ATTACHMENT A
RESA/IGS BRIEF ON EXCEPTIONS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company	**:**	
d/b/a Nicor Gas Company	**:**	
	:	**12-0569**
Proposed Establishment of Rider 17,	**:**	
Purchase of Receivables with	**:**	
Consolidated Billing.	**:**	

PROPOSED ORDER

By the Commission:

I. Procedural History

On September 5, 2012, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor," "Nicor Gas," or the "Company") filed with the Illinois Commerce Commission ("Commission") a proposed tariff Rider 17 pursuant to Section 9-201 of the Public Utilities Act (the "Act") seeking to establish Purchase of Receivables with Consolidated Billing ("PORCB"). Nicor Gas states that the purpose of Rider 17 is to provide a new tariffed service whereby Qualifying Alternative Gas Suppliers ("Q-AGS") may, at their option, sell to Nicor Gas qualifying receivables for natural gas commodity service for eligible residential and small commercial customers. Specifically, Rider 17 provides the terms by which Nicor Gas will purchase receivables from Q-AGS, including the manner in which the Company will recover its costs incurred in providing service under the rider, and then reflect those charges on bills where the receivables have been purchased by Nicor Gas. Rider 17 also sets forth the terms and conditions of the new tariffed service. On October 17, 2012, the Commission suspended Rider 17 for a period of 105 days, up to and including February 1, 2013, pending investigation and a Commission decision. On January 24, 2013, the Commission resuspended Rider 17 pending further investigation.

Staff of the Commission ("Staff") and the Illinois Attorney General's Office ("AG") entered appearances. The following parties petitioned for, and were granted, leave to intervene in this proceeding: Retail Energy Supply Association ("RESA"); Interstate Gas Supply Of Illinois, Inc. ("IGS"); Citizens Utility Board ("CUB"); and the Illinois Competitive Energy Association ("ICEA"). On December 12, 2012, the Company filed direct testimony in support of the Rider 17. On March 1, 2013, Staff, CUB/AG, and RESA/IGS filed direct testimony. On March 25, 2013, the Company filed rebuttal testimony. On April 23, 2013, Staff, CUB/AG, and RESA/IGS filed rebuttal testimony. On April 30,

2013, the Company filed surrebuttal testimony. An evidentiary hearing was held on May 6, 2013.

Nicor Gas witness Robert R. Mudra, CFA, Director, Finance and Rates for the Company, presented testimony and exhibits to support the proposed PORCB program and related tariffs.

The following witnesses presented testimony on behalf of Staff: David Rearden, Policy Program, Energy Division; Theresa Ebrey, Accountant, Accounting Department, Financial Analysis Division; Rochelle M. Phipps, Senior Financial Analyst, Finance Department, Financial Analysis Division; and Christopher L. Boggs, Rates Analyst, Rates Department, Financial Analysis Division. Martin R. Cohen, consultant, presented testimony on behalf of CUB and the AG. Teresa Ringenbach, Senior Manager of Government and Regulatory Affairs for the Midwest for Direct Energy, LLC, presented testimony on behalf of RESA and IGS.

Pursuant to due notice as required by law and by the rules and regulations of the Commission, status hearings were held in this matter before a duly-authorized Administrative Law Judge ("ALJ") on December 6, 2012 and May 2, 2013. An evidentiary hearing was held on May 6, 2013.

On May 17, 2013, Nicor Gas, Staff, CUB-AG and RESA-IGS filed their respective post-hearing Initial Briefs ("Init. Br."). On May 24, 2013, Nicor Gas, Staff, CUB-AG and RESA-IGS filed their respective post-hearing Reply Briefs ("Reply Br.").

II. Background

Nicor has offered its residential and small commercial customers, on a voluntary basis, the option to purchase their natural gas from third-party, alternative gas suppliers ("AGS") for more than a decade through a Commission approved tariff, Rider 15 – Customer Select Program. The Commission approved expansion of Nicor Gas' Customer Select pilot program to all customers of Nicor Gas in Docket Nos. 00-0620, 00-0621 (Cons.). Order (July 5, 2001); Order on Rehearing (Jan. 3, 2002).

During Nicor's reorganization docket, Docket Nos. 11-0046 and 09-0301, Nicor signed an agreement with intervenors IGS and RESA. In that agreement, the intervenors withdrew their testimony from both dockets. Nicor in turn consented to remain neutral on proposed legislation before the Illinois legislature that mandated PORCB. Nicor Ex. 1.2 at 1 (not paginated). If that bill failed to pass, Nicor further agreed to file a PORCB tariff with the Commission. *Id*. at 2 (not paginated). The proposed bill failed in the Illinois legislature, thus Nicor filed Rider 17 pursuant to the terms of the Stipulation and Settlement Agreement dated May 19, 2011, in Docket No. 11-0046, between AGL Resources Inc., Nicor Inc., Nicor Gas, the Retail Energy Supply Association ("RESA") and Interstate Gas Supply of Illinois ("IGS").

Nicor filed Rider 17 pursuant to Section 9-201 of the Act, which authorizes Commission approval of a proposed rider if the rider is found to be just and reasonable. Section 9-201 provides, in part, that:

> If the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge, classification, contract, practice, rule or regulation, the Commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility.

III. Nicor's Proposed Rider 17

A. Purpose and Applicability

Nicor states that the purpose of Rider 17 is to provide a new tariffed service whereby Qualifying Alternative Gas Suppliers ("Q-AGS") may, at their option, sell to Nicor qualifying receivables for natural gas commodity service for eligible residential and small commercial customers. Nicor Gas Exhibit ("Ex.") 1.0 at 2-3. More specifically, Rider 17 provides the terms by which Nicor will purchase receivables from Q-AGS, including the manner in which the Company will recover its costs incurred in providing service under the rider, and then reflect those charges on bills where the receivables have been purchased by Nicor Gas. *Id*. at 4. Rider 17 also sets forth the terms and conditions of the new tariffed service. *Id*.

Nicor states that Rider 17 will be available in conjunction with the Company's competitive alternative retail supply services under Nicor's Rider 15 – Customer Select, and Nicor's Rider 16 – Supplier Aggregation Service. *Id*. at 5. Rider 17 adds a purchase of receivables option for Q-AGS' gas supply charges to the existing utility consolidated billing program. *Id*. Nicor states that it will purchase these receivables, without recourse, at a discount of 1.5% as part of the mechanism for the Company to recover the costs of providing the new service. *Id*. After the purchase of these receivables, Nicor will include on the customer's bill both the Company's distribution charges and the balance of outstanding charges purchased from the Q-AGS, and these charges will enter the Company's collection process. *Id*.

Nicor proposes that any Q-AGS electing to have Nicor purchase its receivables is required, by Rider 17, to sell to the Company such Q-AGS' Qualifying Receivables for (a) all eligible residential customers and all eligible non-residential customers, (b) all eligible residential customers only, or (c) all eligible non-residential customers only. *Id*. at 6. In other words, a Q-AGS cannot elect to sell the receivables for just some of its customers to Nicor; it must sell to Nicor the receivables for all of the chosen class(es) of

customers. *Id*. However, a Q-AGS is not precluded from serving specific non-residential customers, without Rider 17, through either dual billing (where the utility and Q-AGS both send the customer separate bills) or through the supplier's own consolidated billing program in which the Q-AGS consolidates both utility and supplier charges on the supplier's bill. *Id*.

Further, Nicor proposes to exclude from Rider 17 any residential customer participating in the State of Illinois' Percentage of Income Payment Plan ("PIPP"), as provided for in the Illinois Energy Assistance Act (the "IEAA"), 305 ILCS 20/18. Nicor Gas Ex. 1.0 at 7. Under Nicor's proposal, Nicor will not purchase receivables from a Q-AGS for the accounts of residential customers who participate in the PIPP. *Id*. Nicor states that there are significant additional costs to and challenges posed by including such customers in Rider 17. *Id*. at 8. Accordingly, RESA and IGS have agreed that inclusion of PIPP customers should not be part of the initial information technology systems changes, but will be considered for inclusion in the PORCB program at a later date. *Id*. If it is later determined that PIPP customers should be included in Rider 17, then Nicor Gas states that it would seek to recover its incremental investment for these necessary systems changes through the same Capital Recovery Cost ("CRC") mechanism described in Rider 17. *Id*.

B. Costs

In providing the new service under proposed Rider 17, Nicor anticipates incurring developmental, implementation, administrative, and operational costs. Nicor Gas Ex. 1.0 at 9. Rider 17 sets forth two categories for these costs — Administrative and Operational Costs ("AOCs") and CRCs. *Id*. The AOCs are the incremental expenses incurred by or for Nicor in association with services provided under Rider 17 and are described more fully in the tariff. *Id*. Nicor states the CRCs are the revenue requirement necessary to recover the Company's investment in information technology ("IT") systems, are necessary for the PORCB program, and also are described more fully in the tariff. *Id*. at 9-10. Annually, CRCs will equal the five-year levelized revenue requirement sufficient to recover the return of and on the Company's investments at an 8.09% rate of return as approved by the Commission in Nicor's last rate case, Docket No. 08-0363. Nicor Gas Ex. 1.0 at 10.

C. Cost Recovery

Nicor asserts that all costs that it seeks to recover under Rider 17 represent new, incremental costs that are not reflected in Nicor Gas' current, Commission-approved revenue requirement. Nicor Gas Ex. 1.0 at 10. Therefore, Nicor proposes to recover all costs to provide this new service from the Q-AGS that elect the service under Rider 17 and from the Q-AGS' eligible customers. *Id*.

Nicor states that Q-AGS electing service under Rider 17 will be subject to several costs. First, any Q-AGS electing service under Rider 17 will continue to pay the existing Third Party Billing Service charge of $0.25 per bill. *Id*. As such, there will be no change

from what the Q-AGS currently pays for the utility consolidated billing service. *Id*. Second, a Q-AGS electing service under Rider 17 will pay a Discount Factor of 1.5%, which includes 0.5% for CRCs, as applied to Qualifying Receivables purchased by Nicor from the Q-AGS. Id. More specifically, Nicor will apply a Capital Recovery Adjustment ("CRA") charge or credit to applicable Q-AGS' monthly Supplier Aggregation Service bills to recover or refund any anticipated under-collected or over-collected CRCs received through application of the 0.5% portion of the Discount Factor. *Id*. at 10-11. The CRA includes a reconciliation component that will be the difference between the actual capital recovery cost revenue requirement for the reconciliation period and the amounts collected through the application of the 0.5% capital recovery costs component of the Discount Factor, plus amounts collected or refunded to Q-AGS through the CRA during the prior reconciliation period. *Id*. at 11.

Nicor further states that Q-AGS' eligible customers also will be subject to some costs and credits. In particular, Rider 17 includes a customer adjustment, which will be a per-customer per-month charge or credit calculated separately for eligible residential and non-residential customers. *Id*. The charge will be based on AOCs, estimated uncollectible costs, intangible cost recovery and a reconciliation component and will be determined pursuant to the specific conditions set forth in the tariff. *Id*. Under Nicor's proposal, the Company will make regular filings with the Commission on or before the 20th day of the month preceding the adjustment's effective date. *Id*. at 12. The adjustment will be added to or deducted from the customer's Monthly Customer Charge and will be applicable by customer class (residential and non-residential). *Id*.

