

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| 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 |) | |

**VERIFIED PETITION FOR REHEARING OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
AND INTERSTATE GAS SUPPLY OF ILLINOIS, INC.**

I. INTRODUCTION

Pursuant to Section 10-0113 of the Illinois Public Utilities Act (the “PUA”) (220 ILCS 5/10-113) and 83 Ill. Admin. Code Section 200.880, the Retail Energy Supply Association (“RESA”) and Interstate Gas Supply of Illinois, Inc. (“IGS”) hereby submit their Verified Petition for Rehearing of the Order entered on July 29, 2013 (and served July 30, 2013) by the Illinois Commerce Commission (the “Commission”) in this proceeding (the “Order”). For the reasons stated in this Petition for Rehearing, the Commission should grant rehearing in order to approve Rider 17, Purchase of Receivables with Consolidated Billing (“PORCB”), filed by Northern Illinois Gas Company (d/b/a Nicor Gas Company) (“Nicor Gas”).

II. BACKGROUND

RESA is a non-profit trade association of independent corporations that are involved in the competitive supply of electricity and natural gas.¹ RESA and its members are actively involved in

¹ RESA’s members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

the development of retail and wholesale competition in electricity and natural gas markets throughout the United States. Some of the members of RESA have certificates from the Commission under Section 19-110 of the PUA to operate as Alternative Gas Suppliers (“AGS”) in the State of Illinois, including the service territory of Nicor Gas, the petitioner in this proceeding. Currently, these AGS provide gas supply service to tens of thousands of customers of Nicor Gas, including participants in the Customer Select Program offered by Nicor Gas, which is basically available to residential and small non-residential customers.

IGS is an Illinois corporation certified under Section 19-110 of the Public Utilities Act to operate as an AGS in the service territories of Nicor Gas, The Peoples Gas Light and Coke Company, and North Shore Gas Company. IGS provides gas supply service to customers of Nicor Gas, including participants in the Customer Select Program.

On July 30, 2013, the Order was served in this proceeding. While the Order rejected the argument of the Citizens Utility Board and the Attorney General (“CUB/AG”) that the Commission does not have the authority to approve Rider 17, the Order, nevertheless, found that Rider 17 should be denied. (Order, pp. 17-19) According to the Order, the testimony and exhibits of Nicor Gas, RESA, and IGS—the parties supporting Rider 17—did not provide sufficient information that Rider 17 is just and reasonable as necessary to satisfy Section 9-201 of the Public Utilities Act. (*Id.*) However, the Order failed to analyze all of the benefits of Rider 17 contained in the evidentiary record of this proceeding. This Petition for Rehearing will demonstrate that the evidentiary record sets forth numerous benefits which support a finding that Rider 17 is just and reasonable within the meaning of Section 9-201 of the PUA. Moreover, the Commission appears to believe that the evidentiary record must show the “rate impact” of Rider 17 on Nicor Gas’ customers. (*Id.*, p. 18) While RESA and IGS do not believe that Section 9-201 of the PUA requires a demonstration of the

rate impact of Rider 17—and, in fact, such a showing is not possible because of many unknown variables—RESA and IGS are prepared, on rehearing, to offer evidence concerning the positive impacts of POR programs in other jurisdictions, including the State of Maryland. This evidence was not available previously because the Maryland report was issued on May 1, 2013, after the filing dates for all evidence in this proceeding.

For the reasons cited in this Verified Petition for Rehearing, the Commission should grant rehearing in order to reconsider its order denying Rider 17.

III. THE RECORD CONTAINS SUBSTANTIAL EVIDENCE THAT RIDER 17 PROVIDES BENEFITS TO CUSTOMERS AND IS JUST AND REASONABLE WITHIN THE MEANING OF SECTION 9-201 OF THE PUA.

While the Order finds that the Commission has the authority to approve Rider 17 so long as it meets the requirements of Section 9-201 of the Public Utilities Act, the Order goes on to find that Rider 17 does not satisfy Section 9-201. (Order, p. 17) However, unlike the Administrative Law Judge’s Proposed Order (“ALJPO”) which appeared to require a quantitative cost benefit analysis which showed that the benefits exceeded the costs, the Order does not require such a net benefits test.

