

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company)	
d/b/a Nicor Gas Company)	
)	
Application for permanent Certificate of Public)	Docket No. 21-0698
Convenience and Necessity to construct, operate,)	
And maintain gas distribution facilities and to)	
Transact the business of furnishing gas service)	
to the public in Kankakee County, Illinois)	

**INITIAL BRIEF OF
PEMBROKE ENVIRONMENTAL JUSTICE COALITION,
BLACKS IN GREEN, GREEN POWER ALLIANCE
AND ENVIRONMENTAL DEFENSE FUND**

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NOW COME Pembroke Environmental Justice Coalition, Blacks in Green, Green Power Alliance and Environmental Defense Fund (“collectively, PEJC *et al.*”), pursuant to the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), 83 Ill. Admin. Code Part 200.800, and the briefing schedule established by the Administrative Law Judge (“ALJ”), to hereby file their Initial Brief in the above-captioned consolidated proceeding. Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor” or “the Company”) requested an Application for a permanent Certificate of Public Convenience and Necessity (“CPCN”) to extend its service territory to the Village of Hopkins Park in Pembroke Township, pursuant to Sections 8-406 and 8-406.2 of the Public Utilities Act, 220 ILCS 5/8-406, 5/8-406.2 (“the Act”). Nicor’s Application does not meet threshold statutory requirements for this ratepayer-subsidized expansion of Nicor’s natural gas system. The project is inequitable, Nicor has not established that it is capable of safely managing the construction and operation of pipelines in Pembroke, Nicor has not considered costs to prospective and new customers, and Nicor has not met statutorily required community input requirements as such input was not properly solicited, informed, or considered. For the reasons set forth below, Nicor’s Application should be denied.

I. INTRODUCTION

In this case, Nicor seeks to extend its service territory to Pembroke Township and requests that the Commission issue a permanent CPCN authorizing the Company to construct, operate and maintain approximately 35.7 miles of new main, services, and other facilities to serve new customers in Pembroke Township (“the Project”). Pembroke Township, located in Kankakee County near the Illinois-Indiana border, includes the Village of Hopkins Park, the primary target for the Company’s system expansion. Pembroke Township has a relatively high poverty rate and a median household income of \$29,293;¹ Hopkins Park is a “Qualified Census Tract”² by the United States Department of Housing and Urban Development. For the last two years, Nicor has been working with local public officials in and near Pembroke Township: first, on a campaign to build support for the legislation that ultimately included Section 8-406.2, Public Act 102-0609, enacted August 27, 2021, and then in advance of and during the pendency of this docket. Under Section 8-406.2, Nicor may apply for a CPCN to extend its service territory to Pembroke Township despite the fact that the costs would otherwise be greater than allowed under Nicor’s current tariffs. If the Company meets the requirements for the CPCN, contained in Sections 8-406 and 8-406.2 of the Act, the Commission may grant the CPCN.

Pembroke Township has a long and rich history - culturally, environmentally and ecologically. The historically Black farming community was founded by runaway slaves in the 1860s, and generations of residents since have been devout environmental stewards.³ Dr. Wright-Carter, MD, MPA, and co-founder of Black Oaks Center in Pembroke Township, explained that

¹ PEJC *et al.* Ex. 1.0 at 18.

² A qualified census tract is defined by the US Department of Housing and Urban Development is one in which 50% or more of the households are income eligible.

³ *Id.* at 5.

Pembroke is a rare ecological place because of the unique cross-generational environmental stewardship that has protected the lands.⁴ The Black Oak Savanna used to cover over a million acres in the region, from the time glaciers retreated.⁵ Unlike anywhere else in the area, Pembroke remains much as it was over 200 years ago, with rich biodiversity and an extremely healthy ecosystem.⁶ Fireflies still light up the night in the summertime, wide varieties of dragonflies dot the savanna, and tree frogs inhabit the forest.⁷ This is not happenstance – it was very deliberate. Generations of people here defended all life in the environment. Farming was done conscientiously and sustainably to ensure the environment was protected while food was grown.⁸ All of that is threatened by Nicor’s proposed Project, which would construct over thirty miles of new natural gas pipes and facilities without regard for whether residents want, need, or are even financially capable of using natural gas.

Dr. Wright-Carter is a board-certified primary care physician. Because of her interest in socio-economic and political determinants of health, Dr. Wright-Carter also obtained a Master’s degree in Public Health, Her studies focused on the factors and risks that are helpful to and improve health, and those that are detrimental to health, including the impacts of climate change.⁹ Dr. Wright-Carter co-founded the Black Oaks Center in Pembroke Township to equip future generations of sustainable farmers to mitigate and adapt to the impacts of climate disruptions and to be lifeboats in a resource-constrained world impacted by global warming.¹⁰ A longtime resident of Pembroke, Dr. Wright-Carter joined the Pembroke Environmental Justice Coalition to protect the people, health, land, and ecology of Pembroke threatened by Nicor’s system expansion.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 1.

¹⁰ *Id.* at 1, 8.

Nicor’s proposed natural gas system expansion is not just bad public policy; it is not supported by law. Nicor failed to meet its burden to demonstrate that it satisfies the requirements of Sections 8-406 of the Public Utilities Act, which governs CPCNs generally, and 8-406.2, which provides a mechanism for Nicor to request a CPCN for Pembroke Township as a “designated hardship area,” though the costs to Nicor are greater than would otherwise be allowed under the Company’s tariffs. Nicor’s Application fails on numerous counts: the project is inequitable; Nicor has not demonstrated that new natural gas service is the least-cost means of satisfying the needs of customers; Nicor did not consider costs to customers to convert to and use natural gas; the costs to construct and deploy the facilities are greater than allowed under Section 8-406.2; Nicor did not meet its statutory requirements regarding public meetings and consideration of public input; Nicor has not demonstrated that it is safely and efficiently managing the construction and operation of the new facilities. Therefore, its Application must be denied.

II. PROCEDURAL HISTORY / BACKGROUND

Pembroke Township has been a Black agricultural hub since it was founded in the 1860s by runaway slaves.¹¹ It was once the largest Black farming community north of the Mason-Dixon line. Generations of families grew hemp for the U.S. Navy during World War II, fed Black Chicagoans during the Great Migration, and created a local food infrastructure that included on-farm “u-pick” or “pick your own” orchards, fields, and agricultural tourism.¹² These families were committed stewards of the land, growing organically and biodynamically long before those terms were used. Generations of residents in Pembroke – from the indigenous people of the Potawatomi

¹¹ PEJC *et al.* Ex. 1.0 at 3.

¹² *Id.* at 3.

through present day residents – have been meticulous environmental stewards.¹³ As a result, this region is a renowned micro-biome and one of Illinois’ ecological treasures.¹⁴

Pembrokians have fought for over two centuries to protect the environment and local ecology. Because of continued devotion to the land, around January of 2020, when community members first began to learn about Nicor’s proposed legislation that would allow them to construct natural gas pipelines through Pembroke Township, they banded together to stand up against that injustice.¹⁵ Coalition members were concerned about the harms of Nicor’s proposed construction in Pembroke Township, including risks to the environment and to the health and wealth of the people of Pembroke. As more and more people learned about the pipeline and how it could impact their land, their health, their energy costs, and the environment, opposition to the natural gas system expansion grew.¹⁶ The PEJC contacted other communities that successfully fought against pipelines that would run through majority-Black neighborhoods, like the advocates for the Boxtown¹⁷ community near Memphis Tennessee – who put a stop to the Byhalia pipeline – and opponents of the Chickahominy Pipeline, and Atlantic Coast Pipeline.¹⁸ They wanted to connect with those communities and learn how to protect the land and people of Pembroke.¹⁹ Advocates and residents who had been a part of those victories also joined the PEJC.²⁰ As public awareness about the enabling legislation, Public Act 102-0609, and now this proceeding and the proposed Project, have grown, so have the number of people who have taken action with the PEJC.²¹

¹³ *Id.* at 3.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 4.

¹⁷ *See* <https://www.theguardian.com/us-news/2021/apr/22/byhalia-pipeline-memphis-black-landowners>

¹⁸ *Id.* at 4; *See* https://www.bayjournal.com/news/energy/virginia-county-fends-off-natural-gas-plant-but-battles-continue/article_03a0b6c6-0451-11ec-9950-47cbf821ba51.html

¹⁹ PEJC *et al.* Ex. 1.0 at 4.