D. Reconciliation

Nicor proposes a reconciliation process under Rider 17 that reflects the major features commonly implemented for the oversight of tracking riders, including: (1) an internal audit report with numerous tests, including that costs recovered under the rider are not recovered through other approved tariffs, that adjustment factors are being properly billed to customers in the correct time periods, and that Rider 17 revenues are properly stated; and (2) a Commission-initiated proceeding to reconcile costs and revenues, review the costs incurred, and order adjustments to correct errors, if any. Nicor Gas Ex. 1.0 at 12. Nicor proposes to file a petition with the Commission to initiate the reconciliation process on or before August 31 following each twenty-four month reconciliation period. *Id*. The petition will include a reconciliation of the actual purchase of receivables adjustment costs incurred with the actual revenues booked and the actual Capital Recovery Costs incurred with the Capital Recovery revenues booked. *Id*. at 12-13.

E. Implementation

Nicor states that it has estimated that it will incur start-up costs of $3.88 million to implement the changes required by Rider 17. Nicor Gas Ex. 1.0 at 13. To calculate the estimate, Nicor states that it first reviewed its current systems and identified the programs, processes and reports that will need to be modified to implement Rider 17,

which include: (1) service agreements; (2) the enrollment program; (3) programs relating to billing, bill extracts and bill messaging; (4) the cancel/rebill processes; (5) payment programs; (6) programs relating to collections, severance, and reconnection; (7) revenue and reporting databases; (8) Nicor's General Ledger; (9) existing and new financial and credit reports; (10) bill presentations; and (11) a new process to transition Q-AGS to the PORCB program. *Id*. at 13-14.

Nicor then considered the amount of time and resources needed to implement these numerous systems changes and arrived at an estimate of approximately 42,400 hours, which would take two years assuming the use of Nicor's current staffing level. *Id*. at 14. The majority of those hours are estimated to be spent on designing and building the changes and testing the changes, as Nicor must ensure that the changes do not negatively affect its customers or its financial reporting processes. *Id*. Assuming an average hourly rate of $85 as applied to the 42,400 hours results in a figure of $3.6 million. *Id*. Finally, Nicor assumed that it also will incur overhead and administrative / general expenses related to the start-up process, which Nicor estimated at 8% of the $3.6 million, or $288,000. These figures together are the estimated total of $3.88 million. *Id*.

IV. Standard for Rider Approval

Nicor's Position

Nicor made its Rider 17 tariff filing pursuant to Section 9-201 of the Act, which provides that "the Commission shall establish the rates or other charges … which it shall find to be just and reasonable". 220 ILCS 5/9-201(c). Therefore, Nicor contends that the Commission may approve Rider 17 if the Commission finds it to be just and reasonable. Nicor Gas Init. Br. at 8-9; Nicor Gas Reply Br. at 3. Nicor states that "a just and reasonable rate is a question of sound business judgment and is not the product of a legal formula." *Central Illinois Light Company, Proposal to Implement a Competitive Procurement Process*, Docket Nos. 05-0160, 05-0161, 05-0162 (Cons.), Order at 43 (Jan. 24, 2006).

Nicor asserts that it drafted proposed Rider 17 to achieve three goals. First, the Company sought to propose a PORCB program that would hold its supply and delivery customers harmless in the provision of this new, optional service. Second, Rider 17 would provide Nicor with a mechanism to recover all costs incurred in order to provide the new PORCB service – costs that are not being recovered through Nicor's current base rates. The third goal was to propose a balanced PORCB program in response to the request of certain AGS. Nicor states that it presented substantial and compelling evidence showing that proposed Rider 17 accomplishes each of these goals. Nicor Gas Init. Br. at 1-2; *see also* Nicor Gas Reply Br. at 2. Accordingly, Nicor argues that the Commission should approve the Company's Rider 17 proposal because the evidence demonstrates that it is just and reasonable.

Further, Nicor asserts that there is no basis in law for Staff's argument that Rider 17 may only be approved by the Commission if "the expenditures to implement Rider 17

are prudently incurred". Staff Ex. 1.0 at 3. Similarly, Nicor asserts there is no basis in law for CUB/AG's argument that the Company must provide evidence that its Rider 17 proposal provides a "net benefit to customers." CUB-AG Ex. 1.0 Rev. at 2. Nicor further asserts that CUB/AG's argument is beyond the scope of this proceeding. Nicor emphasizes that it is only proposing to provide optional Rider 17 service to Q-AGS as a part of the overall competitive service package that Q-AGS provide to their retail customers. Nicor states that Q-AGS are allowed to establish their own business models, prices, services, subcontractor agreements and other customer terms and conditions in a competitive retail market for natural gas supply in Illinois. According to Nicor, Rider 17 properly permits Nicor to recover the costs of providing the service from the participants and suppliers in this competitive marketplace. Nicor contends that, in this marketplace, AGS and customers ultimately will be the judge of whether Nicor's provision of the PORCB service provides so-called "net benefits" to customers. Nicor Gas Ex. 2.0 Rev. at 33-34.

Nicor also argues that Staff's position that Rider 17 is premature (Staff Ex. 2.0 at 3) also is unsupported. Nicor contends that the evidence shows that the Company has proposed an optional PORCB program and that Rider 17 outlines the cost recovery mechanism for the program, the required ongoing obligations of the Company and the Q-AGS and the requisite administrative and Commission reconciliation and review processes. Nicor asserts that the evidence shows that Rider 17 is considered to be in the preliminary design stage from an IT perspective. Nicor Gas Ex. 2.0 Rev. at 7. Nicor states that the fact that the Company proceeded with caution and did not conduct full scale development for a new, optional service, with an estimated start-up cost of $3.88 million without first obtaining Commission approval should not be a reason to reject Nicor's proposal. *Id.*

Finally, Nicor contends that it provided as much information as it currently has available on the costs to be incurred under the rider. Until Nicor actually incurs costs in connection with providing service under Rider 17, it cannot predict the specific levels of costs or provide "best estimates" of charges. Nicor argues that the fact that these costs cannot be known with certainty at this time does not support the Commission's outright dismissal of the Company's proposal. *Id*. at 8-9. Moreover, Nicor asserts that future costs will be related to the levels of future PORCB uncollectibles, future gas prices, future numbers of participating customers, future participating Q-AGS, the severity of future weather conditions (colder or warmer winters) and future levels of customer participation in retail gas markets in Illinois. For example, Nicor states that if natural gas municipal aggregation were to be approved by the Illinois General Assembly then significantly higher levels of customers may begin switching to the Company's Rider 15 – Customer Select and the costs incurred under the PORCB program would be expected to rise commensurately. *Id*. at 9.

While Staff and CUB/AG each argue for the outright rejection of Rider 17, as an alternative they propose various amendments to the language and mechanics of the rider. *See* Nicor Gas Init. Br. at 10. During the course of the proceeding, Nicor adopted several of Staff's proposed modifications. *Id*. However, with regard to the Staff and

CUB/AG proposed amendments that remain at issue, it is Nicor's position that the Commission should reject Rider 17 rather than adopt such changes. The Company states that it has developed a program that properly balances the interests of its customers, AGS, and the Company. Meanwhile, the Staff and CUB/AG proposed changes unreasonably disrupt this balance. Thus, because the proposed rider is an optional service, Nicor Gas urges the Commission to reject Rider 17 rather than adopt the Staff and CUB/AG proposed amendments that remain at issue. Nicor Gas Init. Br. at 2-3; Nicor Gas Reply Br. at 2-3.

RESA/IGS's Position

RESA/IGS note that Staff and CUB/AG both argue that the Commission should reject Rider 17. According to RESA/IGS, Staff's and CUB/AG's positions appear to go far beyond the issue in this proceeding—whether Nicor Gas' Rider 17 is just and reasonable. RESA/IGS argues that they appear to want to question the Customer Select Program itself. The Commission has already approved Nicor Gas' Customer Select Program. RESA/IGS note that the only issue in this proceeding is whether the Commission should approve a PORCB Program in Nicor Gas' service territory. However, in RESA/IGS's view, Staff and CUB/AG don't seem to realize that Rider 17 creates an optional service for suppliers—a PORCB Program. RESA IGS state that suppliers and customers by choosing a supplier's product will make their own determinations as to whether the service is one to which they should subscribe. RESA/IGS states that whether or not a supplier decides to participate in Rider 17 is going to be based on that supplier's analysis of the costs to itself compared to the benefits it would derive. There is nothing that compels a supplier to participate in Rider 17. 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.

In response to Staff's recommendation that the Commission should only approve Rider 17 if the Commission believes that the expenditures to implement Rider 17 are prudently incurred, RESA and IGS respond that Staff's prudently incurred criteria, based on an undefined cost/benefit analysis, is not the appropriate criteria for the Commission to use in determining whether to approve Rider 17 and that it is not supported by any reference to any Commission rule or decision or any other authority. In this regard, RESA and IGS note that the Customer Select Program itself, Nicor Gas' transportation of customer-owned gas program for small-volume customers, was not subjected to a prudently incurred test based on a cost benefit analysis.

RESA and IGS also note that when the Illinois General Assembly desires a prudence test, it has established one. For example, Section 9-220 of the Public Utilities Act, which provides generally for purchased gas adjustment clauses and purchased fuel adjustment clauses, states in pertinent part:

> Annually, the Commission shall initiate public hearings to determine whether the clauses reflect actual costs of fuel, gas power, or coal transportation purchased to determine

> whether such purchases were *prudent*, and to reconcile any amounts collected with the actual costs of fuel, power, gas or coal transportation *prudently purchased*. In each such proceeding, the burden of proof shall be on the utility to establish the *prudence* of its cost of fuel, power, gas, or coal transportation purchases and costs.

220 ILCS 5/9-220(a) (emphasis added)

RESA and IGS respond similarly to the recommendation of CUB/AG, noting that while it cites the correct criteria under Section 9-201 of the Public Utilities Act, it does not consider for whom the tariff is not just and reasonable. Rider 17 is an optional service for AGS. If the terms of Rider 17 are not reasonable, AGS do not have to apply for the service. With respect to cost recovery, the Rider 17 mechanism is structured so that Nicor recovers the costs of the PORCB program from AGS and their customers. If a customer does not like the offer from an AGS using PORCB the customer may also choose not to participate. Nothing about this program is mandatory.

With respect to CUB/AG's proposed requirement of a "net benefits" test, RESA and IGS argue that CUB/AG does not cite any authority as to why that is the criterion that the Commission should, or must, use in making its decision in this proceeding. Once again, RESA/IGS argue, CUB/AG does not appear to understand the nature of the service—it is an optional service for AGS. AGS and their customers will decide for themselves whether Rider 17 benefits them. If it does not, then they will not apply for service thereunder. However, in RESA/IGS's view, other PORCB programs both on the electric side in Illinois and on the gas and electric sides in other states have clearly proven that customers do see value in competitive offerings and suppliers see value in participating in PORCB.

