APPENDIX A TO
RESA'S AND IGS' BRIEF ON EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion Northern Illinois Gas Company d/b/a NICOR Gas Company Reconciliation of Revenues collected under Gas Adjustment Charges with Actual Costs Prudently incurred	))))))))	Docket No. 01-0705
Illinois Commerce Commission On its Own Motion Northern Illinois Gas Company d/b/a NICOR Gas Company Proceeding to review Rider 4, Gas Cost, Pursuant TO Section 9-244 (c) of the Public Utilities Act	))))))))	Docket No. 02-0067
Illinois Commerce Commission On its Own Motion Northern Illinois Gas Company d/b/a NICOR Gas Company Reconciliation of Revenues collected under Gas Adjustment Charges with Actual Costs Prudently incurred	))))))))	Docket No. 02-0725

EXCEPTIONS TO ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER

I. Exception No. 1

The Administrative Law Judges' Proposed Order contains an incomplete summary of the position of the Retail Energy Supply Association ("RESA") and Interstate Gas Supply of Illinois ("IGS") in this proceeding. Consequently, Section V (B) of the ALJPO should be deleted in its entirety and the following substituted:

B. RESA/IGS

RESA and IGS assert that Ms. Everson's proposal is neither required, nor appropriate. The Commission has discretion to order a different refund method and has done so in the past. The Commission should utilize its discretion to order a refund payable to all Nicor Gas' customers, including transportation customers, in order to provide for equitable treatment of all customers.

According to RESA and IGS, the Public Utilities Act mandates an annual PGA reconciliation, but does not specify the manner in which a refund is to be made. Section 9-220 (a) of the Act states, in pertinent part:

> Annually, the Commission shall initiate public hearings to determine whether the clauses reflect actual costs of…gas…purchased to determine whether such costs were prudent, and to reconcile any amounts collected with the actual costs of …gas…prudently purchased. (220 ILCS 5/9-220 (a))

Section 9-220 (g) of the Act provides the Commission with authority to promulgate rules relating to Section 9-220:

> The Commission shall have authority to promulgate rules and regulations to carry out the provisions of this Section.

Pursuant to Section 9-220 (g), the Commission adopted 83 Ill. Adm. Code Part 525, Purchased Gas Adjustment Clause. Though not specified in the Act, Section 525.70 (b) of the rules sets forth the refund methodology that is being recommended by Staff witness Everson in this proceeding. However, according to RESA and IGS, while the refund method outlined in Section 525.70 (b) is one way to handle the refund in this proceeding, it is not the only way. Because the refund method is not specified in the Public Utilities Act, but in the Commission's rules, the Commission has the authority to devise a different, more equitable, refund.

RESA and IGS acknowledge that it is true that when an administrative agency adopts rules, it is generally bound by those rules and cannot disregard them arbitrarily or dismiss them in a discriminatory manner. (*Heaver v. Illinois Racing Board*, 103 Ill. App. 3d. 1020, 1025; 432 N.E. 2d 290 (1982)). However, they argue that it is actually

the application of Section 525.70 (b) that would result in discrimination—against transportation customers who were sales customers during the period 1999-2002. Moreover, the Court held in the same case that even if there were a violation of administrative rules, any such violation which does not prejudice the plaintiff and has no effect on the issues involved may be disregarded. (*Id*., p. 1026) Again, in the instant proceeding, RESA and IGS assert that prejudice would result from the application of the rule, not by establishing a refund using a different, more equitable, method of refund than that in the rule.

RESA and IGS point out that not only does the Commission have the authority to issue a refund in a manner other than set forth in 83 Ill. Admin. Code Part 525, the Commission has utilized that authority in appropriate circumstances. In Ill. C. C. Docket 01-0707, involving The Peoples Gas Light and Coke Company, the Commission did not direct that the refund resulting from its Order in that proceeding be done in accordance with 83 Ill. Admin. Code Section 525.70. Instead, the Commission directed, out of a refund of $96 million based on a non-unanimous settlement, each residential customer (Service Classification No. 1), whether a sales customer or transportation customer, receive $100. (Order in Ill. C. C. Docket 01-0707, Order dated March 28, 2006, p. 6) The remaining amount of the $96 million was allocated to all other Service Classifications based on their share of the total PGA gas consumed by those Service Classifications during the 2001 through 2004 reconciliation periods. (*Id*.)

Similarly, in Ill, C. C. Docket 01-0706, involving North Shore Gas Company, the Commission did not direct that the refund resulting from its Order in that proceeding be done in accordance with Section 525.70 (b). Instead, the Commission directed that a refund of $4 million be divided among the service classifications on the basis of gas usage during the reconciliation periods in question. There was no distinction between North Shore Gas Company's sales customers and its transportation customers. (Order in Ill. C. C. Docket 01-0706, Order dated March 28, 2006, p. 6)

RESA and IGS state that they would agree with the Commission Staff that its proposed refund method would be reasonable if this proceeding were a typical reconciliation case. For example, if this case concerned the reconciliation of gas costs and gas charge revenues for calendar year 2011 and a refund were going to be issued in calendar year 2012 or even 2013, Staff's proposed refund method would be both reasonable and equitable.

However, RESA and IGS point out that this case concerns the reconciliation of gas costs and gas charge revenues for the period of calendar years 1999 through 2002. At the earliest, any refund would be ordered during calendar year 2013. RESA and IGS contend that, in this proceeding, directing a refund to the customers of Nicor Gas who are sales customers at a point in time in calendar year 2013 is inequitable because such a direction would ignore the substantial shift in sales customers to transportation service from the period of calendar years 1999 through 2002 to the current period.

