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	)	

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

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I. INTRODUCTION.

Pursuant to 83 Ill. Admin. Code Section 200.800 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 Reply Brief in this proceeding. For the reasons stated in this Reply Brief, as well as the RESA/IGS Initial Brief, the Illinois Commerce Commission ("Commission") should 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 May 17, 2013, RESA and IGS filed their Initial Brief in this proceeding. Initial Briefs were also filed by Nicor Gas, the Commission Staff, and, jointly, the Citizens Utility Board and the Illinois Attorney General ("CUB/AG"). In this Reply Brief, RESA and IGS will respond to the Initial Briefs of these other parties. Nicor Gas' Initial Brief demonstrates that the

[1] RESA's members include 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.

Commission has the authority to approve Rider 17 and that Rider 17, as modified by Nicor Gas to incorporate some of the proposals of Staff and CUB/AG, is just and reasonable and should be approved. While Staff and CUB/AG continue to argue that the Commission should reject Rider 17, their arguments are based on errors of law and fact, as demonstrated herein.

The Commission has the authority to approve Rider 17. The evidentiary record supports that approval. 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.

II. RESPONSE TO NICOR GAS.

In contrast to Staff and CUB/AG, Nicor Gas sets forth the proper standard for the Commission's review of Rider 17 in this proceeding, namely whether Rider 17 is "just and reasonable" as required by Section 9-201 of the Public Utilities Act. From Nicor Gas' perspective, Rider 17 was drafted with three goals in mind:

(1) Hold Nicor Gas supply and delivery customers *(i.e*. those customers not purchasing supply from AGS using PORCB service under Customer Select) harmless in the provision of this new, optional PORCB service to AGS;

(2) Provide for the recovery of all costs incurred by Nicor Gas to provide this new PORCB service, none of which costs are currently being recovered through Nicor Gas' base rates; and

(3) Propose a balanced program in response to the request of certain AGS to offer an optional service to AGS.

Nicor Gas presented substantial and compelling evidence that proposed Rider 17 accomplishes each of these goals. Accordingly, proposed Rider 17 is just and reasonable and should be

approved. (Nicor Gas In. Br. pp. 1-2) In contrast to the established "just and reasonable" standard of Section 9-201, Nicor Gas demonstrates that the novel legal standard of a "net benefits" test proposed by Staff and CUB/AG has no basis in the law and should be rejected. (*Id*., pp. 9-11)

III. RESPONSE TO STAFF

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

Staff recommends that the Commission reject Nicor Gas' Rider 17 because of its opinion that the Commission should only approve Rider 17 if the Commission believes that the expenditures to implement Rider 17 are "prudently incurred". By "prudently incurred", Staff means that benefits to customers are greater than the costs required to implement Rider 17. (Staff In. Br., pp. 4-5) However, the Initial Briefs of both Nicor Gas and RESA/IGS demonstrate that Staff's proposed "prudently incurred criteria" is not the appropriate criteria for the Commission to use in determining whether or not to approve Rider 17. (RESA/IGS In. Br., pp. 12-17; Nicor Gas In. Br., pp. 9-13) Indeed, Staff does not point to any Commission rule or decision, or any other authority, from which its witness derived this proposed criteria. Instead of citing legal support, Staff offers more of its own opinion: "For a voluntary program, there **must** be evidence that the benefits from developing a PORCB are, or could be expected to be, higher than its costs." (Staff In. Br., p. 7, emphasis added) While the use of the word "must" implies some sort of requirement, Staff does not cite to any supporting authority; instead, Staff cites to the opinion testimony of Dr. Rearden, one of Staff's witnesses. *(Id.)*

However, even Dr. Rearden testifies that there are potential benefits to Rider 17. In his rebuttal testimony, Dr. Rearden states that two potential benefits from a PORCB Program are most important. First, a PORCB Program can lower AGS' costs which would increase the

number of active sellers, and, in turn, increase competition and reduce customers' prices. Second, a PORCB Program may permit AGS to competitively serve a broader segment of customers. (Staff Ex. 5.0, p. 44-49) With respect to the first potential benefit, Dr. Rearden went on to state that, if the premise that the gas market is or will be competitive with a PORCB Program is true, then, by definition, cost reductions will be passed on to customers. (*Id*., p. 4, lines 78-80)

However, Dr. Rearden only acknowledged 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 Staff's proposed net benefits test inappropriate, it is also an impossible standard to meet.