²⁰ *Id.*

²¹ *Id.*

Meanwhile, from at least January 2020, Nicor has been convening a “steering committee” of Nicor staff and elected officials to build support for its system extension to the Village of Hopkins Park inside of Pembroke Township. The Steering Committee met at least 19 times between January 2020 and October 2021, including approximately monthly during Illinois legislative sessions while the bill that included 8-406.2 was considered.²² While Nicor did not provide full details of agendas for these meetings, the “Kick-Off” meeting materials and the meeting invitees for each meeting are revealing. Goals of the Steering Committee included developing a shared “approach, strategy and core messaging to convey vision as recommended by the sub-committees” as well as “reviewing and mitigating risks”.²³ The Steering Committee consists of public officials and their staff, plus numerous Nicor staff. Subcommittees of the steering committee include a “Communications Committee,” responsible for developing communications and press releases.²⁴ Communications subcommittee members included Nicor’s manager of PR/Media Relations and the Mayor of the Village of Hopkins Park. Invitees to the full Steering Committee meetings included no less than fifteen Nicor employees. The coordinated, concerted effort to promote the system extension project is evidenced through the identical messaging between Nicor and elected officials about the project, including in Nicor’s pre-filing public meetings for this case. As discussed further below, identical language and graphics – often with unsubstantiated claims of natural gas benefits, and without full explanations of the construction or risks – were used on materials disseminated by both the Village of Hopkins Park and Nicor. Though Nicor states that it did not provide payments, gifts, or other compensation to

²² PEJC *et al.* Cross Ex. 1 at 84-103.

²³ PEJC *et al.* Ex. 1.12, slide 6, 8, 10, 12, 14, 16.

²⁴ *Id.* at slide 16.

external members of the “steering committee,”²⁵ it is clear that they were, at minimum, closely coordinating with the Company.

Additionally, just as Nicor was preparing to file this case, on September 15, 2021, Illinois Governor Pritzker signed into law the Climate and Equitable Jobs Act (“CEJA”), Public Act 102-0662. That historic legislation makes Illinois a nation-leading state in equitable decarbonization and includes sweeping reforms to move Illinois toward a reliable, renewable, affordable clean energy future. CEJA targets “equity investment eligible communities,” including Pembroke Township, for many clean energy economic development opportunities.²⁶ Among CEJA’s numerous requirements and opportunities that will benefit Pembroke Township and other similar communities are: receiving at least 40% of the benefits of electric utility grid modernization and clean energy investments; incentives for developing local renewable energy projects; a Green Bank to finance renewable energy projects; a 2045 deadline for removing fossil fuel emissions from Illinois’ energy sector; ratemaking and consumer protections that ensure energy affordability for low-income energy customers; and hiring and contractor supports and requirements that ensure that residents of communities like Pembroke Township are able to benefit from the economic opportunities created by the State’s transition to renewable energy.²⁷ It would be antithetical to the decarbonization and clean energy objectives of CEJA to install new natural gas infrastructure in Pembroke Township just as billions of dollars in clean, affordable energy investments – many earmarked for communities like Pembroke – are becoming available.

²⁵ PEJC *et al.* Ex. 1.12.

²⁶ “Equity investment eligible community” is defined as R3 areas as established pursuant to Section 1-040 of the Cannabis Regulation and Tax Act, as well as environmental justice communities, as defined by the Illinois Power Agency. Pembroke Township and the Village of Hopkins Park are in R3 Zone 498 (*see* <https://r3.illinois.gov/eligibility>).

²⁷ Public Act 102-0662.

Pembroke residents should have a voice in determining whether they want natural gas or a cleaner energy alternative to meet their needs, particularly in light of Illinois' decarbonization objectives and the doors CEJA has opened for clean energy investments in Pembroke and other communities. Instead, Nicor offered residents a false choice of business-as-usual or natural gas, undertook a coordinated public relations campaign with local elected officials to promote their system expansion plans, and did not meet even the minimum standards of community outreach required by their own legislation to meet their statutory burden in this case.

III. MAIN EXTENSION PROJECT

Nicor requests a Certificate of Public Convenience and Necessity, pursuant to Sections 8-406 and 8-406.2 of the Public Utilities Act, to construct, operate, and maintain facilities that expand its system to the Village of Hopkins Park in Pembroke Township. Pembroke Township is a designated R3 area and an equity investment eligible community under the recently-enacted Climate and Equitable Jobs Act. The project would increase Nicor's gas service territory and extend its gas distribution system by installing 34.7 miles of new gas distribution main and related facilities.²⁸

A. The Project will Disrupt the Long-Protected and Unique Ecosystem in Pembroke

Pembroke Township is a unique micro-biome.²⁹ The area is largely savanna, which serves as a transition between prairie and forest.³⁰ The dwarfed black oak that thrives here is just one of the vital plants that grow on the savanna.³¹ Others include orange-fringed orchids (*platanthera ciliaris*) and yellow false indigo (*baptisia sphaerocarpa*). Plains pocket gophers, western glass lizards, and race runner lizards all inhabit the land alongside human residents. This biodiversity is

²⁸ Verified Petition at 3, 4.

²⁹ PEJC *et al.* Ex. 1.0 at 6.

³⁰ *Id.*

³¹ *Id.*

not an accident.³² It is the result of an extremely healthy ecosystem that has been steadfastly defended by those who inhabit the land.³³ It is the result of conscious, deliberate choices to forego infrastructure that could alter the land.³⁴

Nicor’s proposed system expansion puts the people and land of Pembroke at risk. While Nicor claims that the construction and operation of the new pipelines will not result in “permanent conversion” of the long-protected farmland or savanna, Dr. Wright-Carter explained that even temporary disturbances can cause tremendous damage. Agricultural practices deployed by generations of Pembroke farmers have been proven to enhance soil health.³⁵ According to the United States Department of Agriculture, Natural Resources Conservation Service of Illinois, maintaining and enhancing soil health is “one of the most important endeavors of our time.”³⁶ Healthy soils produce greater yields and more profitable farming operations, capture moisture reducing downstream flood risk, and sequester carbon from the atmosphere. Disturbances associated with construction will destroy soil composition and structure, eliminating ecosystem benefits to the public and generating uncompensated financial losses for farmers. Furthermore, Dr. Wright-Carter explained that the nature of the savanna in Pembroke, and the often-high winds there, make it especially vulnerable to topsoil disturbances during pipeline construction activities.³⁷ Nicor’s interpretation of its construction as “temporary” does not acknowledge or respect the generations of regenerative farming practices that would be risked through construction on or nearby farmland and savanna. What is “temporary” to Nicor could well be life-altering for the people, flora, and fauna that call Pembroke home.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ <https://www.nrcs.usda.gov/wps/portal/nrcs/il/soils/health/>

³⁷ PEJC *et al.* Ex. 1.0 at 21.

B. The Project is Uneconomic

Nicor's case focuses solely on the costs of pipeline construction to the Company, without consideration of the costs to new customers to actually take service, or costs to existing Nicor gas customers from the \$11.9 million for construction that will be socialized amongst all customers. Nicor did not even attempt to calculate costs to prospective new customers to take service, which are – likely to be considerable given they use heating sources other than natural gas. Additionally, Nicor's feasibility study is fatally flawed since it assumes many new customers without calculating whether any of those customers can afford to make the necessary conversions to take service. The Company's sole focus on its own bottom line is contrary to the requirements of 8-406, which puts primary weight on the cost or cost savings to the customers of the utility.

First, Nicor's blinkered view of its own financial ability, without consideration of the costs or costs impacts to existing and prospective customers, is contrary to law. The testimony of Anne Hizon, Manager, Rates for Nicor, asserts that the project is economic based solely on the company's feasibility study, but that study is fatally flawed. Ms. Hizon asserts³⁸ Staff similarly appears to have only considered whether the \$11.9 million expense of the project would impact Nicor's credit rating.³⁹ Whether the project would impact Nicor's credit ratings is, and should only be, one of many cost considerations in whether it is appropriate to approve this CPCN.

Second, though Nicor acknowledges – and in fact, relies on – the low-income (“qualified census tract”) designation of Hopkins Park, it did not consider potential customers' household incomes or their ability to pay for the costly and necessary building and appliance conversions needed to use natural gas, even if it is available to them.⁴⁰ The median household income in

³⁸ Nicor Ex. 6.0 at 3.

³⁹ Staff Ex. 2.0 at 3-4.

⁴⁰ Nicor Ex. 5.0 at 4.

Pembroke Township is \$29,293, and 42% of all households are considered “rent-burdened,” meaning that they pay more than 30% of their household income for rent.⁴¹ Almost half of all households in Pembroke Township are on cash public assistance or food stamps.⁴² It strains credulity to claim that these financial circumstances put households in a position to undertake the construction, upgrades, and new appliance purchases needed to convert to natural gas.