RESA and IGS contend further that, besides the fact that both Staff and CUB/AG are proposing criteria not required by Section 9-201, neither addresses the fact that their proposed criteria are not possible to be tested. While the costs of implementing the PORCB program are, to some degree, capable of quantification—for example, Nicor Gas has a current estimate of $3.88 million in capital costs—the customer benefits, described in detail in the direct testimony of RESA/IGS' witness, Ms. Ringenbach, of the PORCB program, while significant, are largely qualitative.

In her Direct Testimony, Ms. Ringenbach described the benefits of Rider 17 to AGS, who are the customers being served under the Rider. Ms. Ringenbach states that AGS use utility consolidated billing to bill their products, which allows for a single bill for all gas charges to be sent to the customer. Because they are the owners of the bill, utilities are better suited for collections and can do so at a lower cost. Ms. Ringenbach further states that, absent a PORCB program, AGS would have to separately collect non-payments from customers who are simultaneously in collection with the utility for charges that appeared on a single bill. Each AGS would have to develop its own systems and employ its own labor to engage in these activities which would come at a

higher cost because the AGS only has the amount applied to its portion of the bill and must do further research to understand whether or not the non-payment was through utility error or true customer non-payment, prior to beginning the collection process.

RESA and IGS contend that a PORCB Program will level the playing field so that AGSs can effectively compete against Nicor to supply gas to customers. RESA/IGS argue that utilities have inherent advantages when it comes to collecting outstanding accounts from customers. RESA/IGS state that utilities are better suited for collections because a utility has greater recourse in the event a customer does not pay. The utility can shut off a customer's gas supply for non-payment whereas an AGS cannot shut off delivery of gas to the customer's home. RESA/IGS state that the AGS' only recourse is to stop supplying gas to the customer and turn the account back to the utility. RESA/IGS argue that if a customer knows that there are consequences for not paying a bill, that customer is much more likely to pay the bill.

RESA and IGS state that the effect of the utility's inherent advantage associated with collections is that a utility has much more success at collecting from customers and thus utilities receive a greater percentage of the accounts billed. This is so even though a utility's cost of collection is typically less. Ultimately this means an AGS' bad debt expense (amount on unpaid accounts plus cost of collections) is much greater than a utility's bad debt expense. This is harmful for AGSs because a high bad debt expense increases the cost an AGS incurs in serving customers. The negative effect of this additional cost is compounded by the fact that a high bad debt expense compared to that of a utility makes it more difficult for an AGS to compete.

According to RESA and IGS, an AGS factors its overall costs into the pricing it offers customers. Therefore, if an AGS' overall costs are increased, the AGS must increase prices in order to make it profitable to offer service to customers. In addition, a utility's price is based on its cost to serve customers. If a utility has a significantly lower cost (because of a lower bad debt expense) than an AGS' cost, then a utility will be able to offer a lower price to customers.

In addition to providing benefits to AGS, according to RESA/IGS, Rider 17 will also benefit customers. RESA/IGS argue that, beyond reducing a customer's confusion and negative experience from dealing with two separate collection entities over a single bill, a PORCB Program leverages the utility's inherent advantage in collections to reduce the net bad debt expense for all customers. Rather than every supplier expending resources to collect on accounts with limited success, a PORCB Program reduces the redundancy of collections expenditures and enhances the success of collecting on unpaid accounts. RESA/IGS argue that this net cost reduction will be passed on to customers through lower prices and more diverse products offered by AGSs.

In response to CUB/AG questioning whether AGS will provide lower prices to customers as a result of adoption of Rider 17, RESA/IGS state 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's service territory, many AGS are not offering products because their costs for collection and uncollectible risk are too high to be ~~profitable~~ competitive. However, according to RESA/IGS, 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. RESA/IGS state that, as more AGS enter the market, the existing AGS will have to lower their prices if they wish to be competitive. RESA and IGS note that Staff witness Dr. Rearden acknowledges 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.

Also, RESA and IGS assert that it is important to remember that customers can choose whether they want to buy from a supplier and, moreover, which supplier. A PORCB Program will encourage more suppliers to make offers in Nicor's service territory, the result being a more competitive market. More competitive markets generally result in better offers and lower prices.

RESA and IGS also noted that, in Illinois, on the electric side, both ComEd and Ameren have PORCB programs. RESA/IGS assert it is well known that the Illinois residential competitive market has expanded greatly since the implementation of PORCB. PORCB is not the only factor that has contributed to the success of the competitive electric market. To be sure, RESA/IGS state, the relatively high utility price-to-compare has resulted in high levels of customer switching in 2011 and 2012; however, without PORCB, several suppliers offering products likely would not be in the market and governmental aggregation would not likely be as effective or vibrant as it has been. RESA/IGS argue that PORCB is part of the fundamental foundation for competition, without which large-scale residential customer switching simply would not have occurred.

According to RESA and IGS, the evidence is overwhelming that PORCB programs contribute to increased customer access to the benefits of participation in the competitive market and, therefore, increased customer migration. In RESA/IGS's view, the implementation of PORCB would be a significant step towards achieving a competitive and robust natural gas market in Nicor Gas' service territory.

In response to the claims of Staff and CUB/AG that the absence of a PORCB tariff has not proven to be a significant impediment to competition, RESA and IGS disagree. Staff and CUB/AG point to RESA/IGS Ex. 2.1, which contains a list of states having gas PORCB programs and the number of suppliers participating in each program. The exhibit shows that the number of suppliers participating in Choice programs having a PORCB component generally far exceeds the number of suppliers participating in Nicor Gas' Customer Select Program.

In response to Staff's and CUB/AG's claim that there is an upward trend in Customer Select, based on Nicor's Response to Staff DR POL 4.1, RESA and IGS argue that this claim is false. In fact, according to RESA and IGS, there has been a downward trend in non-residential customers on Customer Select over the 50-month

period shown in Nicor's response to Staff Data Request No. POL 4.1, the document relied upon by Staff and CUB/AG. Neither does that document show an upward trend in residential customers' participation in Customer Select. Rather there has been upward and downward movements over the 50-month period. In fact, from January 2013 to March 2013, there was a downward trend.

RESA and IGS conclude, with respect to customer benefits that, on the positive side, a PORCB Program will enable AGS to offer customers lower prices, and ultimately make the natural gas market in Nicor's service territory more competitive, resulting in a wider array of competitive products 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 and IGS respond to the differences noted by CUB/AG in the gas and electric supply markets, by stating that the only meaningful difference for purposes of this proceeding is that while Section 16-118 (c) required electric utilities to implement PORCB Programs for Alternative Retail Electric Suppliers, there is no comparable requirement that gas utilities implement PORCB Programs for AGS. RESA/IGS states that Nicor is not required by the PUA to implement a PORCB Program. Consequently, Nicor filed this proceeding pursuant to Section 9-201 to request the Commission's permission to implement Rider 17. RESA/IGS stresses that Section 9-201 gives the Commission authority to approve Rider 17 if it finds that Rider 17 is "just and reasonable".

RESA and IGS state that, in this respect, the situation in this proceeding is no different from Nicor's implementation of Customer Select Program, its transportation program for small-volume customers. RESA/IGS note that Nicor was not required by the PUA, nor by the Commission, to implement Customer Select. Instead, RESA/IGS assert, Nicor filed its Customer Select Program pursuant to Section 9-201, and the Commission, using its authority under that section, approved the program. Similarly, RESA/IGS state The Peoples Gas Light and Coke Company and North Shore Gas Company operate their own versions of Choice Programs, both named Choices For You, having filed tariffs implementing those programs pursuant to Section 9-201 of the PUA and having received Commission approval pursuant to that section.

RESA and IGS acknowledge that the Illinois General Assembly does not require gas utilities to offer PORCB Programs. However, RESA/IGS argue that neither has the General Assembly prohibited gas utilities from offering such programs. According to RESA/IGS, Nicor has the authority under Section 9-201 of the Public Utilities Act to file

Rider 17 and the Commission has the authority under Section 9-201 to approve Rider 17 if it finds it to be just and reasonable.

CUB/AG's Position

CUB/AG request that the Commission reject the tariff identified as "Rider 17," filed by Nicor, as it lacks sufficient legal basis, is not just and reasonable, and neither the Company nor RESA/IGS has offered evidence that it provides any identifiable, quantifiable benefit to customers in the face of unquantified, unlimited costs to these customers.

With regard to the Commission's authority and jurisdiction in this matter, CUB/AG argue that the Illinois General Assembly has not granted the Commission authority in the Illinois Public Utilities Act to approve a POR tariff for a gas utility and the Company's request fails to describe any valid general authority in the Act under which the Commission could legally approve such a proposal. The Company's Supplemental Statement explained that "This proposed tariff is being submitted by Nicor Gas to fulfill the Company's obligation under the terms of the Settlement Agreement." *Id*. CUB/AG aver that an agreement between a utility and certain other parties, all of whom stand to benefit from the tariff, is not sufficient grounds for its approval. The Commission's authority to approve a POR tariff without statutory authority cannot be inferred, according to CUB/AG. To the contrary, CUB/AG state, the inaction of the General Assembly should be read to convey its intention to restrict the operation of such a tariff to electric utilities. While Nicor and RESA/IGS may agree to terms regarding their own obligations, CUB/AG argue that Nicor cannot circumscribe this lack of authority from the General Assembly by simply filing a tariff.

CUB/AG state that it is well established that the Commission, as a creature of statute, is limited to the legislature's grant of authority, and acts outside of that grant of authority are void. Business and Prof'l People for the Pub. Interest v. Illinois Commerce Comm'n ("BPI I"), 136 Ill. 2d 192, 201 (1989); City of Chicago v. Illinois Commerce Commission, 79 Ill. 2d 213, 217-8 (1980). According to CUB/AG, it cannot be disputed that the legislature granted specific authority to electric utilities to file tariffs with the Commission in order to purchase receivables from Alternative Retail Electric Suppliers ("ARES"). 220 ILCS 5/16-118(c). The legislature also granted specific authority to the Commission to "review and approve" the discount rate associated with the purchase of receivables in such a tariff. 220 ILCS 5/16-118(c). CUB/AG note that the Act, however, is markedly silent on the same authority regarding POR tariffs for gas utilities. CUB/AG observe that the legislature, despite including in the Act a section titled "Commission oversight of services provided by gas suppliers" (220 ILCS 5/19-120), chose not to ascribe this power to the Commission. In fact, CUB/AG stress, previously submitted bills to establish POR for the gas market have been submitted to the General Assembly and have never advanced. According to CUB/AG, this inaction by the General Assembly regarding gas utility POR tariffs evinces the intent of the legislature to not establish POR for the gas market.

CUB/AG assert that the gas and electric supply markets in Illinois are different retail markets, selling different commodities, served by different suppliers, and subject to distinct regulatory requirements. In support, CUB/AG cite to the fact that the Illinois legislature recognized the inherent differences among these markets by drafting different sets of statutes to govern the activities in those markets. *See Strategic Energy, LLC v. Illinois Commerce Commission*, 369 Ill. App. 3d 238, 253-4 (2006) (noting that changes to a statute to reflect market realities must be made by legislature). Further demonstrating the inherent differences between utility services, CUB/AG state that the Act contains specific and distinct regulations for water and natural gas utilities (220 ILCS 5/15), electric utilities (220 ILCS 5/16), alternative gas suppliers ("AGS") (220 ILCS 5/19), and alternative retail energy suppliers ("ARES") (220 ILCS 5/20).

