STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a NICOR Gas Company	)	
	)	Docket No. 12-0569
Proposed Establishment of Rider 17, Purchase of Receivables with Consolidated Billing	)	

BRIEF ON EXCEPTIONS OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND INTERSTATE GAS SUPPLY OF ILLINOIS, INC.

ORAL ARGUMENT REQUESTED

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AND INTERSTATE GAS SUPPLY OF ILLINOIS, INC.

I. INTRODUCTION.

Pursuant to 83 Ill. Admin. Code Section 200.880 and the schedule established by the Administrative Law Judge, the Retail Energy Supply Association ("RESA")[1] and Interstate Gas Supply of Illinois, Inc. ("IGS") submit their Brief on Exceptions ("BOE") to the Administrative Law Judge's Proposed Order ("ALJPO") in this proceeding. For the reasons stated in this BOE, the Illinois Commerce Commission ("Commission") should reverse the ALJPO and approve Rider 17, Purchase of Receivables with Consolidated Billing ("PORCB"), filed by Northern Illinois Gas Company (d/b/a Nicor Gas Company) ("Nicor Gas").

On June 12, 2013, the ALJPO was filed and served in this proceeding. While the ALJPO rejected the argument of the Citizens Utility Board and the Attorney General ("CUB/AG") that the Commission does not have the authority to approve Rider 17, the ALJPO, nevertheless, recommends that Rider 17 be denied. (ALJPO, p. 17) According to the ALJPO, the testimony

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

and exhibits of Nicor Gas, RESA, and IGS—the parties supporting Rider 17—did not provide sufficient information that Rider 17 is just and reasonable as necessary to satisfy Section 9-201 of the Public Utilities Act. (*Id*., p. 18) However, the ALJPO erred by finding that "sufficient information" means a quantitative showing that the benefits of Rider 17 outweigh its costs, a requirement that is not contained in Section 9-201 or any other provision of the Public Utilities Act, the Commission's rules or any Commission order. This BOE will demonstrate that the evidentiary record supports a finding that Rider 17 is just and reasonable within the meaning of Section 9-201. Nicor Gas has put together a good PORCB Program, Rider 17, which is necessary for the natural gas competitive market in Illinois to thrive and offers benefits for AGS and customers, without a detriment to Nicor Gas or its customers.

Attachment A to this Brief on Exceptions is a revised version of the ALJPO, reflecting the necessary modifications discussed herein.

In addition, for the reasons stated in Section V, *infra*, the Commission should grant oral argument in this proceeding.

II. Section 9-201 of the Public Utilities Act does not require a net benefits test.

While the ALJPO finds that the Commission has the authority to approve Rider 17 so long as it meets the requirements of Section 9-201 of the Public utilities Act, the ALJPO finds that Rider 17 does not satisfy Section 9-201. (ALJPO, p. 17) The ALJPO's discussion begins with whether RESA and IGS have misinterpreted Staff's argument that the benefits of Rider 17 must exceed its costs by referring to Staff's position as a "net benefits test". The ALJPO then states:

> 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 to be just and reasonable. (*Id*., emphasis added)

However, what the ALJPO refers to as the "bottom line" has no support whatsoever. Obviously, Section 9-201 does not refer to an analysis of costs and benefits:

Section 9-201(c) states, in pertinent part:

> 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**.

(Section 9-201 (c)**, emphasis added)**

While the use of the word "must" in the ALJPO implies some sort of requirement, the ALJPO does not cite to any supporting authority. The ALJPO does not point to any section of the Public Utilities Act, or any Commission rule, or any Commission decision to support this "bottom line" proposed criterion. The reason for this omission is simple—such support does not exist.

At the outset, the ALJPO's proposed net benefits test ignores the very nature of Rider 17. Rider 17 creates an optional service for **suppliers**—a PORCB Program. Suppliers will make their own determinations as to whether the service is one to which they should subscribe. 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. (RESA/IGS Ex. 2.0 Rev. pp. 3-4, lines 32-63) While noting this position, the ALJPO states that the Commission must look at the effect of Rider 17 on customers. (ALJPO, p. 18) However, there is nothing to compel a customer to participate in Customer

Select with an AGS that has elected to participate in Rider 17. Customers can choose whether they want to buy from a supplier and, moreover, which supplier.

The simple fact is that Rider 17 would provide benefits for customers. With respect to customer benefits, even the ALJPO agrees that PORCB has the potential to increase competition and lower customer costs. *(Id.)* While these two benefits would be sufficient to satisfy the just and reasonable standard of Section 9-201, the ALJPO agrees with Staff and CUB/AG that there is no evidence to quantify the rate impact, again effectively adding a quantification requirement into Section 9-201.

