

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
vs.	)	Docket No. 03-0703
	)	
Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	
Reconciliation of revenues collected under	)	
gas adjustment charges with actual costs	)	
prudently incurred.	)	

**REPLY BRIEF ON REHEARING OF**  
**NICOR GAS COMPANY**

January 20, 2016

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	3
A. The Evidence Demonstrated that Nicor Gas Acted Prudently During the 2003 PGA Reconciliation Year. ....	3
1. The Commission and FERC approved the Hub services in use in 2003. ...	5
2. Hub loans did not reduce the amount of gas available to PGA customers or increase PGA costs during the 2003 reconciliation year. ....	6
3. The storage capacity allocated to Hub activities during the 2003 reconciliation year was appropriate in light of Nicor Gas’ gas supply plan and operational objectives. ....	8
4. The storage inventory allocated to Nicor Gas’ Hub activities was not available to the Company’s PGA customers. ....	11
5. Nicor Gas refuted CUB/AG’s assertions regarding seasonal pricing. ....	12
B. CUB/AG’s and Staff’s Proposed Adjustments Should Be Rejected Because They Are Based on Improper Hindsight Review. ....	13
1. CUB/AG’s proposed adjustment should be rejected because it is based on impermissible hindsight. ....	13
2. Staff’s proposed adjustments also should be rejected because they are based on impermissible hindsight and its first proposed adjustment also goes beyond the scope of this rehearing. ....	14
III. CONCLUSION.....	17

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	
vs.	)	Docket No. 03-0703
	)	
Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	
Reconciliation of revenues collected under	)	
gas adjustment charges with actual costs	)	
prudently incurred.	)	

**REPLY BRIEF ON REHEARING OF NICOR GAS COMPANY**

Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas” or the “Company”), pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Adm. Code § 200.800, and the schedule established by the Administrative Law Judge (“ALJ”), respectfully submits this Reply Brief on Rehearing.

**I. INTRODUCTION**

The Citizens Utility Board (“CUB”), the Illinois Attorney General<sup>1</sup> (“AG”) (collectively “CUB/AG”), and Commission Staff<sup>2</sup> (“Staff”) now have had multiple opportunities to refute the fact that Nicor Gas had ample gas in its storage fields during February and March 2003 to serve its sales customers’ demand, if needed. Nonetheless, in rehearing briefs, CUB/AG and Staff continue to ask the Commission to rely on assumptions, not facts, to support their flawed claims that the Company somehow did not have sufficient gas in storage available to serve possible

---

<sup>1</sup> Nicor Gas observes that the AG did not seek rehearing in this matter as CUB’s Application for Rehearing (“Application”) was filed by CUB alone. Yet, the AG is noted as joining CUB’s rehearing brief. In addition, the AG did not submit any testimony in this proceeding, nor did it cross-examine any witness.

<sup>2</sup> Staff’s rehearing brief concedes that the scope of this rehearing is limited to the issues presented in CUB’s Application. Staff Init. Br. on Rehearing at 3-4. However, Nicor Gas respectfully notes that certain issues raised in Staff’s brief go beyond the scope of this rehearing and should be disregarded. Time does not permit Nicor Gas to file a motion to strike these issues prior to the deadline for submission of this brief. Consequently, the Company will address these out-of-scope claims herein.

sales customers' demands during that period. The facts show that not only did Nicor Gas have sufficient gas in storage if such a demand occurred, but that such demand did not occur.

CUB/AG's and Staff's theory that a Hub<sup>3</sup> loan balance during that period led to higher gas costs for the Company's sales customers is completely unfounded. The flawed assumptions of the CUB and Staff witnesses underpin their imprudence claims, and the Commission properly rejected such claims in its September 16, 2015 Order in this proceeding ("Order"). Given that CUB/AG and Staff fail to present any new evidence or argument in their rehearing briefs, there is no basis for the Commission to amend the Order's findings and conclusion that Nicor Gas' 2003 Purchased Gas Adjustment ("PGA") costs for the 2003 reconciliation year were prudent and reasonable. Order at 23-24.

