

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.	:	

REPLY COMMENTS 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 files these Reply Comments 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 and in its Initial Comments, it is the position of Nicor Gas that the proposal set forth in the NOI is unnecessary and should not be adopted.

A. CUB Response To Inquiry 1(a).

Nicor Gas takes exception to comments set forth in CUB’s Response to Inquiry 1(a). Specifically, CUB states that it “has been involved in two proceedings that highlight the need for an expedited process.” As one of its examples, CUB cites its complaint against Nicor Solutions, an affiliate of Nicor Gas (Docket No. 04-0034). Initially, it is notable that Nicor Gas also is a party to that proceeding.

CUB states that its complaint against Nicor Solutions was filed on January 15, 2004. CUB complains that “(t)he case has now been docketed for nearly nine months and has not progressed past the Motion to Dismiss stage.” For this reason, CUB asserts that an expedited hearing process is required to prevent such delays.

There are three problems with CUB’s statements. First, while CUB states that “Nicor’s actions highlight the need to develop a process whereby Motions to Dismiss are handled expeditiously...,” CUB neglects to mention that it has repeatedly amended its Complaint,¹ which is the real reason the case is still in the pleading stage. Indeed, CUB’s latest Amended Complaint still is seriously flawed and should be dismissed. CUB’s repeated inability to file a legally sufficient complaint is the actual cause of delay. It is not due to any improper action on the part of Nicor Gas or Nicor Solutions.

Second, CUB neglects to mention that neither of the respondents to its complaint are Alternate Gas Supplier (“AGS”). As such, Article XIX does not even apply to that case. CUB’s discussion of this case under the guise of Article XIX complaints is improper and irrelevant.

Finally, CUB’s citation of this case actually undermines the position that it sets forth in its NOI Response. To wit, CUB has filed three separate complaints in Docket No. 04-0034. As such, under CUB’s own proposal for an expedited proceeding, it is likely that CUB would have been precluded from making repeated attempts state a cause of action. In other words, it is CUB that has benefited from the additional time it has been afforded to file a legally sufficient complaint in that proceeding.

¹ CUB filed its initial Complaint against Nicor Solutions on January 15, 2004. After Nicor Solutions pointed out serious deficiencies in CUB’s Complaint, CUB filed an Amended Complaint on February 17, 2004 that, *inter alia*, added Nicor Gas as a party. Nicor Gas and Nicor Solutions subsequently filed separate Motions to Dismiss the Amended Complaint. The ALJ denied these Motions. Nonetheless, CUB moved to file a Second Amended Complaint. The ALJ granted CUB’s Motion to Amend on September 2, 2004. Accordingly, CUB has had its Second Amended Complaint on file for only 21 days.

B. CUB Response To Inquiries 1(b) Through 1(e).

CUB states that an expedited process “is equally as important for natural gas retail customers as it is for telecommunications wholesale customers.” This statement does not consider the fact that the type of anti-competitive conduct outlined in Sections 13-514 and 13-515 could prevent a competitor from conducting business. Conversely, gas retail customer complaints generally are economic in nature and do not involve a cut-off of gas service. Moreover, the Commission has rules in place to protect consumers during the pendency of a complaint. *See* 83 Ill.Admin. Code 280.170. As such, the situations are not equal as CUB suggests.

Moreover, CUB fails to consider that the expedited process set forth in Sections 13-514 and 13-515 is a legislative mandated exception to the normal Article X hearing process. No such exception exists in Section 19-120. Accordingly, these sections should not be relied upon for guidance as CUB suggests.

CUB further states that “if the violation by the company is egregious and the harm to consumers is immediate and extreme, then the Commission should be able to act as quickly as necessary to protect consumers.” Nicor Gas agrees. However, the problem with this statement is that nowhere does CUB discuss the fact that a party can seek to have a complaint expedited under the standard hearing process. It cannot be disputed that it is within an ALJ’s discretion to expedite a proceeding. Indeed, it is not unusual for an ALJ to require expedited discovery schedules where conditions warrant.

C. CUB Response To Inquiry 1(f).

In its Response to Inquiry 1(f), CUB states that:

Any consumer representatives bringing requests for emergency relief should not be subject to such penalties. There is no economic incentive for consumer representatives to bring a frivolous complaint and there is no evidence that this has ever been, or will be a problem.

Nicor Gas disagrees with this statement. There is no basis for CUB's position that frivolous complaints would not occur. Indeed, contrary to CUB's statements, the Commission routinely receives frivolous complaints. Because of this, an across-the-board expedited process would unnecessarily tax the resources of the Commission and the other parties to the proceeding.

Interestingly, CUB states that "there is no evidence that this has ever been, or will be a problem" as a basis for avoiding a penalty provision. Utilizing this same rationale, an expedited process is not warranted because there is no evidence that there is a problem with the current hearing process.

D. CUB Response To Inquiry 2.

CUB states that "the Commission has broad statutory authority to carry out its responsibilities." CUB is wrong because it neglects to consider that 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 implement an expedited hearing process without an amendment to Section 19-120.

Moreover, 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.

E. CUB Response To Inquiry 3.

In its Response to this Inquiry, CUB acknowledges that “the circumstances of the case often dictate what is appropriate in terms of due process.” This is precisely why CUB’s universal approach would not work. A proceeding should be expedited only where the “circumstances” dictate. A case-by-case approach makes more sense than a process that expedites every proceeding.

F. Conclusion

For all these reasons, Nicor Gas opposes the implementation of an expedited hearing process with respect to Section 19-120.

Dated: September 24, 2004

Respectfully submitted,

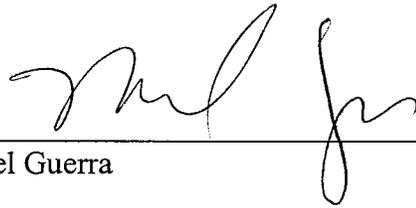
NORTHERN ILLINOIS GAS COMPANY
D/B/A NICOR GAS COMPANY

By: 
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VERIFICATION

I, Michael Guerra, 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 Reply 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.

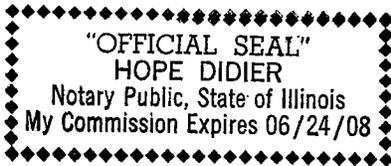


Michael Guerra

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

Subscribed and sworn to before me
this 24th day of September, 2004.



Notary Public

CERTIFICATE OF SERVICE

I, Michael Guerra, hereby certify that I caused a copy of the Reply to Notice of Inquiry of Northern Illinois Gas Company d/b/a Nicor Gas to be served upon the following in the manner indicated on the noted dates:

VIA FEDERAL EXPRESS – OVERNIGHT DELIVERY (on September 24, 2004)

Chief Clerk
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