STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company	)	
d/b/a Nicor Gas Company	)	
	)	Docket 17-0124
Proposed general increase in gas rates	)	

PETITION FOR REHEARING
THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to Section 10-113 of the Public Utilities Act and Section 200.880 of the Rules of Practice of the Illinois Commerce Commission (the "Commission"), the Retail Energy Supply Association ("RESA")[1] submits its Petition for Rehearing of the Commission's Order in this proceeding, the rate case of Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor" or the "Company").

I. INTRODUCTION

On March 10, 2017, Nicor filed rate sheets constituting a general rate increase in this proceeding. RESA addressed only one issue in this proceeding—the proper allocation of customer care costs. Nicor's proposed rate increase includes the recovery of default service costs—such as customer care costs—through base distribution rates. Nicor's proposed method of cost recovery would provide an anticompetitive subsidy to

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

default service rates and send a distorted price signal. Therefore, RESA recommended that the Commission direct that Nicor unbundle customer care costs similar to the manner it has done with Commonwealth Edison Company ("ComEd") on the electric side. In the alternative, RESA recommended that the Commission order Nicor to conduct a study to determine an appropriate allocation of customer care costs between the distribution and supply functions.

Adoption of RESA's proposal would have moved the retail natural gas market forward by removing an existing barrier to competition. The Order, however, rejected RESA's proposal without reasoning. Making matters worse, rather than studying the correct allocation of customer care costs, the Order directed Nicor to study the manner in which choice customers utilize storage assets—a recommendation no longer supported by its initial proponent, given the rejection of RESA's proposed allocation of customer care costs. The Order's directive that Nicor perform an analysis of its storage assets is not supported by the record evidence and is otherwise unjust, unreasonable, arbitrary and capricious. Therefore, the Commission should reverse its directive that Nicor provide a study of its storage assets, or at a minimum, the Commission should require Nicor to present its analysis in conjunction with an analysis of customer care costs required to support default service.

As discussed further below, RESA urges the Commission to grant this petition and correct the errors identified herein.

II. BACKGROUND

On March 10, 2017, Nicor filed rate sheets constituting a general rate increase in this proceeding. RESA addressed only one issue in this proceeding—the proper allocation of

customer care costs. RESA proposed that Nicor allocate $12.7 million of its customer care costs to its supply function and that the Commission direct Nicor to perform a comprehensive allocation study of customer care costs in a revenue neutral rate proceeding. Nicor opposed RESA's recommendations and, among other arguments, took the position that before being required to allocate customer care costs to its supply function, the Commission should direct Nicor to conduct a study of the use of its storage facilities by large-volume transportation customers and suppliers in its small-volume transportation program, Customer Select (the "Storage Study"): "the Company maintains that it is imperative that the impact of Customer Select customers on the fields be understood before any proposals that may increase the volume of Customer Select customers are adopted." (Order, pp. 125-126)

On December 22, 2017, the Administrative Law Judges ("ALJs") filed and served their Proposed Order ("ALJPO") in this proceeding. After a discussion of the Parties' positions on customer care costs, the ALJPO's Commission Analysis and Conclusion section consists of two paragraphs. In the first paragraph, the ALJPO rejects RESA's proposed allocation of customer care costs with absolutely no analysis. (ALJPO, p. 149) In the second paragraph of the Commission Analysis and Conclusion section, the ALJPO accepted Staff's proposal that Nicor should prepare a study of its storage operations and how transportation customers use Nicor's storage assets under its current terms and conditions. The ALJPO's Commission Analysis and Conclusion section failed to even address RESA's Alternative Proposal—that, in the event the Commission does not require Nicor to allocate customer care costs, it should order Nicor to conduct an allocation study to be presented in a revenue neutral rate case.