CUB/AG's and Staff's challenges to the Order have no basis in law or in fact. Both parties base their arguments on the assumptions and mischaracterizations of their witnesses, and demonstrate a fundamental misunderstanding of Nicor Gas' loans to the Hub and its entirely separate and distinct PGA activity. In particular, the CUB and Staff witnesses assumed that the Company had to buy higher-priced flowing gas during the reconciliation year to serve sales, or PGA, customer demand. Yet, the evidence showed that is not what happened and there are no facts to support the assumptions of the CUB and Staff witnesses. Nicor Gas demonstrated that Hub activities do not affect the amount of gas in storage available to sales customers or the associated PGA costs generally, and did not during the 2003 reconciliation year. Accordingly, there is no basis on which to disturb the Order as it was, and continues to be, supported by substantial and compelling evidence and the Order should be affirmed on rehearing.

---

<sup>3</sup> The Hub is a collection of services that Nicor Gas offers to end-user, local distribution companies ("LDC") and other customers that permit those customers to store and transport gas and, in some instances, to borrow gas, using the Nicor Gas system. Sherwood Sur., Nicor Gas Ex. 6.0R, 7:129-131.

## II. ARGUMENT

### A. The Evidence Demonstrated that Nicor Gas Acted Prudently During the 2003 PGA Reconciliation Year.

In this PGA reconciliation proceeding, Nicor Gas must establish the prudence of its PGA-related gas supply purchases and costs. 220 ILCS 5/9-220; Init. Order at 1-2. As the Commission has previously stated, “[i]n determining whether or not a judgment was prudently made, only those facts available at the time judgment was exercised can be considered.” *In re: Commonwealth Edison Company*, Docket No. 84-0395, Order at 17 (October 7, 1987). “Imprudence cannot be sustained by substituting one’s judgment for that of another” and “the prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being ‘imprudent’.” *Id.* No party to this proceeding disputes that the Commission’s prudence standard is the applicable standard here. CUB/AG Init. Br. on Rehearing at 5-6; Staff Init. Br. on Rehearing at 4-5; Gulick Sur., Nicor Gas Ex. 7.0R, Nicor Gas Ex. 7.2 at NG Staff 2.07(a); Tr. 218:5-15, 220:9-12 (Mierzwa).

Here, CUB/AG’s and Staff’s arguments in their respective rehearing briefs fail to demonstrate that Nicor Gas acted imprudently. The record demonstrated clearly, and the Commission correctly found, that CUB/AG’s and Staff’s assertions about Nicor Gas’ alleged imprudence are fundamentally flawed. Specifically, their arguments are based on the assumptions of two witnesses who have admitted that they did not analyze the Company’s *actual* volume of gas in its storage fields available to meet its sales customers’ demand, if necessary, in February and March 2003.<sup>4</sup> Gulick Sur., Nicor Gas Ex. 7.0R, Nicor Gas Ex. 7.5 at NG CUB 3.03(a); Tr. 193:19-195:10 (Rearden). Instead, they *assumed* Nicor Gas did not have sufficient

---

<sup>4</sup> Additionally, neither the CUB nor Staff witness had any experience in operating or managing a gas local distribution system or aquifer storage field system. Tr. 163:1-165:1, 169:17-170:2 (Rearden); Tr. 208:13-210:20 (Mierzwa).

gas in storage at that time to serve sales customers based on accounting records related to Hub activities – activities that do not impact the cost of gas for sales customers. Rearden Reb., Staff Ex. 4.0, 18:378-383; Mierzwa Dir., CUB Ex. 1.0, 5:100-107. Indeed, the unrefuted facts showed that Nicor Gas had ample gas in its storage fields to serve its sales customers' demand, if necessary. Gulick Sur., Nicor Gas Ex. 7.0R, 21:421-23:437 and Table 3.

The evidence demonstrated that the conclusions of Mr. Mierzwa and Dr. Rearden suffered from a lack of empirical precision. Mr. Mierzwa admitted that he made “assumptions” in proposing his disallowance because he did not examine whether the subject Hub loans actually reduced the amount of gas available to sales customers. Tr. 222:16-223:16 (Mierzwa); Gulick Sur., Nicor Gas Ex. 7.0R, Nicor Gas Ex. 7.5 at NG CUB 3.03(a). Similarly, Dr. Rearden conducted no analysis of the actual amount of gas in storage that was available for PGA customers during the period in question. Tr. 193:19-195:10 (Rearden). No party provides an explanation for this failure on the part of the CUB and Staff witnesses. Also lacking from Staff's arguments is any credible explanation for the difference in opinion between Dr. Rearden and its own witness, Mark Maple, a Senior Gas Engineer who found Nicor Gas' practices during the reconciliation period to be prudent. Maple Dir., Staff Ex. 2.0, 1:5-7, 2:31-3:56.