CUB/AG argue that, when interpreting a statute, words that are not within the intention of the legislature cannot be read into the statute, and the meaning of the statute cannot be enlarged or restricted. *County of Kankakee v. Anthony*, 304 Ill. App. 3d 1040, 1047 (1999). Similarly, CUB/AG point out, the intent of the legislature can be derived not only from the language adopted, but from the language that was not adopted. *Laborer's Int'l Union of North America, Local 1280 v. State Labor Relations Board*, 154 Ill. App. 3d 1045, 1050 (1987). Here, CUB/AG state, the legislature adopted nearly identical language in section 16-118 of the Act, which addresses electric providers, and section 5/19-115 of the Act, which addresses gas providers. While the legislature granted the Commission authority to approve electric POR programs, CUB/AG note that it did not grant it authority to approve gas POR programs. Therefore, concludes CUB/AG, the Commission, a creature of statute, has no authority to approve a gas POR tariff.

In addition to the absence of any statutory foundation for gas POR, CUB/AG argue that the lack of specific customer benefits seriously undermines the Commission's ability to determine that Rider 17 is just and reasonable.

CUB/AG conclude that Rider 17 is problematic for several reasons. CUB/AG aver that not only does the Commission lack statutory authority to approve a POR tariff for a gas utility, but any benefits that could allegedly result from tariff have not been quantified, and there has been no showing that the benefits outweigh the costs that will be passed on to customers of participating Q-AGS. CUB/AG argue that no party has presented evidence that demonstrates that retail gas competition has resulted in lower prices in Illinois to date, or by what amount or in what fashion such prices would decrease as a result of a POR tariff. Furthermore, CUB/AG maintain that the construction of the tariff puts customers at risk of potentially unlimited charges, without disclosure of such risk. Each of these reasons, CUB/AG argue, justifies rejecting Rider 17.

Staff's Position

Staff argues that in order for Nicor's Rider 17 to be just and reasonable, its benefits must outweigh its costs from the customers' perspective; hence, whether

customers are likely to be better off. If customers are likely to be worse off, then the expenditures are inherently imprudent. In other words, the Nicor customers are already being provided with "rates" that the Commission has deemed just and reasonable. Rider 17 proposes to restructure the current rate structure for at least some of Nicor's customers. Staff notes that Section 9-201 of the Public Utility Act ("PUA") puts the burden of proof squarely upon Nicor's shoulders.

In Staff's view, it is fundamentally sound public policy to prevent customers from being worse off. That is, the Commission should conclude that Rider 17 is not just and reasonable, because Nicor failed to carry its burden of demonstrating that benefits to customers exceed the costs to customers. Staff IB at 4-9. In fact, Staff argues, since Nicor has presented no evidence those customers are likely to be better off under Rider 17, the Commission has little choice but to reject Rider 17 as unjust and unreasonable. *See e.g.*, *Citizens Utility Board v. Illinois Commerce Comm'n*, 658 N.E.2d 1194 (1st Dist. 1995) ("Where the utility has presented no evidence concerning the impact of rate restructuring on ratepayers, it has not met its burden of proving the restructuring just and reasonable for those ratepayers.").

Nicor, on the other hand, argues that Rider 17 only needs to be declared "just and reasonable" to be approved by the Commission. Nicor IB at 8-9. However, Staff argues, it is not clear what makes the PORCB service and Rider 17 just and reasonable if there are no net benefits to consumers. According to Staff, Nicor sets up a red herring argument. Staff's position is not that rates do not need to be just and reasonable; it is instead that in order for Rider 17 to be just and reasonable Nicor must carry its burden of proof by presenting sufficient evidence to demonstrate that the benefits to customers outweigh the costs of Rider 17.

Staff notes that Nicor disagrees with Staff's criterion that benefits must exceed costs. Nicor insists that Staff's testimony does not specify the Commission rule or decision, or other authority that underlies that criterion. Nor is the Staff's notion of 'prudently incurred' supported. Staff Ex. 5.0 at 5. However, Staff argues, the definition that it offered for prudently incurred costs for this voluntary program is that the benefits of the program should exceed the costs of the program. According to Staff, if the Commission does not approve Rider 17, Nicor will continue to provide the services in its tariffs that have already been approved by the Commission. Staff argues that if the benefits of the program do not exceed its costs, then the Commission is authorizing a program that makes Nicor customers worse off. Also, Staff notes, the Commission has relatively broad authority to determine what is in the public interest. The Commission can reasonably conclude that Rider 17 is not in the public interest if it decides that benefits do not exceed costs. Finally, Staff notes, given that the bill that is the subject of the stipulation in Nicor's reorganization docket failed to pass in the legislature, the PUA does not mandate that gas distribution companies have a PORCB. *Id*., at 5-6.

Staff further argues that there is no record evidence that Rider 17 is in the public interest. Staff states there is no empirical evidence that PORCB lowers prices. According to Staff, RESA/IGS spin a tale of competitive markets that may be

theoretically valid but has little applicability to the case at hand. RESA/IGS provide percentages of eligible customers that take transportation service, but it does not indicate whether or how much money customers actually save. For example, RESA/IGS state that "Rider 17 would provide benefits to customers." Yet, as Staff points out, RESA/IGS do not indicate or estimate the savings that those customers would receive.

Staff also takes issue with RESA/IGS's assertion that participating AGSs benefit from Rider 17. Staff considers this a moot point, since the Commission should not care whether unregulated AGSs are better or worse off from a voluntary PORCB program. According to Staff, the effects on unregulated AGSs are relevant only to the extent that AGS are likely to pass those benefits and costs on to customers. Staff notes that RESA/IGS argue that a robust competitive market, enabled by Rider 17, will force AGSs to lower their prices. Staff states that these lower prices, in IGS/RESA's view, are possible because Rider 17 lowers AGSs costs. Staff argues that this story is a self-fulfilling prophecy: if one assumes that Rider 17 makes the market more competitive and lowers costs, and one assumes that the market is competitive, the lower costs result in lower retail prices. However, Staff argues, there is nothing to support those initial assumptions. Staff avers there is no empirical evidence for whether or how much AGS debt related costs are lowered, and the extent of the market's competitiveness is not empirically analyzed.

Staff further argues that RESA/IGS's contention that it is impossible to analyze these issues is illogical. Staff notes that RESA/IGS provides several POR program examples in several states, and it is unclear why there is no data to examine.

Staff also states that any comparison to Illinois electric utility experience with POR programs is entirely inappropriate. Staff argues that the main driver for mass movements to RES service was municipal aggregation, not POR, as is ably pointed out by the CUB/AG IB. *See* CUB/AG IB at 17-18.

RESA/IGS also address Staff witness Dr. Rearden's testimony when it points out that at this time, there is not a downward trend in the percentage of customers taking service from AGSs. RESA/IGS IB at 18-20. Staff states that RESA/IGS misinterprets Dr. Rearden's testimony, which asked "Is there a downward trend in customer numbers in Nicor's small volume transportation service?" Staff Ex, 5.0 at 1. Staff argues that his testimony did not state that there has never been a downward trend in customer numbers. Nevertheless, RESA/IGS did note that the trend has not always been up. Staff acknowledges that customer percentages fluctuate. In fact, Staff notes, it would be extremely surprising for a program's customer numbers not to fluctuate over time as gas prices and other factors vary over time. Staff argues that the lack of a PORCB is not causing customers to leave Customer Select. *Id*., at 2.

Staff further argues that approval of Rider 17 as proposed by the utility would be premature since many of the specific details of the program have yet to be determined. Staff states that the Company is in effect asking the Commission to approve a blank

check for any and all costs that the Company may decide are associated with PORCB to be recovered through Rider 17. In Staff's opinion, this the Commission may not do. *See e.g., Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 242 Ill.App.3d 172, 190 (1st Dist. 1993) ("The record contains no proof that the increase in postage costs would occur in the test year. Only known or measurable charges are to be included in the budget.").

Commission Analysis and Conclusion

Pursuant to Section 9-102 of the Act, Nicor filed the instant petition seeking approval of its proposed tariff Rider 17, which would establish a new tariffed service allowing for purchase of receivables and consolidated billing. As the parties note, Section 9-201 allows the Commission to approve a proposed rider if the Commission finds the rider is just and reasonable. The utility has the burden of proof.

CUB/AG argue that the Commission lacks legal authority to approve Rider 17. Specifically, CUB/AG argue that, absent specific statutory authority, the Commission cannot approve a PORCB program. The Commission disagrees. As noted by Nicor in its Reply Brief, the Commission has broad authority to set and design utility rates, and included within that authority is the ability to approve riders as a preferred mechanism for cost recovery. *See Business and Prof'l People for the Pub. Interest v. Illinois Commerce Comm'n*. 136 Ill. 2d 192, 204 (1989) ("BPI"); *Citizens Utility Bd. V. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 140 (1995). The Commission exercised such authority in approving Rider 15 – Customer Select Program, which was filed pursuant to Section 9-201 of the Act. Nicor filed Rider 17 pursuant to the same statutory provision.

CUB/AG argue that the legislature granted specific authority to electric utilities to establish POR, but the Public Utilities Act is markedly silent on the same authority regarding POR tariffs for gas utilities. According to CUB/AG, the absence of such specific authority is an affirmative choice by the legislature not to ascribe this power to the Commission. CUB/AG argue that inaction of the General Assembly to allow POR tariffs for gas utilities shows the General Assembly's intent to restrict the operation of such a tariff to electric utilities. The Commission disagrees with CUB/AG's argument. While some riders are specifically authorized by statute, the Commission may authorize other riders pursuant to its general ratemaking authority under Section 9-201. Moreover, as Nicor points out in its Reply Brief, rejected legislation or inaction of the legislature has no legal effect. *See S. 51 Dev. Corp. v. Vega*, 335 Ill. App. 3d 542, 556 (2002).

In their briefs, the parties argue over how to determine what is "just and reasonable" as contemplated by Section 9-201. Nicor and RESA/IGS argue that Staff and CUB/AG are incorrect in requiring a "net benefits test". Nicor and RESA/IGS state that such a test goes beyond the meaning of just and reasonable. Staff argues that RESA/IGS are misinterpreting its argument and that Staff is only stating that the benefits of the rider must outweigh the costs. Semantics aside, ~~the bottom line is that there must be some cost benefit analysis to determine whether a proposed rider is just~~

~~and reasonable. If the costs of a PORCB program outweigh the benefits of such a service, then the Commission cannot find Rider 17 just and reasonable~~, neither Staff nor CUB/AG point to any statute, rule, or Commission order requiring, in a Section 9-201 proceeding, that the benefits of the proposed tariffs exceeded the costs.

