

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

John Friedberg)	
)	
vs.)	Docket No. 15-0339
)	
Ambit Illinois, LLC)	
)	
Complaint as to over charge in Cook County, Illinois.)	

Rebuttal Testimony of
BRENDA KERRICK
Vice President, Product Management
Ambit Management, Inc.,

June 30, 2016

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1 **I. Introduction and Purpose**

2 **A. Identification of Witness**

3 **Q. Are you the same Brenda Kerrick who provided direct testimony on behalf of**
4 **Ambit Illinois, LLC d/b/a Ambit Energy (“Ambit”) in this proceeding?**

5 A. Yes.

6 **B. Purpose of Testimony**

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. The purpose of my rebuttal testimony is to discuss the exhibits that Mr. John Friedberg
9 filed in lieu of narrative direct testimony in this proceeding.

10 **C. Summary of Conclusions**

11 **Q. Please summarize the conclusions of your rebuttal testimony.**

12 A. I conclude that the document submitted as Friedberg Exhibit (“Ex.”) 1.02 and contained
13 in Friedberg Exs. 1.04 and 1.06 is Ambit’s 2009 Terms of Service Agreement for
14 Residential Natural Gas Service for the Nicor Illinois Local Distribution Company
15 service area applicable to the Guaranteed Savings Plan – Natural Gas (“Guaranteed
16 Savings Plan”) and the Illinois Select Variable Natural Gas Plan (“Select Variable Plan”)
17 (“2009 Terms”). These 2009 Terms were not in use in 2012 and were not applicable to
18 the agreement between Ambit and Mr. Friedberg. I also conclude that Mr. Friedberg has
19 incorrectly calculated the difference between the amount he paid to Ambit while enrolled
20 on the Select Variable Plan and the amount he would have paid to Ambit if he had re-
21 enrolled in the Guaranteed Savings Plan.

22 **D. Identification of Exhibits**

23 **Q. Are you sponsoring any attachments to your rebuttal testimony?**

24 A. Yes. I have attached the following exhibits to my testimony:

- 25 • **Ambit Ex. 3.01** is an explanation of Mr. Friedberg’s 1% annual savings pursuant
26 to the Guaranteed Savings Plan related to Ambit charges from 2/16/2012 to
27 3/18/2013.
- 28 • **Ambit Ex. 3.02** is an explanation of the difference between the amount Mr.
29 Friedberg paid to Ambit from February 2012 through January 2015, and the
30 amount he would have been charged by Ambit if he had re-enrolled in the
31 Guaranteed Savings Plan.
- 32 • **Ambit Ex. 3.03** is a graph depicting natural gas commodity costs during what is
33 known as the Polar Vortex period in 2014.

34 **II. Friedberg Exs. 1.01, 1.02, 1.04, and 1.06**

35 **Q. Mr. Friedberg’s Ex. 1.01 purports to be a facsimile transmission of a “Customer**
36 **Sign Up/Letter of Agency.” This document is also attached to Mr. Friedberg’s First**
37 **Amended Formal Complaint (Sept. 9, 2015) as Ex. A at BATES 10001-10004. Are**
38 **you familiar with this document?**

39 A. No. I did, however, direct Ambit’s Information Technology (“IT”) department to
40 perform various searches of our electronic archives in an attempt to authenticate this
41 document. We found historical data tables indicating that there was some form of a
42 Customer Sign Up and Letter of Agency for Mr. Friedberg, but we cannot be sure that
43 Friedberg Ex. 1.01 is an authentic portrayal of that customer enrollment flow.