Indeed, Nicor admitted that it did not take potential customers’ household incomes or financial ability to pay for and/or finance appliance conversions, and the cost of utilizing Nicor Gas as an energy source, into account.⁴³ Nicor did not analyze the status of existing structures to determine building readiness for natural gas conversions.⁴⁴ Additionally, many properties have driveways far longer than the 500-foot subsidized service line allowance, so residents would also be responsible for paying for service line extensions beyond that allowance.⁴⁵ As Dr. Wright-Carter, a Pembroke resident, explained, her own driveway is half a mile long – more than five times the allowance that Nicor would subsidize.⁴⁶ Nicor did not consider any of that in its feasibility study, which is its sole evidence that the project is economic. Nicor’s response to Dr. Wright-Carter’s point that the feasibility study should have considered that buildings in Pembroke were not constructed for natural gas use is that it used “normal business practices” to calculate the expected number of new customers in its feasibility study.⁴⁷ However, this is not a “normal” system extension – it is an extension pursuant, in part, to Section 8-406.2, to a low-income, “designated hardship area.” That unique circumstance should require at least some additional

⁴¹ PEJC *et al.* Ex. 1.0 at 18; U.S. Census Bureau American Community Survey 2015-2019, Accessed at data.census.gov.

⁴² *Id.*

⁴³ PEJC *et al.* Ex. 1.11.

⁴⁴ PEJC *et al.* Cross Ex. 1 at 39.

⁴⁵ PEJC *et al.* Ex. 1.0 at 19.

⁴⁶ *Id.* at 19.

⁴⁷ Nicor Ex. 5.0 at 5.

analysis regarding the likelihood of prospective new customers to realistically take natural gas service. Nicor's failure to consider whether prospective customers are financially positioned to make necessary conversions, upgrades, and appliance purchases to take natural gas service from Nicor is a fatal flaw to its feasibility study, rendering it useless for analyzing project economics in this case.

Residents' questions in recent public meetings held by Nicor reveal that costs to customers are a primary concern of the community, including prospective new customers. Residents asked about or commented on the potential for "free" appliances and gas; financial assistance, incentives and funds for fuel switching; grant funding; hiring and paying for contractors to convert buildings; who will pay for new appliances; costs of pipe beyond the subsidized amount; and what happens if a building is not up to code and needs repairs prior to converting to natural gas.⁴⁸

Yet Nicor did not research, analyze or estimate the amount of grant funding or other financial assistance prospective customers might need for appliance conversions or other costs of utilizing natural gas.⁴⁹ Therefore, Ms. Hizon's reference to grants that may assist in appliance conversions through the Pembroke Township Natural Gas Investment Pilot Program Fund does not resuscitate the Company's position. The Company does not, and cannot, know whether the grant funding is sufficient to financially position any prospective customers to pay for any additional service line extensions beyond 500 feet, convert building hookups, and purchase new appliances that use natural gas.

Ms. Hizon goes on to argue that costs to convert to natural gas use "are not properly before the Commission in this docket, and the Company will address that point in briefs." Firstly, those costs are explicitly before the Commission, per Section 8-406(d). Secondly, even if they were not,

⁴⁸ PEJC et al. Cross. Ex. 1 at 43-47; 60-61.

⁴⁹ PEJC *et al.* Ex. 1.11.

Nicor's assertion that the Commission should consider costs to the Company but not costs to customers is self-interested, unreasonable, and inequitable.

Moreover, this CPCN is a prerequisite to eminent domain authorization. If the Commission grants the CPCN, and Nicor receives other necessary approvals, it could seek eminent domain authorization for private property. As described above, construction is likely to disrupt the delicate ecosystem, biodiversity, and rich soil in Pembroke, and could lead to uncompensated losses for farmers.⁵⁰

Nicor also has not explained whether or how the new assets constructed for this project will impact long-term affordability across its service territory or for its new/prospective customers in Pembroke. As Illinois residents increasingly transition to clean energy, low-income customers who cannot transition will bear an ever-increasing share of system costs while wealthier customers leave the natural gas system.⁵¹ Households that already pay too high a percentage of their income for energy cannot and should not have to take on new costs.⁵² Nicor estimates the useful life of the new assets to be installed for this project as being many decades: 70 years for distribution main, 50 years for services, 38 years for meters, 50 years for meter installations and 50 years for regulator installations.⁵³ Nicor's cost calculations are based on the assumption that it will not see any reduction in natural gas customers over the useful life of the new assets put in service for this project.⁵⁴ In response to a question as to whether Nicor believes the trend of increased natural gas prices is likely to continue over the useful life of the new assets put in place for this project, Nicor replied that "The Company cannot predict natural gas prices over the life of the new assets."⁵⁵

⁵⁰ PEJC *et al.* Ex. 1.0 at 6.

⁵¹ *Id.* at 20.

⁵² *Id.* at 21.

⁵³ PEJC *et al.* Cross Ex. 1 at 1.

⁵⁴ *Id.* at 2.

⁵⁵ PEJC *et al.* Cross Ex. 1 at 3.

Nicor’s failure to account for any reductions in customers over the useful life of the assets, and to consider natural gas prices over the life of the new assets, cast further doubt upon the legitimacy of their feasibility study and demonstrate that costs to customers, which Nicor did not even calculate, could be an insurmountable barrier to using Nicor’s natural gas system.

In addition to the carbon emissions created from the combustion of natural gas, methane, the primary component of natural gas, is a potent global warming agent.⁵⁶ In addition to the goals set forth in the Climate and Equitable Jobs Act, in 2019, Illinois joined the U.S. Climate Alliance, a group of states committed to reducing greenhouse gas (“GHG”) emissions consistent with the United Nations Paris Agreement.⁵⁷ Through that action, Illinois committed to reducing GHG emissions by at least 26-28% below 2005 levels by 2025, tracking and reporting progress, and accelerating new and existing policies to reduce carbon pollution and promote clean energy deployment.⁵⁸ Other states and local jurisdictions are adopting even more stringent emissions reduction requirements, both economy-wide and specific to the natural gas sector.⁵⁹ This trend, combined with steps Illinois has already taken to decarbonize the energy sector, evidence the likelihood of future mandated reductions of emissions from the natural gas sector. In the event of such requirements, the economics of this project will become even more untenable. The newest customers on the system, and the newest assets, could be the last remaining as wealthier and/or

⁵⁶ PEJC *et al.* Ex. 1.0 at 11.

⁵⁷ Executive Order 2019-06.

⁵⁸ Illinois Environmental Protection Agency, *Climate Change in Illinois*, available at <https://www2.illinois.gov/epa/topics/climate/Pages/default.aspx>.

⁵⁹ New York Public Service Commission Docket No. 20-G-0131; California Public Utilities Commission Docket R.20-01-007; Massachusetts Department of Public Utilities Docket No. 20-80; District of Columbia Public Service Commission Formal Case No. 1167; Colorado Public Utilities Commission Proceeding No. 20M-0439G. *See also* Washington Utilities and Transportation Commission Filing U-210553; Minnesota Public Utilities Commission Docket 21-565.

older areas of the system move to cleaner alternatives. This inequitable result should not be borne by customers in a designated hardship area who have vehemently objected to the project.

C. Nicor Ignored Clean Energy Alternatives to Natural Gas

Nicor relied on an incomplete and biased survey as its evidence of customer interest for this project. The survey was conducted as part of Nicor's campaign to pass the legislation that is now Section 8-406.2. Nicor states that it mailed a survey to approximately 523 "prospective customers," and, to date, has received responses from 279.⁶⁰ Marketing materials that preceded or included the survey included an advertisement in the Mayor's newsletter, a postcard, posts made by the Hopkins Park Facebook page, a Project FAQ flier, and a website.⁶¹ Those materials provide a highly limited and overly rosy picture of natural gas use and its costs, benefits, and risks. For example, the introduction to the survey in the Mayor's Newsletter calls natural gas "clean, safe, reliable and affordable," states that natural gas would create "sizeable savings" of up to 70 percent on energy bills, and tells residents "We need your help! Keep watch for important mailings from Nicor Gas with more information and a short survey on your level of interest in having gas energy in your home. To find out how much you could save by converting to natural gas, visit nicorgas.com/Pembroke."⁶² These unsubstantiated statements of "clean, safe, reliable and affordable" energy, and "sizeable savings," ignore the costs and risks of expanding the gas system to Pembroke Township and are clearly intended to drive positive responses to the advertised survey. All of Nicor's other marketing materials make similar claims, each one referring to Nicor's natural gas service as clean, safe, reliable and affordable.⁶³ Some materials, such as the Frequently

⁶⁰ Nicor Ex. 1.0 at 5.

⁶¹ PEJC *et al.* Ex. 1.10.

⁶² PEJC *et al.* Ex. 1.10, EDF 3.01 Exhibit 1.

⁶³ PEJC *et al.* Ex. 1.10, EDF 3.01 Exhibits 2-5.