By contrast, Nicor Gas presented the testimony of Company witness Timothy Sherwood, Vice President of Gas Supply Operations, who has nearly 30 years of experience working for natural gas operators, including extensive operational experience in managing the gas supply operations of LDCs, including the management of storage assets. Nicor Ex. 1.0R; Nicor Ex. 4.0; Nicor Gas Ex. 6.0R, 1:7-2:22, 3:52-58; Nicor Gas Ex. 6.1; Tr. 34:2-35:1 (Sherwood). In addition, Nicor Gas presented Company documentation relating to its gas supply activities and use of the Hub in and around the 2003 reconciliation timeframe. *See, e.g.*, Nicor Gas Exs. 6.2,

6.4, 6.5; Nicor Gas Exs. 7.3, 7.4, 7.6, 7.7; CUB Cross Exs. 2, 3. Nicor Gas also presented the testimony of Christopher Gulick, an individual with extensive experience in managing gas supply operations for a utility and a thorough understanding of how a utility uses storage assets. Gulick Sur., Nicor Gas Ex. 7.0R.

Thus, the inquiry on rehearing begins and ends with CUB/AG's and Staff's failure to support their arguments with actual evidence of Nicor Gas' alleged imprudence. CUB/AG's and Staff's positions are built on conjecture, not facts. Therefore, the Commission correctly rejected the opinions of Mr. Mierzwa and Dr. Rearden in its Order. In all their attempts at briefing their positions, CUB/AG and Staff have failed to identify any reasons why the Commission should deviate from its previous findings, which are supported by substantial and compelling evidence. Among other facts, the evidence established that the Company's Hub activities were in full compliance with tariffs approved by the Commission and the Federal Energy Regulatory Commission ("FERC"), the Hub loans did not impact the amount of gas available to PGA customers during the 2003 reconciliation year, the Hub loans did not increase sales customers' gas costs, and there were operational benefits of the Hub loans for purposes of storage cycling and reliability. Put simply, there is no evidence that Nicor Gas acted imprudently during the 2003 reconciliation year and there is no basis to disturb the Commission's Order.

**1. The Commission and FERC approved the Hub services in use in 2003.**

As an initial matter, the evidence is undisputed that Nicor Gas' use of the Hub was in conformance with tariffs in force in 2003. In particular, Nicor Gas' Hub services in 2003 were subject to Commission and FERC regulation pursuant to Nicor Gas' Commission-approved Rate 21 and a FERC-approved tariff. Gulick Sur., Nicor Gas Ex. 7.0R, 27:496-498. Dr. Rearden and Mr. Mierzwa agreed that Nicor Gas' Hub services at issue here were provided pursuant to the

Company's approved tariffs. Tr. 195:12-196:21 (Rearden); Tr. 216:15-217:2 (Mierzwa). These witnesses also agreed that the tariffs specified the terms and conditions under which the Hub services could be offered, as well as the types of various Hub services. Tr. 196:4-7 (Rearden); Tr. 217:3-6 (Mierzwa). Importantly, neither Dr. Rearden nor Mr. Mierzwa claimed that Nicor Gas violated its Hub services tariffs in 2003. Tr. 199:8-12 (Rearden); Tr. 217:13-20 (Mierzwa).

Staff's rehearing brief makes no reference to the tariffs. And, while CUB/AG admit that Nicor Gas "is permitted to conduct Hub transactions under tariff [*sic*]," CUB/AG continue by making the unremarkable conclusion that the Company "is not required to." CUB/AG Init. Br. on Rehearing at 3. It remains undisputed on rehearing that the Company's Hub activities in 2003 were taken in full compliance with tariffs approved by the Commission and FERC. There is no basis to modify the Commission's finding that "Nicor Gas acted in accordance with its FERC- and Commission-approved tariffs[.]" Order at 24.