RESA and IGS argue that the only issue in this proceeding is whether the Commission should approve a PORCB program, and that alternative gas suppliers will make a determination on whether or not to participate in the voluntary program based on that supplier's analysis of the costs to itself compared to the benefits it would otherwise derive. RESA/IGS argue that the customers themselves will ultimately determine whether Rider 17 benefits them. ~~RESA/IGS's view of this proceeding is not accurate. The question in this proceeding is whether Rider 17, as presented by Nicor, is just and reasonable, to which the Commission must determine whether the costs of implementing such a program are supported by the benefits of such a program. In making a determination, the Commission looks, in part, at the effects of such a service on customers, not just whether Rider 17 is just and reasonable to alternative gas suppliers.~~ While the Commission agrees that Rider 17 is a service for alternative gas suppliers, the Commission nonetheless thinks that it should consider potential benefits to customers. According to RESA and IGS, with respect to customer benefits, a PORCB Program will enable alternative gas suppliers to offer customers lower prices, and ultimately make the natural gas market in Nicor Gas' service territory more competitive, resulting in a wider array of competitive products customers and offer the following benefits to alternative gas suppliers 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.

The Commission agrees that these are substantial benefits and finds that Rider 17 will provide benefits to alternative gas suppliers and their customers, while protecting Nicor Gas and customers that not participating in the PORCB Program.

The Commission finds that the evidence presented in this docket is ~~in~~sufficient to make a determination that the proposed Rider 17 is just and reasonable. ~~The Commission agrees that PORCB has the potential to increase competition and lower customer costs, which are two of the benefits purported by Nicor and 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 such would occur. The Commission agrees with Staff and CUB/AG that there is no evidence in the record to somehow quantify the rate impact. 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.~~ Accordingly, the Commission agrees with ~~Staff, CUB and the AG~~ Nicor Gas, IGS and RESA, that the proposed Rider 17 ~~lacks~~ provides the requisite evidentiary basis for the Commission to determine that the Rider 17 is just and reasonable. ~~However, the Commission stresses that nothing in this determination should be construed to mean that a future PORCB program would not be approved should sufficient evidence be presented.~~ In particular, the Commission is supportive of fostering a competitive market place in Nicor Gas' service territory and finds that Rider 17 will improve the competitive marketplace for transportation of gas to residential and small non-residential customers. Furthermore, that improvement will benefit all customers who are eligible for Nicor Gas' Customer Select Program. On that basis, the Commission finds that Rider 17 is just and reasonable and should be and is hereby approved.

With regard to Staff's argument that approval of Rider 17 is premature, the Commission does not agree ~~agrees in part~~. As Staff notes, Nicor failed to submit sample templates of a billing service agreement and title transfer documents, which should be available for interested parties review and comment in a proceeding determining approval of a PORCB program. However, the lack of such templates is not a basis for rejecting Rider 17. Rather, the Commission directs Nicor Gas to provide sample templates of the requested documents to all parties within 30 days after the Order is entered in this proceeding. ~~However~~ Moreover, the Commission agrees with Nicor and RESA/IGS that it is imprudent to require Nicor to conduct full scale development for a new, optional service with considerable start-up costs without first obtaining Commission approval. Additionally, while the pending Staff report from the Office of Retail Market Development regarding the state of retail gas competition in Illinois, including barriers to development of competition, would be useful information in the instant proceeding, the absence of the report does not make establishing a PORCB program premature.

~~Nicor proposes the Commission adopt its suggested Rider 17, but argues in the alternative that should the Commission adopt any of Staff's or AG/CUB's recommended modifications, Nicor would then urge the Commission to reject Rider 17. Nicor states that its proposed Rider 17 properly balances the interests of its customers, AGS, and the Company, and any changes would disrupt this balance. In essence, it appears Nicor would find Rider 17 unjust and unreasonable if the Commission makes any changes to Rider 17 prior to approval. The Commission disagrees with Nicor that any changes to the proposed Rider would necessarily disrupt the balance of interests. Moreover, the Commission disagrees that Nicor's proposed Rider 17 accurately balances those interests in the first place. While not addressing all the contested modifications to Rider 17 in this proceeding, if the Commission were to approve Rider 17, the evidentiary record in this proceeding supports a Commission decision to deny recovery of intangible costs, and find that Nicor's proposed Discount Factor is not supportable by record evidence, as is discussed more fully below.~~

V. STAFF'S PROPOSED MODIFICATIONS TO RIDER 17

A. Intangible cost recovery

COMMISSION STAFF

Staff contends that if the Commission approves Rider 17, it should require Nicor Gas to strike any reference to or recovery of what Nicor Gas calls "intangible costs". Nicor Gas proposes that up to 0.5% of gross receivables be applied to intangible costs. Staff does not believe that intangible, or unquantifiable costs, are an appropriate ratemaking concept. According to Staff, if costs cannot be quantified, then they may be nonexistent or very small. An unquantifiable cost, even one that may be quantified in the future, but for which no mathematical certainty can be adduced, is inherently incapable of being known and measurable and, thus, arbitrary in that there can be no evidence to report its recovery. Staff concludes that if the Commission approves Rider 17, then only the costs that are expended should be recovered. Nicor Gas should not be allowed to recover what it refers to as intangible costs.

CUB/AG

CUB/AG also opposes Nicor Gas' recovery of intangible costs. CUB/AG argues that intangible costs are not actual costs incurred by Nicor Gas, but rather are unquantifiable costs that may or may not be incurred by the Company. According to CUB/AG, while Rider 17 may have negative consequences for Nicor Gas, the idea that these risks should be monetized and the Company be compensated by customers for them is novel and unjustifiable. CUB/AG takes the position that because Nicor Gas is already receiving a generous return on its investment in Rider 17, recovery of intangible costs would overcompensate Nicor Gas for unsubstantiated risk created by the Company itself through its proposed Rider 17.

NICOR GAS

According to Nicor Gas, the evidence demonstrates that intangible cost recovery should be permitted for the following reasons. First, it was part of the settlement agreement with RESA and IGS wherein the commercial terms of Rider 17 were deemed to be acceptable to both the suppliers and the Company and properly identified that Nicor Gas would incur additional costs associated with the program. Second, intangible cost recovery provides an incentive for Nicor Gas to keep its PORCB Program administration costs down. Third, it encourages innovation in areas in which utilities may further support the growth and development of unregulated retail energy markets.

Nicor Gas also asserts that the intangible cost recovery component of Rider 17 is an important component of the risk/reward structure developed with RESA and IGS. Due to the concentrated nature of recovering capital costs and return from a limited number of Q-AGS, their customers, and an optional program, the intangible cost recovery component represents a reasonable level of compensation necessary to

recover other costs associated with the PORCB Program and provides enough incentive for Nicor Gas to agree to participate in the program.

RESA/IGS

RESA/IGS agree that Nicor Gas has established the need to recover intangible costs in Rider 17. The recovery of intangible costs is an important component of the risk/reward structure of the settlement agreement entered into by Nicor Gas with RESA and IGS.

COMMISSION ANALYSIS AND CONCLUSION

The Commission finds the arguments of Nicor Gas and RESA/IGS to be persuasive. The Commission, therefore, approves Nicor Gas' recovery of intangible costs in the manner reflected in Rider 17.

B. Below-the-line treatment for intangible cost recovery

COMMISSION STAFF

Staff opposes Nicor Gas' proposed below-the-line treatment of intangible costs, contending that the impacts on the Company's bottom line that allegedly result from its incurring intangible costs all stem from changes to regulated costs. The Commission should not grant below-the-line treatment to cost recovery that relates solely to regulated services. The Commission should keep the revenues above-the-line to make sure that Nicor Gas does not make excess profits from the accounting treatment of alleged intangible costs. According to Staff, if the Commission approves below-the-line recovery, then Nicor Gas does not have to offset those revenues in its next rate filing, which could lead to the Company earning higher revenues than it otherwise would earn to provide regulated service.

CUB/AG

CUB/AG also opposes Nicor Gas' proposed below-the-line accounting for intangible costs. CUB/AG argues that allowing Nicor Gas to account for intangible cost recoveries below-the-line would increase Nicor Gas' earnings without counting as regulated revenues in a ratemaking proceeding. The result is that Nicor Gas could earn more than its authorized return. If the Commission does not eliminate intangible costs from Rider 17, it should require these costs to be recovered from Q-AGS, not from customers. According to CUB/AG, these revenues should be accounted for above-the-line in Nicor Gas' revenue requirement.

NICOR GAS

Nicor Gas' position is that below-the-line treatment of intangible cost recovery is appropriate. The purchase of third-party receivables is a non-utility service that will give

rise to intangible costs which are appropriately accounted for below-the-line, consistent with the Commission's Uniform System of Accounts for Gas Utilities. While the Company would only receive $438,609 return on equity under Rider 17, it would incur intangible costs and financial risks associated with purchasing as much as $181 million, or significantly more, of receivables from Q-AGS. Therefore, Rider 17 includes an incentive to recover intangible costs of only up to 0.5% of qualifying receivables annually if, and only if, Nicor Gas can keep its AOCs at or below 1% of qualifying receivables. Due to the optional nature of the PORCB service and the attendant risks and uncertainty of future intangible cost recovery and full cost recovery under Rider 17, recording the intangible cost recovery revenues below-the-line in Account 417, Revenues from Non-Utility Operations, is appropriate. By definition, below-the-line revenues are not included in the net operating income of the utility for ratemaking purposes, so it is impossible for such revenues to cause Nicor Gas to over-earn on its utility rate base. Nicor Gas concludes that below-the-line treatment for intangible cost recovery properly recognizes the non-utility nature of this service (receivables factoring) and its risk, while providing Nicor Gas with some opportunity to recover its intangible costs associated with providing the proposed PORCB service.

RESA/IGS

The negotiation of the intangible costs was in recognition that Nicor Gas is the first Illinois utility on the gas side to develop a POR program. As such, RESA and IGS are willing to pay for unforeseen costs which may occur as the program is put in place. The proposed method for intangible costs creates a definitive amount to be paid by AGS without concerns for additional charges going forward outside of normal bad debt adjustments. RESA and IGS support a below the line recovery of these costs as an incentive for Nicor Gas not to seek additional recovery if the amount of intangibles is higher than the actual costs. RESA and IGS support Nicor Gas proposed below-the-line accounting treatment for intangible cost recovery revenues.

COMMISSION ANALYSIS AND CONCLUSION

The Commission agrees with Nicor Gas and RESA/IGS that below-the-line accounting is appropriate for intangible cost recovery revenues. The Commission agrees with Nicor Gas that such accounting would not cause it to earn more than its authorized rate of return. The Commission, therefore, approves Nicor Gas' proposed accounting treatment.

C. Administrative and operational costs

COMMISSION STAFF

Staff takes issue with the 8% overhead factor for AOCs. Staff contends that the Company has not provided any data to support the calculation of the 8%.

NICOR GAS

Nicor Gas' position is that it presented evidence that the 8% factor is completely different than the AOCs defined in Rider 17, which does not include any reference to an "overhead factor". The 8% overhead factor referenced by Staff was included in the Company's preliminary IT design estimate of $3.88 million and is the standard overhead rate used for IT projects at the time the estimate was prepared. Thus, Nicor Gas concludes that the AOCs must be considered separate and apart from the 8% overhead factor used by Nicor Gas in its estimate of the start-up costs to implement changes required by the PORCB Program. To the extent that Staff is dissatisfied with Nicor Gas' data provided in support of the 8% factor relating to its IT design estimate, that does not have any bearing on whether the Company has provided sufficient information to support its proposed mechanism to recover its actual start-up costs.