Asked Questions handout, go even further, claiming that natural gas is “environmentally friendly” and “can mean serious savings,” then encouraging residents to fill out the survey.⁶⁴

The survey itself offers customers only the choice of converting to natural gas and does not compare interest in natural gas to any other alternative. It certainly does not advise customers of any economic or environmental risks of natural gas, nor does it advise respondents of renewable energy alternatives, including the programs supporting clean energy development to be available under the Climate and Equitable Jobs Act. For these reasons, Nicor’s survey offers customers a false choice: convert to natural gas or continue to use current energy sources. The biased materials driving potential respondents to the survey and the incomplete nature of the survey itself demonstrate that the survey is not reliable evidence of customer interest.

In comparison, Dr. Wright-Carter’s organization conducted a survey of economic development activities that compared natural gas to clean energy development in an apples-to-apples survey of Pembroke residents’ priorities. Black Oaks Center received an R3 (Restore, Reinvest, Renew) grant from the State of Illinois to involve the community in the economic development process.⁶⁵ Survey results indicated that respondents consistently ranked solar and other renewable energies higher than natural gas, with many respondents ranking natural gas as a “1” on a scale of 1 to 5 (1 being least important and 5 being most important for community economic development).⁶⁶ When faced with a fair comparison of natural gas or solar and renewable energy, respondents expressed a clear preference for using “solar and renewable energy for the community” to drive economic development in Pembroke.

⁶⁴ PEJC *et al.* Ex. 1.10, EDF 3.01 Exhibit 3.

⁶⁵ PEJC *et al.* Ex. 1.0 at 22.

⁶⁶ *Id.*

Public comments on the ICC’s e-Docket page further demonstrate that public sentiment for the project is not positive. Comments are overwhelmingly in opposition to the project, including concern from those who are “strongly against” the project, concern about the “lasting negative impact” of the project, and concern that community input has not been meaningfully considered. Like respondents to the economic development survey conducted by Dr. Wright-Carter, many commenters favor clean, renewable energy rather than expansion of the natural gas system.

IV. STATUTORY REQUIREMENTS

In order to receive a CPCN, a utility must meet the requirements set forth in Section 8-406 of the Public Utilities Act. In this instance, Nicor must also meet the requirements of Section 8-406.2. Where the costs of the main extension would be greater than normally allowed for subsidization under Nicor’s current tariffs, Nicor may be allowed to extend its service territory to serve Pembroke as a “designated hardship area” if it meets certain requirements, including demonstrating that the cost to construct and deploy the hardship area facilities is equal to or less than 250% of what the utility’s current tariffs would allow. As discussed in the Direct Testimony of Dr. Jifunza Wright-Carter and herein, Nicor has not met its burden of proof to meet the requirements of either 8-406 or 8-406.2.

In its Petition and Direct Testimony, Nicor Gas addresses whether the proposed project satisfies the requirements of Section 8-406.2 of the Act, and references Section 8-406(a), but not the other requirements of Section 8-406; particularly, 8-406(b) and (d). This omission is fatal to Nicor’s application as the Petition must satisfy the requirements of those sections for ICC approval.

When considering the applicability of Sections 8-406 and 8-406.2, the Commission must ascertain and give effect to the intent of the legislature.⁶⁷ In so doing the Commission should first

⁶⁷ *Schramer v. Tiger Athletic Ass’n of Aurora*, 351 Ill. App. 3d 1016, 1020, 815 N.E.2d 994, 997 (2004) (citing *In re Marriage of King*, 208 Ill.2d 332, 340, 280 Ill.Dec. 695, 802 N.E.2d 1216 (2003))

look to the plain language of Sections 8-406 and 8-406.2 and give the words their plain and ordinary meaning.⁶⁸ The statutory language is the “best indication of legislative intent.”⁶⁹ If “the statutory language is clear and unambiguous, the plain language as written must be given effect without reading into it exceptions, limitations or conditions that the legislature did not express and without resorting to other aids of statutory construction.”⁷⁰ The Commission must follow and implement that clear and unambiguous language “irrespective of its opinion regarding the desirability of the results surrounding the operation of the statute.”⁷¹ If the language of Sections 8-406 and 8-406.2 is ambiguous, then the Commission “may look beyond the language of the statute and consider extrinsic evidence of legislative intent.”⁷²

The plain language of Sections 8-406 and 8-406.2 make clear that Nicor’s petition must satisfy both sections.

The plain language of Sections 8-406 and 8-406.2 are clear that both apply to Nicor’s petition. Section 8-406(a) clearly states that “no public utility...shall transact *any* business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business” (emphasis added).⁷³ Further, Section 8-406(b) clearly states “no public utilities that begin construction of *any* new plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such

⁶⁸ *Id.*

⁶⁹ *Brucker v. Mercola*, 227 Ill. 2d 502, 513–14, 886 N.E.2d 306, 313 (2007) (citing *Business & Professional People for the Public Interest v. Illinois Commerce Comm’n*, 146 Ill.2d 175, 207, 166 Ill.Dec. 10, 585 N.E.2d 1032 (1991))

⁷⁰ *The Dep’t of Transportation of the State of Illinois, for & on Behalf of the People of the State of Illinois*, Petitioner, No. T17-0033, 2019 WL 6735300, at *9 (Nov. 26, 2019) (citing *In re Telephone Bell Co.*, 2005 WL 1902105, 65 Ill.C.C. Mar. 23, 2005); see also *Hall v. Henn*, 208 Ill.2d 325, 330, 280 Ill.Dec. 546, 802 N.E.2d 797 (2003)

⁷¹ *Id.*

⁷² *Id.* (citing *Williams v. Staples*, 208 Ill.2d 480, 490, 281 Ill.Dec. 524, 804 N.E.2d 489 (2004))

⁷³ 220 ILCS 5/8-406(a)

construction” (emphasis added).⁷⁴ Section 8-406(b) outlines requirements that Nicor must demonstrate in order for the Commission to determine that the proposed construction promotes “the public convenience and necessity,” and issue a certificate.⁷⁵

1) That the proposed construction is *necessary* to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (emphasis added)

2) That the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and

3) That the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.⁷⁶

Section 8-406.2 describes additional requirements that must be met for certain projects.

Section 8-406.2 “is intended to provide a mechanism by which a gas public utility may extend its service territory and gas distribution system to provide service to designated low-income areas whose residents do not have access to natural gas service and must purchase more costly alternatives to satisfy their energy needs.”⁷⁷ This intent is in contrast to Section 8-406, which broadly covers “construction of *any* new plant, equipment, property or facility or any extension or alteration thereof or in addition thereto,” including, by its plain language, the construction proposed by Nicor in its current petition.⁷⁸

Section 8-406(b) outlines the requirements for the Commission to determine that the proposed construction will promote the public convenience and necessity. Without supplanting those requirements, the more recently enacted Section 8-406.2(d) provides additional criteria for

⁷⁴ 220 ILCS 5/8-406(b)

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ 220 ILCS 5/8-406.2(a)

⁷⁸ 220 ILCS 5/8-406(b)

the Commission to grant a certificate of public convenience and necessity under the unique circumstances covered in the section for projects where the costs would otherwise be higher than is allowed under the utility's current tariffs. The legislature was undoubtedly aware of the general requirements of Section 8-406 and could have clearly replaced the requirements for determination in Section 8-406 with requirements for determination in Section 8-406.2. It did not. Therefore, the plain statutory language makes clear that both Section 8-406 requirements and Section 8-406.2 requirements apply.

Interpreting Section 8-406.2 to replace the requirements of Section 8-406 would lead to absurd and inconvenient results.

Per the Illinois Supreme Court, “when undertaking the interpretation of a statute, we must presume that when the legislature enacted a law, it did not intend to produce absurd, inconvenient or unjust results.”⁷⁹ If Section 8-406.2 were interpreted to replace Section 8-406, the interpretation would produce absurd and inconvenient results—even for Nicor. Section 8-406 specifies details on the issuance of certificates that are not addressed in Section 8-406.2 and that clearly must apply to Nicor's application. Section 8-406 provides the Commission with the power to issue temporary certificates in the event of emergency during the pending determination of the certificate for public convenience and necessity,⁸⁰ and allows for the Commission to modify or alter certificates on its own motion, or by an application by an individual or by Nicor.⁸¹ Section 8-406 additionally states that the certificates shall not be construed as granting a monopoly or an exclusive privilege, immunity, or franchise.⁸² By providing additional considerations to emergencies, modifications, and protections necessary to ensure the prevention of monopolization, the plain language of 8-406

⁷⁹ *Vine Street Clinic v. Healthlink, Inc.*, 222 Ill.2d at 282, 305 Ill. Dec. 617, 856 N.E.2d 422 (Ill. 2006)

⁸⁰ 220 ILCS 5/8-406(e)

⁸¹ 220 ILCS 5/8-406(f)

⁸² *Id.*

demonstrates the legislature's intent to acknowledge varying factors in an application for a certificate. If Section 8-406 were interpreted to not apply to Nicor's current application, none of these additional protections and pathways for Nicor to obtain a certificate would be available in the current case. Nicor's application would not be eligible for a temporary certificate in case of emergency or modification by the Commission, and any certificate granted could be construed as granting a monopoly. Such an interpretation would not only be contrary to the plain language of Sections 8-406 and 8-⁸³[OBJ] Furthermore, without Section 8-406, Section 8-406.2 would have no requirement of "necessity" for a CPCN. Section 8-406(b)(1) contains that requirement, and an application for a CPCN without it would lead to a clearly absurd result.

