

UNITED STATES OF AMERICA 95 FERC ¶ 61,452  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, Linda Breathitt,  
Pat Wood III, and Nora Mead Brownell.

Northern Illinois Gas Company

Docket Nos. PR99-18-000 and 001  
Docket No. CP92-481-000  
(Not Consolidated)

ORDER APPROVING CONTESTED SETTLEMENT, AS MODIFIED,  
ACCEPTING REVISED OPERATING STATEMENT AND DENYING  
AUTHORITY TO NEGOTIATE RATES

(Issued June 27, 2000)

On August 4, 2000, Northern Illinois Gas Company (Nicor) filed a Stipulation and Agreement (Settlement) and a revised Hub Operating Statement (Operating Statement) intended to resolve issues related to its July 15, 1999, Application for Approval of Rates under Section 284.224 of the Commission's regulations (Application). The Application included proposals to implement (1) new services, (2) new and revised rates, and (3) a negotiated rates program (subsequently withdrawn and refiled on a pro forma basis). The Settlement is opposed by ANR Pipeline Company (ANR). As discussed below, the Commission will (1) approve the Settlement as modified herein, accept the Operating Statement, effective July 15, 1999, and (2) deny Nicor's proposal for authority to offer negotiated rates.

BACKGROUND

Nicor is a local distribution company in the State of Illinois operating under a tariff approved by the Illinois Commerce Commission (ICC tariff). Nicor, a Hinshaw pipeline under section 1(c) of the Natural Gas Act (NGA), also performs interstate transactions under a blanket certificate issued in Docket No. CP92-481-000 consisting of interruptible transportation as well as interruptible and firm storage. Its interstate services are performed under the terms of an Operating Statement on file with the Commission.

On July 15, 1999, in Docket No. PR99-18-000, Nicor filed an application under Sections 284.224 and 284.123(b)(2) of the Commission's regulations to revise its

existing rates, and to implement new firm transportation service, new parking and lending (PAL) service, and a new negotiated rates program. In a companion filing in Docket No. CP92-481-000, Nicor proposed a revised Operating Statement consistent with its proposals.

On September 29, 1999, ANR filed initial comments on the Application objecting to (1) the initial reporting provisions of the negotiated rates proposal, (2) a purported inconsistency in the way capacity is allocated under the current terms of the Operating Statement versus the ICC tariff, and (3) how Nicor currently charges for fuel under the Operating Statement. On October 15, 1999, Nicor filed a reply to ANR's comments. The comments and reply are discussed below together with comments on the Settlement addressing the same issues.

### THE SETTLEMENT OFFER

As a result of discussions on issues raised by its proposal, Nicor filed the proposed Settlement on August 4, 2000. As part of the Settlement, Nicor filed a revised Operating Statement which (1) incorporates the new and revised rates, (2) implements the new firm transportation and PAL services, (3) addresses issues raised by ANR in its initial comments by revising the fuel charge and capacity allocation provisions of the Operating Statement, and (4) withdraws the proposed negotiated rates program, refiling it instead on a pro forma basis for a separate Commission determination. The major elements of the Settlement are as follows:

- (1) Nicor may charge, effective July 15, 1999, (a) a maximum rate for interruptible transportation service of \$0.0804 per MMBtu, (b) a maximum reservation charge for firm transportation service of \$2.4465 per MMBtu, with a maximum commodity charge designed to recover only fuel costs, (c) a maximum rate for interruptible storage service of \$0.0876 per MMBtu per day, (d) maximum rates for firm storage service of \$1.333 per MMBtu for the monthly deliverability charge and \$0.0252 per MMBtu for the monthly capacity charge, and (e) a maximum daily rate of \$0.168 for parking and loaning service, plus such additional charges as set forth in the Operating Statement.
- (2) Nicor amended the Operating Statement to state that (a) prior to accepting a firm interstate shipper's designation of primary points, Nicor will analyze its system requirements, and will not accept the designation if it cannot provide the service, and (b) firm interstate service will be scheduled and curtailed on an equal basis with firm intrastate service.

