommend denying the tariff as failing to measure up to the requirements under the Act, the only reasonable resolution is to reject this tariff outright.

If, however, the Commission finds that the law and the facts support a POR tariff for Nicor Gas, and rejects CUB-AG's proposal to require Q-AGS to pay all costs of the program, the following modifications to PORA charges should be adopted to provide the minimum in consumer protections to customers of participating Q-AGS:

- i In order for the charges to be seen and understood by customers, they should be listed as a separate line item on Nicor bills, rather than as invisible adjustments to the

Monthly Customer Charge. The derivation and description of any POR-related charges to the customer should also be stated in plain language on Nicor bills.

ii In order to protect small volume customers from bearing excessive costs, the total monthly POR-related charges billed by Nicor to a Q-AGS customer should be capped at no more than 50 cents per month for residential customers and $2 per month for commercial customers, with a maximum amount of 1% of the customer's supply charges.

iii In order to appropriately assign POR-related costs, Administrative and Operating Costs (AOC) should be recovered by Nicor directly from Q-AGS as a component of the Discount Factor.

iv In order to equitably allocate any costs collected directly from customers, such costs should first be allocated by customer class and then allocated within each class volumetrically;

v In order to protect all AGS and their customers from unfairly being required to pay higher costs due to the marketing practices of some Q-AGS, the uncollectibles portion of the discount factor should be set separately for each Q-AGS based on the uncollectibles history of its receivables over the preceding year. For newly certified Q-AGSs or those without an established uncollectibles history, the uncollectibles portion of the discount factor should be set at the Q-AGS average percentage until an actual rate can be calculated. If the Commission determines that a uniform discount rate should apply to all Q-AGSs, the uncollectibles component of the rate should be set at a percentage intended to recover the total Q-AGS supply uncollectibles.

vi In order to prevent the utility from receiving an unwarranted below the line income stream, recovery of Intangible Costs (IC) should be eliminated. However, if the increased risks cited by the Company are deemed by the Commission to warrant recognition as IC, these costs should be recovered directly from Q-AGSs, not customers.

Absent rejection of the tariff, to ensure that customers are not charged excessive amounts, all costs of Rider 17 should be charged to the Q-AGS themselves. If the Commission determines the customers should be charged for Rider 17, the lack of incentive for a Q-AGS to limit its customers' uncollectibles must be addressed by settiong the uncollectibles component of the discount rate separately for each Q-AGS based on its uncollectibles history. If the Commission decides to allow Nicor to charge customers for a Purchase of Receivables program, a series of consumer protections to disclose the charges and to limit them to reasonable amounts should be included in the tariff. Intangible Cost recovery should be denied and in no case should Nicor be allowed to recover Intangible Costs below the line.

Wherefore, CUB-AG respectfully request that the Commission reject Rider 17, or, in the alternative, make the modifications recommended both herein, and by Staff witnesses.

Dated: May 17, 2013

Respectfully submitted,

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