Nicor itself seeks approval pursuant to Section 8-406(a), but ignores the remaining statutory requirements in Section 8-406. It would also be an absurd result to determine that Section 8-406(a) applies, but the other requirements of Section 8-406 do not, despite the fact that nothing in Section 8-406.2 states that it supersedes or replaces those requirements.

Extrinsic evidence of legislative intent provides further indication that Section 406 applies to Nicor's application.

Assuming, *arguendo*, that it is ambiguous as to whether Section 8-406 applies to the present petition after the passage of Section 8-406.2, canons of statutory interpretation require the Commission to interpret the words of Section 8-406.2 in the context of the law as a whole. Reading 8-406 as a whole provides the necessary context to confirm the application of Section 8-406 and Section 8-406.2.⁸⁴

When specific statutory language is unclear or susceptible to multiple reasonable interpretations, the court may consider the statute as a whole and interpret words and phrases in

⁸³ *Vine Street Clinic v. Healthlink, Inc.*, 222 Ill.2d at 282, 305 Ill.Dec. 617, 856 N.E.2d 422 (Ill. 2006)

⁸⁴ *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1999)

light of other relevant provisions.⁸⁵ According to the Illinois Supreme Court, “each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous.”⁸⁶ At the same time, when interpreting statutes as a whole, courts reject “an interpretation that exalts one provision of a statutory scheme over another.”⁸⁷

In several subsections of Section 8-406, the legislature is explicit that it is exempting certain projects from general certificate requirements. For example, Section 8-406(g) states:

A public utility that undertakes any of the actions described in items (1) through (3) of this subsection (g) or that has obtained approval pursuant to Section 8-406.1 of this Act shall not be required to comply with the requirements of this Section to the extent such requirements otherwise would apply. For purposes of this Section and Section 8-406.1 of this Act, "high voltage electric service line" means...⁸⁸

Unlike the present matter, the legislature clearly specified its intent that Section 8-406(b) and Section 8-406.1 would not simultaneously apply.

Section 8-406(b-5) provides another example of clear legislative intent for certain kinds of projects to be exempt. It states:

Nothing in this subsection (b-5) requires the owner or operator of a high voltage direct current transmission line that is not a qualifying direct current project to obtain a certificate of public convenience and necessity to the extent it is not otherwise required by this Section 8-406 or any other provision of this Act.⁸⁹

The legislature understood other sections of 8-406 to be relevant to the language of section 8-406(b) and acknowledged the limits of the exemption described. Drafters used explicit language

⁸⁵ *Brucker v. Mercola*, 227 Ill. 2d 502, 513–14, 886 N.E.2d 306, 313 (2007) (citing *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 279, 271 Ill.Dec. 881, 786 N.E.2d 139 (2003))

⁸⁶ *Id.* (citing *Sylvester v. Industrial Comm'n*, 197 Ill.2d 225, 232, 258 Ill.Dec. 548, 756 N.E.2d 822 (2001))

⁸⁷ *Vill. of Riverdale v. Williams*, 2021 IL App (1st) 192396-U, ¶¶ 46-47 (citing *Van Milligan v. Department of Employment Security*, 373 Ill. App. 3d 523, 538-39 (2007))

⁸⁸ 220 ILCS 5/8-406(g)

⁸⁹ 220 ILCS 5/8-406(b)

to provide clarity and modify the default application of all relevant sections. In the present matter, the legislature did not do so.

In fact, Nicor's Petition requests approval pursuant to Section 8-406(a), but does not explain why other subsections are not addressed. As discussed below, even if Nicor attempted to meet those statutory requirements, it could not.

A. Nicor's Application Does Not Satisfy the Requirements of Section 8-406

Though the requirements of Section 8-406 clearly apply to Nicor's requested CPCN, and Nicor requested approval pursuant to Section 8-406(a), Nicor's Application does not meet the statutory requirements of Section 8-406(b) and (d), which set forth the required Commission considerations for whether a project "will promote the public convenience and necessity," (8-406(b)), and the "primary" consideration – costs or costs savings to customers – for the Commission in making its determination (8-406(d)).

i. Section 8-406(b): The Project is Not Necessary, Least-Cost, or Equitable

The Commission will determine that construction proposed by a utility seeking a CPCN will promote the public convenience and necessity only if the utility demonstrates that the proposed construction is necessary to provide adequate, reliable and efficient service to its customers, is the least-cost means of satisfying the service needs of its customers or promotes an efficient competitive electricity market, and is equitable to all customers.⁹⁰ The utility must also demonstrate that it is capable of efficiently managing and supervising construction, and is capable of financing the proposed construction without significant adverse consequences to the utility or its customers.⁹¹ Nicor has not met its burden of proof.

⁹⁰ 220 ILCS 5/8-406(b)(1).

⁹¹ 220 ILCS 4/8-406(b)(2) and (3).

As a threshold matter, Nicor admitted that it did not even consider: 1) costs to new customers to make necessary upgrades and use natural gas; 2) costs to existing customers to subsidize long-lived system expansion; or 3) the potential for or cost impacts of a declining customer base, whether due to greenhouse gas reduction commitments, increasingly affordable and accessible clean energy, or natural gas costs.⁹² Nicor also did not compare the costs of natural gas to clean energy alternatives.⁹³ Since Nicor did not analyze or provide evidence on those issues, it did not and cannot satisfy the requirement of demonstrating that the project is the least-cost means of satisfying the service needs of its customers.

Furthermore, the record is replete with evidence that the project and related costs are inequitable. First and foremost, Pembroke residents have not been a meaningful part of the development of this Project, starting from the time of its legislative inception, and have been ignored even during the statutorily-required pre-filing public meetings.⁹⁴ Nicor's representative moderating the public meetings went so far as to instruct members of the public that they were limited to two minutes for their comments, and that "this meeting is governed by the regulations that require it to be completely statements, and any questions you asked will be addressed at other community forums..."⁹⁵ These statements were patently false, and it is impossible to estimate their detrimental impact on community input given at the pre-filing meetings. As discussed in additional detail below, meeting notices, internet format, and presentations were also problematic for many reasons. Authentic and meaningful public engagement is a prerequisite to equity; the community has a right to understand and give meaningful input on the project.⁹⁶

⁹² PEJC *et al.* Ex. 1.11; PEJC *et al.* Cross Ex. 1 at 1, 2, 3, and 39.

⁹³ *Id.* at 40.

⁹⁴ PEJC *et al.* Ex. 1.0 at 19; PEJC *et al.* Cross Ex. 2.

⁹⁵ PEJC *et al.* Cross Ex. 2.

⁹⁶ PEJC *et al.* Ex. 1.0 at 19-20.

Additionally, the project will expand Nicor’s service territory just to the village of Hopkins Park – less than five of the over 50 square miles of Pembroke Township.⁹⁷ Since Hopkins Park is in the middle of Pembroke Township, the pipelines must transect other land in the Township to reach Hopkins Park.⁹⁸ It would be unfair and inequitable to approve a project that disrupts and sacrifices the land generations of residents have protected for the benefit of residents living on one-tenth of that land.⁹⁹ And many Hopkins Park residents may not be able to afford the necessary hookups, conversions, and new appliances, leaving an even smaller number of potential beneficiaries.¹⁰⁰

It is also inequitable to socialize the long-lived costs of these new assets amongst all Nicor gas ratepayers. Nicor estimates the useful life of the new mains, services, facilities and meters it would put in service for this project at 38-70 years.¹⁰¹ As Dr. Wright-Carter testified, and in line with Illinois’ climate commitments, Illinois, our country, and our globe should be equitably decarbonizing and transitioning to clean energy. The 38-70 year useful life of new assets for natural gas provision is far longer than is appropriate. Residents of Pembroke Township, an R3 and CEJA equity investment eligible community, should not be left behind while other areas transition to clean energy. As other areas of the state increasingly adopt cleaner energy alternatives, low-income customers will bear an ever-increasing share of system costs.¹⁰² That intergenerational inequity would impact residents for decades to come.

