

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>NORTHERN ILLINOIS GAS COMPANY</b>	)	
<b>D/B/A NICOR GAS COMPANY</b>	)	
	)	<b>Docket No. 08-0363</b>
	)	
<b>Proposed general increase in natural gas rates.</b>	)	
	)	

**INITIAL BRIEF OF  
THE ENVIRONMENTAL LAW & POLICY CENTER  
ADDRESSING NEW RIDER 29**

**INTRODUCTION**

Environmental Law & Policy Center addresses only one issue in this rate case. Northern Illinois Gas Company (“the Company” or “Nicor”) proposes an energy efficiency program that will allow its customers to save money and make their homes more efficient. Ultimately, the program is good for customers and good for the environment. Moreover, the program is supported by the Company and all of the consumer and environmental intervenors, including the Environmental Law and Policy Center (“ELPC”), the Illinois Attorney General, and the Citizens Utility Board. The only opposition comes from the Staff of the Illinois Commerce Commission (“the Commission” or “ICC”) and which fails to adequately support its position. Thus, for the reasons set forth below, the Commission should approve the program with the modifications suggested by ELPC.

**STATEMENT OF FACTS**

In the context of this rate case, Nicor Gas proposes a plan to spend \$13 million per year on energy efficiency programs. As set forth in the Company's testimony, its proposal is nearly identical to the program approved for Peoples Gas and North Shore Gas in ICC Docket No. 07-

0241/07-0242. The proposal does not contain specific programs, merely a structure that includes an Advisory Board that would work with the company to develop such programs, a Plan Administrator, Program Implementers and an independent third-party review to verify results. Additionally, the Company includes a decoupling mechanism that it submits would protect it from fluctuations in sales due to the increased reliance of customers on efficiency and decreases in sales of gas.

Under this framework Nicor would act as the fiscal agent for the program, but would merely be one vote on the Advisory Board. The Board would work with the Plan Administrator to develop the programs, thereby giving customers significant input and oversight as to how these dollars will be spent.

## **ARGUMENT**

### **I. BOTH THE ILLINOIS GENERAL ASSEMBLY AND THE ILLINOIS COMMERCE COMMISSION RECOGNIZE THE BENEFITS OF EFFICIENCY**

Well designed energy efficiency programs lower bills and provide environmental benefits. The Illinois General Assembly recently passed legislation stating, "investment in cost-effective energy efficiency and demand-response measures will reduce direct costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure." 220 ILCS 5/12-103(a). The Commission similarly recognized the value of gas efficiency programs in the last Nicor rate four years ago stating that "energy efficiency is critically necessary as a strategic tool to protect Illinois consumers and reduce their energy costs." Docket No. 04-0779 Final Order at 192. Then it cited this same passage in its approval of a nearly identical program for The Peoples Gas Light and Coke Company ("Peoples"). Docket No. 07-0241/07-0242 at 183.

Nicor Witness Nichols succinctly states the needs for the program:

Cost-effective energy efficiency measures likely will produce benefits for consumers through lowering overall energy costs. Nicor Gas' proposed Plan provides a mechanism to support cost-effective measures while providing the necessary organizational structure and monitoring function.

Nicor Gas Ex. 13.0 at 4.

ELPC Witness Kubert notes that such programs are consistent with Nicor's obligation to provide reliable least-cost service to its customers. He emphasizes, "[o]n the margin, utility spending on energy efficiency is the least-cost energy resource." ELPC Ex. 13.0 at 2.

## **II. ENERGY EFFICIENCY PROGRAMS PROVIDE BENEFITS TO RATEPAYERS**

ELPC Witness Kubert points out that the average wholesale price of natural gas has recently been between \$9.00 and \$12.00 per thousand cubic feet (mcf), and that "properly designed energy efficiency programs can save natural gas at a life cycle cost which is one-third of the cost of purchasing and distributing that same amount." ELPC Ex.1.0 at 2. While program participants will benefit the most, all ratepayers benefit. "[U]tilities are able to buy less natural gas on the margin when gas is at its most expensive because household and businesses have reduced their demand during seasonal peak periods. This has a direct impact on all ratepayers." ELPC Ex. 2.0 at 5. At current gas prices, each 1% reduction in gas consumption from residential and commercial customers represents \$22 million annually in avoided gas and interstate distribution expenses. ELPC Ex.1.0 at 5.