44 **Q. Mr. Friedberg’s Ex. 1.01 references “Terms of Service (version 55ILF1109).” You**
45 **previously testified that you are familiar with that document as the 2009 Terms.**
46 **Would Ambit normally use those 2009 Terms during the customer enrollment**
47 **process in 2012, when Friedberg Ex. 1.01 purports to have been created?**

48 A. No. As a matter of course, Ambit would only have provided the current Terms of Service
49 applicable at that time – which would have been the 2012 Terms of Service Agreement
50 (“2012 Terms”) – to customers during the enrolment process. *See* Kerrick Dir., Ambit
51 Ex. 1.0, 8:169-10:209. However, because of the version number in the hyperlink on
52 Friedberg Ex. 1.01, I directed Ambit’s IT department to investigate Mr. Friedberg’s
53 enrollment process. It appears that there was a computer glitch on the date Mr. Friedberg
54 enrolled and the Customer Sign Up and Letter of Agency document submitted as
55 Friedberg Ex. 1.0 may have inadvertently included a hyperlink to the 2009 Terms instead
56 of the 2012 Terms.

57 **Q. Does this mean that Ambit provided the 2009 Terms to Mr. Friedberg?**

58 A. No. I found no indication that Ambit actually provided the 2009 Terms to Mr. Friedberg.
59 Moreover, Friedberg Ex. 1.01 purports to be a facsimile transmission from Mr.
60 Friedberg’s consultant, Marc Kalman Segel, to Mr. Friedberg. Mr. Friedberg would not
61 have been able to click on a hyperlink in a facsimile transmission, so the 2009 Terms
62 were clearly not provided to him via that facsimile transmission. And in any event, Mr.
63 Friedberg specifically testified that he never received or reviewed the 2009 Terms
64 referenced in the hyperlink. Friedberg Decl., Friedberg Ex. 1.03 at ¶4. To the contrary,
65 as explained in my direct testimony, there is ample evidence that Ambit provided the

66 2012 Terms to Mr. Friedberg and that Mr. Friedberg actually received the 2012 Terms.
67 Kerrick Dir., Ambit Ex. 1.0, 7:137-8:168.

68 **Q. How can you be sure that the “Terms of Service (version 55ILF1109)” were only**
69 **applicable in 2009?**

70 A. The version number clearly indicates this. That is, “1109” stands for November 2009.
71 Similarly, the 2012 Terms have a version number TOS0112-Nicor. *See* Ambit Ex. 1.01.
72 The “0112” stands for January 2012. In addition, the company name at the top of the
73 2009 document is Ambit Energy, L.P. Ambit may have used that name in Illinois prior to
74 June 30, 2010. However, the entity Ambit Energy, L.P. no longer existed after June 30,
75 2010. By 2012, Ambit was only utilizing the name Ambit Illinois, LLC d/b/a Ambit
76 Energy in Illinois, as reflected on the 2012 Terms. *See* Ambit Ex. 1.01.

77 **Q. Which Friedberg exhibits contain copies of the 2009 Terms?**

78 A. Mr. Friedberg has submitted the 2009 Terms in three places: Friedberg Exs. 1.02, 1.04,
79 and 1.06.

80 **III. Friedberg Ex. 1.07**

81 **Q. What does Friedberg Ex. 1.07 appear to be?**

82 A. Friedberg Ex. 1.07 appears to be Mr. Friedberg’s gas utility bills, some of which appear
83 to have been printed from Nicor’s website and some of which appear to be paper copies
84 of actual bills, from February 2012 through January 2015. In addition, Mr. Friedberg
85 appears to have made certain notations and embellishments on the face of the bills in red
86 font and yellow highlighting.

87 **Q. Do these bills appear to be accurate?**

88 A. I cannot testify to the portion of the bills related to Nicor's delivery service charges. I
89 have verified, however, that the amounts represented as "Usage" charges "Due Ambit
90 Energy" are accurate. I also note that Mr. Friedberg has attached an incomplete invoice
91 for the billing period 5/17/13 – 6/17/13. His attachment does not include the Ambit
92 charges of \$90.15.