- (3) Nicor amended the Operating Statement to state that (a) its fuel charge is zero unless incremental compression is necessary to implement a transaction, (b) charges for incremental fuel are based on the full fuel cost incurred by Nicor, and (c) the fuel charge provision is equally applicable to firm and interruptible shippers.
- (4) Nicor will refund to each affected shipper all amounts, if any, collected in excess of the Settlement rates, together with interest calculated in accordance with 18 CFR § 154.501 of the Commission's regulations, within thirty days of the effective date of the Settlement. Within sixty days of the effective date of the Settlement, Nicor will file an original and two copies of a refund report which shall include the amount of principal and interest refunded, and the dates on which any refunds were paid.
- (5) Nicor will file on or before July 15, 2002, an application for rate approval which either rejustifies the Settlement rates, or proposes such other rate as Nicor deems appropriate.<sup>1</sup>
- (6) Nicor's proposal to implement negotiated rates is not covered by the Settlement, and shall be addressed in a separate Commission order.
- (7) Nicor is not relieved of its obligation to file the reports required under Part 284 of the Commission's regulations.
- (8) The order approving the Settlement is without prejudice to any previous or future findings or orders made by the Commission, or any contentions by Nicor in any pending or future proceeding. The Commission's approval of the Settlement does not constitute approval of any principle or precedent.

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<sup>1</sup>Consistent with Consumers Energy Co., 94 FERC ¶ 61,287 (2001), Nicor may file a cost and revenue study in lieu of an application for rate approval.

## DISCUSSION AND COMMENTS ON THE SETTLEMENT

On August 24, 2000, ANR filed comments requesting that the Commission either reject, or modify the Settlement. On September 5, 2000, Nicor filed reply comments. These comments, along with initial comments on the Application, are discussed below.

### 1. Rates

The Commission finds Nicor's proposed rates to be just and reasonable. Nicor calculated its rates using actual costs and determinants. In accordance with the Equitable method, it allocated storage costs equally between capacity and deliverability. The proposed storage deliverability determinants are based on a three-year average of actual peak day withdrawals, an accepted design methodology. Similarly, the proposed capacity determinants are based on a three-year average of winter season cycled gas. Nicor's proposed return on equity is 11.13%, with an overall return of 9.67%, based on a capitalization of 41% debt and 59% equity. Finally, the proposed rate for the PALS is the total of the interruptible storage and transportation charges. The Commission has previously accepted initial rates for new PAL service based on this design method.

### 2. Conflict between the ICC Tariff and Operating Statement

#### A. The Parties' Positions

ANR believes there could be a possible conflict between Section 2.14.1 of the Operating Statement, which provides that all firm service (including intrastate firm service) is scheduled and curtailed on a pro rata basis; and a provision on Sheet No. 47 of the ICC tariff whereby Nicor, on critical days as defined in the ICC tariff, schedules and curtails intrastate gas supplies at receipt points based on whether the upstream shipper on the connecting pipeline has nominated the gas to be delivered to Nicor on a primary or secondary basis. Nicor agrees with a clarification offered by ANR that the ICC allocation provision will apply only after Nicor has allocated all firm service consistent with the pro rata allocation method in the Operating Statement.

ANR requests an additional clarification that Nicor should not have the discretion to restrict its interstate services to certain points on its transmission and storage systems in order to avoid potential capacity allocation conflicts between interstate and intrastate services. Nicor opposes this clarification on the grounds it would be prohibited from evaluating whether it is operationally capable of performing a potential interstate service,

and could therefore be compromised in its ability to meet other firm service commitments, including those required by the ICC.

### B. Discussion

The Commission finds that revised Section 2.14.1 of the Operating Statement, dealing with capacity scheduling and curtailment, resolves any potential conflict between the terms of the Operating Statement and Nicor's ICC tariff as to how Nicor allocates capacity on critical days. The Operating Statement provides that firm interstate service is scheduled and curtailed pro rata on an equal basis with intrastate service. This allocation method is consistent with general Commission policy on scheduling firm service, and provides a nondiscriminatory method of allocating capacity between Nicor's interstate and intrastate classes of shippers, even on days which the ICC tariff defines as critical. After Nicor has initially allocated capacity among interstate and intrastate shippers on a pro rata basis, whether it subsequently reallocates aggregated intrastate capacity by a different method is a matter subject to state jurisdiction.

We deny ANR's request to prohibit Nicor from restricting interstate shippers' access to certain points on its system to avoid potential capacity allocation conflicts with intrastate service. Under Section 2.14 of the Operating Statement, Nicor has the discretion to contractually limit the paths and duration of jurisdictional firm transportation service. Section 2.13 gives Nicor similar discretion to limit amounts of jurisdictional firm storage. Such limitations are consistent with Nicor's Hinshaw status. As a Hinshaw pipeline, Nicor is regulated as though it were an intrastate pipeline providing service under Section 311 of the NGPA. In Order No. 436-A, we found that an intrastate pipeline providing such service is not obligated to provide interstate transportation on a firm basis, and this policy "avoids the situation whereby an intrastate pipeline is required to offer firm service for out-of-state shippers, thus, progressively being turned into an interstate pipeline against its will and against the will of the responsible state authorities."<sup>2</sup> This policy allows an intrastate pipeline to limit the amount of interstate service it will provide, including where on its system such service will be provided. It is therefore appropriate for a Hinshaw pipeline such as Nicor to have similar discretion to determine if it can perform firm jurisdictional service without impairing its existing intrastate obligations, and discretion to limit the points at which interstate service will be provided.

