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.	**)**	

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

June 26, 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 200.830) ("Commission Rules"), and the schedule set by the Administrative Law Judge ("ALJ"), hereby submit this Reply Brief to the Brief on Exceptions ("BOE") of Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor" or the "Company"), and the Retail Energy Supply Association ("RESA") and Interstate Gas Supply of Illinois, Inc. ("IGS"), (collectively, "RESA/IGS"), regarding the ALJ's Proposed Order tariff filed by Nicor entitled "Nicor Gas Rider 17 Purchase of Receivables with Consolidated Billing" ("POR Tariff" or "Rider 17").

I. INTRODUCTION

The Proposed Order was correct to reject Nicor's Rider 17. In the absence of a legal mandate to implement a POR tariff, the law requires the Commission to base its decision on evidence demonstrating the justness and reasonableness of the tariff with regard to all affected parties. 220 ILCS 9/201(c). The Proposed Order's analysis and conclusion regarding the absence of evidence that the proposed tariff is just and reasonable is legally sustainable and should be adopted in whole by the Commission. Each of the arguments presented by Nicor and

RESA in their respective Briefs on Exception were a rehash of arguments previously made and properly considered and rejected by the Proposed Order. Thus, CUB-AG will not repeat all the arguments contained in CUB-AG's Initial and Reply Briefs, but rather will focus on the most pivotal arguments justifying Proposed Order's rejection of Rider 17.

Every party to this proceeding agrees that the "just and reasonable" standard under Section 9-201 of the Public Utilities Act ("PUA" or "Act") is the controlling legal provision. Whether a tariff is "just and reasonable" is necessarily a judgment call on behalf of the Commission, as the expert agency charged with the obligation to ensure that only just and reasonable rates are charged to Illinois ratepayers. 220 ILCS 5/9-101. The Proposed Order correctly, appropriately and reasonably applies the evidence in this proceeding to the law in concluding that Rider 17 does not satisfy this standard. The Commission must examine the proposed rate or tariff in light of the evidence of record and its effect on all affected parties and, if it does, its conclusions are given substantial deference by the courts. *Commonwealth Edison Co v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389, 397 (2nd Dist. 2010) ("We [the appellate court] give substantial deference to the decisions of the Commission, in light of its expertise and experience in this area. Accordingly, on appeal, the Commission's findings of fact are considered *prima facie* true; its orders are considered *prima facie* reasonable, and the appellant bears the burden of proof on all issues raised.")

Nicor does not satisfy its burden of proof to demonstrate that the effect of Rider 17 is just and reasonable to customers. Nicor and RESA/IGS ("Proponents") instead focus on the tariff's "optional" nature as it relates to Qualifying Alternative Gas Suppliers ("Q-AGS") in an effort to exculpate it from the legally required just and reasonable standard. The tariff as designed and supported by Nicor, however, has rate impacts on customers of participating Q-AGS – rate

impacts that have not been quantified in this record and have been shown to be unnecessary and unreasonable. Considering the alleged benefits of Rider 17 are limited to "qualitative" benefits of speculative additional market participation, and unquantified, uncertain and speculative reduced future supplier rates, the Proposed Order rightly concluded that Rider 17 must be rejected for its failure to provide benefits to ratepayers that exceed the costs to those customers.

The derivation of Rider 17 was limited to the interests of the two parties who agreed to propose it: RESA/IGS and Nicor (first as legislation, and only after that failed, as a tariff filing). Neither Staff nor any consumer party – not CUB, nor AG– were a party to the Nicor/AGL-RESA/IGS Stipulation and Settlement Agreement ("Stipulation") filed in Docket No. 11-0046. Not surprisingly, then, Rider 17 is not constructed with customer impacts in mind: there is no limit on customer charges under Rider 17; the charges are buried in the customer charge and therefore effectively hidden from customers; and the discount rate is currently set too low, and 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. CUB-AG Ex. 1.0 Rev. at 11:275-283. While CUB-AG and Staff each developed modifications to Rider 17 to mute the negative consequences on customers, the errors in the design of Rider 17 cannot easily be remedied. The resolution of the issues in favor of ratepayers (*i.e*. adoption of the modifications proposed by CUB-AG) would make the tariff unacceptable to Nicor. Nicor Init. Br. at 2-3. If, however, CUB-AG and Staff recommendations are not adopted, and the tariff is approved as presented in Nicor Ex. 2.2, the Commission would be acting in contravention of its obligation to approve only rates that are "just and reasonable." 220 ILCS 5/9-101. Consequently, the only legally-sustainable, reasonable and fair solution is to reject the tariff outright.

II. ARGUMENT

A. RIDER 17 DOES NOT MEET THE "JUST AND REASONABLE" STANDARD UNDER ILLINOIS LAW

No party denies that the "just and reasonable" standard under Sections 9-101 and 9-201(c) of the Public Utilities Act ("PUA" or "Act") applies to Rider 17. The tariff may only be approved if the Commission concludes that it is "just and reasonable to both the utility and customers, alike." *Business and Prof'l People for the Pub. Interest v. Illinois Commerce Comm'n ("BPI I")*, 146 Ill.2d 175, 208, *quoting* 220 ILCS 5/9–201(c). The Act requires the Commission to establish rates which are "just and reasonable" for both the investors and the consumers. 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 Bd. v. Illinois Commerce Comm'n*, 276 Ill. App. 3d 730, 737 (1st Dist. 1995).