**2. Hub loans did not reduce the amount of gas available to PGA customers or increase PGA costs during the 2003 reconciliation year.**

In support of their arguments that Nicor Gas acted imprudently during the reconciliation year, CUB/AG and Staff assert that Hub loans reduced the amount of on-system storage gas available to PGA customers and increased PGA costs. CUB/AG Init. Br. on Rehearing at 6-7, 12-13, 17-18; Staff Init. Br. on Rehearing at 6-9. CUB/AG focus on 8 Bcf of gas that was loaned between February 11 and March 31, 2003 in support of Mr. Mierzwa's proposed disallowance. CUB/AG Init. Br. on Rehearing at 6-7, 12-13, 17-18. Staff focuses on the purported difference between the value of the gas that was loaned and the value of the gas that was repaid in support of Dr. Rearden's proposed disallowance, arguing that Hub loans would only be considered prudent if their anticipated revenues exceeded their costs. Staff Init. Br. on Rehearing at 6-9.

These arguments are built on the premise that all Nicor Gas' storage inventory during the 2003 reconciliation year was available to its PGA customers. According to Staff and CUB/AG, any transaction that depleted the storage inventory for the benefit of a non-PGA customer would have necessarily reduced the amount of gas available to the Company's PGA customers. Staff and CUB/AG oversimplify and fundamentally misconstrue Nicor Gas' Hub activities and, more broadly, the manner in which the Company does business.

The evidence demonstrated, and the Commission properly found, that Nicor Gas' provision of Hub services did not impact the storage capacity or deliverability available to the Company's sales customers. Order at 23-24. As Nicor Gas witness Mr. Sherwood explained, "the Hub loan services come out of storage capacity that would be allocated to transportation customers and not storage capacity that would be used to serve firm sales PGA customers ... activity from Hub parks or loans in neither direction changed the activities associated with the injection and withdrawal storage for sales customers." Tr. 98:2-13 (Sherwood). Mr. Sherwood further explained that "there are no particular detriments or costs put onto the sales customers associated with providing Hub loan services" given that the capacity allocated to Hub services is "unutilized storage capacity allocated to transportation customers and not available to sales customers." Tr. 97:10-15 (Sherwood).

CUB/AG and Staff failed to present any evidence in support of their theory that Hub loans reduced the amount of on-system storage gas available to PGA customers. In fact, Dr. Rearden and Mr. Mierzwa both admitted that they had not done any analysis or study to determine whether the status of the Hub loans actually reduced the amount of gas available for sales customers. Tr. 193:19-195:10 (Rearden); Gulick Sur., Nicor Gas Ex. 7.0R, Nicor Gas Ex. 7.5 at NG CUB 3.03(a). And Mr. Mierzwa admitted that he made "assumptions" in proposing

his disallowance, a fact that CUB/AG continue to emphasize on rehearing. Tr. 222:16-223:16 (Mierzwa); Nicor Gas Ex. 7.5 at NG CUB 3.03(a); CUB/AG Init. Br. on Rehearing at 17.

Thus, CUB/AG's and Staff's only support for the assertion that Hub loans reduced the amount of gas available to Nicor Gas' PGA customers is their subjective, and flawed, belief in its logic. No party presented any evidence that actually proved this to be true. In fact, the evidence conclusively proved that, at the end of March 2003, Nicor Gas had more than 19 Bcf in on-system storage gas available to PGA customers. Gulick Sur., Nicor Gas Ex. 7.0R, 21:421-23:437 and Table 3. The Company could have withdrawn additional gas from storage to serve sales customers in the amounts and during each of the months as to which CUB/AG and Staff claim there was insufficient inventory. However, under real-world conditions – warmer weather in the latter half of March 2003 reduced sales customers' demand – there was no need to withdraw additional gas from on-system storage to serve sales customers. Sherwood Sur., Nicor Gas Ex. 6.0R, 5:92-94. Accordingly, there is no basis on which to conclude that any Hub loans during the 2003 reconciliation year reduced the on-system gas available to Nicor Gas' sales customers, and there is no reason to disturb the Order's conclusion that the Hub loans “did not impact the gas available for sales customers.” Order at 24.