RESA/IGS

RESA and IGS note that, in his rebuttal testimony, Mr. Mudra accepted some of Staff's proposed revisions, proposed modified versions of some of Staff's proposed revisions, and rejected some of Staff's proposed revisions. Mr. Mudra sponsored Nicor Gas Ex. 2.2, a modified version of Rider 17, reflecting the changes to the rider. RESA and IGS take the position that Nicor Gas' revised Rider 17, as set forth on Nicor Gas Ex. 2.2, including the treatment of AOCs, represents a reasonable accommodation of Staff's concerns and should be approved by the Commission.

COMMISSION ANALYSIS AND CONCLUSION

The Commission believes that Nicor Gas has explained its use of an 8% overhead factor. Consequently, Staff's proposal is rejected.

D. Capital recovery costs

COMMISSION STAFF

Staff proposes to revise the definition of Capital Recovery Costs ("CRCs") to incremental costs incurred through one year following the commencement of service under Rider 17. Staff states that there is no evidence that the PORCB Program will be operated under an IT system that is not integrated into Nicor Gas' current IT system. Moreover, Staff's proposed one year limitation for Rider PORCB implementation costs is consistent with the PORCB tariffs and Ameren and ComEd. Finally, Staff asserts that the Company has never explained why the three-year period to accumulate PORCB implementation costs is inadequate.

NICOR GAS

Nicor Gas argues that Staff's proposal to limit the definition of CRCs should be rejected. The definition of CRCs specifically includes future system modifications required to maintain IT system integrity and functionality, insuring that the appropriate cost causers (the Q-AGS) pay for all of the capital costs required to install and maintain

the PORCB system on an ongoing basis. The costs at issue do not relate to the Company's existing IT system, but only to costs that would be required for the PORCB Program. Nicor concludes that the Commission should reject Staff's proposed changes to the definition of CRCs because it does not improve Rider 17 from a rate design, cost recovery or equity perspective between customer classes.

RESA/IGS

RESA and IGS take the position that Nicor Gas' revised Rider 17, as set forth on Nicor Gas Ex. 2.2, including the treatment of CRCs, represents a reasonable accommodation of Staff's concerns and should be approved by the Commission.

COMMISSION ANALYSIS AND CONCLUSION

The Commission is of the opinion that Staff's proposal to limit the recovery of CRCs would not allow Nicor Gas to recover all future costs associated with implementation of Rider 17. Staff's proposal is therefore rejected.

E. Supply Uncollectible Adjustment

COMMISSION STAFF

Staff proposes a number of changes to the language for Factor SUA (Supply Uncollectible Adjustment). Staff argues that its proposed changes make Nicor Gas' Rider 17 similar to that utilized in the PORCB tariffs of Ameren and ComEd. Staff states that the record contains no reason as to why the process for Nicor should be more complex than it was for ComEd or Ameren. Staff concludes that its proposed language for Factor SUA should be approved by the Commission.

NICOR GAS

Nicor Gas responds that while Staff contends that its proposal for Factor SUA is less complicated than the Company's proposal, the evidence demonstrates that the Company's proposed rate design formulas are designed to address the complexities and business process changes necessary to provide a new service to purchase millions of dollars of third-party receivables each year.

Nicor Gas states that it identified the following reasons why Staff's proposal would impede the timely and accurate recovery of the Company's cost to provide PORCB service. First, Nicor Gas' proposal to estimate and adjust the purchase of receivables cost for the customer class on a monthly basis for each respective customer class based on actual experience is more precise and equitable for each customer class. Second, the Company's proposal uses forward looking estimates, which, according to the Company, are more appropriate than historical data points to establish the accurate and relevant charges for each effective future month of PORCB service. Third, Nicor Gas states that its proposal is superior to Staff's approach, which sets an historical cap on SUA recoveries until the two-year reconciliation process is complete,

which creates additional financial risk for the Company. Fourth, unlike Nicor Gas' method, Staff's method does not account for actual customer payment experience on a monthly basis. Fifth, Nicor Gas worked with RESA and IGS to develop a structure for Rider 17 that considers the risks and rewards of the PORCB Program.

RESA/IGS

RESA and IGS take the position that Nicor Gas' revised Rider 17, as set forth on Nicor Gas Ex. 2.2, including Factor SUA, represents a reasonable accommodation of Staff's concerns and should be approved by the Commission. Consequently, RESA and IGS do not support Staff's proposed revisions to the SUA formula.

COMMISSION ANALYSIS AND CONCLUSION

The Commission appreciates Staff's concerns about consistency with the PORCB tariffs of other Illinois utilities. However, Nicor Gas has offered many reasons why its proposed SUA formula is appropriate for itself. The Commission, therefore, accepts Nicor Gas' methodology.

F. Tracking of internal IT costs

COMMISSION STAFF

Staff recommends that the Company be required to specifically track revenues and costs of Rider 17 so that they are readily identifiable for reconciliation purposes. While the Company agreed to specifically track revenues and costs of Rider 17, it takes issue with the tracking of the costs of the internal information system employees' time which will be capitalized. Staff contends that Nicor Gas has not explained why tracking capitalized internal labor for Rider 17 would be any different than tracking internal labor as it relates to any other capital project that the Company undertakes.

NICOR GAS

Nicor Gas states that contrary to Staff's claims, Nicor Gas presented evidence that IT programming will be incremental capitalized work and, therefore, 100% of that cost should be included for cost recovery. Accordingly, the Company should not be required to verify that the internal costs are incremental and not otherwise included in recovery under any other tariffs currently in effect.

RESA/IGS

RESA and IGS take the position that Nicor Gas' revised Rider 17, as set forth on Nicor Gas Ex. 2.2, represents a reasonable accommodation of Staff's concerns and should be approved by the Commission. For the reasons stated by Nicor Gas, RESA and IGS do not see a need for the tracking of the Company's internal costs and, therefore, do not support Staff's proposal.

COMMISSION ANALYSIS AND CONCLUSION

For the reasons stated by Nicor Gas, the Commission does not see any need for tracking internal costs. Therefore, the Commission will not accept Staff's proposal.

VI. CUB/AG'S PROPOSED MODIFICATIONS TO RIDER 17

A. Separate line item for Rider PORCB charges

CUB/AG

CUB/AG claims that Rider 17 is designed to be hidden from customers because customer charges arising out of Rider 17 would be buried in the customer charge and not separately identified on the customer's bill. Basic notification and identification of charges should be a pre-requisite for approval of a tariff that, according to CUB/AG, has unknown economic consequences for customers. CUB/AG recommends that there be a separate line item for Rider 17 charges.

NICOR GAS

Nicor Gas contends that the evidence demonstrates that a separate line item on the bill for Rider 17 charges and credits would not be more beneficial to customers. In fact, it would create confusion for customers because Nicor Gas currently includes its uncollectible costs within the monthly customer charge. It could also increase operating costs in situations when the extra line creates more two-page bills or through additional customer calls and inquiries. Moreover, Nicor Gas publishes its rates and tariffs on its website and provides historical monthly rate information so that market participants can review the costs and credits associated with the Customer Select Program. Nicor Gas states that it will publish Rider 17 charges and credits on its website and will provide the historical charges for both residential and non-residential customers (similar to the manner in which it currently provides history on items such as Rider 6, Purchased Gas Adjustment, and Rider 26, Uncollectible Expenses). Thus, Nicor Gas concludes that all participants in the competitive marketplace would be able to readily access this information.

RESA/IGS

RESA and IGS take the position that the treatment of Rider 17 charges is consistent with the treatment of charges under Nicor Gas' Rider 26, its uncollectible recovery rider. There is no benefit in creating a separate line item for Rider 17.

COMMISSION ANALYSIS AND CONCLUSION

The Commission agrees with Nicor Gas that CUB/AG's proposal would not provide any benefit to customers. Adequate information is available for customers

regarding Rider 17 charges. Consequently, the Commission rejects CUB/AG's proposal.

B. Price caps on monthly Rider PORCB charges

CUB/AG

CUB/AG recommends that, if any portion of Rider 17 costs is charged to customers, such portion should be capped or limited to an amount of 50 cents per month for residential customers and $2 per month for commercial customers. Furthermore, to ensure that small volume customers do not pay an unreasonably high proportion of their bills toward POR costs, there should be a further limit of 1% of any monthly supply costs. The result would be a maximum charge to a residential customer of $0.50 per month or 1% of the customer's supply charges for the month, whichever is less. According to CUB/AG, any costs incurred by Nicor Gas above the proposed caps should be paid by the Q-AGS. Responding to RESA/IGS' position that the caps are arbitrary, CUB/AG claims that they are no more arbitrary than the 1.5% discount factor.

NICOR GAS

Nicor Gas states that the Commission should reject CUB/AG's proposal for caps on monthly PORCB customer charges. The variable per customer price caps proposed by CUB/AG would create operational complexities that are far greater than Nicor Gas had envisioned for itself and its customers in designing the PORCB tariff. According to Nicor Gas, even if the operational requirements of the CUB/AG recommendation could be implemented, they would introduce significant new billing and computing issues which could delay customer bills and collections, complicate the AGS pool billing process, and significantly increase administrative costs as compared to Nicor Gas' Rider 17 proposal.

In addition, Nicor Gas contends that the evidentiary record demonstrates numerous other reasons to reject CUB/AG's cap proposal. First, its proposal ignores the symmetrical nature of Nicor Gas' proposal and arbitrarily caps charges to customers, but does not cap the credits that may be provided to customers. Second, its recommendation is based on the premise that there is an intra-class cross subsidy within the residential and commercial customer classes; however no such subsidy exists. Third, CUB/AG's proposal fails to account for the fact that Q-AGS are able to design their products and service offerings in a uniquely tailored fashion to small volume and large volume customers because Q-AGS prices charged on a monthly basis are not regulated by the Commission. Fourth, CUB/AG's position fails to consider that the competitive retail natural gas industry may significantly change in the future; Nicor Gas' proposed rate design for Rider 17 would appropriately recover costs under changing business and economic conditions and the Commission should not modify the rate design to introduce arbitrary pricing limitations that increase risk and administrative complexity.

RESA/IGS

RESA/IGS witness, Ms. Ringenbach, testified that the 50 cents, $2, and 1% figures are completely arbitrary and have no empirical support, as acknowledged in AG/CUB's response to RESA/IGS Data Request No. 1.01. While CUB/AG attempts to justify those unsupported figures by claiming that the 1.5% Discount Rate in Rider 17 is arbitrary, the record shows that the 1.5% Discount Rate is in line with discount rates in other jurisdictions. On the other hand, RESA and IGS are not aware of any jurisdictions imposing caps of the type contemplated by CUB/AG.

COMMISSION ANALYSIS AND CONCLUSION

The Commission finds that the caps proposed by CUB/AG are completely arbitrary. Moreover, Nicor Gas has pointed out numerous problems associated with CUB/AG's proposed caps. The Commission, therefore, rejects CUB/AG's proposal.

C. Administrative and operational costs assignment

CUB/AG

CUB/AG takes the position that if the Commission finds that a PORCB tariff should be approved, Rider 17 should be modified so that all costs of implementing and operating the PORCB Program, as well as any excessive costs of uncollectibles associated with supply service to Q-AGS customer accounts, are recovered from participating Q-AGS, through the Discount Factor, not their customers.