### 3. Fuel Charges for Interstate Service

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<sup>2</sup>FERC Statutes and Regulations, Regulations Preambles 1982-1985 ¶ 30,665 at p. 31,694.

A. Comments

Commenting on the Application, ANR believes that current language in Section 5.10 of the Operating Statement establishing a maximum charge per MMBtu for fuel suggests that Nicor has the authority to discount its fuel charges, contrary to Commission policy. Noting a statement in Section 5.10 that unless Nicor is required to use incremental compression, the charge for fuel for interruptible shippers is zero, ANR seeks clarification (1) why it appears that interruptible shippers are entitled to have their fuel charges discounted to zero while firm shippers are not so entitled, (2) whether a fuel charge is assessed on transportation and again on storage when a transaction involves the use of both services, and (3) how Nicor determines which transactions require compression for the purpose of charging for fuel.

Commenting on the Settlement, ANR maintains that since interstate pipelines have to support and post their fuel charges, Nicor should not be allowed to impose fuel gas costs that vary from its posted rates. ANR also states that while Nicor clarified in the Settlement that fuel charges apply to both interruptible and firm service, this clarification does not address which shippers, transportation or storage, are subject to the cap. ANR notes that while Nicor, in initial reply comments, stated that the cap applies to transportation and storage in combination, the clarification is not included in the Settlement. From this, ANR concludes it is not clear whether Nicor impermissibly bundles fuel charges for combined transportation and storage services. ANR believes Nicor should be required to post separate fuel charges for transportation and storage services and provide support for each.

ANR also believes certain language in the Operating Statement requires clarification as to why incremental fuel charges apply only to interstate services. ANR asserts that Nicor does not allocate any gas costs to interstate shippers, resulting in a disproportionate share of fuel costs being allocated to intrastate operations. ANR argues this failure to allocate costs discriminates against intrastate services and permits Nicor to provide subsidized services to interstate shippers.

In response, Nicor states that because many of its transactions are performed by displacement, or rescheduling deliveries, "it looks to its entire system to assess whether a transaction has caused it to incur incremental fuel costs." Nicor also explains that the maximum fuel charge formula in the Operating Statement is the ceiling fuel charge shippers may be required to pay, but the actual charge for any specific transaction is established before service is provided. Nicor states that when an interstate transaction includes both storage and transmission, the fuel charge is applied only once.

On the issue of cross-subsidization, Nicor notes that it does not collect fuel costs from either its interstate or intrastate services through a tracker. Rather, its intrastate fuel charges are embedded in rates approved by the ICC. Nicor represents that, in reviewing such charges, the ICC takes into account the costs and revenues associated with interstate service. Nicor states that although fuel charges for interstate services are collected in a different way (by a separately stated direct fuel charge), this does not result in intrastate shippers bearing a disproportionate burden of fuel costs.

Nicor further states that its ability to assess fuel charges for interstate service within a range does not amount to impermissible discounting, but rather gives Nicor, in the absence of a fuel tracking mechanism, the discretion to determine if fuel charges are appropriate. Nicor also objects to ANR's proposal to require the posting of separate fuel charges for transportation and storage, noting that it assesses a fuel charge only one time, even if a shipper uses both transportation and storage.

#### B. Discussion

Section 5.10 of the Operating Statement provides that Nicor shall not charge for fuel unless it determines that incremental fuel is necessary for compression associated with a specific transaction, and notifies the shipper in advance of performing service. This section also places a cap on the fuel charge. This section gives Nicor the flexibility to determine actual incremental fuel costs and charges within a cap. Our approval here does not authorize Nicor to discount such charges to levels below actual costs. We have approved fuel provisions for interstate pipeline tariffs which operate in a similar manner.<sup>3</sup>

Regarding ANR's assertion that Nicor's intrastate services are subsidizing the fuel costs of its interstate services, Nicor has explained that its rates established by the ICC include an embedded cost for fuel. If ANR believes that the ICC established Nicor's intrastate rates using an improperly allocated fuel component, resulting in cross-subsidization, the proper forum to raise its concern is in a proceeding before the ICC.<sup>4</sup>

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<sup>3</sup>See, e.g., El Paso Natural Gas Company, FERC Gas Tariff, Second Revised Volume No. 1-A, Sheet No. 29.