At any rate, Staff's proposed prudence standard based on a 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)

Similarly, 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.

B. <u>Approval of Rider 17 would not be premature.</u>

Staff also argues that approval of Rider 17 would be premature because many specific details have not been worked out. (Staff In. Br., p. 14) However, this argument was effectively rebutted during the proceeding by Mr. Mudra, Nicor Gas' witness, who testified that Rider 17 outlines the cost recovery mechanism, the requiring ongoing obligations of Nicor Gas and participating AGS, and the required administrative and Commission reconciliation processes. All that remains to be developed is the information technology ("IT") processes which are estimated to cost $3.88 million. However, it would not make sense for Nicor Gas to conduct full scale development for a new, optional service, with an estimated IT start-up cost of almost $4 million without first obtaining Commission approval. (Nicor Gas. Ex. 2.0, p. 7, lines 145-155)

RESA/IGS witness, Ms. Ringenbach, agreed with Nicor Gas that Rider 17 is in the preliminary design stage only from an IT perspective. However, as explained by Mr. Mudra, the

tariff and structure of the program itself are not in any way preliminary. It is appropriate for Nicor Gas to delay IT design because it would be imprudent for Nicor Gas to spend almost $4 million on IT programming to fully develop an optional new service, without obtaining approval from the Commission first. (RESA/IGS Ex. 2.0, p. 9, lines 171-181)

C. Rider 17 should not be rejected because of the absence of certain administrative documents.

Staff argues that Rider 17 should be rejected because Nicor Gas did not submit, as part of its surrebuttal testimony, sample templates of a billing service agreement and title transfer documents that would be used in the PORCB Program. (Staff In. Br., pp. 24-26) 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. Staff's concern 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. RESPONSE TO CUB/AG

A. The Commission has the authority to approve Rider 17.

CUB/AG claims that the Public Utilities Act ("PUA") does not grant the Commission authority to approve a PORCB tariff for a gas utility and that Nicor Gas failed to describe any authority in the PUA providing such authority to the Commission. (CUB/AG In. Br., pp. 6-7) On the contrary, Nicor Gas filed its proposed Rider 17 pursuant to Section 9-201 of the Public

Utilities Act and its filing was suspended by the Commission pursuant to the same section. 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)**

It is odd that CUB/AG does not recognize that Section 9-201 is the statutory authority for Nicor Gas' filing of Rider 17, considering that its witness, Mr. Martin Cohen, did. While disclaiming that he is not an attorney, Mr. Cohen effectively recognizes that this case was filed pursuant to Section 9-201 when he stated his belief that "in order to approve the tariff, the Commission must find that it is just and reasonable".[2] (CUB/AG Ex. 12.0, p. 1, lines 15-17)

In support of its argument that the Commission has no authority to approve Rider 17, CUB/AG notes the differences between the provisions in the PUA relating to gas and electric supply markets. (CUB/AG In. Br., pp. 7-9) However, 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. This is why this proceeding is taking place. Nicor Gas is not required by the PUA to implement a PORCB Program. Consequently, Nicor Gas filed this proceeding pursuant to Section 9-201 to request the Commission's permission to implement Rider 17. As previously stated, Section 9-201 gives the Commission authority to approve Rider 17 if it finds that Rider 17 is "just and reasonable".

[2] RESA/IGS will address, *infra*, in Section IV (B), CUB/AG's invention of a net benefits test to go along with the "just and reasonable" standard.

In this respect, the situation in this proceeding is no different from Nicor Gas' implementation of the Customer Select Program, its transportation program for small-volume customers. Nicor Gas was not required by the PUA, nor by the Commission, to implement Customer Select. Instead, Nicor Gas filed its Customer Select Program, pursuant to Section 9-201 and the Commission, using its authority under that section, approved the program. Similarly, 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.