The project is also inequitable in that it would disrupt a long-protected ecosystem, threatening the livelihood of farmers whose crop yields depend on the extremely healthy soil there,

⁹⁷ *Id.* at 20.

⁹⁸ *Id.*; *see also* PEJC *et al.* Ex. 1.8, EDF 3.02 Exhibit 1 at slide 6.

⁹⁹ PEJC *et al.* Ex. 1.0 at 20.

¹⁰⁰ *Id.*

¹⁰¹ PEJC *et al.* Cross Ex. 1 at 1.

¹⁰² PEJC *et al.* Ex. 1.0 at 20.

and put people and land at risk in the event of a safety incident like a leak or explosion.¹⁰³ As discussed in greater detail below, Nicor is under investigation for safety incidents, and Pembroke Township has limited emergency services.¹⁰⁴ It is inequitable to risk the health and safety of the people and wildlife that call Pembroke home in order to bring natural gas to a sub-set of Pembroke residents in the Village of Hopkins Park. Furthermore, while Nicor may not consider it “permanent,” soil disruption from construction is a serious concern for farmers.¹⁰⁵ Dr. Wright-Carter, a farmer herself who teaches sustainable farming practices, explained that it can take years to build back soil composition and structure, at significant expense.¹⁰⁶ Declines in soil health as a result of the construction from this project could reduce crop yields and incomes, an especially inequitable result if those impacted farmers are not even in Nicor’s new service area of the Village of Hopkins Park.¹⁰⁷ The often-high winds experienced in Pembroke as a result of its savanna characteristics make it especially vulnerable to topsoil disturbances during pipeline construction activities.¹⁰⁸

Finally, the expedited nature of the instant docket threatens the equity of the project. The 120-day deadline for a Commission decision, extremely short testimony and briefing turnaround times, and technical nature of Commission proceedings are enormously high barriers to participation.¹⁰⁹ Dr. Wright-Carter explained that, for decades, communities of color have been disenfranchised from decision-making processes, even though they face the greatest harms from

¹⁰³ PEJC *et al.* Ex. 1.0 at 21.

¹⁰⁴ *Id.* at 18.

¹⁰⁵ *Id.* at 21.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

those decisions.¹¹⁰ She implored the Commission not to perpetuate those inequities here by approving the CPCN.

ii. Section 8-406(d): Primary Weight is on Costs to Customers, Not the Utility

Section 8-406(d) of the Act provides explicit guidance to the Commission in making its determination on a CPCN application, stating: “the Commission shall attach primary weight to the cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings, including the public utility’s engineering judgment regarding the materials used for construction.” Here again, Nicor’s failure to consider costs to customers¹¹¹ is a fatal flaw in Nicor’s Application. Absent any analysis of customer costs, the Commission fulfills its statutory duty of attaching primary weight to the cost or cost savings to customers of the project. Nicor did not evaluate building readiness, the costs of building conversions, the costs of new appliances, additional customer-funded service lines beyond the subsidized 500-feet, or the amount of grant funding customers would require in order to take natural gas service from Nicor. Those costs – likely considerable – must receive primary weight in the Commission’s determination.

C. Nicor did not meet the requirements of Section 8-406.2

Nicor relies primarily on the requirements of Section 8-406.2 for its CPCN approval, as the proposed project exceeds the costs otherwise allowed under current tariffs. In addition to the deficiencies described above, Nicor did not meet several critical requirements of Section 8-406.2.

¹¹⁰ *Id.*

¹¹¹ PEJC *et al.* Ex. 1.11.

i. Section 8-406.2(a): Nicor did not consider alternatives

As a threshold matter, Section 8-406.2(a) states that it is intended to provide a mechanism for areas whose residents must purchase “more costly alternatives to satisfy their energy needs.” Nicor did not consider or calculate the costs of any clean energy alternatives to natural gas.¹¹² Since it conducted no such analysis, it is not possible for the Commission to determine whether this CPCN would avoid Pembroke residents paying for “more costly alternatives to satisfy their energy needs.” The Climate and Equitable Jobs Act, with numerous programs that fund, incentivize, and in some instances require workforce training, contracting, utility investments, renewable energy construction, pilot projects, and protections for low-income energy consumers in Pembroke and other equity investment eligible communities, may enable cleaner, more affordable energy choices. Implementation of CEJA is just beginning; for example, the ICC is currently holding workshops in advance of electric utilities filing “beneficial electrification plans,” due to be submitted by July of 2022.¹¹³ It would be unjust and inequitable to ignore the numerous opportunities for clean energy afforded by programs pursuant to CEJA, in addition to currently-available alternatives that Nicor also did not consider. This injustice is particularly true given the multi-decade useful life of the infrastructure at issue here. Instead, Nicor only completed a cursory analysis of propane, natural gas, and existing space heating options. Pembroke should not be given the choice between natural gas and the status quo, especially when Illinois has just unlocked tremendous clean energy alternatives. Since Nicor did not analyze whether those alternatives could be less costly, it has failed to meet this statutory requirement.

¹¹² PEJC *et al.* Cross Ex. 1 at 40.

¹¹³ See <https://icc.illinois.gov/informal-processes/beneficial-electrification-workshops-2021-2022>.

ii. 406.2(c)(4) and (5): Costs to Construct and Deploy the Project Exceed the Statutory Allowance

Since Nicor only considered costs to construct, but not to “deploy” natural gas service in Pembroke, it has not met its statutory obligation under Section 406.2(c)(4) and (5) to include: a projection of the costs to construct and deploy the hardship area facilities; and a showing that the estimated cost to construct and deploy the hardship area facilities is equal to or less than 250% of the amount allowed under the gas utilities’ then current tariffs to provide standard service to extend main and services. Nicor’s filing only discusses the costs to construct the main extension, not to “deploy” it – which would require considering costs to customers to take service. If customers cannot afford to use natural gas, including due to the costs to convert buildings and appliances and any additional unsubsidized service line costs, Nicor cannot actually “deploy” the new facilities. Since Nicor did not project or even consider those costs,¹¹⁴ or household incomes¹¹⁵ (though Nicor agrees and relies upon the fact that Pembroke is a low-income “qualified census tract,”), it is not possible for the Commission to determine the full costs of deploying the facilities, including whether those costs exceed 250% of the amount allowed under its current tariffs.

iii. 406.2(c)(6) Pre-Filing Public Meetings were Deficient

Section 8-406.2(c)(6) requires Nicor to hold “at least 2 pre-filing public meetings in the community” and to consider public input from those meetings when developing and implementing its plans.¹¹⁶ The record makes clear, however, that Nicor failed to fulfill its obligation to gather input from the community and to consider such input when planning for the proposed project. Instead, Nicor’s approach to this statutory obligation reveals its desire to move the proposed

¹¹⁴ PEJC *et al.* Ex. 1.11.

¹¹⁵ *Id.*

¹¹⁶ 220 ILCS 5/8-406(c)(6)

project forward with as little public accountability and as little delay as possible. This strategy is reflected in the minimal notice of the public meetings provided to community members, the very limited and biased information provided on the project in meeting notices and at meetings, the holding of community meetings at inaccessible times and in inaccessible forums, and the artificial limitation of public commenters' time and refusal to respond to questions from the public under the false pretense that "regulations" imposed such limitations. As one would expect, Nicor's public input process resulted in relatively little public input, though several commenters raised critical concerns that mirror those noted in Dr. Wright-Carter's testimony. Following this process, Nicor held just one meeting to review community input and concluded, unsurprisingly, that the input required no changes to their proposed plans.

In order for Pembroke Township residents to provide input at Nicor's public meetings, it is clear that they needed sufficient advance notice that the meetings were occurring and of the purpose of the meetings. Nonetheless, on September 2, 2021, six days before its first public meeting and seven days before the second, Nicor sent "informational letters" about the hearing to its mail room for processing. According to Nicor they were "mailed thereafter," presumably delivered to Pembroke Township residents at best a few days before the actual meetings.¹¹⁷ Nicor also provided notice about the meetings via "informational fliers," but these were distributed on September 3 and September 4, 2021, four to five days prior to the first meeting.¹¹⁸ Nicor similarly posted signage in the community on September 3, 2021. At best, these last-minute efforts gave Pembroke residents a scant five days' notice of the impending hearings. Moreover, the notices provided were unclear as to the purpose of the meetings or the nature of the project to be discussed. Nicor provided photographs and examples of the notices of the pre-filing meetings with Nicor Ex.

¹¹⁷ EDF 2.03 at 1.

¹¹⁸ *Id.*

1.3. As evidenced there, roadside notices included a vague title, “Hopkins Park/Pembroke Township Expansion Project,” and vaguely mentioned “efforts to bring affordable energy” to Pembroke.¹¹⁹ The notice signs, presumably to be read from a car or as individuals walked past, stated “Virtual meetings Sept. 8 and 9 at 9:30am,” with numbered dates and times closely printed and in smaller font underneath the larger, vague title for the events.¹²⁰ They do not explain that the “efforts” or “expansion project” would construct, operate and maintain new natural gas pipelines and infrastructure in Pembroke Township.