The Commission similarly recognized the benefits to participants and non-participants in the previous Nicor rate case, noting efficiency programs, "will lower the cost of heating for the home or business participating in the program. Second, targeted correctly, they will reduce the

amount of high cost natural gas that Illinois has to buy, thus reducing everyone's costs, as well."

Docket No. 04-0779 at 192.

Mr. Kubert also notes that Iowa, Wisconsin and Minnesota, which have efficiency programs, have average customer usage well below the Nicor territory. In 2005 the average residential consumption in Iowa was 791 therms, Wisconsin 823 therms, and Minnesota 942 terms. He states:

While there are a number of factors driving these differences, including the size and age of the housing stock, this is a large enough variance to suggest that long-established energy efficiency programs in these neighboring (and colder) states have played a role in reducing gas use which independent evaluations of these programs confirm.

ELPC Ex. 1.0 at 2. These usage reductions translate into significant savings.

### **III. THE ADVISORY BOARD IS A CRITICAL ELEMENT IN PROTECTING CONSUMERS**

While Nicor will act as the fiscal agent for the programs, the programs themselves will be overseen by an Advisory Board, that will consist of five members including Nicor and four other qualified stakeholders. Witness Nichols lays out the duties of the Advisory Board as follows:

- 1) To oversee the creation and issuance of Request for Proposals ("RFPs") and select a Plan Administrator and a Plan Evaluator.
- 2) To determine the need for a Board Facilitator, and, if desired, oversee the creation and issuance of RFPs and ultimately select the Board Facilitator.
- 3) To approve the general Plan goals and performance criteria.
- 4) To approve the portfolio of programs to be implemented by the Plan Administrator.
- 5) To evaluate the performance of the Plan Administrator, provide direction and guidance to the Plan Administrator, and take corrective action that it deems necessary for the proper execution of the Plan.
- 6) To determine the effectiveness of each program implemented in the Plan and either approve or discontinue further funding of each individual program.
- 7) 7) To provide all required reports to the Commission.

Nicor Ex. 13.0 at 7.

When it approved a similar structure for Peoples, the Commission stated, "the proposed governance structure for the program should ensure independence from the Utilities and will

likely result in representation of all or substantially all relevant interests." Docket No. 07-0241/07-0242 at 183. The record in the current docket supports the same finding.

ELPC asserts that the independent Governance Board proposed by Nicor will provide the best management and implementation of the programs. Nicor Ex. 13.0 at 6; Nicor Ex 13. ELPC witness Kubert outlines three reasons that such a Board will provide better results for consumers:

First, since Nicor has no experience running programs of this type, the program can be more effectively run by hiring outside experts to administer the program. Second, the Governance Board gives external stakeholders meaningful participation in the design and implementation of the program. Third, by proposing a structure similar to that being used with Peoples Gas and North Shore Gas, it creates an opportunity at some point in the future to possibly consolidate both utilities' programs under a single Governance Board, program managers and brand identity.

ELPC Ex. 1.0 at 7.

Dr. Brightwell proposes that if the Commission approves the programs, it adopts the structure used for the CornEd and Ameren programs, where Nicor would be responsible for the ultimate decisions regarding programs and could be ultimately held accountable by the Commission. Summarizing Dr. Brightwell's concern, "[r]atepayer money would be spent on projects by a group over whom the Commission has no authority." Staff Ex.13.0 at 15. Moreover, he is concerned that the company, by virtue of controlling the purse strings, would give the Company undue influence over the board's actions. *Id.*