In its attempt to support its arguments, CUB/AG cites cases which do not support its arguments. CUB/AG cites *Business and Prof'l People for the Pub. Interest v. Illinois Commerce Commission*, 136 Ill. 2d 192, 201 (1989) ("*BPI I*") for the unremarkable principle that the Commission, as a creature of the PUA, is limited to the General Assembly's grant of authority. However, *BPI I* actually supports RESA's and IGS' position because it specifically cites Section 9-201 for the principle that when a utility files a rate schedule—as Nicor Gas did when it filed Rider 17—the Commission has the power to hold a hearing thereon—which the Commission is doing in this proceeding—and must determine whether the proposed rates are just and reasonable—which is the point of this proceeding. (*Id*.) Briefly, in *BPI I*, a Commission order was reversed because the Commission adopted a settlement proposal not agreed to by all the parties which was not supported by the evidence and which exceeded the Commission's statutory authority. (*Id*., at 245)

Neither is *City of Chicago v. Illinois Commerce Commission*, 79 Ill. 2d 213, 217-218 (1980) on point. The issue in that case was whether the Commission had the authority to require

a public highway authority to improve and maintain the property of a public utility. The instant proceeding is not a rulemaking proceeding. This is a Section 9-201 proceeding and the Commission clearly has authority under Section 9-201 to approve Rider 17 if it finds it to be just and reasonable.

Similarly, *Strategic Energy, LLC v. Illinois Commerce Commission*, 369 Ill. App. 3d 238, 253-254, has nothing to do with the instant proceeding. In that case, the Appellate Court found that the Commission's interpretation of Section 16-115 (d) (5) of the PUA—the now deleted reciprocity requirements for Alternative Retail Electric Suppliers ("ARES")—was not consistent with the legislative intent as expressed in the wording of the PUA. RESA and IGS are somewhat perplexed by this citation as they are not asking the Commission to interpret Section 16-118 (c) of the PUA—the section which requires electric utilities to offer PORCB Programs—to require gas utilities to offer such programs. RESA and IGS acknowledge that the Illinois General Assembly does not require gas utilities to offer PORCB Programs. However, neither has the General Assembly prohibited gas utilities from offering such programs. Nicor Gas 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.

County of Kankakee v. Anthony, 304 Ill. App. 3d 1040, 1045 (1999) stands for the unremarkable principle 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. However, because the statute in question is Section 9-201 of the Public Utilities Act, it is CUB/AG which violates this principle as shown in Section IV (B), *infra*. CUB/AG is attempting to read into Section 9-201 the requirement of a net benefits tests that does not exist in that Section.

Finally, *Laborer's Int'l Union of North American, Local 1280 v. State Labor Relations Board*, 154 Ill. App. 3d 1045, 1050 (1987) has nothing to do with the instant proceeding. In that case, the Court found that the Illinois General Assembly purposely did not adopt language of the National Labor Relations Act ("NLRA") in enacting the Illinois Public Labor Relations Act ("IPLRA"). Consequently, the Court did not have to follow interpretations of the NLRA in addressing questions regarding the IPLRA. At most, this case stands for the proposition that by including a requirement that electric utilities offer PORCB Programs in Article XVI of the PUA which covers the retail electric market, while not including a requirement that gas utilities offer PORCB Programs in Article XIX of the PUA, which covers the retail gas market, the General Assembly did not intend that gas utilities be required to offer PORCB Programs. Again, no one is arguing that this requirement exists. However, the simple fact is that CUB/AG cannot point to any provision of the PUA which forbids gas utilities from offering PORCB Programs.