**3. The storage capacity allocated to Hub activities during the 2003 reconciliation year was appropriate in light of Nicor Gas' gas supply plan and operational objectives.**

CUB/AG assert that Nicor Gas did not justify the capacity it allocated to Hub activities during the 2003 reconciliation year, which CUB/AG argue represented a “significant increase” from previous years. CUB/AG Init. Br. on Rehearing at 8-9. CUB/AG's focus on the capacity allocated to Hub activities in 2003 is specious since, as discussed above, Hub activities had no bearing on Nicor Gas' ability to serve its PGA customers. CUB/AG also fail to present any

evidence that the capacity allocated to Hub activities was imprudent. CUB/AG merely assert that, in 2003, Nicor Gas allocated more gas to Hub activities than in previous years. CUB/AG Init. Br. on Rehearing at 8-9.

In the face of CUB/AG's mere assertions, the evidence demonstrated that the Hub activities were appropriate in the context of the Company's gas supply plan for the reconciliation year. Nicor Gas established its gas supply plan for the 2003 reconciliation year months before the winter season. Sherwood Sur., Nicor Gas Ex. 6.0R, 21:433-434. As Mr. Sherwood testified, among the many activities Nicor Gas undertook in planning for the 2002-2003 winter season, Nicor Gas evaluated transportation customer activity over the prior periods and made a reasonable and prudent estimate of the inventory space that transportation customers were likely to leave unfilled going into the winter of 2002-2003. *Id.* at 12:224-227, 22:452-23:459. Nicor Gas used data regarding the historical level of storage gas left uncycled by transportation customers as of April 30th for the several years prior – between 10.6 Bcf and 14.9 Bcf – to determine the prudent and reasonable level of Hub loans it could offer to the marketplace as a tool in fully cycling storage prior to the end of winter, assuming normal weather. *Id.* at 23:467-24:470.

CUB/AG point to a Company memo for the proposition that “Hub loans have traditionally been of the magnitude of 1 or 2 Bcf per year.” *Id.* (citing Nicor Gas Ex. 7.3 at 25-26). Yet, as even CUB/AG acknowledge, the Company memo states that the volume of 1 to 2 Bcf was for “late winter season loans,” which “typically involved a February 1 effective date.” Gulick Sur., Nicor Gas Ex. 7.0R, Nicor Gas Ex. 7.3 at 25-26. Nicor Gas demonstrated that any review of loan activity must include all Hub loans throughout an entire winter season. For example, for the 2002-2003 winter season, approximately 84% of the total Hub loan balance as

of March 31, 2003 was the subject of loan agreements entered into prior to the end of 2002 and 60% of the loans had been withdrawn from storage by December 31, 2002. Sherwood Sur., Nicor Gas Ex. 6.0R, 9:168-172.

CUB/AG also argue that the need for cycling storage inventory did not justify the Hub loans. CUB/AG Init. Br. on Rehearing at 10. However, CUB/AG failed to provide any evidence questioning the cycling requirements for Nicor Gas' storage fields. Additionally, CUB/AG provided no evidence in support of their claim that PGA withdrawals alone would have satisfied these storage field cycling requirements. This is perhaps not surprising given CUB witness Mr. Mierzwa's admission that he had no expertise in the highly complicated business of operating gas storage fields. Tr. 208:13-210:20 (Mierzwa).

The evidence demonstrated that the Hub loans at issue assisted in the necessary cycling of the Company's aquifer storage fields. Mr. Sherwood explained that the unique physical characteristics of the Company's aquifer storage fields required the gas inventory to be regularly cycled in order to maintain optimal performance. Sherwood Sur., Nicor Gas Ex. 6.0R, 19:389-391. Mr. Sherwood testified that the failure to reach the necessary inventory of gas at the start of each winter season would result in reduced daily and seasonal withdrawal deliverability. *Id.* at 20:399-400. Additionally, Mr. Sherwood explained that the Company's failure to sufficiently empty each aquifer field by the end of the season could result in reduced future withdrawal deliverability. *Id.* at 20:401-403. Mr. Gulick further explained that the 15.5 Bcf left in the storage fields at the end of March 2003 was evidence that the Hub loans were necessary to "try to get the inventories in a deep enough cycle" to counter the fact that, in February and March 2003, the transportation customers were "injecting gas into storage when operationally Nicor needed to get gas out of storage[.]" Tr. 152:16-153:10 (Gulick). Mr. Mierzwa did not refute

these points and even conceded that the proper cycling of the storage fields supports their vitality and longevity. Tr. 210: 16-20 (Mierzwa).

