

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
Notice of Inquiry into the need for an	:	
expedited hearings process for	:	04-NOI-01
complaints against an alternative gas	:	
supplier where the complainant seeks	:	
a cease and desist order under	:	
Section 19-120 of the Public Utilities	:	
Act.	:	

**RESPONSE OF NICOR GAS TO NOTICE OF INQUIRY**

Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas” or the “Company”), by and through its attorneys, hereby responds to the Commission's Notice of Inquiry ("NOI") which seeks comments regarding whether an expedited hearing process is needed with respect to certain proceedings initiated pursuant to Section 19-120 of the Illinois Public Utilities Act (the "Act") 220 ILCS 5/19-120. For the reasons stated below, it is Nicor's position that the proposal set forth in the NOI is unnecessary and should not be adopted.

**A. Introduction**

Nicor Gas has a strong interest in the development of retail gas competition in Illinois. While Nicor Gas is not an Alternative Gas Supplier ("AGS"), and it is not affiliated with one, it is a strong proponent of customer choice in the marketplace. Indeed, Nicor Gas voluntarily implemented its Customer Select program, which gives all of its customers in its service territory the ability to choose alternate suppliers of natural gas.

Nicor Gas is concerned that an expedited hearing process, with extremely short timeframes for discovery and the filing of pleadings, could have a chilling effect on the nascent

competition in the retail gas market. Specifically, Nicor Gas is concerned that a truncated hearing process similar to the 30-day hearing requirement set forth in Section 13-515(d) of the Act will impose an undue economic burden on AGSs and, furthermore, will compromise AGSs' due process rights. Thirty days between the filing of a complaint and hearing simply is not enough time to establish an adequate evidentiary record for the Commission. Such short timeframes will result in an unduly burdensome process that could result in the departure of current market participants and possibly deter other alternate suppliers from entering the marketplace.

**B. Responses To Specific Inquiries**

- 1. (a.) Is there a need for the Commission to implement an expedited process for complaints filed under Section 19-120 of the Public Utilities Act [220 ILCS 5/19-120] in which the complainant seeks a cease and desist order? Please provide specific examples of Section 19-120 docketed proceedings before the Commission in which the lack of an expedited process resulted in denial of the relief sought by the complainant.**

**Response:**

There is no need for the Commission to implement a universal expedited process for Section 19-120 complaints that seek a cease and desist order. Currently, nothing in the Act prevents a Section 19-120 complainant from seeking an expedited schedule either in the complaint itself or through a separate motion. It is within the discretion of the ALJ to determine whether the hearing process should be expedited. This case-by-case approach is superior to a process that results in an expedited proceeding in every instance -- even where the complaint is frivolous or otherwise does not warrant an accelerated schedule. A "one size fits all" approach simply is not warranted.

In sum, the Commission should proceed with caution and refrain from fixing something that is not broken. Nicor Gas does not oppose an expedited hearing process where circumstances

dictate that one is necessary -- to the extent that a party makes this request before an ALJ who can weigh the gravity of the situation versus the due process rights and the burdens to be imposed on the parties.

**1. (b.) Should an “expedited” cease and desist process include an opportunity for “emergency” relief such as that which is available under Sections 13-514 and 13-515 of the Public Utilities Act when a competitive telecommunications carrier alleges that the anticompetitive actions of an incumbent carrier will cause irreparable harm to the complainant?**

**Response:**

Complaints filed under Sections 13-514 and 13-515 of the Act are very different than Section 19-120 complaints against AGSs. Sections 13-514 and 13-515 generally involve complaints between incumbent and competitive telecommunications carriers. Specifically, Section 13-514 of the Act sets forth specific prohibited actions that relate to intentional anti-competitive conduct that hinders the complaining carrier's ability to conduct business. On the other hand, complaints under Section 19-120 generally are filed by customers against AGSs and are, thus, economic in nature. These complaints do not rise to the level of "emergency" because the customer will continue to receive gas service during the pendency of the complaint process. The relief/penalty to be awarded, if any, is not something that must be decided on an emergency basis.

Moreover, the fact that Sections 13-514 and 13-515 exist indicates that the Commission cannot effectuate significant changes to the hearing process without a statutory change. The emergency relief set forth in Section 13-514 and 13-515 is a statutory exception to the normal hearing process. Indeed, Section 19-120 specifically states that "the Commission shall have jurisdiction in accordance with the provisions of Article X of this Act to entertain and dispose of any complaint against any alternative gas supplier ..." Section 10-108 of the Act sets forth

specific requirements applicable to the complaint process. 220 ILCS 5/10-108. Clearly, without an amendment to Section 19-120, the Commission cannot unilaterally implement an expedited hearing process.

1. (c) **Would the availability of an expedited or emergency cease and desist process under Article 19 be intended to prevent harm to competition in a manner similar to that provided in Section 13-515 of the Public Utilities Act? If so, please explain how a complaint against a competitive gas supplier is comparable to a complaint that is filed by a competitive telecommunications carrier against a noncompetitive carrier.**

**Response:**

As stated above, a Section 19-120 complaint against a competitive gas supplier is not comparable to a Section 13-514 complaint that is filed by a telecommunications carrier. Section 13-514 sets forth specific activities that trigger the expedited hearing process. These activities all relate to a carrier knowingly impeding competition. On the other hand, Section 19-120 complaints are generally between an AGS and customers and do not relate to the prevention of competitive harm.