NICOR GAS

Nicor Gas states that its proposed tariff design recovers AOCs directly from Q-AGS through the Discount Factor to the extent that the Discount Factor is high enough to cover the future expenses. If the Discount Factor is not adequate to recover the monthly expenses, then an adjustment, which includes the AOCs, is placed on the customer's bill to recover the difference. Thus, according to Nicor Gas, costs are allocated to the appropriate cost causers—Q-AGS and their customers. Similarly, if the Discount Factor is too high, the adjustment will provide credits to customers with the objective of recovering actual costs incurred over the course of the program and through the Commission reconciliation process. Nicor Gas notes that, in addition, the initial terms and structure of Rider 17 were acceptable to the marketplace as represented by RESA and IGS. Nicor Gas concludes that because there is nothing inappropriate about recovering the AOCs as proposed in Rider 17, the Commission should reject CUB/AG's proposal to recover the AOCs directly from Q-AGS as a component of the Discount Factor.

RESA/IGS

RESA and IGS support Nicor Gas' Rider 17, as revised in Nicor Gas Ex. 2.2. However, as a fallback position, RESA and IGS would not object to a modification which would require all costs, including Administrative and Operating Costs, to be recovered from participating Q-AGS.

COMMISSION ANALYSIS AND CONCLUSION

For the reasons stated by Nicor Gas, the Commission finds that the Company's proposed cost recovery structure is reasonable. CUB/AG's proposal to assign all costs to Q-AGS is rejected.

D. Allocation of costs by customer class and volume

CUB/AG

CUB/AG claims that AOCs are not fairly and appropriately charged because lower usage customers, such as residential customers, would pay the same amount as higher usage commercial customers. According to CUB/AG, to charge a very small volume customer the same fixed monthly amount as a large commercial customer is unreasonable. The appropriate way to correct this potential inequity is to charge AOCs directly to Q-AGS, rather than allocate them among customers and customer classes—Nicor Gas should recover AOCs as a component of the Discount Factor, not as a charge on an individual customer's bill.

NICOR GAS

Nicor Gas contends that its proposed allocation of AOCs by customer class is consistent with the tariff design intended to ensure that each customer class ultimately pays the appropriate costs caused by that class. Costs should not be allocated on a volumetric basis, as proposed by CUB/AG because that allocation methodology is not superior to the Company's proposal to collect bad debt expenses as a customer cost included within the monthly customer charge. Under Nicor Gas' proposal, costs are first incurred and then tracked by customer class where possible. The direct costs of residential uncollectibles are recorded directly in the residential customer class and the direct costs of non-residential uncollectibles are recorded directly in the non-residential class. The common costs of administering the program for both residential and non-residential customers included in the AOCs are recorded on a per customer basis from all customers. In proposing to recover these costs on a volumetric basis, CUB/AG assumes that higher volume customers cause a greater proportion of the AOCs. However, administrative costs are not likely to be primarily spent on the larger customers; instead, they can be fairly recovered from all customers. Finally, according to Nicor Gas, use of a volumetric billing determinant assumption within the Rider 17 tariff design introduces more uncertainty and error because weather and monthly gas volumes change considerably each month and each year making cost/therm charges harder to estimate and collect than cost/customers charges, which are more stable. For

all of these reasons, Nicor Gas contends that the Commission should reject CUB/AG's proposed volumetric rate design for AOCs.

RESA/IGS

RESA and IGS support Nicor Gas' Rider 17, as revised in Nicor Gas Ex. 2.2. However, as a fallback position, RESA and IGS would not object to a modification which would require all costs, including Administrative and Operating Costs, to be recovered from participating Q-AGS through the discount rate.

COMMISSION ANALYSIS AND CONCLUSION

For the reasons stated by Nicor Gas, the Commission finds that the Company's allocation methodology is appropriate. In particular, the Commission finds that CUB/AG has not shown that AOCs are related to volumes consumed by customers. The Commission, therefore, rejects CUB/AG's proposal.

E. Separate uncollectible rates for each Q-AGS

CUB/AG

CUB/AG argues that the discount rate should be calculated separately for each Q-AGS because the level of uncollectibles associated with each Q-AGS may differ because of different marketing strategies and retail prices, terms and conditions of service provided to their customers. According to CUB/AG, because the costs to Q-AGS for uncollectibles are limited to the discount rate, the risk of uncollectibles above the Discount Rate is then shifted to all Q-AGS customers. Consequently, Rider 17, as proposed, may encourage Q-AGS to engage in marketing that may increase the level of uncollectibles. CUB/AG offered the following two examples. A Q-AGS could target neighborhoods with large numbers of high credit risk customers or neighborhoods with a high proportion of non-English speaking residents who might be less likely to fully comprehend the marketing offers or the bill implications of those offers.

CUB/AG argue that because the uncollectible percentage may vary significantly among Q-AGS, due at least in part to the type of marketing practices employed, the uncollectibles factor in the discount rate should be calculated separately for each Q-AGS to protect customers and to avoid anti-competitive effects. For Q-AGS without an uncollectible factor established through at least one year of customer pay history, the uncollectibles factor in the Discount Rate should be set initially at the Q-AGS average.

NICOR GAS

Nicor Gas recommends that the Commission reject CUB/AG's proposal to set the uncollectibles portion of the Discount Factor separately for each Q-AGS based on their uncollectibles history. The evidence demonstrates that Rider 17 is properly designed

with a uniform discount rate for all suppliers and adjustment based on forward looking, not historical, data. Nicor Gas states that, due to the dynamic nature of the natural gas industry, it should not be required to establish discount rates based on historical information. In addition, CUB/AG's recommendation would significantly increase administrative, IT programming and maintenance costs. It would require Nicor Gas to segregate receivables by supplier and, by relying on historical information, would not provide Nicor Gas with a timely or efficient cost recovery mechanism.

Moreover, Rider 17 builds in consumer and Q-AGS protections. Q-AGS will not be able to bring older, more difficult to collect, bad debt into the PORCB Program. Q-AGS will be incentivized to look for customers with good credit and the ability to pay because otherwise Q-AGS will be dealing with the customer's future uncollectibles.

RESA/IGS

RESA and IGS oppose CUB/AG's proposal to calculate separate uncollectible factors for each Q-AGS. This proposal would add to the complexity of the Rider and significantly increase Nicor Gas' administrative, IT program and maintenance costs as compared to the design reflected in Rider 17. In addition, RESA and IGS rebutted CUB/AG's speculation about deceptive marketing practices. RESA/IGS' witness testified that PORCB Programs are available for electric customers in Illinois, but that she was not aware of any Alternative Retail Electric Suppliers ("ARES") that target residential neighborhoods with large numbers of high credit risk customers or neighborhoods with a large proportion of non-English speaking residents. RESA and IGS point out that neither is CUB/AG's witness aware of any such ARES. Moreover, CUB/AG is ignoring several consumer protections which prohibit this starting with the Public Utilities Act and ending with the AGS licensing requirements. Any AGS which misleads customers would be subject to losing its ability to serve customers.

COMMISSION ANALYSIS AND CONCLUSION

The Commission agrees with Nicor Gas and RESA/IGS that CUB/AG's proposal is unnecessary. Moreover, it would add to the complexity of Rider 17 and significantly increase the Company's administrative and IT program and maintenance costs. Therefore, the Commission rejects CUB/AG's proposal.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the record herein, is of the opinion and finds that:

(1) Nicor Gas is an Illinois corporation that is engaged in the distribution and sale of gas to the public in Illinois; as such, it is a public utility, as is defined in Section 3-105 of the Public Utilities Act;

(2) This Commission has subject matter jurisdiction and jurisdiction over the parties;

(3) The proposed tariff sheets filed by Nicor Gas on September 5, 2012 to implement a PORCB service do not reflect the modifications made by Nicor Gas during the course of this proceeding, as reflected in Nicor Gas Ex. 2.2, and therefore, they

should be permanently canceled and annulled in a manner that is consistent with the findings herein;

(4) New tariff sheets that are in conformance with this Order should be filed by Nicor Gas within five (5) business days from the date upon which this Order is entered, to be effective immediately;

(5) Within one month of this Order, Nicor Gas shall submit to the Staff and the parties to this proceeding the template documents requested by Staff; and

(6) All motions, petitions, objections, and other matters in this proceeding that remain unresolved shall be disposed of in a manner that is consistent with the conclusions herein.

IT IS THEREFORE ORDERED that the tariff sheets at issue in this proceeding are hereby permanently cancelled and annulled, effective at the time when new tariff sheets approved herein become effective.

IT IS FURTHER ORDERED that Nicor Gas is authorized to and shall file new tariff sheets in accordance with Finding (4) of this Order.

IT IS FURTHER ORDERED that Nicor Gas shall submit the template documents in accordance with Finding (5) of this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding that remain unresolved shall be disposed of in a manner that is consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to Section 10-113 of the Public utilities Act, this Order is Final; it is not subject to the Administrative Review Law.

IT IS FURTHER ORDERED that Nicor Gas has five (5) business days from the date of a final order in this docket to file tariffs that comply with that order.

~~**V. Intangible Cost Recovery**~~

~~**Nicor's Position**~~

~~Nicor argues that intangible cost recovery should be permitted for the following reasons: (1) it was part of the settlement agreement with RESA and IGS wherein the commercial terms of Nicor Gas' proposed Rider 17 were deemed to be acceptable to both the industry participants and the Company and properly identified that Nicor would incur additional costs associated with the program; (2) it provides an incentive for Nicor to keep its PORCB administration costs down; and (3) it encourages innovation in areas where utilities may further support the growth and development of unregulated retail energy markets. Nicor Gas Ex. 2.0 Rev. at 47; Nicor Gas Ex. 2.10; Nicor Gas Ex. 3.0 at 3-4; Nicor Gas Init. Br. at 15-16.~~

~~Moreover, Nicor points out that the intangible cost recovery component of Rider 17 is an important component of the risk/reward structure developed with RESA and IGS. Without this component, Nicor's earnings opportunity on PORCB is limited by the assumption that it will be able to recover its capital investment and required return through sufficient participation in the PORCB program via the Discount Factor or by the assumption that sufficient Q-AGS remain in the program for it to recover any~~

outstanding amounts due through the CRA component. Nicor Gas Ex. 2.0 Rev. at 48. If Q-AGS elect to opt out of the program, Nicor Gas points out that it may never recover its estimated initial $3.88 million investment in the program. Due to the concentrated nature of recovering capital costs and return from a limited number of Q-AGS, their customers, and an optional program, Nicor argues that the intangible cost recovery component represents a reasonable level of compensation necessary to recover other costs associated with the PORCB program and provide enough incentive for Nicor to agree to participate in such a program. *Id*.

RESA/IGS's Position

RESA/IGS agree that Nicor Gas has established the need to recover intangible costs in Rider 17. RESA/IGS states that the recovery of intangible costs is an important component of the risk/reward structure of the settlement agreement entered into by Nicor Gas with RESA and IGS.