In short, in addition to failing to prove that the purported increase in Hub loans actually impacted PGA customers, CUB/AG failed to refute the evidence that demonstrated the Hub loans in the reconciliation year were consistent with the Company's gas supply planning processes and operational objectives.

**4. The storage capacity allocated to Nicor Gas' Hub activities was not available to the Company's PGA customers.**

As stated above, it is undisputed here that Nicor Gas' Hub activities in the 2003 reconciliation year conformed to both its Commission and FERC tariff obligations. CUB/AG nonetheless argue that the Hub activities were imprudent because the capacity allocated to Hub loans "could have and should have been used for sales customers to offset market purchases." CUB/AG Init. Br. at 10-13. In support, CUB/AG contend that storage aquifers cannot be physically segregated, nor can gas molecules be assigned to particular customers. *Id.* at 10-12. CUB/AG also dismiss the "allocation" of gas in storage as purely an accounting mechanism. *Id.* These arguments demonstrate that CUB/AG completely misunderstand the Company's unrefuted evidence explaining Nicor Gas' accounting treatment for its Hub loans.

The Company presented evidence that its accounting practices ensured that Hub activities did not affect the amount of inventory available to its PGA customers during the 2003 reconciliation year. The Company's operation of its storage fields and the Company's accounting for the gas in those storage fields are entirely separate and distinct matters. Nicor Gas accounted for its physical underground storage inventories by adding quantities of natural gas injected into the storage fields to existing inventories and subtracting withdrawals. Gulick Sur., Nicor Gas Ex. 7.0R, 17:359-18:360. For any given account, the costs associated with

existing inventories, injections, and withdrawals also are recorded with the corresponding quantities of gas. *Id.* at 18:360-362. CUB/AG ignore this basic premise of Hub services – that such gas is not physically segregated, but is accounted for in the Company’s records. Nicor Gas witness Mr. Gulick explained that “the physical quantity of gas in the Nicor Gas storage fields changed as a result of making Hub loans, but the accounting for the amount of gas held by Nicor Gas’ PGA and other storage customers did not.” *Id.* at 20:398-400. *See also Id.* at 21:421-23:437 and Table 3. In light of this evidence, CUB/AG have failed to support their claim that Nicor Gas should have withdrawn more gas from storage to serve sales customers in February and March of 2003 is flatly incorrect.

**5. Nicor Gas refuted CUB/AG’s assertions regarding seasonal pricing.**

CUB/AG challenge Nicor Gas’ Hub activities on the additional ground that the Company should have known that gas prices are typically higher in winter than in the summer. CUB/AG Init. Br. at 13-15.<sup>5</sup> As an initial matter, it is immaterial whether gas prices are typically higher in the winter as CUB/AG assert because the evidence proved that Hub activities did not impact the storage gas available to the Company’s PGA customers. And, even if there was a link between Hub activities and sales customers’ PGA costs, Nicor Gas presented substantial evidence regarding its “best-cost” gas purchasing strategy, including the timing and the multiple factors that are taken into consideration when establishing its winter season supply plans. Gilmore Dir., Nicor Ex. 1.0R, 9:187-10:198; Sherwood Sur., Nicor Ex. 6.0R, 10:188- 11:195, 12:220-235, 20:395-403, 21:432-434, 22:438-24:476; Tr. 41:4-20, 42:4-7 (Sherwood). Finally, Nicor Gas presented evidence that summer gas prices are not always lower than winter gas prices. Mr.

---

<sup>5</sup> CUB/AG argue that the Commission’s Order approving the Company’s Gas Cost Performance Plan (“GCPP”) in Docket No. 99-0127 somehow is supportive of their claims here. CUB/AG Init. Br. on Rehearing at 14. CUB/AG’s new reliance on that proceeding is suspect given CUB’s prior arguments attempting to distinguish any matters relating to the GCPP from this proceeding. *See* CUB/AG Reply Br. at 8-13; CUB Motion to Strike.