In this regard, the ALJPO stated:

Semantics aside, the bottom line is that there **must** be some cost benefit analysis to determine whether a proposed rider is just and reasonable. (ALJPO, p. 17, **emphasis added**)

As pointed out in RESA’s and IGS’ Brief on Exceptions, what the ALJPO referred to as the “bottom line” has no support whatsoever in Section 9-201 of the Public Utilities Act, any Commission rule, or any Commission decision.

However, it appears that the Order is not requiring a quantitative cost benefit analysis and a showing of net benefits. In the Order, the above-quoted statement from the ALJPO was revised to read as follows:

Semantics aside, the bottom line is that there must be some Commission analysis, test or weighing of interests to determine whether a proposed rider is just and reasonable. (Order, p. 17)

After revising the ALJPO's language, the Order goes on to state:

Nicor and RESA/IGS appear to argue that the Commission can reach a determination of just and reasonable without partaking in any actual underlying analysis in determining whether a rider is a 'sound business judgment.' As Staff points out, this argument is illogical. (*Id.*, pp. 17-18)

RESA and IGS do not know how the Commission arrived at the notion that RESA and IGS believe that the Commission can determine whether Rider 17 was just and reasonable without partaking in an analysis of the Rider. RESA's and IGS' arguments were that the ALJPO was erroneous in requiring a net benefits test—the Commission appears to agree with this argument—and that an analysis of the record in this proceeding supports a finding that Rider 17 does satisfy the just and reasonable test—an argument that the Commission obviously does not agree with.

In RESA's and IGS' opinion, an analysis of the evidentiary record supports approval of Rider 17. First, Rider 17 creates an optional service for **suppliers**—a PORCB Program. Thus, if a supplier's analysis does not result in the benefits outweighing the cost of Rider 17 for that supplier, the supplier need not participate in the Rider. (RESA/IGS Ex. 2.0 Rev. pp. 3-4, lines 32-63) Moreover, there is nothing to compel a customer to participate in Customer Select with an AGS that has elected to participate in Rider 17. Customers can choose whether they want to buy from a supplier and, moreover, which supplier.

Second, while the fact that Rider 17 is a service for suppliers is important; RESA and IGS never argued that the Commission should ignore customers and that the Commission should address the question of "simply whether Rider 17 is just and reasonable to alternative gas suppliers". (Order, p. 18) RESA and IGS presented evidence that demonstrated that Rider 17 would provide benefits for

customers. With respect to customer benefits, the Order agrees that PORCB has the potential to increase competition and lower customer costs. (*Id.*) However, the Commission then finds that it has not been proven that these benefits will occur, nor has the effect of these benefits been quantified by the determination of a “rate impact”:

The Commission agrees that PORCB has the potential to increase competition and lower customer costs, which are two of the benefits purported by RESA/IGS. However, as Staff and CUB/AG note, other than stating that these are potential benefits, there is a distinct lack of evidence in the record that the Commission can rely on to support that these benefits would occur. The Commission agrees with Staff and CUB/AG that there is no evidence in the record to somehow demonstrate the rate impact of Rider 17 on customers of alternative gas suppliers. (*Id.*)

Third, RESA and IGS note that the Commission’s analysis only acknowledges two of the potential benefits of Rider 17. While the record shows that a PORCB Program will enable AGS to offer customers lower prices, and ultimately make the natural gas market in Nicor Gas’ service territory more competitive, Rider 17 would also result in a wider array of competitive products for customers and offer the following benefits to AGS and their customers:

- Reduced customer confusion regarding collections.
- Leverage existing systems, reducing overall costs.
- Continuity of message and consistency in treatment of receivables.
- Expanded access to the competitive market for higher risk customers.
- Efficient utilization of effective recovery tools.
- Diminished counterparty risk.

(RESA/IGS Ex. 1.0, pp. 10-12, lines 209-258) While the record shows that the substantial benefits listed above would be derived from a PORCB Program, they are, at least at the present time, qualitative rather than quantitative.