Dr. Wright-Carter photographed the roadside signs she saw. The writing was so small she had to pull over to read it. Below is a photograph she took from her car:¹²¹



Given her previous knowledge of the proposal and involvement with the PEJC, Dr. Wright-Carter was in-tune to signage and notices related to Nicor and the project¹²² She noted that other residents may not have realized what it was. Other notices Nicor provided extolled purported benefits of the project, without mention of costs or risks, before encouraging residents to attend. For example, a post on the Facebook account of the Village of Hopkins Park dated September 6, 2021 stated:

¹¹⁹ PEJC *et al.* Ex. 1.0 p.11

¹²⁰ Nicor Gas Ex. 1.3

¹²¹ PEJC *et al.* Ex. 1.0 at 10; PEJC *et al.* Ex. 1.4.

¹²² PEJC *et al.* Ex. 1.0 at 10.

“Interested in learning more about the latest efforts to bring affordable energy choice to Pembroke Township? Register today to hear from project representatives on September 8 and 9 from 9:30-11 am CT. These virtual meetings will be free to the public and provide details on the proposed natural gas expansion. There will be an opportunity for those who attend to share input for consideration.”¹²³ Unfortunately, that input was strictly limited and not meaningfully considered. And, here again, the accompanying graphic – in larger, colored print – made no mention of Nicor or natural gas, stating only: “Virtual Community Meeting: Proposed Hopkins Park/Pembroke Township Expansion Project.”¹²⁴ Dr. Wright-Carter explained that, to this day, she does not believe most Pembroke residents know or understand what is being proposed for their community.¹²⁵

Even if residents went to Nicor’s webpage for more information, or read through additional materials provided at the public meetings, they received incomplete and biased information in favor of natural gas. As with Nicor’s materials accompanying its survey of “customer interest,” information from Nicor in advance of and during the public meetings is replete with unsubstantiated assertions regarding benefits of natural gas. For example, Nicor’s website asserts that natural gas is sustainable and environmentally friendly when measured by carbon dioxide emissions, but makes no mention of methane, a much more potent global warming agent in the first twenty years after emission.¹²⁶ The webpage makes similar assertions with respect to affordability and jobs benefits of natural gas.¹²⁷ What it does not do is compare natural gas

¹²³ Nicor Ex. 1.3, Exhibit A at 12.

¹²⁴ *Id.*

¹²⁵ PEJC *et al.* Ex. 1.0 at 11.

¹²⁶ PEJC *et al.* Ex. 1.0 at 11, citing <https://www.edf.org/sites/default/files/EDF-Methane-Science-Brochure.pdf>; <https://www.edf.org/climate/methane-crucial-opportunity-climate-fight>; Alvarez *et al.*, Assessment of Methane Emissions from the U.S. Oil and Gas Supply Chain, *Science* (July 2018), available at <https://science.sciencemag.org/content/361/6398/186>.

¹²⁷ PEJC *et al.* Ex. 1.0 at 11.

sustainability, jobs, or affordability to *any* renewable alternatives. The webpage references “energy choice,” but the only new energy choice discussed is natural gas.¹²⁸ Here again, Nicor presented a false choice between natural gas and existing energy sources in Pembroke, rather than making a fair comparison between natural gas and cleaner alternatives.

Beyond sufficient advance notice, Section 8-406.2 requires that the public meetings be held “in the community.”¹²⁹ Nicor did not hold its statutorily required meetings in the community. Instead Nicor chose to hold them virtually and at a time inaccessible to Pembroke residents. The two public meetings were held on back-to-back dates, September 8 and 9, 2021 and both were held at 9:30am, the middle of the working day for most people.¹³⁰ These meetings were also held on-line even though internet access is limited in Pembroke.¹³¹ Nicor was well aware of that fact; when the Company inquired with the local library about a rental space for meetings, they ruled it out in part based on “limited internet connectivity, which would not have allowed for remote presenters to attend.”¹³² Indeed, Pembroke Township lacks broadband internet, as shown below:¹³³

¹²⁸ *Id.*

¹²⁹ 220 ILCS 5/8-406(c)(6)

¹³⁰ Nicor Gas Ex 1.3 (Binswanger declaration) ¶5

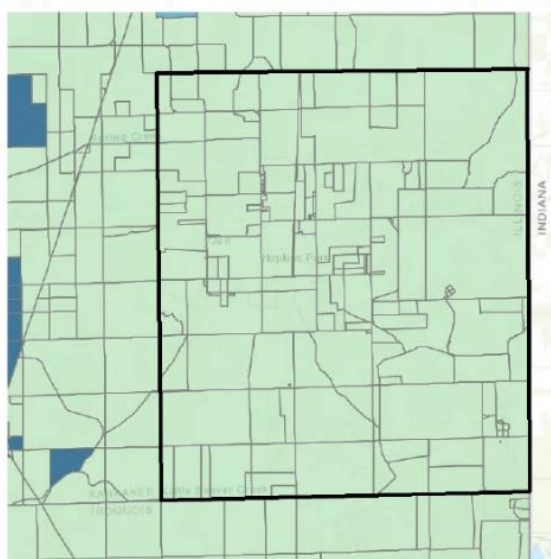
¹³¹ *Id.*

¹³² PEJC *et al.* Cross. Ex. 1 at 41.

¹³³ PEJC *et al.* Ex. 1.0 at 12-13; PEJC *et al.* Ex. 1.5.

Pembroke Township – Broadband Internet Access 2020

The entirety of Pembroke Township is considered unserved by Broadband Internet by the State of Illinois.



Three Fixed Wireline (e.g. DSL, cable) speed tiers have been calculated:

- Unserved (Less than 25 Mbps downstream or 3 Mbps upstream or no service available)
- Minimum 25 Mbps downstream and 3 Mbps upstream and less than 100 Mbps downstream and 20 Mbps upstream
- Minimum 100 Mbps downstream and 20 Mbps upstream

Residents who tried to attend virtually were not able to; Dr. Wright-Carter testified that she went to the website listed on the notice and was never let in, instead waiting in a virtual waiting room.¹³⁴ According to Lewis Binswanger, Nicor’s Vice President of Affairs, virtual meetings were “necessitated by the ongoing COVID-19 pandemic.”¹³⁵ This claim is belied, however, by the fact that Nicor began holding in-person meetings in Pembroke Township the very next week.¹³⁵ Nicor contacted the veteran’s hall, where it later held in-person meetings, about availability for the pre-filing meetings, but that inquiry was apparently made at the last minute given that “availability could not be confirmed before letters announcing the meetings had to be mailed to allow for timely notification.”¹³⁶ In reality, the evidence demonstrates that Nicor’s last-minute scramble to hold the statutorily-required pre-filed meetings apparently led to the need for webcast meetings rather than meetings in the community, as required by statute.

¹³⁴ PEJC et al. Ex. 1.0 at 12.

¹³⁵ Nicor Gas Ex. 4.0 (LaPorte Rebuttal) at lines 197-99

¹³⁶ PEJC et al. Cross Ex. 1 at 41.

Nicor Gas attempts to cover for its failure to fulfill its obligation to hold pre-filing public meetings in the community by emphasizing that it held subsequent in-person meetings that were, in fact, in the community: “In addition to these [required] meetings, Nicor Gas has engaged in a series of in-person meetings *in the community* to help inform and educate residents about the Company’s proposal.”¹³⁷ The first of these meetings occurred on September 16, 2021, the same day that Nicor Gas filed its petition in the present proceeding. Thus, these meetings, while in the community, do not meet Nicor’s obligation to hold *pre-filing* meetings in the community.

To provide public input on Nicor’s proposed project, Pembroke residents would also need to first have sufficiently detailed and objective information on the project. Such information would include purported benefits of the project, with substantiation, as well as potential costs and risks. For residents to weigh in on a project that Nicor purports will provide clean, reliable, and affordable energy to Pembroke Township residents, information on the pros and cons of other alternative energy sources is necessary.