Sherwood testified that “the average Chicago city-gate price in January 2003 was less than May and June 2003” and three years prior to that “summer gas prices also were higher than the preceding winter prices.” Sherwood Sur., Nicor Gas Ex. 6.0R, 15:295-298; Nicor Gas Ex. 6.3. This testimony refuted CUB/AG’s assertion as to what the Company *should* have known regarding gas prices because it provided concrete examples when CUB/AG’s proposition was incorrect.

**B. CUB/AG’s and Staff’s Proposed Adjustments Should Be Rejected Because They Are Based on Improper Hindsight Review.**

Both Mr. Mierzwa and Dr. Rearden calculated adjustments based on their review of gas pricing data from 2003. CUB/AG Init. Br. on Rehearing at 15-18; Staff Init. Br. on Rehearing at 6-10. By using actual market prices to calculate the “lost” value to Nicor Gas’ PGA customers, they impermissibly applied hindsight review. Gulick Sur., Nicor Gas Ex. 7.0R, 6:126-130. As the Commission properly found, Staff’s and CUB/AG’s proposed adjustments must be rejected because they were calculated with information that was not available to Nicor Gas at the time the Company decided to enter into the subject Hub loan agreements. Order at 24.

**1. CUB/AG’s proposed adjustment should be rejected because it is based on impermissible hindsight.**

CUB/AG argue that no hindsight was required for Nicor Gas to understand the “likely ramifications” of engaging in Hub loans in February and March of 2003. CUB/AG Init. Br. on Rehearing at 15-16. According to CUB/AG, Nicor Gas could “reasonably be expected to know” that buying gas at winter market prices “would cost more than using gas from storage.” *Id.* However, Nicor Gas provided evidence that gas prices are not always higher in the winter. Sherwood Sur., Nicor Gas Ex. 6.0R, 15:295-298; Nicor Gas Ex. 6.3. Additionally, Nicor Gas presented evidence, and the Commission properly found, that the Company’s decisions to make

the majority of the Hub loans at issue took place in 2002, several months prior to the Company's actual Hub experience in 2003 or the daily prices occurring then. Order at 23-24; Sherwood Sur., Nicor Gas Ex. 6.0R, 10:180-187; Gilmore Reb., Nicor Gas Ex. 4.0, 9:177-185. And, even if Nicor Gas could have predicted future gas prices, it would not have impacted the loan decisions because the Hub loans did not affect Nicor Gas' ability to withdraw gas for PGA customers and did not increase the cost of gas charged to PGA customers. CUB/AG cannot argue that their reliance on *post hoc* data about gas prices during February and March of 2003 is not hindsight review when they used this data to assume that a decision was imprudent because, in hindsight, there was a theoretically cheaper means of supplying gas. This sort of hindsight analysis is strictly prohibited by the Commission's prudence standard, and the Commission properly rejected it in its Order.

**2. Staff's proposed adjustments also should be rejected because they are based on impermissible hindsight and its first proposed adjustment also goes beyond the scope of this rehearing.**

Staff addresses two adjustments in its rehearing brief – one based on Staff's position that all Hub revenues must offset PGA costs under Section 525.40 of the Commission's Rules and a second based on Staff's belief that Nicor Gas' Hub loans increased PGA costs. Staff Init. Br. on Rehearing at 6-9.

Taking Staff's second adjustment first, Staff argues that its proposal was not based on hindsight where it used the "same facts" that allegedly were available to Nicor Gas at the time it made its decision to enter into the Hub transactions. Staff Init. Br. on Rehearing at 9. Staff claims that Nicor Gas' use of the Hub was imprudent because Nicor Gas "refrained from performing any analysis of the expected revenue from its Hub transactions compared to the expected cost of each transaction." *Id.* Yet, the evidence demonstrated that Staff's reliance on

“individual transactions” is misplaced. Mr. Sherwood testified that it was irrelevant to the Company’s gas supply activities “to do an analysis on an individual basis as to the impact on PGA sales customers when, in total, there is no impact” on the cost of serving PGA customers. Tr. 72:5-8, 97:10-15 (Sherwood). And, as discussed above, the evidence demonstrated that Hub services did not affect the quantity or cost of storage inventories for PGA customers and, therefore, Nicor Gas had a rational basis for its understanding that Hub services in the aggregate were essentially costless to the PGA customers. Gulick Sur., Nicor Gas Ex. 7.0R, 26:479-481.