B. <u>A prudence review based on a cost benefit analysis is not required in this proceeding to satisfy the "just and reasonable" test of Section 9-201 of the Public Utilities Act.</u>

Curiously, having first argued that there is no statutory authority for the Commission to approve Rider 17, CUB/AG then argues that the Commission cannot approve Rider 17 because, according to them, it does not meet the "just and reasonable" standard, citing language from Section 9-201 of the PUA. (CUB/AG Ex. In. Br., pp. 9-10)

However, while CUB/AG cites the correct criteria under Section 9-201 of the Public Utilities Act—"just and reasonable"—it fails to apply the criteria to the entities to whom the tariff is directed. 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. As Nicor Gas' witness pointed out, in response to Mr. Cohen's testimony that Nicor Gas has not offered any evidence of a net benefit

to customers, a request for a cost-benefit test related to a new service in a competitive marketplace is beyond the scope of this proceeding. In this proceeding, Nicor Gas only proposes to provide optional Rider 17 service to AGS as part of the overall competitive service package that AGS provide to their retail customers. 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. Rider 17 properly permits Nicor Gas to recover the costs of providing the service from the participants and suppliers in this competitive marketplace. Nicor Gas concluded that, in this competitive marketplace, AGS and customers ultimately will be the judge of whether Nicor Gas' provision of PORCB service provides so-called "net benefits" to customers. (Nicor Gas Ex. 2.0, pp. 33-34, lines 746-755)

After ignoring this critical point, CUB/AG adopts Mr. Cohen's invention of a requirement of a "net benefits" test, stating the Commission should reject Rider 17 because "if the costs to ratepayers significantly outweigh the benefits, as is the case here, then the Commission must find in favor of ratepayers". (CUB/AG In. Br., p. 10) In support of the requirement implied by the use of the word "must", CUB/AG cites *BPI I* and *Citizens Utility Board v. Illinois Commerce Comm'n*., 276 Ill. App. 3d 730, 757 (1995).[3] However, neither case supports the imposition of a non-existent net benefits requirement. BPI I simply stands for the proposition that Section 9-201 requires rates to be "just and reasonable not only to ratepayers, but to the utility and its stockholders". (BPI I, p. 175) In *Citizens Utility Board*, the Court reversed the Commission where it authorized a complete restructuring of rates which could

[3] CUB/AG also cites *Camelot Utilities, Inc. v. Illinois Commerce Commission*, 51 Ill. App. 3d 5, 10 (1977) for the principle that "if the rightful expenditures of the investor are incompatible with those of the consuming public, it is the latter that must prevail". However, as demonstrated in Section II, *supra*, Nicor Gas will be made whole by the operation of Rider 17. Unlike *Camelot*, this is not a general rate increase proceeding and that case is simply inapposite.

double or triple the bills of some of the phone company's customers. Like *BPI I*, *Citizens Utility Board* says nothing whatsoever about a net benefits test.

RESA and IGS have already demonstrated, *supra*, in Section III (A), that Section 9-201 neither explicitly nor implicitly requires a net benefits test. However, here RESA and IGS need to respond to CUB/AG's unsubstantiated claim that the costs of Rider 17 to ratepayers significantly outweigh the benefits. It is simply unfair to claim that the costs of Rider 17 outweigh, let alone significantly outweigh, the benefits. 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, of the PORCB program, although largely qualitative, are significant. (*see, supra, Section III (A))* Moreover, based on the experience of PORCB programs offered by gas utilities in other jurisdictions, there is good reason to believe that the benefits of Rider 17 will be greater than the costs.

For self-serving reasons, CUB/AG always assumes that the customers of participating AGS will pay a surcharge under Rider 17. However, 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, on April 15, 2013, Columbia Gas filed to reduce the rate under its uncollectible rider from $0.0781/MCF to $0.0173/MCF, a decrease of almost 78%. (RESA/IGS Ex. 2.0 Rev., p. 5, lines 89-94)

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)

In support of its argument, CUB/AG claims 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 PORCB tariff. With respect to the question of whether retail gas competition has resulted in lower prices in Illinois, that question goes to the benefits of the Customer Select Program itself. The Commission has already approved Nicor Gas' Customer Select Program. The only issue in this proceeding is whether the Commission should approve a PORCB Program in Nicor Gas' service territory.

