

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

THE SOUTHERN COMPANY :
AGL RESOURCES, INC. and :
NORTHERN ILLINOIS GAS COMPANY :
d/b/a NICOR GAS COMPANY :
: 15-0558
Application for approval of a :
Reorganization pursuant to :
Section 7-204 of the Public Utilities Act :

DIRECT TESTIMONY OF
JOSEPH OLIKER ON BEHALF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

1 I. BACKGROUND AND QUALIFICATIONS

2 Q. Please state your name and business address.

3 A. My name is Joseph Oliker. My business address is 6100 Emerald Parkway,
4 Dublin, Ohio 43016.

5 Q. On whose behalf are you testifying in this proceeding?

6 A. I am testifying on behalf of the Retail Energy Supply Association.¹

7 Q. Please describe the operations of RESA.

8 A. RESA is a non-profit trade association of independent corporations that are

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

9 involved in the competitive supply of electricity and natural gas. RESA and its
10 members are actively involved in the development of retail and wholesale
11 competition in electricity and natural gas markets throughout the United States.

12 **Q. What is RESA’s interest in this proceeding?**

13 | **A.** As a trade organization of retail natural gas suppliers, RESA is concerned the
14 merger could impact the Large Volume Transport (“LVT”) and Customer Select
15 Programs offered by Nicor Gas Company. Specifically, RESA is concerned with
16 any potential elimination of those programs and is also concerned with further
17 erosion operationally of the LVT and Customer Select programs resulting from
18 the merger. Additionally, RESA is concerned with any costs and changes to the
19 existing systems which would impede customer participation in the LVT and
20 Customer Select programs. In this regard, RESA and its members have been
21 actively involved in Commission proceedings involving Nicor and its
22 transportation programs for many years and have worked to make improvements
23 in those programs. Therefore, RESA is extremely interested in making sure such
24 improvements are maintained.

25 **Q. Please describe your educational and work history background.**

26 **A.** As regulatory counsel, I represent IGS and its affiliated companies in state and
27 federal regulatory proceedings throughout the country. I also provide support and
28 advice to IGS’s business entities regarding competitive markets and policies.
29 Moreover, I serve as the Chair of RESA’s Federal Energy Regulation
30 Commission (“FERC”) caucus. Prior to joining IGS, I was an Associate with the
31 law firm of McNees, Wallace, and Nurick (“McNees”). In that capacity, I

32 represented a coalition of industrial energy consumers as well as natural gas local
33 distribution companies in regulatory matters before the Public Utilities
34 Commission of Ohio, the Supreme Court of Ohio, and the FERC. The regulatory
35 matters included advising commercial and industrial customers regarding aspects
36 of restructured electric and natural gas markets, as well as wholesale electric and
37 gas market fundamentals. Prior to joining McNees, I was employed by the law
38 firm Greenberg Traurig. Following law school, I clerked for the New York State
39 Supreme Court. I hold a Juris Doctor from Case Western Reserve University
40 School of Law and a Bachelor of Arts from the State University of New York at
41 Albany.

42 **Q. What is the purpose of your testimony in this proceeding?**

43 A. In this proceeding, Nicor Gas Company, along with The Southern Company and
44 AGL Resources Group (collectively referred to as the “Joint Applicants”) are
45 seeking approval of a proposed reorganization. Pursuant to Section 7-204 of the
46 Public Utilities Act, in order to approve the proposed reorganization, the
47 Commission must find, among other things, that the proposed reorganization is
48 not likely to have a significant adverse effect on competition in those markets
49 over which the Commission has jurisdiction. In my opinion, absent a requirement
50 that Nicor Gas maintain and improve its existing LVT and Customer Select
51 Programs, the proposed reorganization will have a significant adverse effect on
52 competition in the gas markets of Nicor Gas.

53 **II. SUMMARY OF POSITION**

54 **Q. Is there a specific recommendation that RESA is making to avoid significant**

55 **adverse effects on competition in the gas markets of Nicor Gas?**

56 A. Yes. To ensure a competitive landscape continues to exist after the merger of the
57 Joint Applicants, the Joint Applicants must make a commitment to maintain both
58 the LVT and Customer Select programs other than for legal or regulatory changes
59 that are not initiated by the Joint Applicants prior to or after closing. Further,
60 Joint Applicants should commit to improve and enhance Nicor Gas' Customer
61 Select and LVT programs notwithstanding the actions of other parties. Such
62 commitments should be made conditions of the reorganization.