<sup>4</sup>We issued a similar ruling in Mid Continent Market Center, Inc., 86 FERC ¶ 61,259 (1999), reh'g.denied in Panhandle Eastern Pipe Line Co., 88 FERC ¶ 61,262 (1999).

Negotiated RatesA. The Proposal

Nicor's proposal for negotiated rates is contained in pro forma Operating Statement sheets filed as an attachment to Settlement. In part, the pro forma sheets address how Nicor would make revenue comparisons and allocations when bids for capacity at the maximum recourse rate compete against bids at negotiated rates, including negotiated rates containing a commodity component. The pro forma sheets also state that Nicor will maintain separate records for negotiated rate transactions for each billing period. These records will include the volumes, billing determinants, rates, and revenues associated with negotiated rate agreements.

As initially filed, the proposal would have required Nicor to make public the terms of a specific negotiated rate in connection with its annual reporting requirement as a Hinshaw pipeline,<sup>5</sup> rather than when service begins or immediately thereafter, as required by the Alternate Rates Policy Statement (Policy Statement).<sup>6</sup> After ANR objected to this aspect of the proposal, Nicor stated it would comply with any reporting requirement imposed by the Commission. Nicor revised the pro forma sheets to state that Nicor will reflect a new negotiated rate agreement in revisions to the Operating Statement prior to beginning service under each agreement.

B. Discussion

As detailed below, the Commission denies Nicor's proposal to implement negotiated rates, without prejudice to it refileing a proposal after complying with the regulations applicable to interstate pipelines.

NGA Section 1(c) exempts pipelines from the Commission's Natural Gas Act jurisdiction when all gas received by the pipeline from outside the state is consumed within the state, and the pipeline is regulated by a state commission. In addition, Section

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<sup>5</sup>Under section 284.224(e)(1), Nicor, as a Hinshaw pipeline, is subject to the same reporting requirements as those applying to intrastate pipeline service authorized under subparts C and D of part 284. Intrastate pipelines file annual reports under section 284.126(b), stating information including total volumes transported for shippers and total revenues received for the service.

<sup>6</sup>Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; 74 FERC ¶ 61,076 (1996).

284.224 of the Commission's regulations allows Hinshaw pipelines to remain exempt from generally applicable Commission regulations while performing services under a blanket certificate issued pursuant to that section. Except for a particular rate election, service under the blanket certificate is subject to the same rate, terms and conditions, and reporting requirements as service performed by intrastate pipelines under Section 311 of the NGPA. Paragraph (5) of Section 284.224 specifically provides that the tariff filing requirements of part 154, which apply to interstate pipelines, do not apply to transactions performed under the blanket certificate.

The blanket certificate enables a Hinshaw pipeline to structure its interstate business without having to account for the impact of Commission regulations applicable to interstate pipelines. In contrast, interstate pipelines must offer shippers firm transportation service, capacity release, right of first refusal, flexible receipt and delivery points, and a right to segment to the extent operationally feasible; further they must observe the detailed accounting provisions of the Uniform System of Accounts, undergo an extensive review when filing a general section 4 rate case, and comply with the tariff filing requirements of part 154. Moreover, they must comply with extensive reporting requirements which enable both the Commission and third parties to monitor the presence of undue discrimination, and to monitor market activity in general. Additionally, a fully regulated pipeline must comply with affiliate reporting requirements in Sections 161 and 250.16. These safeguards help minimize the possibility of undue discrimination in the interstate pipelines' offering of negotiated rates.

Although Hinshaw pipelines are prohibited from engaging in undue discrimination in their provision of interstate service, they do not have to comply with the aforementioned requirements. Like intrastate pipelines performing section 311 service, Hinshaw pipelines are required only maintain an Operating Statement on file with the Commission, and to file annually to report their jurisdictional activity. In other words, with respect to their interstate activity, Hinshaw pipelines have greater latitude to make operational and business decisions than do interstate pipelines. Accordingly, without comparable regulatory obligations and safeguards, we must decline to approve negotiated rate authority for Nicor. To do otherwise would confer on Nicor a regulatory advantage over interstate pipelines with whom it competes.<sup>7</sup>

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<sup>7</sup>See Michigan Consolidated Gas Co., 85 FERC ¶ 61,080 (1998).

The Commission orders:

(A) The Settlement filed in this docket is approved subject to modification as discussed in the body of the order;

(B) Nicor's request to implement a negotiated rates program is denied without prejudice to Nicor refiling such a proposal consistent with the discussion in the body of this order; and

(C) The Operating Statement filed with the Settlement is accepted effective July 15, 1999.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.