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

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

(RESA/IGS Ex. 1.0, pp. 10-12, lines 209-258)

While the record shows that the substantial benefits listed above would be derived from a PORCB Program, they are, at least at the present time, qualitative rather than quantitative. Thus,

not only is the ALJPO's proposed net benefits test inappropriate, it is also an impossible standard to meet.

Moreover, the ALJPO's interpretation of Section 9-201 to require a showing that benefits exceed costs is inconsistent with the Commission's past orders. The issue in this proceeding—whether Rider 17 is just and reasonable—is no different than the issue that the Commission addressed when Nicor Gas filed, pursuant to Section 9-201, proposed tariffs expanding its Customer Select Pilot Program, its transportation program for small-volume customers, to all eligible customers *i.e*. whether the Customer Select Program was just and reasonable. The Commission, using its authority under Section 9-201, approved the expansion of the Customer Select Program to all eligible customers without requiring a quantitative showing that the benefits of the Customer Select Program exceeded its costs. (Order, dated July 5, 2001 in Ill. C. C. Dockets 00-0620/00-0621) Similarly, The Peoples Gas Light and Coke Company ("Peoples Gas") and North Shore Gas Company ("North Shore") operate their own versions of Choice Programs, both named Choices For You, having filed tariffs to implement those programs pursuant to Section 9-201 of the Public Utilities Act and having received Commission approval pursuant to that Section, without having to submit quantitative showings that the benefits of their programs exceeded their costs. Specifically, in Ill. C. C. Docket 01-0469, the Commission entered an Order on March 5, 2001, granting North Shore authority to implement its SVT Program, without requiring a net benefits analysis. In Ill. C. C. Docket 01-0470, the Commission entered an Order on March 5, 2001, granting Peoples Gas authority to expand its SVT Program to residential customers, again without requiring a net benefits analysis.

If the Commission adopts the ALJPO's rejection of Rider 17 because of a failure to pass a non-existent net benefits test, it will be departing from its past decisions in Section 9-201 cases.

This departure, which is unexplained in the ALJPO, would result in reversible error. The Courts have consistently held that although the Public Utilities Act grants the Commission discretion, its decisions are entitled to less deference when they depart from past practice. *Citizens Utility Board v. Illinois Commerce Commission*, 291 Ill. App. 3d 300, at 304 (1997). Similarly, the Appellate Court found in *Abbott Laboratories v. Illinois Commerce Commission*, 280 Ill. App. 3d 705, at 714 (1997) that the Commission's decisions are entitled to less deference when it departs from its usual rules or decisions to reach a different, unexplained result in a single case. This is exactly the situation presented in this proceeding by the ALJPO which applies a net benefits test, without citing any supporting authority and without explaining the reason for its departure from the Commission's past orders, in this Section 9-201 proceeding.

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.
>
> (Subsection 9-220 (a) of the Public Utilities Act, emphasis added)

Moreover, while it is not possible to quantify the benefits to customers of Rider 17, RESA and IGS did offer empirical evidence, based on the experience of PORCB Programs offered by gas utilities in other jurisdictions, that there is good reason to believe that the benefits of Rider 17 will be greater than the costs. Although the ALJPO appears to assume that customers of participating AGS will pay a surcharge under Rider 17, under Rider 17, customers

can receive a credit. (Nicor Gas Ex. 1.0, p. 11, lines 249-252) While it is not possible, because of many unknown factors, to predict whether the 1.5% discount rate in Rider 17 will result in a refund or surcharge to customers, discount rates in other jurisdiction with PORCB for gas utilities have decreased.

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

Moreover, the experience of Ohio gas utilities is corroborated by the experience of Illinois electric utilities. In Illinois, there are no gas PORCB programs, but there are PORCB programs operated by ComEd and Ameren on the electric side. ComEd's uncollectible rate for its PORCB Program, established in Ill. C. C. Docket 10-0138, started out at 1.84% in January 2011. The current uncollectible rate for that program is 0.66%. Ameren recently filed to reduce the current PORCB discount rate from 1.29% to 1.22% effective June 2013. (RESA/IGS Ex. 2.0 Rev., p. 6, lines 99-109) Again, this demonstrates that neither ComEd's nor Ameren's PORCB programs has created a higher uncollectible rate for the utility.