RESA and IGS assert that the Agreed Stipulation of Facts Between Nicor Gas and the Retail Energy Supply Association, admitted into evidence as RESA/IGS Ex. 1.0 in this proceeding, demonstrates that since the period of calendar years 1999-2002, many of Nicor Gas' sales customers have become transportation customers; *i.e.* customers who purchase their natural gas supply from Alternative Retail Gas Suppliers (including IGS and members of RESA), but continue to receive delivery service from Nicor Gas. As of December 31, 1999, Nicor Gas had 1,861,308 sales customers and 67,733 transportation customers. However, as of December 31, 2011, Nicor Gas had 1,932,591 sales customers and 252,297 transportation customers, approximately 185,000 more transportation customers than in 1999. Some of the customers who were transportation customers as of December 31, 2011, were sales customers during some or all of the calendar years 1999 through 2002. The exact number is not known because in April 2006, Nicor Gas implemented a new customer billing system and detailed billing data prior to this date is not readily available.

As further support for their position, RESA and IGS point to the evidentiary record from the cross-examination of Ms. Everson, which according to RESA and IGS, demonstrates the inequity of her proposed refund method for transportation customers. Ms. Everson acknowledged that under her proposed refund method, refunds would be made to customers who were sales customers at the time of the refund; however, refunds would not be made to customers who were transportation customers at the time of the refund. She acknowledged that customers who are transportation customers at the time of the refund, but who were receiving sales service at any time during the years 1999-2002 would have paid gas charges to Nicor Gas during the years 1999-2002 for the periods that they were sales customers. She further acknowledged that under her proposed refund method, customers who were receiving sales service during the period 1999-2002 but who are transportation customers at the time of the refund in this proceeding would not receive a refund. In contrast, she testified that a person who became a sales customer of Nicor Gas during the month of February 2012 and remained a sales customer at the time of the refund would receive a refund. She also stated that she cannot identify the number of customers who are currently transportation customers of Nicor Gas, but who were receiving sales service from Nicor Gas at any time during the years 1999-2002.

RESA and IGS argue that Staff's proposed refund method is unfair and inequitable. Under Staff's proposed refund method, customers who are currently transportation customers, but who were sales customers during all or part of the period of calendar years 1999-2002 would not receive a refund because they would not be sales customers at the time of the refund. However, a brand new sales customer would receive a refund. Therefore, absent a Commission order requiring that any refund be handled more fairly across all customers including transportation customers, transportation customers at the time of a refund who were sales customers during all or part of calendar years 1999-2002 would not receive any refund as a result of this proceeding.

RESA and IGS propose that the Commission's final order in this proceeding direct that any refund ordered be allocated in the manner utilized by the Commission in its Order in Docket 01-0706, for North Shore Gas Company. Specifically, the refund should be allocated in the following manner. The $72.1 million refund proposed by the ALJPO (or the dollar amount of any refund ordered in this proceeding) should be allocated to all Rates based on each Rate's share of the total PGA gas consumed by all Rates during calendar years 1999-2002. Each Rate's allocation should be divided by the total number of customer accounts (both sales and transportation) receiving service under that Rate on the date the Commission's Order is entered. Refunds to all Rates should be provided to all customers at the time of the refund, whether they are sales or transportation customers .

EXCEPTION TWO

Section V (D) of the ALJPO should be deleted in its entirety and the following substituted:

D. COMMISSION ANALYSIS AND CONCLUSION

The Commission acknowledges that the Staff's proposed refund methodology is the methodology set forth in the Commission's Part 525 and has been used in other PGA reconciliation proceedings. However, the Commission agrees with RESA and IGS that the Commission has discretion to order a different refund method. In fact, RESA and IGS demonstrated that the Commission has ordered a different refund method in past reconciliation proceedings. Finally, the Commission agrees with RESA and IGS that the refund methodology proposed by the Commission Staff would be unfair and inequitable to Nicor Gas' transportation customers. The evidentiary record clearly shows that a large number of customers who were sales customers during the period 1999-2002 are currently transportation customers and, thus, would not receive a refund under the Commission Staff's method.

The Commission, therefore, in order to provide for equitable treatment of all customers, adopts the refund method proposed by RESA and IGS which will result in a refund payable to all Nicor Gas' customers, including transportation customers. Specifically, the refund should be allocated in the following manner. The $_____ million refund ordered in this proceeding should be allocated to all Rates based on each Rate's share of the total PGA gas consumed by all Rates during calendar years 1999-2002. Each Rate's allocation should be divided by the total number of customer accounts (both sales and transportation) receiving service under that Rate on the date the Commission's Order is entered.

Refunds to all Rates should be provided to all customers at the time of the refund, whether they are sales or transportation customers.

EXCEPTION THREE

In Section VI of the ALJPO, on page 31, finding (5) should be deleted and replaced with:

> (5) the refund methodology proposed by RESA and IGS should be adopted.

EXCEPTION FOUR

In Section VI of the ALJPO, on page 32, the first paragraph should be deleted and replaced with:

> IT IS FURTHER ORDERED that the refund methodology proposed by RESA and IGS is adopted.

Dated: November 28, 2012

Respectfully submitted,

Retail Energy Supply Association

Interstate Gas Supply of Illinois, Inc.

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