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, as previously

stated, 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)

While acknowledging Ms. Ringenbach's testimony that Rider 17 will result in a broader segment of customers enjoying the benefits of retail competition, including lower prices, AG/CUB claims that her testimony lacks "empirical evidence". (CUB/AG In. Br, p. 14) That is simply not true. RESA/IGS' witness provided data, not theory, from Ohio where not only has switching behind Columbia gas increased beyond 40% with a PORCB program, but also there has been no correlation in Columbia's territory or any other territory in Ohio to show an increase in uncollectibles. The same is true for ComEd and Ameren in Illinois. In fact, recent data shows decreases in the rates of uncollectibles both in Ohio and Illinois. (RESA/IGS Ex. 2.0, p. 5, lines 88-108)

C. Contrary to CUB/AG's claim, lack of a PORCB Program has been an impediment to a competitive marketplace for natural gas in Illinois.

CUB/AG argues that the absence of a PORCB tariff has not impeded market penetration. In support of this argument, CUB/AG cites the Commission's website and claims that there are 26 AGS in Nicor Gas' Customer Select Program. (CUB/AG In. Br., pp. 14-15) In fact, a more thorough review of that website shows that there are only ten AGS actively making offers to customers in Nicor Gas' service territory. In contrast, RESA/IGS Ex. 2.1 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. For example, in New Jersey, 42 suppliers are in the service territory of

Elizabethtown Gas, 48 in the service territory of New Jersey Natural Gas, 56 in the service territory of Public Service Electric & Gas, and 45 in the service territory of South Jersey Gas. High numbers of suppliers are also shown for Ohio, Pennsylvania, and New York. Moreover, all of the states that have a greater than 10% customer participation in gas Choice programs have utilities that offer some form of PORCB program. (RESA/IGS Ex. 1.0, pp. 14-15, lines 303-308; RESA Ex. 2.1)

In support of its claim that the absence of a PORCB tariff has not impeded market penetration, CUB/AG also refers to the testimony of Dr. Rearden that there has been an upward trend in Customer Select in the last year. However, RESA and IGS demonstrated, in detail, that this claim is false. (RESA/IGS In. Br., pp. 17-20) In fact, that there has been a downward trend in non-residential customers on Customer Select over the 50-month period shown in Nicor Gas' response to Staff Data Request No. POL 4.1, the document relied upon by Dr. Rearden. (RESA/IGS Cross-Examination Ex.1) Neither does RESA/IGS Cross-Examination Exhibit 1 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. (*Id*.)

Although apparently arguing that the competitive gas market in Nicor Gas' service territory is sufficiently robust that it does not require Rider 17 (CUB/AG In. Br., p. 14), CUB/AG then argues that an AGS faces so many disadvantages in competing with a gas utility, that the lack of a PORCB Program is "but a small factor". (CUB/AG In. Br., p. 16-19) First, if this were true, there would appear to be little harm in removing this "small" impediment to the ability to compete. Second, it is not true. As previously stated, Columbia Gas of Ohio

experienced a 40% increase in its natural gas Choice Program and a PORCB Program was incorporated into that program. (RESA/IGS Ex. 2.0, p. 5, lines 88-92)

In support of its argument, CUB/AG also claims that while the electricity market in Illinois has been open to residential and small commercial customers since 2002, it did not attract significant participation until late 2011, after municipal aggregation was implemented. (CUB/AG In. Br., p. 18) There are two basic problems with this claim. First, it ignores the fact that the Commission's approval of ComEd's Rider PORCB predated the implementation of municipal aggregation on a widespread scale. Second, the record shows that without PORCB, governmental aggregation would not likely be as effective or vibrant as it has been. PORCB is part of the fundamental foundation for competition, without which large-scale residential customer switching simply would not have occurred. (RESA/IGS Ex. 2.0, pp. 12-13, lines 264-276)

D. <u>CUB/AG's claims of potential marketing abuses are without merit.</u>

CUB/AG argues that Rider 17 may encourage AGS to engage in marketing practices that may increases the level of uncollectibles. For example, AGS could target residential neighborhoods with large numbers of high credit risk customers or neighborhoods with a large proportion of non-English speaking residents who might be less likely to fully comprehend the marketing offers or their bill implications. (CUB/AG In. Br., pp. 24-25) However, this argument was rebutted by RESA/IGS' witness. Ms. Ringenbach testified that PORCB programs have been available for electric customers in Illinois, but she is not aware of any ARES that target residential neighborhoods with large numbers of high credit risk customers or neighborhoods with a large proportion of non-English speaking residents. Neither is Mr. Cohen aware of any such ARES, as evidenced in AG/CUB's response to RESA/IGS Data Request No.