In its Brief on Exceptions, RESA demonstrated there was no connection between its proposals and Nicor's request that it be ordered to perform the Storage Study. (RESA BOE, p. 19) Moreover, RESA demonstrated that Nicor's stated concerns about its storage operations were unfounded and based on misleading statistics. (*Id.*, pp. 19-21)

In its Reply to Briefs on Exceptions, the Commission Staff clarified its proposal regarding the Storage Study and stated that it never took the position that Nicor should be ordered to perform the Storage Study whether or not the Commission adopted RESA's proposals regarding customer care costs. Staff further stated that if the Commission adopted the ALJPO's conclusion and rejected RESA's proposals, Staff had no objection to RESA's position that the Commission not order Nicor to perform the Storage Study. Accordingly, the Commission Staff proposed to modify the ALJPO:

> Dr. Rearden's testimony was intended to state that Nicor is always free to study storage allocation if it was concerned about them, not that Nicor should necessarily be ordered to do so in this case. (Staff Ex. 10.0 Revised, 7.) If the Commission adopted the ALJPO's conclusion, which rejects both RESA's primary proposal and alternative proposal, Staff has no objection to RESA's substantive position that the Commission not order Nicor to study storage assets. Since RESA did not offer any exceptions language to address this particular situation [footnote omitted] Staff would proposed the following modification to the ALJPO:
>
> …~~In making this determination, t~~The Commission agrees with Staff's ~~proposal~~ that the Company is always free to ~~should~~ prepare a study to assess the implications of how Transportation Customers use the Company's storage assets under the current terms and conditions of service. ~~Accordingly, Nicor Gas is directed to prepare such a study and present its results in the Company's next rate case.~~ Therefore, the Commission rejects the proposals of RESA, and accordingly will not order Nicor Gas to prepare a study of storage asset or customer care cost allocations.

(Staff Reply to BOEs, pp. 21-22)

Notwithstanding the fact that the Commission accepted the ALJPO's position and rejected RESA's customer care cost allocations and, therefore, the Commission Staff was not proposing that the Commission order Nicor to perform the Storage Study, the Commission did not accept Staff's modified language. Instead, without addressing RESA's Brief on Exception or its Staff's Reply to Briefs on Exceptions, the Commission's Order adopted *verbatim* the language of the ALJPO and ordered the performance of the Storage Study. (Order, p. 131)

RESA's Petition for Rehearing is not challenging the Commission's rejection of RESA's proposal to allocate customer care costs in this proceeding. Instead, this Petition for Rehearing is limited to the Order's unfounded direction that Nicor perform the Storage Study. There is no basis for the requirement of the Storage Study and that requirement constitutes reversible error.

III. THERE IS NO FOUNDATION FOR THE COMMISSION'S ORDER REQUIRING THE PERFORMANCE OF A STORAGE STUDY BECAUSE THERE WAS NO STAFF PROPOSAL FOR SUCH A STUDY TO ADOPT.

Simply put, there is no foundation for the Commission's Order directing Nicor to perform the Storage Study. Nicor's position was that before the Commission should allocate a portion of its customer care costs to its supply function, the Commission should conduct a study of the use of its storage assets by suppliers and transportation customers. (Order, pp. 125-126) The basis of Nicor's position was that if the Commission accepted of RESA's allocation of customer care costs, there would be an increase in Customer Select participants and, consequently, an increase in the use of Nicor's storage facilities

by Customer Select participants. Therefore, because the Commission rejected RESA's proposals, there would be no resulting increase in Customer Select participants, a dubious concern to begin with, and, therefore, no basis for requiring Nicor's proposed storage study. As shown above, the Commission Staff acknowledged this in its Reply to Brief on Exceptions.

A point-by-point analysis of the Analysis and Conclusions section of the Order demonstrates there is no support for the requirement of the Storage Study.

First, the Order states, "The Commission notes that the Company has an obligation to serve all customers for both supply and delivery service; therefore, it is necessary for Nicor Gas to properly allocate these costs." (Order, p. 131) RESA agrees that a proper allocation of Nicor's customer care costs is necessary. However, the Commission determined not to do so and, therefore, this is no basis for the Storage Study.

Second, the Order states, "The Commission is troubled by RESA's allocators and the impacts on the Company's system." (*Id*.) Neither the ALJPO nor the Order explained why the Commission was troubled by RESA's allocators; however, ignoring that, the Commission rejected RESA's allocation proposals and, therefore, there is no impact on Nicor's system.