With respect to the issue of the amount of decreases resulting from a PORCB Program, it is simply not possible to quantify to what extent prices will decrease as a result of Rider 17. The

answer will depend upon how many new AGS enter the Nicor Gas market and the need for new and existing AGS to compete for customers. However, the fashion in which price will decrease was addressed. RESA/IGS' witness testified that in a competitive natural gas market AGS will have to reduce prices if they wish to remain competitive with other suppliers. Currently in Nicor Gas' service territory, many AGS are not offering products because their costs are too high to be profitable. However, as the costs to AGS are reduced substantially by the implementation of a PORCB, AGS will be able to enter the market offering a lower price to customers. As more AGS enter the market, the existing AGS will have to make better offers and lower their prices if they wish to be competitive. (RESA/IGS Ex. 1.0, pp.9-10, lines 194-205) In fact, Staff's witness, Dr. Rearden, acknowledged this when he states that if the premise that the market is or will be competitive is true, then, by definition, the cost reductions will be passed on to customers. (Staff Ex. 5.0, p. 4, lines 78-30)

III. Approval of Rider 17 would not be premature.

The ALJPO rejects Staff's argument that approval of Rider 17 would be premature because many specific details have not been worked out, finding that it would be imprudent for Nicor Gas to fully develop a new, optional service without first obtaining Commission approval. (ALJPO, p. 18)

The ALJPO also rejects Staff's argument that approval of Rider 17 is premature because the report required by the Commission's Office of Retail Market Development ("ORMD") regarding gas competition has not been completed, finding that the absence of the ORMD report does not make the PORCB Program premature. (*Id.*)

While the ALJPO states that Nicor Gas should have submitted sample templates of a billing service agreement and title transfer documents that would be used in the PORCB Program

(Id.), this is not a valid reason for the Commission to reject Rider 17. Nicor Gas estimates that it will take approximately two years to complete the IT programming for the PORCB Program. (Nicor Gas Ex. 1.0, p. 14, lines 325-327) Thus, there is ample opportunity for Nicor Gas to develop the billing service agreement and title transfer documents that will be used in the PORCB Program and to submit them to Staff and other interested parties for their review and comment. Lack of the template documents does not justify rejection of Rider 17; at most, the Commission could, in its order in this proceeding, establish a process for submission and review of such documents.

IV. Staff's and CUB/AG's proposed modifications to Rider 17 should be rejected.

Presumably because of the ALJPO's rejection of Rider 17, it fails to address the modifications proposed by Staff and CUB/AG. Because, for the reasons stated herein, Rider 17 should be approved, those proposed modifications should be considered in the ALJPO. For the reasons stated in RESA/IGS' Reply Brief at pages 17-18, in Nicor Gas' Initial Brief at pages 13-16, and Nicor Gas' Reply Brief at pages 8-21, all of the proposed modifications of the Commission Staff, except those accepted in the Rebuttal Testimony of Nicor Gas witness Robert Mudra, should be rejected. The proposed revisions to the ALJPO to accomplish this are set forth on pages 20-33 of Attachment A to this Brief on Exceptions.

V. The Commission should grant oral argument in this proceeding.

Pursuant to 83 Ill. Admin. Code Section 200.850, RESA and IGS are requesting oral argument in this proceeding. The Commission should grant oral argument because the ALJPO effectively creates a new requirement, a net benefits test, for tariffs filed pursuant to Section 9-201 of the Public Utilities Act. Such a requirement has no support in the Public Utilities Act, the Commission's rules, or the Commission's orders. It is on the basis on this non-existent

requirement that the ALJPO would deny Rider 17, Nicor Gas PORCB Rider, which would help improve the competitive market place in its service territory.

VI. CONCLUSION.

In conclusion, the Commission has the authority under Section 9-201 of the Public Utilities Act to approve Rider 17. Nicor Gas has demonstrated that proposed Rider 17 is just and reasonable and, therefore, meets the requirements of Section 9-201 of the Public Utilities Act. The record shows that Rider 17 makes Nicor Gas whole; does not impose costs on Nicor Gas' customers, other than those participating in Rider 17; and provides benefits to AGS and customers. The arguments raised by the Commission Staff and CUB/AG, and accepted by the ALJPO, against Rider 17 are based on errors of law and fact. In particular, there is no support in the law that Section 9-201 requires a quantitative showing that the benefits of Rider 17 exceed its costs, as proposed by Staff and CUB/AG. The Commission should approve Nicor Gas' Rider 17 in order to enhance the competitive market in Nicor Gas' service territory.

Respectfully submitted,
Interstate Gas Supply of Illinois, Inc.
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NOTICE OF FILING

Please take note that on June 21, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exceptions of Interstate Gas Supply of Illinois, Inc. and the Retail Energy Supply Association in this proceeding.

Dated: June 21, 2013

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the Brief on Exceptions of Interstate Gas Supply of Illinois, Inc. and the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 12-0569 via electronic delivery on June 21, 2013.

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