63 **III. LVT AND CUSTOMER SELECT PROGRAMS**

64 **Q. Can you explain RESA's need for a commitment to maintain and improve**
65 **the LVT and Customer Select Programs?**

66 A. The acquiring entity in this reorganization is Southern Company, which offers no
67 retail access program in its service territories nor does Southern Company have
68 any experience with Nicor Gas' LVT and Customer Select Programs. RESA is
69 concerned that Southern Company could make decisions which would result in
70 the LVT and/or Customer Select Programs being eliminated or difficult to
71 participate in. Therefore, RESA would like a commitment from the Joint
72 Applicants that the existing programs will remain in place and will not be
73 changed unless and only if those changes are intended to improve the programs
74 and not intended to create barriers or requirements which will compromise the
75 further evolution of the LTV or Customer Select Programs. RESA has some
76 specific recommendations for improvements which I discuss later in my
77 testimony.

78 **Q. What types of actions is RESA concerned with which could result in**
79 **elimination of LVT and Customer Select Programs?**

80 A. A decision by Southern Company to require Nicor Gas to make filings to
81 eliminate the Choice tariffs would be the most extreme example. However, there
82 are much more subtle actions which could slowly kill a program. For example,
83 any filings that increase penalties while simultaneously limiting flexibility to
84 correct nominations could make a program so unworkable that suppliers would no
85 longer participate. Any fees for operating on the system which become excessive
86 or unnecessary and not directly correlated to costs could make it too costly to
87 serve customers at market competitive prices. Finally, the Southern Company
88 could seek to implement changes that make it operationally difficult to serve
89 customers or otherwise lead to delays to gas suppliers' ability to serve their
90 customers properly ultimately leading to customer dissatisfaction with the
91 Customer Select and LVT programs.

92 **Q. You testified that RESA and its members have been involved in**
93 **previous Commission proceedings in order to obtain improvements in Nicor**
94 **Gas' transportation programs. Can you provide some examples?**

95 A. Yes. Nicor Gas' last gas base rate proceeding was Ill. C. C. Docket 08-0363. In that
96 proceeding, Nicor Gas entered into a Memorandum of Understanding with the
97 Customer Select Gas Suppliers, which included Interstate Gas Supply of Illinois, Inc.
98 (now known as IGS Energy, a RESA member) to make certain improvements to the
99 Customer Select Program. Those improvements were as follows:

- 100 • Customer Select customers will receive a credit for gas in storage as part of the
101 Transportation Service Credit;
- 102 • Nicor Gas will calculate a supplier’s end-of-month inventory target levels during
103 the winter as a percentage of month-end storage capacity, as opposed to a
104 percentage of the preceding November 1 inventory;
- 105 • Customer Select suppliers will be allowed to cycle annually the additional
106 operation balancing storage capacity of six times the Group’s Maximum Daily
107 Contract Quantity (“MDCQ”) and also permit the combined storage capacity of
108 34 times the Group’s MDCQ as the basis for calculating monthly storage
109 inventory target levels and the daily storage injection capacity;
- 110 • Nicor Gas will include the Account Charge in the base rates of all eligible
111 customers;
- 112 • Nicor Gas will eliminate the \$10 Group Addition fee as it relates to switching
113 from another supplier to another and recover these costs through base rates;
- 114 • Nicor Gas will extend the number of days that a customer has to select a new
115 Customer Select supplier after returning to Nicor Gas from another Customer
116 Select supplier from 45 to 120 days;
- 117 • Nicor Gas will make available to Customer Select suppliers a residential customer
118 mailing list; and
- 119 • Nicor Gas will continue to meet with interested Customer Select stakeholders.

120 (Order in Docket 08-0363, pp. 127-128)

121 RESA participated in the last reorganization case involving Nicor Gas, Ill. C. C.
122 Docket 11-0046, concerning the acquisition of Nicor, Inc, Nicor Gas parent

123 company by AGL Resources Inc. In that proceeding, RESA entered into a
124 Settlement Agreement with the Joint Applicants in that docket to make certain
125 improvements in its transportation programs:

- 126 • Nicor Gas agreed to file a Purchase of Receivables tariff, assuming related
127 legislation was not enacted into law;
- 128 • Nicor Gas agree to meet with RESA regarding operation changes in its
129 transportation programs:
 - 130 ○ Timely notice;
 - 131 ○ Improved administrative process;
 - 132 ○ Improved quality of programs; and
 - 133 ○ Improved transportation service configuration.

134 As a result of the Settlement Agreement, RESA members had many meetings
135 with Nicor Gas representatives and effectuated many improvements to its
136 transportation programs. RESA is concerned that the many improvements to
137 Nicor Gas' transportation programs that have been secured over the years are not
138 eliminated or weakened.

139 **Q. Has RESA received any statements or signals that Southern Company plans**
140 **to shut down or modify the LVT and or Customer Select Programs?**

141 A. No. However, RESA has some concern over the Direct Testimony of Mr.
142 Henry P. Linginfelter on the subject. Regarding the LVT Programs, Mr.
143 Lingenfelter states:

144 Q. Do you foresee any adverse effects on Nicor Gas' traditional transportation
145 program related to the reorganization?

146 A. No. The Joint Applicants do not anticipate any changes to Nicor Gas' current
147 transportation program. (Joint Applicants Ex. 2.0, p. 13, lines 281-284)

148 However, when asked a similar question regarding Customer Select, Mr.

149 Lingenfelter does not provide the same response:

150 Q. Do you foresee any adverse effects on the retail customer choice program
151 after the Reorganization?

152 A. No. (*Id.*, p. 14)

153 Because of its concerns, RESA submitted its first set of data requests to the Joint

154 Applicants to clarify their position.

155 **Q. Did the Joint Applicants' responses to RESA's data requests allay its**
156 **concerns?**

157 A. No. The response to RESA DR 1.01 was positive in that it states that the Joint
158 Applicants do not anticipate any changes to the Nicor Gas' Customer Select
159 Program as a result of the Reorganization. However, the responses to RESA DRS
160 1.02 and 1.03 indicate that the Joint Applicants are unwilling to commit to
161 continuing to operate the LVT and Customer Select Programs in substantially
162 their current forms for at least three years after the closing of the Reorganization.
163 Instead, the Joint Applicants expressed their willingness to consider a
164 commitment to discuss potential changes to such programs with RESA and any
165 other interested stakeholder prior to filing such changes with the Commission.

166 **Q. Is the Joint Applicants' commitment acceptable to RESA?**

167 A. No. A commitment to merely discuss potential changes to the LVT and Customer
168 Select Programs before filing such changes for Commission approval is
169 inadequate. RESA would like a written commitment, in the form of a condition to
170 approval of the reorganization in this proceeding, to ensure there is no change in
171 policy or major change in the employees responsible for the LVT and Customer
172 Select Programs that could result in deterioration of the programs or the good
173 working relationships that Nicor Gas currently has with gas suppliers.

174 **Q. Should Nicor Gas make additional commitments as a condition of the**
175 **merger?**

176 A. Yes, I believe that Nicor Gas should commit to making additional improvements
177 to its LVT and Customer Select Program. Specifically, I recommend that Nicor
178 Gas make the following improvements:

- 179 • Allocate capacity to suppliers or allocate capacity costs embedded in distribution
180 rates to the default service;
- 181 • Allow for flexibility in nomination cycles, including intraday and weekend
182 nominations;
- 183 • Allow balances to be transferred between Customer Select and LVT customers;
- 184 • Provide GTS customer meter read information to suppliers through EDI
185 transactions at one point during the month.
- 186 • Simplify the nomination and daily demand extraction process.
- 187 • Allow pooling for Rider 25 accounts

188 I explain each of these proposed commitments in further detail below.

189 **Q. Why would allocating capacity costs to the default rate be an appropriate**
190 **condition for reorganization approval?**

191 A. The main benefit of holding pipeline capacity is the ability to transport natural gas
192 between two points on a pipeline. Delivering supply from one point to another allows
193 the holder of capacity to capture a market spread value between the two points.
194 Retail suppliers must recover the cost of capacity (or city gate gas, which includes a
195 premium for the capacity used to bring that gas to that location) through their
196 competitive charges. Nicor, however, recovers the cost of the capacity used to serve
197 default service customers through its distribution rates. Thus, Nicor default service
198 obtains an anticompetitive price advantage because part of the default service costs to
199 supply gas are recovered through distribution rates. RESA recommends that Joint
200 Applicants either allocate capacity assets to suppliers or commit to unbundle the cost
201 of its capacity from distribution rates in its next rate case and to allocate such costs
202 directly to default service.

203 **Q. Why would increasing flexibility in nomination cycles be an appropriate**
204 **condition for approval of the Reorganization?**

205 A. Allowing suppliers to make nominations within the day (intraday) and on the
206 weekend would allow suppliers to more effectively supply their customers' usage
207 requirements and rectify any volumes that did not flow as expected. RESA
208 recommends that the Joint Applicants commit to establishing a working group to
209 establish increased flexibility in nomination cycles.

210 **Q. Why would allowing suppliers' balances to be transferred between Customer**
211 **Select and LVT customers be an appropriate condition of merger approval?**

212 A. Nicor treats a supplier's LVT and Customer Select customers as part of different
213 pools for purposes of deliveries. At times, a supplier may under deliver to the LVT
214 pool while over delivering to the Customer Select pool. Nicor, however, does not
215 allow a supplier to transfer balances between pools to address such an imbalance.
216 Operationally, it should not matter whether gas is delivered for one pool or another,
217 so long as the total sum of gas that is needed to meet a supplier's cumulative pool
218 delivery requirements is satisfied. RESA recommends that Joint Applicants be
219 required to commit to allowing suppliers to transfer balances between Customer
220 Select and LVT programs.

221 **Q. Why would providing GTS customer meter read information to suppliers**
222 **through EDI transactions at one point during the month be an appropriate**
223 **condition of Reorganization approval?**

224 A. Nicor Gas currently provides meter reading information to suppliers for GTS
225 customers using a paper bill on a rolling basis. This process is cumbersome and
226 antiquated. RESA recommends that Joint Applicants commit to providing meter
227 reading information for GTS customers through an EDI transaction at one point
228 during the month.

229 **Q. Why would simplification of the nomination and daily demand extraction**
230 **process be an appropriate condition of Reorganization approval?**

231 A. Nicor Gas currently uses a cumbersome system for accessing daily demand and
232 nominating gas deliveries. Suppliers must enter multiple passwords in order to extract
233 daily demand information that comes in a jumbled text file. Other utilities have
234 streamlined this process to be much more user friendly. RESA recommends that
235 Joint Applicants commit to form a working group to explore streamlining its
236 nomination and daily demand extraction process for its LVT and Customer Select
237 Programs.

238 **Q. Are there any other enhancements Nicor Gas should create to enhance the**
239 **transportation programs?**

240 A. Yes. Nicor Gas should improve the option for pooling Rider 25 customers by
241 allowing pooling similar to Rate 74 Rider 13 accounts.

242 **Q. How is Rider 13 pooling handled?**

243 A. Rider 13 accounts are daily read customers that are pooled together by supplier.
244 These accounts are billed on a calendar month so the billing occurs at the same
245 time each month for all of these customers. By pooling Rider 13 under one
246 supplier it creates a single nomination. So if you had 150 customers under Rider
247 13 you have one nomination instead of 150 nominations. While there is a limit at
248 150 before you must create a new pool the process simplifies the nomination
249 process.

250 **Q. How is Rider 25 handled?**

251 A. Rider 25 are grouped by unique customer or by customer owner group. Rider 25
252 does allow for grouping if for example all Walgreens stores are together. In that
253 situation, under Rider 25 those single owner customers would be pooled and have

254 a single nomination. However, if a supplier is serving accounts for Caterpillar
255 and a Ford, etc. and there are 200 unique non-same owner accounts then 200
256 nominations are required. In addition, the storage bank shows on the individual
257 customer's bill. This is unlike the situation for same owner Rider 25 customers
258 where the supplier would see in the storage bank on one invoice because those
259 customers are pooled together in a group. Thus, for unique Rider 25 customers a
260 supplier must pull and add each individual customer to see storage bank amounts.
261 In addition, pooling for Rider 25 would allow for one nomination for the entire
262 pool instead of 200 nominations.

263 **Q. Why does the supplier need to see storage bank amounts?**

264 A. The supplier is managing the storage bank for the customer. While we are not
265 trying to change this process, allowing pooling would make for more efficient
266 management of a single bank from the supplier perspective rather than 200
267 smaller banks. In the end, this is a reporting and efficiency change.

268 **Q. Is there a difference between Rider 13 and Rider 25 that would not allow for
269 this?**

270 A. No. However, Rider 13 accounts have daily meter reading and are billed on a
271 calendar month as indicated above. Rider 25 accounts are cycle read on a monthly
272 basis and customers are billed individually on their cycle reading. Therefore due
273 to this difference Nicor would need to calendarize the months. It would not have
274 to be a perfect calendar month. Nicor could convert the cycle reads to an
275 imperfect calendar month for purposes of nominations and storage bank
276 management, but could continue to bill on cycles. Cycles that cross calendar

277 months, for example, a read that covered part of December and part of January
278 would be part of the January calendar month for purposes of the group
279 nomination.

280 **Q. What is RESA's recommendation on calendar month pooling?**

281 A. RESA would like the Commission to require, as a condition of reorganization
282 approval, Nicor Gas to work with suppliers serving Rider 25 customers to create a
283 detailed process to implement pooling of Rider 25 customers similar to Rider 13.

284 **Q. Does this conclude your direct testimony?**

285 A. Yes, it does.

NOTICE OF FILING

Please take note that on February 3, 2016, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Direct Testimony of Joseph Oliker on behalf of the Retail Energy Supply Association in this proceeding.

/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 Direct Testimony of Joseph Oliker on behalf of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 15-0558 via electronic delivery on February 3, 2016.

/s/ GERARD T. FOX
Gerard T. Fox