The adoption of an overly burdensome complaint process that restricts the due process rights of competitive gas suppliers may have a chilling effect on competition. In addition to due process concerns, the significant expenses associated with a truncated hearing process could discourage competitors from entering the Illinois market and possibly drive current competitors to abandon the market. Given a complainant's existing ability to seek an expedited hearing, there is no basis to impose such a process on all Section 19-120 complaints.

2. **In the absence of specific statutory authority mandating expedited proceedings, is there a statutory basis for expedited proceedings under Section 19-120 of the Public Utilities Act? Please provide specific citations to any relevant Sections of the Public Utilities Act and the Illinois Administrative Procedure Act.**

**Response:**

There is no statutory authority authorizing expedited Section 19-120 proceedings. In contrast, the expedited proceedings outlined in Sections 13-514 and 13-515 are statutorily mandated. Clearly, the legislature has determined that the specific actions set forth in Section 13-514, which all relate to claims concerning the intentional impairment of competition, warrant an exception to the normal hearing process. No such legislative mandate exists with respect to Section 19-120.

Additionally, as noted above, Section 19-120 specifically states that "the Commission shall have jurisdiction in accordance with the provisions of Article X of this Act to entertain and dispose of any complaint against any alternative gas supplier..." Section 10-108 of the Act sets forth specific requirements applicable to the complaint process. 220 ILCS 5/10-108. As such, the Commission cannot unilaterally and without cause implement an expedited hearing process without an amendment to Section 19-120.

**3. (a.) Will expedited proceedings afford all parties to a complaint proceeding sufficient due process?**

**Response:**

As stated above, Nicor Gas is concerned that extremely short timeframes similar to those set forth in Section 13-515 may not afford all parties to a complaint proceeding sufficient due process protections. This is because it is difficult, if not impossible, to establish an adequate record in the thirty days between the filing of a complaint and the evidentiary hearing. Such an expedited process is simply not warranted in Section 19-120 cases because they are generally economic in nature. They do not involve situations where a company "knowingly impede(s) the development of competition..." as is the case in Section 13-514 cases.

4. **If an expedited proceeding is necessary, identify any current Commission rules that would need to be amended to provide for such a proceeding.**

**Response:**

As noted above, a universal expedited hearing process is not warranted. Notwithstanding this, Section 19-120 requires that complaints be entertained and disposed of in accordance with the provisions of Article X of the Act. Accordingly, an expedited hearing process cannot be implemented without an amendment to Section 19-120.

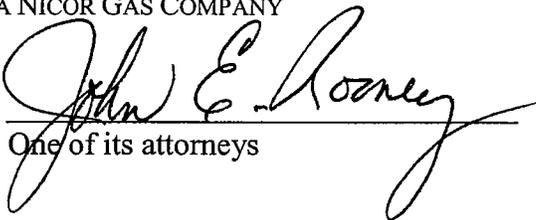
**III.**  
**Conclusion**

For all these reasons, Nicor Gas opposes the implementation of an expedited hearing process with respect to Section 19-120. Scheduling decisions are best left to the ALJ who can weigh the relevant factors on a case by case basis.

Dated: September 13, 2004

Respectfully submitted,

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

By: 

One of its attorneys

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**VERIFICATION**

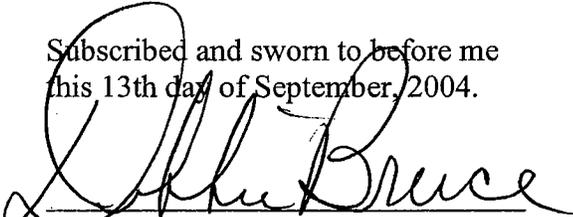
I, John E. Rooney, being first duly sworn, hereby state that I am an attorney for Northern Illinois Gas Company d/b/a Nicor Gas Company, that I am authorized to make this Verification on its behalf, that I have read the foregoing Response of Nicor Gas to Notice of Inquiry, that I have knowledge of the facts stated therein, and that the same are true and correct to the best of my knowledge, information, and belief.

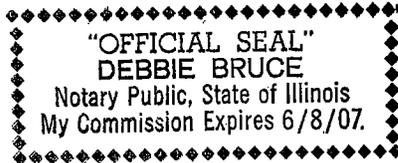


John E. Rooney

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

Subscribed and sworn to before me  
this 13th day of September, 2004.

  
Notary Public



**CERTIFICATE OF SERVICE**

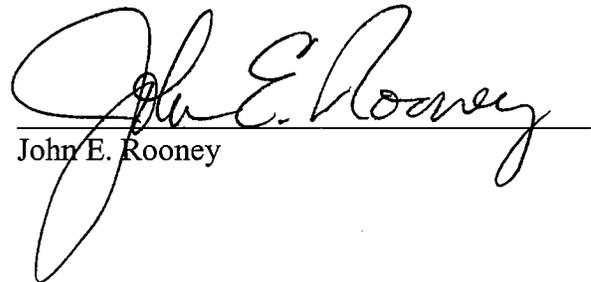
I, John E. Rooney, an attorney, hereby certify that I caused a copy of the Response of Nicor Gas to Notice of Inquiry to be served upon the following in the manner indicated on the noted dates:

**VIA FEDERAL EXPRESS – OVERNIGHT DELIVERY** (on September 13, 2004)

Chief Clerk  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701

**VIA E-MAIL AND FEDERAL EXPRESS – OVERNIGHT DELIVERY** (on September 14, 2004)

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