Because Rider 17 contains no limit on the Purchase of Receivables Customer Adjustment ("PORA") paid by a customer, the total customer impact of the tariff is not known. In the face of evidence that the discount rate is set too low and the actual uncollectibles have the propensity to rise dramatically, based on potential marketing strategies and deregulated prices, terms and conditions, the Commission cannot conclude that the customer impacts of Rider 17 are just and reasonable. Nor can the Commission conclude that the tariff is in the public interest, against the objection of each party charged with the obligation to protect the interests of ratepayers, including the Commission's own Staff. If it is true, as RESA/IGS claim, that "it does not appear that anyone can perform a cost-benefit analysis of a PORCB program at this time," (RESA/IGS Init. Br. at 22), then the Commission does not have a basis on which to conclude that the tariff is

just and reasonable, especially considering the lack of legislative mandate paired with the fact that costs will be borne by ratepayers under proposed Rider 17.

B. THE DUBIOUS, SPECULATIVE AND UNQUANTIFIABLE CUSTOMER BENEFITS IDENTIFIED BY RESA DO NOT OVERCOME THE LEGAL, POLICY AND TECHNICAL DEFECTS OF RIDER 17

Rider 17 is a tariff under which customers of participating Q-AGS will charged an unknown amount for the PORA, which will be included in the customer charge for those customers. *See* Nicor Ex. 2.2. The PORA includes the amount of receivables above (or below) the actual Q-AGS uncollectibles recovered through the discount rate mechanism, plus a portion of capital costs, intangible costs and administrative costs. Nicor Ex. 2.2, Original Sheet No. 75.9.9. The resulting amount is then split evenly between the total number of customers in each customers class, regardless of how much gas each customer uses. There is no limit to the charges that may flow through to customers of participating Q-AGS under the Rider 17 (as presented in Nicor Ex. 2.2). No evidence was presented in this proceeding to demonstrate either the reasonableness of the Proponents' arbitrary 1.5% discount rate, nor the impact this discount rate will have on the PORA (and, ultimately, customer rates). Because the PORA charges are core components to the operation and cost recovery of Rider 17, the Commission must review what effect the PORA may have on customers. The Commission must conclude that the tariff is "just and reasonable" for those customers that will be paying PORA rates in order to approve the tariff. The importance of the "just and reasonable" requirement in this case is heightened in light of the significant void of empirical data regarding the customer impact. If the Commission cannot examine the rate impact on customers arising out of Rider 17, then it cannot conclude the tariff is "just and reasonable."

While RESA attempts to justify the benefits of Rider by pointing to the experience of Illinois electric utility POR programs (RESA BOE at 7), Rider 17 was distinctly not modeled on other comparable tariffs in Illinois, the Retail Electric Supplier ("RES") tariffs, but instead was developed through negotiations between the Proponents, and includes customer rate components that are not included in the Commission-approved RES tariffs. Considering the electric POR riders were specifically authorized by the Public Utilities Act, (220 ILCS 5/16-118(c)), and Rider 17 possesses no such authority, a safer bet would have been to model a proposed POR gas rider on the already statutorily-authorized one. That is not what the Proponents elected to do. Instead, Rider 17 includes unjustifiable components like "Intangible Costs" (recovered below the line) and a PORA that charges customers for uncollectible costs in excess of the discount rate. *See* Nicor Ex. 2.2, Original Sheet No. 75.9.9. These unique components are what constrain the Commission's ability to determine the tariff is just and reasonable.

RESA admits that no future rate reduction can be either predicted or confirmed as a result of Rider 17. *See* CUB Cross Ex. 1. Yet, Rider 17 saddles customers with PORA charges that are not capped, and thus if uncollectibles from Q-AGS customers rise, the PORA charges will also rise for those customers. Thus, any illusory, dubious and speculative "qualitative" benefit associated with additional "choices" of suppliers cannot overcome the potentially adverse effect of increased Q-AGS customer costs under Rider 17. Furthermore, the notion that customer choice is faltering and POR is required to rescue it is belied by the evidence in this proceeding, which demonstrates that there has been a recent upward trend in Customer Select participation. Staff Ex. 5.0 at 1-2:19-25. This dispels the notion that the Commission must act to stimulate the competitive marketplace in Nicor's territory.

RESA claims that customers who do not wish to be exposed to increased PORA charges may simply leave their alternative supplier and return to the utility. RESA BOE at 3-4. This claim ignores unrebutted record evidence that the PORA charges, which are to be included within the customer charge, are hidden from customers and therefore customers may not be aware of the increased charges on their bill. CUB-AG Ex. 1.0 at 7:161-167. When the Commission approved the expansion of choice tariffs for Nicor's Customer Select program beyond a pilot group, the Commission required Nicor to send a notification letter to customers of their participation in Customer Select. *See* ICC Docket No. 00-0620 & 00-0621 (cons.), July 5, 2001 Order at 32. No such notification provision is included in proposed Rider 17 regarding the additional PORA charges Q-AGS customers would be required to pay under Rider 17.

Nicor claims that Intangible Cost Recovery is an important component of Rider 17 and is justifiable. The reasons cited by Nicor, that unforeseeable costs may – or may not – arise in the future, and that an additional incentive is required for Nicor to agree to implement Rider 17, do not support the recovery of intangible costs at all, let alone below the line. First, the fact that RESA/IGS and Nicor agreed to this cost component does not make it reasonable. The record contains ample evidence of the unreasonableness of intangible costs, not the least of which is the fact that the source of these costs is speculative and Nicor currently considers them unquantifiable. May 6 tr. at 33-34. Second, if the Commission finds it has the authority to authorize a POR tariff for Nicor and finds Rider 17 in the public interest, no additional incentive beyond recovery of its costs should be required for Nicor to implement it. CUB-AG Ex. 2.0 2nd Rev. at 6-7:146-149.

III. CONCLUSIONS AND RECOMMENDATIONS

The Commission should adopt the Proposed Order and reject Rider 17 for all the reasons articulated in the Proposed Order and in the Initial and Reply Briefs of CUB-AG and Staff.

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Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS

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