As noted, Nicor did not provide this type of information in advance of the public meetings. It also failed to do so during the public meetings. Instead, in order to set a tone that would shape public input in its favor, Nicor began each meeting by presenting a slate of elected officials – all but one of whom also sit on Nicor’s Steering Committee, described above – who made broad and unsubstantiated claims about the benefits of the project for community residents. For example, the first public meeting began with comments from seven different elected officials, lasting nearly half the meeting, during which unsubstantiated claims were made that the project: “enables access to a cleaner, more affordable, and reliable energy source;” “brings tremendous opportunities for infrastructure growth;” and will lead to “more jobs.”¹³⁸

¹³⁷ Nicor Gas Ex. 4.0 (LaPorte Rebuttal) at lines 197-99 (emphasis in original)

¹³⁸ PEJC Cross Ex. 2; EDF Ex. 2.05 Ex. 1

Following these comments, Mr. Binswanger spoke next on behalf of Nicor. According to Mr. Binswanger, he “spoke on behalf of Nicor Gas to provide an introductory overview of the Hopkins Park main extension.”¹³⁹ In reality, Mr. Binswanger provided very little information on the proposed project and instead presented general and unsubstantiated claims on its benefits. This included claims that natural gas is a “sustainable” source of energy that “supports a cleaner energy future”¹⁴⁰ and that the project will lead to future business development in Pembroke Township.¹⁴¹ When the opportunity for public comment arose, the meeting host and facilitator misstated or fabricated regulations, claiming public comment was limited to two minutes per individual and that Nicor was prohibited from answering community questions.¹⁴² After posting notices a few days ahead of time, providing minimal descriptions of the meetings, and advertising the meetings as opportunities for community input, the facilitator told the community members that were able to attend the virtual meeting during the workday that “there will be other Q and A virtual meetings.” – apparently post-filing, making it impossible for Nicor to consider that input in its Application.¹⁴³

During the second meeting, one member of the public brought up the lack of information being provided to community residents: “Were any feasibility studies done? Were there any environmental and economic impact studies done? Because the town feels like we’re being left out. We’re not getting much information, just that we’re going to get free appliances and gas. We don’t know where it’s coming in.”¹⁴⁴ Nicor declined to answer these or other questions that were raised during the public meetings.¹⁴⁵ Nicor also did not address community members’ mistaken

¹³⁹ Nicor Gas Ex. 1.3 (Binswanger) ¶9

¹⁴⁰ EDF Ex. 2.05 Ex 1 at 17:40

¹⁴¹ *Id.* at 18:03

¹⁴² PEJC Cross Ex. 2; EDF Ex. 2.05 Ex. 1 at 22:00.

¹⁴³ *Id.*

¹⁴⁴ PEJC *et al.* Cross Ex. 1 at 45.

¹⁴⁵ *Id.*

impression that they were going to receive “free appliances and gas;” - even assuming some grant funding is available, Nicor has not calculated how much funding prospective customers would require or might receive in order to utilize natural gas. Numerous details of interest to community residents were not shared with the community, including: the project will include rights-of-way that include cropland, pastureland or forested land and not only land used for roadway purposes (“the *majority* of the apparent road rights-of-way do not include any cropland, pastureland, or forested land and only include areas that appear to be used and maintained for roadway purposes.” (emphasis added))¹⁴⁶ Nicor Gas will address any concerns raised by landowners and resolve or compensate for any damage caused during construction.”);¹⁴⁷ and the cost and benefits of non-gas alternatives.

Not surprisingly, Nicor’s wholly insufficient public input efforts resulted in very few public comments, and these comments received minimal consideration from Nicor. There were two comments at the first meeting and ten at the second.¹⁴⁸ Nicor chose not to answer questions asked by community members; in fact the meeting facilitator misstated that Nicor could not answer questions, per “regulations.”¹⁴⁹ The lack of community comments and questions for such a high-profile project demonstrates Nicor’s failed approach to public engagement.

Nicor held a single meeting to consider the public input it did receive and “determined that none of the public comments necessitated changes to its proposed filing.”¹⁵⁰ Nicor filed its petition just one week after the second public meeting.

¹⁴⁶ Nicor Gas Ex. 3.0 at 4 (emphasis added).

¹⁴⁷ *Id.* at lines 145-46

¹⁴⁸ Nicor Gas Ex. 1.3 (Binswanger declaration) ¶8

¹⁴⁹ PEJC *et al.* Cross Ex. 2 at 22:00.

¹⁵⁰ EDF 2.06

A review of basic guidance on effective public participation reveals the deliberate inadequacy of Nicor’s actions. For example, the United States Environmental Protection Agency (US EPA) provides a readily available *Public Participation Guide* for projects like Nicor’s. This guide makes the obvious point that “conducting meaningful public participation involves seeking public input at the specific points in the decision process and on the specific issues where such input has a real potential to help shape the decision or action.”¹⁵¹ The Illinois Environmental Protection Agency (IEPA) has a Public Participation Policy that is also easily accessible and provides basic guidance on how to effectively seek public input. Among other things, IEPA’s policy makes clear that effective engagement requires notice that provides basic information about a proposed project, and information about the project that includes a description of the proposed development and addresses key community concerns.¹⁵² None of these basic, effective practices were undertaken by Nicor.

In-person “Community Input Meetings” that Nicor has conducted since filing this Petition neither satisfy the statutory requirements nor remedy the failures of the pre-filing meetings. Comments and questions received at those meetings reveal that, despite Nicor’s commitment to responding to questions it refused to answer at the pre-filing meetings, many outstanding questions and concerns remain.¹⁵³ At every in person public meeting, up to and including a meeting held October 23, 2021, most questions were about costs to customers to convert to and use natural gas.¹⁵⁴ Meanwhile, Nicor’s presentations continued to focus on the asserted “benefits” of natural gas. Nicor’s “Community Information Meeting” presentation repeats its oft-used public relations

¹⁵¹ <https://www.epa.gov/international-cooperation/public-participation-guide>

¹⁵² <https://www.ilga.gov/commission/jcar/admincode/035/03501600ZZ9996AR.html>

¹⁵³ PEJC *et al.* Cross Ex. 1 at 59-61.

¹⁵⁴ *Id.*

messaging, including repeated use of a graphic featuring stacks of cash intended to portray natural gas as the least expensive energy source:¹⁵⁵



Potential customers demand and deserve to understand what it would cost them to switch to natural gas – not just the cost of the commodity, but the cost to convert their homes and businesses to natural gas; Nicor’s refusal or inability to answer those questions is tantamount to not considering public input.

Based on her expertise in the community, including conducting her own community input surveys, Dr. Wright-Carter also provided recommendations of basic practices Nicor should have used to adequately notice public meetings. First, she explained that the notices should have clearly stated that the meetings were about a proposed natural gas pipeline.¹⁵⁶ Second, pre-meeting agendas should have been published and Project information provided so that residents could better understand the issues at stake.¹⁵⁷ Third, meetings should have been held in a more accessible format. If some meetings were to be virtual, Nicor should have, at minimum, taken steps to ensure that every person who attempted to access the virtual meetings was able to do so.¹⁵⁸ Fourth, at least some meetings should have been outside of normal business hours to allow working residents adequate opportunity to participate.¹⁵⁹ Fifth, notices should have provided a map, or a link to a

¹⁵⁵ PEJC et al. Cross Ex. 1. at 70, 71, 75, 79.

¹⁵⁶ PEJC et al. Ex. 1.0 at 14.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

map, or at least a high-level description of the location of the proposed construction so that residents knew whether their land would be impacted, either directly or because of its close proximity to the construction and operation of the new pipelines.¹⁶⁰

In sum, Nicor's pre-filing public meetings, required by Section 8-406.2, were deficient, and Nicor did not consider public input as required by law.

iv. 406.2(d): Nicor Has Not Demonstrated that it is Capable of Efficiently Managing and Supervising the Construction and Operation of the Main Extension Project

Record evidence in this case calls into question whether Nicor is capable of constructing and operating the main extension in a manner that ensures safety of the residents of Pembroke, and protectsthe land generations of residents have stewarded,. Section 8-406.2(d)(3) requires that a CPCN only be granted if the Commission determines that the public utility is capable of efficiently managing and supervising the construction of the hardship area facilities, and has taken steps to ensure adequate and efficient construction and supervision of the construction. Nicor witness Mr. Stiglic took great pains to distinguish "safe" management from "efficient" management – apparently arguing that, so long as construction is managed "efficiently" from a business perspective, Nicor need not, under 8-406.2, demonstrate that it can manage the project safely.¹⁶¹ That would, of course, be an absurd reading of the statute.

Dr. Wright-Carter noted at least one recent safety incident in Nicor's system, and the Company is currently under investigation by the Illinois Attorney General's Office.¹⁶² Because the investigation is ongoing, state agencies cannot provide information about it.¹⁶³ The Commission cannot determine whether Nicor has satisfied 8-406.2(d)(3) until it has had an opportunity to

¹⁶⁰ *Id.*

¹⁶¹ *See* Nicor Ex. 6.0 at 4-5.

¹⁶² PEJC *et al.* Ex. 1.0 at 6-7, 18.

¹⁶³ 5 ILCS 140/7(d)(i); 5 ILCS 140/7(1)(f); 5 ILCS 140/7(1)(m).

review the results of that investigation. