

102 FERC ¶ 61,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Northern Illinois Gas Company) Docket No. IN03-6-000
d/b/a Nicor Gas)

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 14, 2003)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Market Oversight and Investigation (OMOI) and Northern Illinois Gas Company d/b/a Nicor Gas (Nicor Gas). The Agreement resolves all issues relating to a nonpublic, preliminary investigation conducted by OMOI under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2002), concerning apparent violations of the Natural Gas Act (NGA), 15 U.S.C. §§ 717 *et seq.* (1994), and Commission regulations on the provision of interstate gas service (18 C.F.R. §284.224) and on releases of interstate pipeline capacity (18 C.F.R. § 284.8).

2. Nicor Gas and OMOI stipulate that Nicor Gas provided interstate transmission and storage services that were not delineated in Nicor Gas's Operating Statement. That Operating Statement is on file with, and approved by, the Commission to govern Nicor Gas's provision of interstate natural gas services under its blanket certificate as a Hinshaw pipeline.¹ Nicor Gas also stipulates that it filed annual transportation reports, and semi-annual storage reports that failed to report all of its storage transactions and the bundling of transportation and storage revenues. The unauthorized transactions included:

¹A Hinshaw pipeline is exempt from Commission regulation under Sec. 1(c) of the Natural Gas Act, because its facilities are all within the boundaries of one state, and the gas it transports is ultimately consumed within that state. However, Nicor Gas has been authorized to use its pipeline and storage facilities to provide interstate transportation and storage services, subject to Commission regulation. Northern Illinois Gas Company, 61 FERC ¶ 62.060 (1992) (issuing blanket certificate); 95 FERC ¶ 61,452 (2001) (order accepting revised operating statement).

- use of rate formulas, such as revenue-sharing arrangements, that could only be implemented under negotiated rate authority, which Nicor Gas has not been granted;
- collections of revenues in excess of maximum lawful rates;
- bundling rates for interruptible storage and transportation services, without having a bundled rate on file in its Operating Statement;
- rate practices that appeared to include fixed charges for interruptible services;
- transactions that combined firm injections with interruptible withdrawals;
- interruptible services that provided for interruption of services only under specified circumstances; and
- firm services available only on Nicor Gas's Critical Days.

3. Furthermore, Nicor Gas identified various capacity release transactions that it admits may have violated Commission regulations applicable to such capacity releases (18 C.F.R. 284.8), including roll-overs of prearranged releases and re-releases of capacity. OMOI stipulates that Nicor Gas voluntarily disclosed these violations and possible violations of Commission regulations and cooperated fully with OMOI in documenting these transactions and answering all of OMOI's inquiries concerning these transactions.

4. Nicor Gas and OMOI have agreed to a series of remedies for the violations and possible violations:

a) Nicor Gas agrees to institute detailed training and compliance procedures to ensure that future violations of this nature do not occur, to conduct annual audits of its training and compliance procedures, and to make annual reports on these audits to the Commission to verify compliance with these stipulated compliance measures. Nicor Gas also represents to OMOI that it intends to implement organizational changes, as well as new policies and procedures that will be designed to, among other things, ensure Nicor Gas's continuing compliance with Commission regulations.

b) Pursuant to its agreement with OMOI Staff, Nicor Gas has already made refunds of \$762,530.97, inclusive of interest, to shippers who were charged in excess of the maximum lawful rate.

c) Nicor Gas agrees to give credits to its retail ratepayers (in the form of a credit to their Purchased Gas Adjustment (PGA) charge) in the amount of \$381,308, plus interest, to disgorge all revenue (except for recovery of fuel costs) realized from certain interstate transmission services not delineated in its Operating Statement.

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d) Nicor Gas agrees to give credits to its retail ratepayers (in the form of a credit to their PGA charge) of \$755,889, plus interest, to disgorge all of the revenues it realized from capacity release transactions that it admits may have violated Commission regulations.

e) Nicor Gas agrees to remit \$60,000 to the U.S. Treasury to cover the costs of the OMOI investigation.

The Commission finds:

The Agreement provides an equitable resolution of this matter and is in the public interest.

The Commission orders:

(A) The attached Stipulation and Consent Agreement is approved in its entirety without modification.

(B) The Commission's approval of the attached Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in this matter.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Northern Illinois Gas Company d/b/a Nicor Gas

Docket No. IN03-6-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

The Office of Market Oversight and Investigation (“OMOI”) and Northern Illinois Gas Company d/b/a Nicor Gas (“Nicor Gas”) enter into this Stipulation and Consent Agreement (“Agreement”), which resolves all issues arising from or pertaining to the non-public, preliminary investigation that OMOI conducted under Part 1b of the Commission’s Regulations,¹ concerning the provision of interstate services by Nicor Gas pursuant to 18 C.F.R. § 284.224 and the release by Nicor Gas of interstate pipeline capacity pursuant to 18 C.F.R. § 284.8.

II. STIPULATION OF FACTS

OMOI and Nicor Gas hereby stipulate and agree on the following:

- A. On August 13, 2002, a representative of Nicor Gas contacted OMOI to report that Nicor Gas had determined that it had offered services that were not delineated in its Operating Statement and, furthermore, that Nicor Gas had identified instances in which the revenues it collected were in excess of its maximum rates.
- B. Nicor Gas identified to OMOI several issues concerning its rates, including: (i) rate formulas that were not approved by the Commission, e.g. revenue-sharing arrangements, which could be construed as negotiated rates; (ii) several instances in which Nicor Gas collected revenues in excess of its maximum rates; (iii) rate practices that could be construed as bundling rates for interruptible storage and transportation services, although Nicor Gas did not have a bundled rate on file; and (iv) rate practices that could be construed as applying a fixed charge for interruptible services. Nicor Gas stated, with respect to items (iii) and (iv), that it had intended such rates to operate as discounted rates.
- C. Nicor Gas identified errors in the annual transportation and semi-annual storage reports it has filed with the Commission pursuant to 18 C.F.R. § 284.224(e) and 18 C.F.R. § 284.126. These errors included the failure to report all transactions in its April 8, 2002

¹ 18 C.F.R. Part 1b (2002).

storage report, the bundling of transportation and storage revenues in its semi-annual storage report, and minor inaccuracies in other reports.

- D. OMOI has concluded that poor record keeping and procedures contributed to these problems.
- E. On January 13, 2003, a representative of Nicor Gas contacted OMOI to report that Nicor Gas had identified possible violations of 18 C.F.R. 284.8, including roll-overs of prearranged releases or re-releases of capacity that may not have complied with the Commission's regulations.
- F. Nicor Gas self-disclosed these potential violations of Commission regulations and cooperated fully with OMOI's inquiry.

III. REMEDIES

1. General Matters

- A. Nicor Gas is currently reviewing its internal compliance and control procedures, including, but not limited to, regulatory compliance and administration of Commission-jurisdictional contracts. Nicor Gas has represented to OMOI that it intends, as a result of this review, to implement organizational changes, as well as new policies and procedures that will be designed to, among other things, ensure Nicor Gas' continuing compliance with the Commission's regulations.
- B. As part of this review, Nicor Gas agrees with the Commission that, without limiting the specific remedies set forth below, it will (i) institute a formal training process with respect to compliance with the regulations of the Commission, (ii) designate internal personnel as directly responsible for such compliance, and (iii) conduct regular reviews of its compliance with Commission regulations.
- C. Within six (6) months of Commission approval of this Agreement, Nicor Gas will submit a written report to the Commission reporting on the status of its reorganization and compliance activities.
- D. Within one (1) year of Commission approval of this Agreement, Nicor Gas will submit a written report to the Commission reporting on the status of its reorganization and compliance activities, including the results of the review of Commission compliance conducted thereunder.

2. Blanket Certificate Activities

- A. Nicor Gas refunded \$762,530.97, which equals all amounts, including interest, that it has collected in excess of the revenues that would have been generated by its maximum rates. Nicor Gas submitted a report to OMOI on January 17, 2003, detailing such refunds and providing work papers supporting such refunds. In the event Nicor Gas thereafter identifies any other instances in which it has collected revenues in excess of the revenues generated by its maximum rates, it shall promptly refund such amounts, with interest, and report such refunds to the Commission in this docket. Except as may be required pursuant to paragraph B hereof and any Commission action in Docket No. PR02-18-000, Nicor Gas shall have no additional refund liability with respect to services provided prior to December 16, 2002.
- B. In 2000–2002, Nicor Gas collected (and has retained, after consideration of the refunds referenced in paragraph A and net of fuel) \$381,308 with respect to certain firm services identified by OMOI. Nicor Gas hereby agrees that, notwithstanding any rate mechanism for the recovery of its gas costs it otherwise has in effect for service to its retail customers, 100% of this amount will be credited to its ratepayers through its purchased gas adjustment mechanism, Rider 6, Gas Supply Cost to Nicor Gas' ICC tariff, or any successor mechanism thereto ("PGA") and that no portion of this amount will be retained by Nicor Gas for the benefit of itself or its shareholders. Any amounts that are required to be credited to ratepayers shall include carrying charges as accrued under Nicor Gas' purchased gas adjustment clause, pursuant to the regulations of the Illinois Commerce Commission ("ICC"). These amounts shall be credited to ratepayers within thirty (30) days of the effective date of a final order issued by the ICC in ICC Docket Nos. 01-0705, 02-0067 and 02-0725, and Nicor Gas shall submit a crediting report to the Commission within sixty (60) days of such effective date. Nicor Gas shall report to the Commission on the implementation of this requirement on December 1 of each year until pending ICC proceedings related to recovery of its 2000–2002 gas costs are complete.
- C. Nicor Gas shall implement a training program with respect to services it provides pursuant to 18 C.F.R. § 284.224. The training program shall contain, at minimum, the following elements:

Training will be mandatory, and trainees are to include supervisors and employees engaged in the planning of, contracting for, solicitation of, execution of, approval of, or keeping records of interstate transactions. Training may take place in multiple sessions, provided the last session must be completed within one month of the commencement of each training cycle. All trainees must sign an attendance log, to be maintained by the human resources group, and Nicor Gas shall perform an annual review to ensure that all requisite employees attended

training. New hires must receive training, through written materials and one-on-one meetings or other formal training session with a qualified instructor with expertise in regulatory compliance, before undertaking any of the activities described earlier in this subparagraph.

Training will cover contract forms and procedures, including approved services, approved contract forms, jurisdictional issues, and the results of the immediately prior audit or internal review of operations. The first training session, held on January 7 - 8, 2003, included an overview of the matters described in Section II above, with an explanation of why such services and rates are not consistent with Commission rules and regulations. The written training materials, attendee log, and trainers' resumes for the first training sessions were filed with OMOI on January 24, 2003.

Training for each covered employee shall occur at least once every 12 months; provided, for the first two years, training shall be held every 6 months. If any audit subsequently identifies compliance issues, training shall revert to once every 6 months for the following 12 months.

An additional training session shall be held prior to the effective date of any changes in Nicor Gas' Operating Statement, whether such changes are initiated by Nicor Gas or filed in response to a Commission order.

D. Nicor Gas shall adopt the following business practices and procedures.

Nicor Gas shall adopt a written policy for approval by senior management, including legal, regulatory and accounting review, of (i) any proposed changes in its Operating Statement to be submitted to the Commission, and (ii) changes in contract forms. These policies shall also define the authority of Nicor Gas' employees to enter into contracts that require only "filling in the blanks" on approved forms and shall define the approval process for all firm services and for all services with a term of one year or more.

A "Hub Services Agreement" (or master contract) must be executed by both Nicor Gas and a shipper before service commences. If a Hub Services Agreement has been properly executed, a specific transaction may be commenced on the basis of telephone confirmations, provided (i) the shipper has previously been provided blank copies of the relevant contracts or transaction forms for the services requested, and (ii) Nicor Gas tenders a written confirmation to the shipper on the next business day.

Within 45 days of Commission approval of this Agreement, Nicor Gas shall file with the Commission a procedural document explaining the roles, responsibilities,

process steps and output of process steps, including examples of output documents for the contract approval and record keeping processes. For a period of one year after Commission approval of this Agreement, Nicor Gas shall submit monthly reports detailing any changes in such procedures and forms to the Commission; a monthly report is not required if no changes have taken place. Nicor Gas shall summarize all changes to procedures and procedural documents in the annual audit described in the next subparagraph.

Nicor Gas will conduct an audit once a year, for two years, to ensure compliance with the procedural documents, and the results of such audits shall (i) be filed with the Commission, and (ii) addressed at the immediately subsequent training session. The first audit will be conducted within one year of the date of the approval of this Agreement by the Commission. In the event the audits identify additional violations of the Commission's rules and regulations, the audit requirement or the reporting requirement set forth in the prior subparagraph may be extended by the Commission.

Nicor Gas will separate interstate and intrastate transactions by (i) using separate contract forms for interstate and intrastate services, (ii) establishing separate designations for interstate and intrastate delivery points, and (iii) using separate numbering systems for interstate and intrastate transactions. Each contract must be assigned a unique number, and contract numbers must be used in the contract database used to track contract activity. Contracts for interstate and intrastate services shall be physically separated and maintained, and separate data bases shall be maintained for each.

Nicor Gas shall separately track and record transportation and storage fees and billing determinants on a daily basis for purposes of preparing any required reports to the Commission and the reconciliation analysis described in this subparagraph. Within 45 days of the termination of each transaction, Nicor Gas shall perform a reconciliation analysis to determine compliance with maximum rates. Any refunds due as a result of such reconciliation analysis shall be paid, with interest, by the end of such 45 day period, and Nicor Gas shall file a refund report with the Commission; provided, in the event Nicor Gas files to implement rate forms pursuant to paragraph D below, the procedures approved by the Commission with respect to such rate forms shall supersede this sentence.

Within ninety (90) days of execution of this Agreement, Nicor Gas shall submit corrected semi-annual storage and annual transportation reports for 1998 to the present, with an explanation of all corrections.

- E. Absent a filing to modify its Operating Statement, as of December 16, 2002, Nicor Gas shall not (i) charge any rate that is based on revenue-sharing or other

formula, even if capped by Nicor Gas' maximum rates, or (ii) charge any rate that is expressly capped at a cumulative rate per MMBtu of service, or a cumulative amount for all services, provided under a contract, even if capped by Nicor Gas' maximum rates. Nicor Gas' standard forms of contracts shall contain express language on Nicor Gas' compliance with its minimum and maximum rates, and define the applicability of fuel charges in advance. Nothing herein shall preclude Nicor Gas from discounting its rates, without further filings with the Commission. Furthermore, nothing herein shall preclude Nicor Gas from filing changes in its Operating Statement to seek Commission authority to implement discount conventions (such as those described in clause (ii) of the second preceding sentence), payment plans or other rate forms.

- F. Nicor Gas renegotiated all contracts containing unauthorized services or rate forms by December 16, 2002, and Nicor Gas reported to OMOI on the status of the renegotiations on December 16, 2002.

3. Capacity Release

- A. Nicor Gas has identified to OMOI gross revenues of \$755,889 it received from capacity releases in 2000–2002 that may have been in violation of the Commission's capacity release regulations. Nicor Gas hereby agrees that, notwithstanding any rate mechanism for the recovery of its gas costs it otherwise has in effect for service to its retail customers, 100% of this amount will be credited to its ratepayers through its PGA mechanism and that no portion of this amount will be retained by Nicor Gas for the benefit of itself or its shareholders. Any amounts that are required to be credited to ratepayers shall include carrying charges as accrued under Nicor Gas' PGA. These amounts shall be credited to ratepayers within thirty (30) days of the effective date of a final order issued by the ICC in ICC Docket Nos. 01-0705, 02-0067 and 02-0725, and Nicor Gas shall submit a crediting report to the Commission within sixty (60) days of such effective date. Nicor Gas shall report to the Commission on the implementation of this requirement on December 1 of each year until pending ICC proceedings related to the recovery of its 2000–2002 gas costs are complete. Except as may be required pursuant to this paragraph, Nicor Gas shall have no additional refund liability with respect to capacity it released prior to February 27, 2003.
- B. For so long as Nicor Gas releases capacity pursuant to 18 C.F.R. § 284.8, Nicor Gas shall implement a training program with respect to services it provides pursuant to 18 C.F.R. § 284.224. The training program shall contain, at a minimum, the following elements:

Training will be mandatory, and trainees are to include supervisors and employees engaged in the planning of, contracting for, solicitation of, execution of, approval

of, or releases by Nicor Gas of capacity. Training may take place in multiple sessions, provided the last session must be completed within one month of the commencement of each training cycle. All trainees must sign an attendance log, to be maintained by the human resources group, and Nicor Gas shall perform an annual review to ensure that all requisite employees attended training. New hires must receive training, through written materials and one-on-one meetings or other formal training sessions with a qualified instructor with expertise in regulatory compliance, before undertaking any of the activities described earlier in this subparagraph.

The first training session, to be held within thirty (30) days of Commission approval of this Agreement, shall include an overview of the capacity release matters described in Section II above, with an explanation of why such releases may not have been consistent with Commission rules and regulations. The written training materials, attendee log, and trainers' resumes for the first training sessions shall be filed with the Commission within 15 days of completion of the last session of the first round of training.

Training for each covered employee shall occur at least once every 12 months; provided, for the first two years, training shall be held every 6 months. If any audit subsequently identifies compliance issues, training shall revert to once every 6 months for the following 12 months.

Nicor Gas will conduct an audit once a year, for two years, to ensure compliance with the capacity release regulations, and the results of such audits shall (i) be filed with the Commission, and (ii) addressed at the immediately subsequent training session. The first audit will be conducted within one year of the date of the approval of this Agreement by the Commission. In the event the audits identify additional violations of the Commission's rules and regulations, the audit requirement or the reporting requirement may be extended by the Commission.

- C. For the first two (2) years after Commission approval of this Agreement, Nicor Gas shall not release capacity at less than the maximum tariff rate applicable to the release pursuant to Section 284.8(h)(1) of the Commission's Regulations unless it has completed, with respect to any such release, a written checklist that shows that either (i) Nicor Gas has not released capacity in the previous month on the same pipeline to the proposed pre-arranged replacement shipper, or an affiliate of such shipper, at less than the maximum rate, unless such prior month's release was for a different service (i.e., storage v. transportation) or for a different transportation path that does not substantially overlap with the capacity to be released on a pre-arranged basis, or (ii) any such release in the previous month was either at the pipeline's maximum rates or was posted for bidding. This checklist must be completed for all pre-arranged capacity releases, whether or not

posted for bidding. All checklists must be retained until the end of the next audit immediately following the end of the release period.

- D. For the first two (2) years after Commission approval of this Agreement, all releases of capacity by Nicor Gas must be reviewed quarterly by personnel designated as directly responsible for regulatory compliance pursuant to Section III.1.B.(ii) above, and the results of the quarterly review must be signed by a supervisor with such responsibility. The signed reviews shall be retained by the designated regulatory personnel until the end of the next audit immediately following the reviewed quarter.

IV. TERMS

- A. OMOI and Nicor Gas agree that they enter this Agreement voluntarily and that other than the agreements set forth herein, no tender, offer, or promise of any kind whatsoever has been made by any party to this Agreement, or to any member, employee, officer, director, agent, or representative of any such party to enter into this Agreement. They further agree that they intend to settle only those matters referred to in this Agreement and that are within the Commission's jurisdiction and statutory authority to settle.
- B. Within 15 days of a final and non-appealable Commission order approving this Agreement without modification, Nicor Gas shall pay \$60,000 to the U.S. Treasury to cover the costs of the OMOI investigation. Nicor Gas shall make this payment by delivering a certified check, payable to the U.S. Treasury, to:

Federal Energy Regulatory Commission
Office of Market Oversight and Investigation
Division of Enforcement
888 First Street, N.E.
Washington, D.C. 20426

Nicor Gas shall not seek to recover any portion of this payment in its rates for ICC or Commission-jurisdictional services.

- C. If the Commission does not issue an order which becomes final and non-appealable approving this Agreement in its entirety, without modification, this agreement shall be null and void ab initio and of no effect whatsoever and neither OMOI nor Nicor Gas shall be bound by any provisions or terms, unless they otherwise agree in writing.
- D. Should the Commission's order referenced in Section IV, paragraph B above be subsequently modified on appeal in a fashion which modifies this Agreement, this Agreement shall be null and void ab initio and of no effect whatsoever and neither OMOI

nor Nicor Gas shall be bound by any of its provisions or terms, unless they otherwise agree in writing.

- E. Except as expressly stipulated and acknowledged and agreed herein, neither OMOI nor Nicor Gas makes or has made any admissions, acknowledgments, or agreements in connection herewith.
- F. The provisions of this Agreement shall be binding on Nicor Gas and its agents, successors, and assigns for a period of three (3) years after Commission approval of this Agreement; provided, no later than sixty (60) days after the third anniversary of such Commission approval, Nicor Gas shall file a report with the Commission stating that Nicor Gas has complied with the Agreement during its term; provided, further, Nicor Gas' obligations pursuant to Sections III.2.B and III.3.A of this Agreement shall survive until discharged in full pursuant to their terms;
- G. OMOI and Nicor Gas agree that a Commission order approving this Agreement without modification shall be a final and non-appealable order under Section 19 of the NGA.² By the Commission order approving this Agreement, OMOI shall terminate with prejudice its investigation of the matters resolved in this Agreement.
- H. With the exception of any administrative or civil remedies that may be imposed for failure to comply with the terms of the Agreement, the Commission's final and non-appealable order approving this Agreement constitutes a full and complete settlement of all administrative, civil, or other claims concerning the facts set forth in this Agreement that the Commission has or may have against Nicor Gas.
- I. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts this Agreement on the party's behalf.

² 15 U.S.C. § 717r (1994).

Agreed and accepted:

_____	_____
Dennis O'Keefe	Date
Deputy Director, Investigations and Enforcement	
Market Oversight and Investigation	

_____	_____
Rocco J. D'Alessandro	Date
Senior Vice President	
Northern Illinois Gas Company	
d/b/a Nicor Gas	