93 **Q. Did Mr. Friedberg pay all of the usage charges due to Ambit?**

94 A. No. From February 2012 through January 2015, Ambit charged Mr. Friedberg
95 \$8,988.00. Of that sum, Mr. Friedberg did not pay – and still owes to Ambit – \$867.76.
96 This amount represents the unpaid charges of \$896.00 on his January 19, 2015 statement,
97 less the 1% savings he should have received from his participation in the Guaranteed
98 Savings Plan in 2012 that Ambit inadvertently omitted. *See* Friedberg Ex. 1.07 at 36
99 (showing final balance of \$896.00 due Ambit) and Ambit Ex. 3.01 (showing 1% savings
100 from 2012 Guaranteed Savings Plan in the amount of \$28.24 Misc. Adjustment).

101 **Q. What is the difference between the amount Mr. Friedberg paid to Ambit from**
102 **February 2012 through January 2015 and the amount he would have been charged**
103 **by Ambit if he had re-enrolled in the Guaranteed Savings Plan?**

104 A. If Mr. Friedberg had re-enrolled in the Guaranteed Savings Plan for 2013, factoring in the
105 1% savings, he would have been charged \$441.35 less on the Guaranteed Savings Plan
106 than he was charged on the Select Variable Plan. Subtracting the outstanding balance of
107 \$867.76, the difference between the amount he paid and the amount he would have been
108 charged is negative \$426.41. That is, Mr. Friedberg would still owe Ambit \$426.41. *See*
109 Ambit Ex. 3.02 at 1. In 2014, however, even if Mr. Friedberg had once again re-enrolled

110 in the Guaranteed Savings Plan, he would not have received the 1% savings. Although
111 customers are free to cancel their contract with Ambit at any time, in order to receive the
112 1% savings, a customer must remain with Ambit for the full 12-month term. *See, e.g.,*
113 *Ambit Ex. 1.07 at 2.* In 2014, Mr. Friedberg cancelled his service before he reached that
114 12-month anniversary. For purposes of creating a fulsome record, however, I note that
115 even if Mr. Friedberg had been eligible to receive the 1% savings in 2014, Mr. Friedberg
116 would have been charged \$1,515.47 less on the Guaranteed Savings Plan than he was
117 charged on the Select Variable Plan. Subtracting the remaining outstanding balance of
118 \$426.41, the total difference between the amount he paid and the amount he would have
119 been charged if he had remained enrolled in the Guaranteed Savings Plan for the full 12-
120 month term for both 2013 and 2014 is \$1,089.06. *See Ambit Ex. 3.02 at 2.*

121 **Q. Mr. Friedberg calculates this figure differently. Can you explain why he reaches a**
122 **different result?**

123 A. Yes. Mr. Friedberg fails to take into account that each billing period involves more than
124 one rate for natural gas. Roughly speaking, the first half of the billing period often has a
125 different rate than the second half of the billing period. Determining the correct rate
126 therefore requires calculating the daily weighted average of the applicable historical rates.
127 Mr. Friedberg does not do this. He simply takes the “Nicor Gas Historical Natural Gas
128 Cost Rates per Therm” as reflected on the Illinois Commerce Commission website, and
129 improperly applies those historical rates to each billing period in its entirety, without
130 using a weighted average.

131 **Q. Were there any significant weather events between February 2012 and January**
132 **2015 that could have led to increased Select Variable Plan rates as compared to**
133 **Nicor’s tariffed supply rates?**

134 A. Yes. The winter of 2014 was commonly known as the “Polar Vortex.” The “Polar
135 Vortex” caused extreme cold temperatures across the Midwest and Northeast, which led
136 to an increase in natural gas supply costs. This was an extraordinary weather event and it
137 explains the difference between Ambit’s Select Variable Plan rates, which are variable
138 month to month, based among other factors, on the commodity cost, and Nicor’s supply
139 rates, which are fixed in advance by tariff. Ambit Ex. 3.03 provides details regarding this
140 increase in natural gas commodity costs.

141 **IV. Conclusion**

142 **Q. Does this conclude your rebuttal testimony?**

143 A. Yes.