In the face of these facts, Staff continues to assert that Nicor Gas should have conducted a different analysis in order to demonstrate the value of these benefits relative to the market value of the storage. Staff Init. Brief on Rehearing at 7-9<sup>6</sup>. However, such an analysis would be dependent upon application of after-the-fact market prices, and cannot be reconciled with the Commission’s prudence standard by which Nicor Gas’ conduct must be reviewed. *See, e.g., In re: Commonwealth Edison Company*, Docket No. 84-0395, Order at 17 (October 7, 1987); *Illinois Power Co. v. Illinois Commerce Comm’n*, 339 Ill. App. 3d 425, 428 (5th Dist. 2003) (“When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered.”). The Commission’s rejection of Staff’s second adjustment, therefore, should be affirmed.

As for Staff’s first adjustment based on Section 525.40, it is beyond the scope of this rehearing. Staff agrees that the scope of issues on rehearing is limited to the arguments raised in CUB’s Application. Staff Init. Br. on Rehearing at 3 (citing Tr. on Rehearing 6:4-7). However, CUB’s Application makes no reference to Section 525.40 or to Staff’s theory regarding the manner in which Hub revenues should be credited. Therefore, Staff’s argument regarding Dr.

---

<sup>6</sup> For the first time on rehearing, Staff also argues that Nicor Gas failed to meet its burden of proof with respect to Dr. Rearden’s second adjustment. Cf. Staff Init. Br. on Rehearing at 7-8 with Staff Init. Br. at 9-13 and Staff Reply Br. at 7-11. This belated assertion is without merit in light of the evidentiary record.

Rearden's first adjustment should be disregarded in its entirety. Staff Init. Br. on Rehearing at 6. Because there is not sufficient time to brief a motion to strike, Nicor Gas will address Staff's first adjustment below.

The Commission's rejection of Staff's first adjustment also should be affirmed because it is contrary to the Commission's directives to Nicor Gas regarding the allocation of Hub revenues. Specifically, the Hub services were operated and accounted for in accordance with two Commission Orders in effect in 2003. The Commission first expressly required Nicor Gas to record its Hub revenues "above-the-line" and not as an offset to PGA costs. *In re Northern Illinois Gas Company*, Docket No. 93-0320, Order at 6 (March 13, 1996). In a later Order, the Commission credited Nicor Gas' Hub revenues against the revenue requirement. *In re Northern Illinois Gas Company*, Docket No. 95-0219, Order at 14-15 (April 3, 1996). Specifically, under the heading "Revenue Items Not Included," Nicor Gas was directed to credit off-system storage revenues to the PGA. *Id.* at 17. The Commission did not authorize or require Nicor Gas to reflect Hub revenues as an offset to PGA costs as Staff continues to assert here. Instead, the Commission's 1996 Orders recognized that PGA and non-PGA Hub activities were distinguishable and directed that they be credited differently.

The Commission's direction concerning the treatment of Hub revenues, as reflected in these 1996 Orders, remained in effect in 2003. Accordingly, the Commission properly found that Nicor Gas acted in accordance with the Commission Orders in effect in 2003 and rejected Staff's first adjustment. Order at 24.

### III. CONCLUSION

For the reasons set forth herein and in its Initial Brief on Rehearing, Northern Illinois Gas Company d/b/a Nicor Gas Company respectfully requests that the Commission enter an Order on Rehearing affirming the conclusions set forth in its September 16, 2015 Order and rejecting the arguments and disallowances proposed by CUB/AG and Staff.

Dated: January 20, 2016

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY  
D/B/A NICOR GAS COMPANY

By: /s/ John E. Rooney  
One of their attorneys

John E. Rooney  
E. Glenn Rippie  
Anne W. Mitchell  
ROONEY RIPPIE & RATNASWAMY LLP  
350 West Hubbard Street, Suite 600  
Chicago, Illinois 60654  
(312) 447-2800  
john.rooney@r3law.com  
glenn.rippie@r3law.com  
anne.mitchell@r3law.com

**CERTIFICATE OF SERVICE**

I, John E. Rooney, certify that I caused a copy of Nicor Gas Company's Reply Brief on Rehearing to be served upon the service list in Docket No. 03-0703 by electronic mail, on the 20th day of January, 2016.

/s/ John E. Rooney  
John E. Rooney