Third, the Order states, "The Commission notes that there are both operational and legal differences between the Nicor Gas system and what was determined in the ComEd case." (*Id*.) RESA showed that there is no meaningful difference that would justify rejecting an allocation of customer care costs for Nicor, similar to that approved by the Commission for ComEd (*Id*., pp. 128-129); however, ignoring that, this statement

would be a basis, although not a correct one, for rejecting RESA's allocation proposal, not for ordering the Storage Study.

Fourth, the Order states, "The Company expresses concern about the impacts that may occur to the Company's storage fields should RESA's proposal be adopted." (*Id*., p. 131) RESA demonstrated, in detail, that Nicor's concerns were unfounded and based on its witness' misleading use of storage statistics which combined the use of storage by large-volume transportation customers and Customer Select customers, which have vastly different requirements and restrictions under Nicor's tariffs. (*Id*., pp. 130-131) However, ignoring that as well, the simple point is that RESA's proposal was not adopted and, obviously, the rejection of RESA's proposal does not have an impact on Nicor's storage fields. Consequently, this is another statement that does not support the requirement of the Storage Study.

Fifth, the Order states, "While RESA attempts to dismiss such concerns, it appears that more information as to the effects is needed." (*Id*., p. 131) Presumably the "effects" referred to in this statement are the effects of the acceptance of RESA's allocation proposal on Nicor's storage operations. Again, since the Commission rejected RESA's allocation proposal, there are no effects to be considered.

Sixth, the Order states, "Staff agrees that additional information is needed to determine how the Company should allocate its storage." (*Id*.) It is clear from Staff's Reply to Briefs on Exceptions, that any "additional information" would only be needed if the Commission were to grant RESA's allocation proposal. Because the Commission did not, there is no need for additional information and, therefore, no need for the Storage Study.

Seventh, the Order states, "The Commission must be convinced that the storage fields are not subject to operational risk." (*Id*.) Nicor's professed concerns about operational risk were based on its witness' concerns that the allocation of customer care costs, as proposed by RESA, would result in the growth in the number of Customer Select customers and that an increase in such customers would result in growing operational challenges in managing its on-system storage, especially under the existing terms and conditions of Nicor Gas' provision of those services. (*Id,* p. 125) Initially, there is no cap on Nicor's Customer Select program now and RESA has not seen a justification for a cap. (*Id*.) Nicor raised its concerns in this proceeding in response to RESA's proposal to allocate customer care costs. Because RESA's proposal is rejected, there is no impact of that proposal on Nicor's storage fields and, therefore, no basis to require the Storage Study.

Eighth, the Order states, "In making this determination, the Commission agrees with Staff's proposal that the Company should prepare a study to assess the implications of how Transportation Customers use the Company's storage assets under the current terms and conditions of service." (*Id*., p. 131) As previously demonstrated, the Commission's requirement of a Storage Study is inconsistent with its own Staff's position in this proceeding, as stated in its Reply to Briefs on Exceptions.

Because the Commission rejected RESA's proposed allocation of customer care costs, there is simply no basis for the Order's requirement of the Storage Study. The Commission should, on rehearing, enter an Order on Rehearing eliminating that requirement. Failure to do so would constitute reversible error.

IV. THE COMMISSION'S ORDER'S DIRECTION THAT A STORAGE STUDY BE PERFORMED CONSTITUTES REVERSIBLE ERROR.

To be valid, a Commission order must explain the basis for the decisions made in that order. According to long-standing decisions of the Illinois Supreme court, in establishing public utility rates, the Commission's findings of fact must be sufficiently specific to enable reviewing courts to intelligently review the Commission's orders and to ascertain if the facts upon which such orders are based constitute a fair and reasonable basis for the Commission's decisions. (*Illinois Bell Telephone Co. v. Illinois Commerce Commission,* 414 Ill. 275, 111 N.E. 2d 329 (1953))

For purposes of review of the Commission's order in a utility rate case, if the Commission's order does not include sufficient findings of fact, the order is void. (*Citizens Utility Bd. V. Illinois Commerce Commission*, 276 Ill. App. 3d 730, 658 N.E. 2d 1194 (1st District, 1995), Appeal denied 165 Ill. 2d 548, 663 N.E. 2d 423)

While it is true that the Commission is not required to make a finding on each evidentiary fact or claim, the findings must be specific enough for an appellate court to permit an intelligent review of the Commission's decision. (City of Chicago v. Illinois Commerce Commission, 281 Ill. App. 3d 617, 666 N.E. 2d 1212 (1st District, 1996)) As demonstrated in the previous section of this Petition for Rehearing, the Order's "findings" related to the requirement of the Storage Study do not meet this standard.

While RESA is limiting this Petition for Rehearing to the reversing the Order's direction that Nicor perform the Storage Study, RESA notes that the Commission's decision in this proceeding is inconsistent with its decision in Ill. C. C. Docket 14-0132, the ComEd rate case. In the Commission's final order, dated December 10, 2014, the Commission directed ComEd to unbundle customer care costs that were historically collected through

distribution rates: "Having reviewed the evidence presented by all parties, the Commission determines that ComEd's Updated Alternative Study provides a good starting point for allocating customer care costs to the default supply function. . . . Allowing ComEd to recover these costs through distribution rates provides a subsidy to ComEd's supply rate." (Docket No. 14-312, Order at 104)

The Order in the instant proceeding allows Nicor to continue to require customers who purchase their gas supply from suppliers to subsidize customers who purchase their gas supply from Nicor. While the Order notes that there are "operational and legal differences between the Nicor Gas system and what was determined in the ComEd case." (Order, p. 131), the Order does not explain what these differences are. Moreover, any differences between the operating systems of Nicor and ComEd have nothing to do with RESA's proposal to allocate customer care costs.

While the Commission's orders are not *stare decisis*, nonetheless the Commission cannot arbitrarily reverse its position from case to case. Appellate Courts have held that Commission decisions are entitled to less deference on appellate review when they depart from the Commission's past decisions and usual rules of decision to reach a different result. *Abbott Laboratories, Inc. v. Illinois Commerce Com'n*, 289 Ill. App. 3d 705, 682 N.E. 2d 340. Although the Public Utilities Act grants the Commission discretion, the Commission's decisions are entitled to less deference when the Commission drastically departs from past practice. *Citizens Utility Bd. V. Illinois Commerce Com'n,* 291 Ill. App. 3d, 683 N.E. 2d 938 (1st District, 1997)

V. IF THE COMMISSION DOES NOT ELIMINATE THE REQUIREMENT OF THE STORAGE STUDY, THAT STUDY SHOULD BE DONE IN CONJUNCTION WITH THE PERFORMANCE OF AN ALLOCATION STUDY.

In the event the Commission does not reverse its Order on rehearing to eliminate the requirement for the Storage Study, the Commission should, on rehearing, require Nicor to conduct an allocation study of customer care costs, to be presented in Nicor's next rate case. Once Nicor determines the appropriate amount of customer care costs to be allocated to its supply function, it then could address the impact, if any, of that allocation on its storage operations. Moreover, storage operations and terms cannot be evaluated in a vacuum. To the extent that there is a study of storage operations and changes are considered with respect to those operations, such an evaluation must be considered within the context of a holistic evaluation of all capacity and storage assets that Nicor operates. The Order, however, fails to provide any directions as to how the Storage Study should be conducted. Consequently, if the Commission does require a Storage Study in conjunction with an allocation study, the Commission should provide directions on the parameters of both studies.

VI. CONCLUSION

In conclusion, the Commission should grant this Petition for Rehearing and enter an Order on Rehearing eliminating the Order's requirement that Nicor conduct the Storage Study. As demonstrated in this Petition for Rehearing, that requirement has no support in the record of this proceeding and failure to eliminate the requirement would constitute reversible error.

Respectfully submitted,

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NOTICE OF FILING

Please take note that on March 1, 2018, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the Brief on Exceptions of the Retail Energy Supply Association in this proceeding.

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Brief on Exception of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 17-0124 via electronic delivery on March 1, 2018.

/s/ GERARD T. FOX
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