CUB/AG's Position

According to CUB/AG, intangible costs are not actual costs incurred by Nicor, but rather are unquantifiable costs that may or may not be incurred by Nicor that are explained by Mr. Mudra to include "reputational risk, reduced employee morale or loss of productivity associated with collecting Q-AGS's receivables…" CUB/AG Ex. 1.0 at 10. CUB/AG argue that, while CUB witness Mr. Cohen does not disagree that Rider 17 may have such negative consequences for Nicor, the idea that these risks should be monetized and the Company should be compensated by customers for them is novel and unjustifiable. *Id*. Moreover, CUB/AG state Rider 17 provides for Capital Cost Recovery of amounts invested in POR implementation, including a projected return of 8.09%. *Id*. at 10. Because Nicor is already receiving a generous return on its investment in Rider 17, CUB/AG argue that recovery of intangible costs would over-compensate Nicor for unsubstantiated risks created by the Company itself through its proposed tariff.

Additionally, CUB/AG state that intangible costs are defined in Rider 17 as amounts to be accounted for "below the line" that would increase Nicor earnings without counting as regulated revenue in a ratemaking proceeding. CUB/AG Ex. 1.0 at 6. CUB/AG note that these extra contributions to boost Nicor earnings, beyond otherwise authorized levels and paid by Q-AGS customers, would be in addition to the return on invested capital recovered by Nicor directly from Q-AGSs as a portion of the 1.5% discount on purchased receivables. *Id*.

Mr. Mudra stated in Rebuttal Testimony that Nicor is not opposed to recovering the intangible costs directly from Q-AGS. Nicor Ex. 2.0 Rev. at 47. Thus, CUB/AG's position is that, if the Commission does not eliminate Intangible Costs from Rider 17, it should require that these costs are recovered from Q-AGS, and not customers, and these revenues should be accounted for above the line in Nicor's revenue requirement.

Staff's Position

Staff argues that intangible or unquantifiable costs are not an appropriate ratemaking concept. Staff states that if costs cannot be quantified, then they may be nonexistent or very small. Staff concludes that intangible costs may not be real or substantial enough to merit rider recovery, and including intangible costs recovery in the rider, especially accounting for the revenues below-the-line, may lead to double recovery of costs by Nicor. Staff Ex. 1.0 at 10. In fact, Staff stresses, costs that are not known and measurable simply cannot be recovered. *See e.g., Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 242 Ill.App.3d 172, 190 (1st Dist. 1993) ("The record contains no proof that the increase in postage costs would occur in the test year. Only known or measurable charges are to be included in the budget."). In Staff's opinion, an unquantifiable cost, even one that may be quantified in the future, but for which no mathematical certainty can be adduced, is simply inherently incapable of being known and measurable and thus arbitrary in that there can be no evidence to support its recovery.

Staff states that Nicor continues to expound that it will not agree to "any revisions that compromise the Company's ability to obtain full cost recovery" under Rider 17. Nicor Initial Brief at 10. Staff fails to comprehend how eliminating recovery of intangible costs though Rider 17 prevents Nicor from "full cost recovery." According to Staff, if intangible costs are truly "unquantifiable," as Nicor argues, then it is impossible to determine if those "costs" are fully recovered, under-recovered, or over-recovered. Therefore, in Staff's view, removing the provision for intangible cost recovery from the tariff language and mechanism does nothing to prevent Nicor from full cost recovery.

Staff states that Nicor attempts to justify the recovery of intangible costs as a "reasonable level of compensation necessary to recover other costs associated with the PORCB program and provide incentive for Nicor Gas to agree to participate in such a program." *Id.* at 16. The fact that Nicor characterizes intangible cost recovery as "necessary compensation" and "incentive" is very telling in Staff's view. Since the Company describes Rider 17 as providing "a mechanism . . . to recover its costs to provide [PORCB] service" (*Id*. at 1), Staff argues that it is unclear why additional compensation or incentives are necessary under the tariff.

Staff further states that Nicor defends the inclusion of an intangible cost recovery factor in Rider 17 as part of the "risk/reward structure" of the stipulation agreement with RESA/IGS. In other words, if not enough AGSs participate, Nicor may find itself under-recovering its costs. Due to the program's voluntary nature, it has no other recourse for funding any shortfall. Thus, intangible cost recovery "represents a reasonable level of compensation," according to Nicor. *Id*. at 16. Further, Nicor asserts that PORCB is a "non-utility" service, so that below the line treatment is appropriate. *Id*. According to Staff, both of these claims are incorrect. Staff argues that PORCB is a utility service, since it would be part of the utility's tariffs and collect and impose costs paid by retail customers. Staff states the tariff needs to be approved and regulated by the Commission. Staff argues that nowhere in the record is it established that additional,

below the line cost recovery is required for just Rider 17. Staff Initial Brief at 10-11. Finally, as Staff points out, only known and measureable costs can be recovered. Staff argues that intangible costs are inherently unknown and are not measurable.

Commission Analysis and Conclusion

Nicor proposes that the Company should be permitted to recover intangible costs for the following reasons: (1) it was part of the settlement agreement with RESA and IGS; (2) it provides an incentive for Nicor to keep its PORCB administration costs down; and (3) it encourages innovation. Nicor's argues that without recovery of intangible costs, Nicor is in danger of not obtaining full cost recovery. The Commission is not persuaded by this argument. These costs are unknown, not quantifiable, and not certain to exist. Additionally, while intangible cost recovery was accepted in the Settlement Agreement with RESA and IGS, the Commission was not a party to the agreement, and thus there is no basis for the Commission to conclude that such costs, to the extent they may exist, should be recoverable. Furthermore, the fact that Nicor is requesting intangible costs due to concern that there will not be enough participation by AGS in the program places further questions as to whether the stated benefits of the program, such as increased competition and lower customer costs, will occur.

VI. Discount Factor

Nicor's Position

Nicor states it presented evidence demonstrating that the 1.5% Discount Factor was a product of discussions with RESA and IGS and represents an amount that certain AGS determined to be reasonable, including 0.5% for Capital Recovery Costs. Nicor Gas Ex. 1.0 at 11. The Company asserts that it cannot speculate on the factors considered by RESA and IGS in their determination of the reasonableness of the 1.5% Discount Factor. Staff Ex. 2.0, Attach. D. According to Nicor, Rider 17 is designed to recover and reconcile the actual costs incurred by the provision of the PORCB service to the residential and non-residential customer classes. Nicor Gas Ex. 2.0 Rev. at 10. Furthermore, the Company points out that the purchase of receivables adjustment factor will charge or credit customers (within the appropriate customer class) for amounts that are either under or over-recovered due to the level of the 1.0% portion of the Discount Factor. Any over or under-recovery related to capital cost recovery will be billed to the Q-AGS on their monthly Rider 16 – Supplier Aggregation Service pool bills. *Id*. As a result, Nicor contends that customers and AGS that are not enrolled in the PORCB program will not be impacted by PORCB costs or by deviations above or below the Discount Factor. The Q-AGS and their customers only will be charged (or credited) for the actual and appropriate services provided, by customer class, and actual costs will be recovered. Finally, Nicor emphasizes that the Discount Factor is only a component of the computational process and not the final end result. *Id*. at 11.

RESA/IGS's Position

RESA/IGS argue that the record shows that the 1.5% Discount Rate is in line with discount rates in other jurisdictions.

CUB/AG's Position

CUB/AG state that under the Rider 17 tariff, the 1% portion of the discount that remains after Capital Recovery Costs are accounted for is the maximum contribution toward uncollectibles by Q-AGSs. CUB/AG Ex. 1.0 at 11. CUB/AG assert that any uncollectible amounts beyond that are recovered from Q-AGS customers through the PORA. *Id*. CUB/AG witness Mr. Cohen concluded that, based on information he reviewed, this 1% amount is likely to be insufficient to match the average Nicor uncollectible rate, let alone cover the possibly larger proportion of Q-AGS receivables that become uncollectible. *Id*. CUB/AG point to the evidence that Nicor itself uses a 1.7% Future Bad Debt Rate to show that the 1.5% proposed Discount Factor is too low and instead should contain an uncollectibles component set high enough to cover the estimated Q-AGS uncollectibles. *Id*.

According to Mr. Cohen, instead of an arbitrary discount rate of 1.5%, the percentage paid by Q-AGS toward uncollectibles through the discount rate should equal the estimated actual percentage of uncollectibles experienced by Nicor from the accounts served by Q-AGS. *Id*. at 11-12. CUB/AG believe that such treatment would minimize the SUA component of the PORA. *Id*. Mr. Cohen proposes that, at a minimum, if the Commission determines that a uniform discount rate should be applied to all Q-AGS, in order to minimize excessive customer payments toward uncollectibles, the uncollectibles component of the Discount Factor should be set based on Nicor's average uncollectibles associated with Q-AGS accounts, rather than the insufficient and arbitrary 1% amount. *Id*.

Staff's Position

Staff argues that, like the recovery of intangible costs, Nicor claims that the "evidence" supports the discount factor component. Yet, Staff stresses, the record reveals no such thing. In fact, Staff states that no "evidence" of reasonableness of the 1.5% Discount Factor was provided for the record. Staff argues that the only support for the 1.5% discount factor remains the discussions between RESA and IGS, to which neither Staff nor the Commission were parties. Moreover, Nicor acknowledges that the Commission "cannot speculate on the factors considered by RESA and IGS in their determination of the reasonableness of the 1.5% Discount Factor." Nicor Initial Brief at 15. Again, in Staff's view, Nicor simply failed to carry its burden of demonstrating that the 1.5% Discount Factor of Rider 17 is just and reasonable.

Commission Analysis and Conclusion

There is no evidence in the record to support that the 1.5% Discount Factor is reasonable. Nicor merely states that the Discount Factor resulted from discussions with RESA and IGS, and that the Discount Factor is reasonable. This is insufficient. While

Nicor states it cannot speculate as to what factors RESA and IGS considered in determining the reasonableness of the Discount Factor, Nicor did not present any evidence supporting its own contention that the 1.5% Discount Factor is reasonable. While Nicor emphasizes that the Discount Factor is only a component of the computational process and not the final end result, Nicor still must present evidence supporting that the component is reasonable, which Nicor failed to do in this proceeding.

VII. Findings & Ordering Paragraphs

The Commission, having considered the record herein, is of the opinion and finds that:

(1) Northern Illinois Gas Company d/b/a Nicor Gas Company is an Illinois corporation engaged in the distribution of natural gas to the public at retail in the State of Illinois and as such is a "public utility" as defined in Section 3-105 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(3) all motions, petitions, objections, and other matters in this proceeding that remain unresolved shall be disposed of in a manner that is consistent with the conclusions herein; and

(4) the testimony and exhibits admitted into the record did not provide sufficient evidence that Northern Illinois Gas Company's proposed Rider 17 is just and reasonable as provided for in Section 9-201(c) of the Act.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Northern Illinois Gas Company d/b/a Nicor Gas Company's proposed Rider 17 is hereby denied, consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding that remain unresolved shall be disposed of in a manner that is consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: June 12, 2013
BRIEFS ON EXCEPTIONS DUE: June 21, 2013
REPLY BRIEFS ON EXCEPTIONS DUE: June 26, 2013

Heather Jorgenson,
Administrative Law Judge