Fourth, returning to the benefits of increased competition and lower costs, while it is not possible to predict the future and, thereby, quantify such benefits to customers of Rider 17 because of factors which are currently unknown, RESA and IGS did offer empirical evidence, based on the experience of PORCB Programs offered by gas utilities in other jurisdictions, that there is good reason to believe that the benefits of Rider 17 will be greater than the costs. Although the Order appears to assume that customers of participating AGS will pay a surcharge under Rider 17, under Rider 17, customers can receive a credit. (Nicor Gas Ex. 1.0, p. 11, lines 249-252) While it is not possible, because of the unknown factors, to predict whether the 1.5% discount rate in Rider 17 will result in a refund or surcharge to customers, discount rates in other jurisdictions with PORCB for gas utilities have decreased.

For example, in Ohio, Columbia Gas passes both supplier and utility uncollectibles through its uncollectible rider. Since Columbia's uncollectible rider was approved in 2003, switching has increased to 40%, but switching has not been cited in any of its annual uncollectible rate filings as creating an increase in bad debt. In fact, Columbia recently filed for a reduced uncollectible rate. Specifically, on April 15, 2013, Columbia Gas filed to reduce the rate under its uncollectible rider from \$0.0781/MCF to \$0.0173, a decrease of almost 78%. Other Ohio gas utilities have similar uncollectible riders. Although switching has increased for these utilities, there has not been any correlated increase in uncollectible riders. (RESA/IGS Ex. 2.0 Rev., p. 5, lines 89-98)

Moreover, the experience of Ohio gas utilities is corroborated by the experience of Illinois electric utilities. In Illinois, there are no gas PORCB programs, but there are PORCB programs operated by ComEd and Ameren on the electric side. Both ComEd and Ameren have seen decreases in their Discount Rates since their programs began. (RESA/IGS Ex. 2.0 Rev., p. 6, lines 99-109)

RESA and IGS would have liked to submit evidence that competition would increase by a certain percentage in Nicor Gas' service territory and AGS' customers on average would save a certain amount of money, which represented a certain percentage off their current bills. However, that evidence does not exist at the current time. With respect to the issue of the amount of decreases resulting from a PORCB Program, it is simply not possible to quantify to what extent prices will decrease as a result of Rider 17. The answer will depend upon how many new AGS enter the Nicor Gas market and the need for new and existing AGS to compete for customers. However, the fashion in which price will decrease was addressed. RESA/IGS' witness testified that in a competitive natural gas market AGS will have to reduce prices if they wish to remain competitive with other suppliers. Currently in Nicor Gas' service territory, many AGS are not offering products because their costs are too high to be profitable. However, as the costs to AGS are reduced substantially by the implementation of a PORCB, AGS will be able to enter the market offering a lower price to customers. As more AGS enter the market, the existing AGS will have to make better offers and lower their prices if they wish to be competitive. (RESA/IGS Ex. 1.0, pp.9-10, lines 194-205) In fact, Staff's witness, Dr. Rearden, acknowledged this when he states that if the premise that the market is or will be competitive is true, then, by definition, the cost reductions will be passed on to customers. (Staff Ex. 5.0, p. 4, lines 78-30)

Moreover, on rehearing, RESA and IGS are prepared to offer additional evidence demonstrating other states' experience with POR programs. For example, the Staff of the Maryland Public Service Commission issued Comments regarding POR programs operating by Maryland electric utilities. In general, those Comments show that POR programs resulted in an increase in customer participation in Choice Programs—including a roughly 220% increase for residential

customers—and savings to customers over the utilities’ standard offers.² These Comments directly respond to the following statement in the Order: “Moreover, while RESA/IGS claim that states without PORCB programs have low participation in customer choice programs, there is nothing in the record demonstrating that greater switching in other states is a result of POR programs and not due to other factors.” (Order, p. 18) Again, this evidence was not available prior to the filing dates for evidence in this proceeding.

IV. THE COMMISSION SHOULD GRANT REHEARING BECAUSE THE APPARENT REQUIREMENT OF A SHOWING OF THE RATE IMPACT OF RIDER 17 REPRESENTS A DEPARTURE FROM PRIOR COMMISSION ORDERS IN SECTION 9-201 PROCEEDINGS.