While ELPC understands Dr. Brightwell's concern, it strongly believes that the Advisory Board structure will ultimately provide greater benefits to consumers than a utility run program. While the Commission cannot directly hold the Advisory Board financially responsible by disallowing the recovery of costs for the programs, this is more than outweighed by the fact that the Advisory Board will not have the conflict of balancing the needs of shareholders with those of customers. Nicor has been in the business of selling gas—not helping customers reduce

consumption. The financial structure of the company, and the traditional ratemaking framework, rewards the company for selling more gas -not saving it. Once rates are set based on test year sales, any increase produces greater profits for the company. This is simply a fundamental principle of ratemaking. While decoupling removes some of this incentive two issues remain: first, it remains to be seen whether decoupling will work as designed in terms of revenue; and second, it does not address the issue that the culture at Nicor, since its inception, has been to sell as much gas as possible. That culture is not likely to change over night.

In contrast to the issues regarding Nicor's commitment to efficiency, the likely members of the Advisory Board such as the Illinois Attorney General's office, the Citizens Utility Board, and Environmental Law & Policy Center have no financial conflict of interest or any incentive other than to save their constituents money through these programs. These entities have supported energy efficiency for a number of years, and have fought to get this program established with only one goal in mind; reduce customers' energy usage. This safeguards the public interest more effectively than Nicor taking unilateral responsibility for the programs.

ELPC also notes that the Commission does in fact maintain significant authority over the program. The Commission has broad powers to regulate utilities and oversee programs such as this one. On cross-examination Dr Brightwell acknowledged that Nicor's proposal calls for an independent audit after 24 months (Tr. at 561), that Staff would be monitoring the program (Tr. at 583), and that if problems arise the Commission can hold hearings on the program, amend it or shut it down. (Tr. at 583, 584).

#### **IV. THE LEVEL OF FUNDING PROPOSED BY NICOR FAILS TO PROVIDE THE OPTIMAL LEVEL OF BENEFITS TO ITS CUSTOMERS**

Nicor proposes funding the program for four years at \$13 million per year, based only on the funding for Peoples' program and Ameren's proposed funding. Nicor Ex. 13.0 at 3. The \$7.5

million per year funding of the Peoples program was based only on a settlement between the parties in the Peoples merger case. *In Re WPS Resources Inc.*, Docket No. 06-0540. ELPC Witness Kubert proposes gradually escalating spending from \$15 million in year 1 to \$25 million in year 4 based upon levels of funding for the gas programs in Iowa, Wisconsin and Minnesota. ELPC Ex. 1.0 at 7. While gas prices remain at such high levels and efficiency programs around the country continue to receive increased funding, it makes sense to fund these programs at levels comparable to our neighboring states.

If the Commission ultimately disagrees, at a minimum the Commission should increase funding to \$15 million for the first two years, and then hold a limited proceeding to review progress and determine the appropriate amount going forward. First, in order to approximate the spending by Peoples, the amount should be \$15 million. As ELPC Witness Kubert notes, Nicor has 1.93 times as many customers as Peoples and its overall gas sales is 2.07 times that of Peoples, thus the proportionate spending should be twice the \$7.5 million in the Peoples program. ELPC Ex. 1.0 at 6. Second, four years is a very long period of time to hold spending at the same level. Assuming the programs produce benefits, consumers should not have to wait longer than necessary for increased funding. In Docket 04-0779 the Commission ruled that efficiency programs can be addressed in a separate forum outside a rate case, and the Commission should commit to a proceeding to review the funding level after the second year of the program. Docket No. 04-0779 at 192.

#### **V. THE COMMISSION SHOULD SET A SAVINGS TARGET**

ELPC supports setting savings targets for the parties to meet during the course of the program. While the Commission would not penalize the companies for not meeting the targets, as the design of the programs is not the responsibility of the utility, such targets still provide

goals for the parties and assist in the evaluation. Mr. Kubert recommends setting the targets at 0.25% for year 1, 0.5% for year 2, 0.75% for year 3, and 1% for year 4. He notes that Minnesota's law requires the gas utilities to achieve 1.5% annual savings, and that a one percent reduction should be reasonably achievable. ELPC Ex. 1.0 at 8,9.