1.02. (RESA/IGS Ex. 2.0 Rev., p 17, lines 355-363) Moreover, as previously stated, neither ComEd's nor Ameren's PORCB programs have resulted in increased uncollectibles. In fact, uncollectible rates under ComEd's and Ameren's PORCB programs have decreased. (*Id*., pp. 5-6, lines 99-106)

In further support of its argument regarding potential marketing abuses, CUB/AG cites experiences relating to Santanna Energy Services, Just Energy Services, and its witness' personal experience with a door-to-door marketing representative. RESA and IGS will dispose of these matters in a summary fashion. First, the Commission proceeding cited by CUB/AG relates to incidents in 2002, over ten years ago. More recently, the Commission granted Santanna Energy Services an ARES certificate, after finding it meets the legal requirements, in Ill. C. C. Docket 12-0407 (order dated August 15, 2012). Second, with respect to Ill. C. C. Docket 10-0398, CUB/AG neglects to mention that an Agreed Draft Order has been filed in that proceeding, to which CUB did not object, under which the Commission would find that Just Energy has successfully completed the management audit recommendations and that it is no longer required to conform to previously established daily reporting obligations. Third, while it is unfortunate that a door-to-door salesman attempted to take advantage of Mr. Cohen, CUB/AG's Initial Brief indicates that there are almost 270,000 customers participating in Customer Select. (CUB/AG In. Br., p. 14) While this number is much smaller than it should be in a competitive marketplace due to the lack of a PORCB program, it is sufficiently large that if there were serious problems of marketing abuses, CUB/AG would be able to offer more than Mr. Cohen's anecdotal evidence on this subject.

E. CUB/AG's proposed modifications to Rider 17 should be rejected.

CUB/AG argues that if the Commission approves Rider 17, it should modify Rider 17 to require AGS to pay all costs of the program. (*Id*., p. 5) Interestingly, in this regard, CUB/AG notes that RESA and IGS, as a fallback position, stated that they would accept a modification to Rider 17 to require AGS to pay all of the costs of implementing and operating Rider 17. (*Id*., p. 4) CUB/AG then claims that this fallback position would "presumably" cause Nicor Gas to withdraw the tariff or fail to implement it and concludes "this alone warrants rejection of the proposed tariff". (*Id*.) It is difficult to respond to an argument that because RESA/IGS would be willing, as a fallback position, to accept CUB/AG's fallback position, Rider 17 should be rejected. However, there is no need to respond to this argument because CUB/AG has misstated Nicor Gas' position. Nicor Gas has requested that the Commission either approve Rider 17, as proposed by Nicor Gas, or reject it. (Nicor Gas Ex. 3.0, p. 2, lines 22-24)

CUB/AG further argue that if the Commission approves Rider 17 and rejects CUB/AG's fallback position that AGS be required to pay all of the costs of Rider 17, then the Commission should accept the modifications to Rider 17 set forth on pages 19-28 of its Initial Brief. Nicor Gas accepted one of the modifications and rejected the rest for the reasons set forth in the Rebuttal Testimony of Mr. Mudra. (Nicor Gas Ex. 2.0, pp. 31-48) RESA/IGS' witness, Ms. Ringenbach, agreed with Mr. Mudra that, with that one exception, those modifications should be rejected. (RESA/IGS Ex. 2.0 Rev., pp. 12-15, lines 259-309)

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 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 net benefits test, as proposed by Staff and CUB/AG. Contrary to the claims of the Staff and CUB/AG, the lack of a PORCB program is a serious impediment to the competitive marketplace for natural gas in Illinois. The Commission should remove this impediment by approving Nicor Gas' Rider 17.

Respectfully submitted,
Retail Energy Supply Association

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NOTICE OF FILING

Please take note that on May 24, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply Brief of Interstate Gas Supply of Illinois, Inc. and the Retail Energy Supply Association in this proceeding.

Dated: May 24, 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 Initial Brief 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 May 24, 2013.

/s/ GERARD T. FOX
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