The Commission should grant rehearing because its Order departs from prior Commission orders in Section 9-201 proceedings. Evidence of the rate impact on customers was not required when Commission considered Nicor Gas’ filing, pursuant to Section 9-201, of proposed tariffs expanding its Customer Select Pilot Program, its transportation program for small-volume customers, to all eligible customers. The Commission, using its authority under Section 9-201, approved the expansion of the Customer Select Program to all eligible customers as “just and reasonable” without requiring a showing of the rate impact of that expansion on customers of alternative gas suppliers. (Order, dated July 5, 2001 in Ill. C. C. Dockets 00-0620/00-0621) Similarly, Peoples Gas and North Shore operate their own versions of Choice Programs, both named Choices For You, having filed tariffs to implement those programs pursuant to Section 9-201 of the Public Utilities Act and having received Commission approval pursuant to that Section, without having to submit showings of customer rate impacts. (*North Shore Gas Company*, Ill. C. C. Docket 01-0469, Order dated March 5, 2001; *The Peoples Gas Light and Coke Company*, Ill. C. C. Docket 01-0470, Order dated March 5, 2001)

² Comments of the Electricity Division (RR-2716, 2717, 2718, 2720) Re: 2013 POR discount rates, dated May 1, 2013.

Thus, the Commission apparent requirement of a showing of the rate impact of Rider 17 on customer is a departure from its past decisions in Section 9-201 cases. This departure, which is unexplained in the Order, would result in reversible error. The Courts have consistently held that although the Public Utilities Act grants the Commission discretion, its decisions are entitled to less deference when they depart from past practice. *Citizens Utility Board v. Illinois Commerce Commission*, 291 Ill. App. 3d 300, at 304 (1997). Similarly, the Appellate Court found in *Abbott Laboratories v. Illinois Commerce Commission*, 280 Ill. App. 3d 705, at 714 (1997) that the Commission's decisions are entitled to less deference when it departs from its usual rules or decisions to reach a different, unexplained result in a single case.

V. ON REHEARING, THE PARTIES COULD RECONSIDER THE INTANGIBLE COST RECOVERY FACTOR AND THE DISCOUNT RATE COMPONENTS OF RIDER 17.

The Order singled out two aspects of Rider 17 with which the Commission disagreed—the recovery of intangible costs and the Discount Factor. With respect to intangible costs, the Order states that if the Commission were to approve Rider 17, the evidentiary record in this proceeding supports a Commission decision to deny recovery of intangible costs. (Order, pp. 19, 22) With respect to the Discount Factor, the Commission found that Nicor Gas' proposed Discount Factor is not supported by record evidence. (*Id.*, pp. 19, 24)

These two elements of Rider 17 appear to be major stumbling blocks to the Commission's approval of Rider 17. On rehearing, the parties would be able to consider modifications to the recovery of intangible costs and the Discount Factor.

VI. CONCLUSION

In conclusion, for the reasons stated in this Petition for Rehearing, the Commission should grant rehearing of its final order in this proceeding.

Dated: August 29, 2013

Respectfully submitted,

Retail Energy Supply Association

Interstate Gas Supply of Illinois, Inc.

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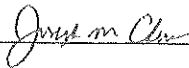
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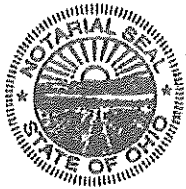
Teresa Ringenbach, being first duly sworn, on oath deposes and says that she is the Illinois Chair for the Retail Energy Supply Association's Gas Caucus, that she has read the foregoing Verified Petition for Rehearing in Ill. C. C. Docket 12-0569, that she knows of the contents thereof, and that the same is true to the best of her knowledge, information, and belief.


/s/TERESA RINGENBACH
Teresa Ringenbach

Subscribed and sworn to me

This 29th day of August, 2013



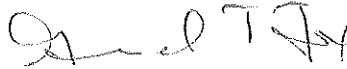


JOSEPH M. CLARK, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

NOTICE OF FILING

Please take note that on August 29, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Petition for Rehearing of the Retail Energy Supply Association and Interstate Gas Supply of Illinois, Inc. in this proceeding.

Dated: August 29, 2013



/s/ Gerard T. Fox

Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Verified Petition for Rehearing of the Retail Energy Supply Association and Interstate Gas Supply of Illinois, Inc. upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on August 29, 2013.



/s/ Gerard T. Fox

Gerard T. Fox