## **VI. STAFF'S CONCERNS ARE NOT SUPPORTED BY THE RECORD AND WERE REJECTED IN THE RECENT PEOPLES CASE**

Staff has made no secret of its dislike for ICC approved energy efficiency programs, as evidenced by its opposition to the Peoples program in Docket No. 07-0241/07-0242, Final Order at 167-168. In fact, its arguments are nearly identical to the ones it made in the Peoples case—particularly the one that customers are conserving due to high gas prices "without any utility program." *Id.* The Commission specifically dismisses Staff's opposition, stating, "The Commission rejects Staff's arguments that the program is necessarily inequitable and inefficient... the Commission believes that the proposed programs will make a significant positive contribution to the benefit of all ratepayers." *Id.* at 183.

Dr. Brightwell attempts to distinguish Staff's argument from that rejected in the Peoples case by citing a recent American Gas Association (AGA) study, *An Economic Analysis of Consumer Response to Natural Gas Prices* as "new evidence about the efficiency of markets for providing strong incentives to encourage conservation," and that efficiency programs are not needed. Dr. Brightwell states:

[T]he current natural gas price and uncertainty about future prices provide a strong incentive for Nicor Gas' customers to privately adopt conservation measures. The testimony of Company witness O'Connor indicates that Nicor Gas' residential customers reduced weather-normalized gas consumption for space heating use from 1183 therms in 2004 to 1088 therms in the Company's 2009 test year. (Co. Ex. 12.0, p.21) This is an 8% reduction over a six year period or an average annual reduction of 1.33%. This indicates that Nicor Gas's customers are adopting conservation efforts without the assistance of Nicor Gas' programs.

Staff Ex. 13.0 at 6.

Examination of this argument reveals that the AGA study fails to support Staff's position, and that new Energy Information Administration (EIA) data indicates that these programs are needed more than ever due to increased costs. First, Dr. Brightwell ignores the AGA study's caveat that besides high prices, "other factors that impacts residential energy use are the many programs that encourage consumers to save energy." Frederick Joutz & Robert P. Trost, *An Economic Analysis of Consumer Response to Natural Gas Prices* 6 (Am. Gas Ass'n. Mar. 2007). Thus, the AGA study acknowledges that existing efficiency programs in some states are contributing to reductions. Second, Dr. Brightwell acknowledges on cross-examination that these statistics may amount to nothing more than customers turning down their thermostats to an uncomfortable level in order to save money. See, Tr. at 577. Moreover, Dr. Brightwell ignores the continuing hardship customers face regardless of decreased usage. According to the Energy Information Administration, in the last five years expenditures on heating in the Midwest have gone from \$750 per year to \$1008 per year. *Short Term Energy Outlook* (Energy Information Administration, Nov. 2008) Table WF01, Selected U.S. Average Consumer Prices and Expenditures for Heating Fuels During the Winter; ELPC Cross Ex.1.0. Thus, while consumers may be conserving on their own, this hardly solves the problem of their bills increasing dramatically.

Most importantly, as ELPC Witness Kubert points out, Dr. Brightwell fails to distinguish between conservation and efficiency:

Mr. Brightwell does not distinguish between conservation and energy efficiency and provides no evidence that Nicor customers are making energy efficiency investments. The decline in demand may be due to customers simply lowering their thermostat and living less comfortably in order to save on their gas bills. There is no evidence that Nicor customers are making real, permanent changes in the energy consumption of their homes and businesses through energy efficiency investments which will continue to deliver

energy savings regardless of the commodity price of natural gas.

ELPC Ex.2.0 at 2. The Commission should be looking to long term solutions to reducing consumption and increasing efficiency that the proposed efficiency program will provide.

### **CONCLUSION**

Since the Commission initially ordered the development of gas efficiency programs in the last Nicor rate case, prices have continued to rise and the concern regarding environmental issues has increased. The Commission needs to approve Nicor's proposal, as modified by ELPC, in order to start Nicor customers on the path towards savings and lower prices. Moreover, while \$15 million represents an appropriate starting point, spending needs to be increased over time to levels comparable to our neighboring states.

Respectfully Submitted,



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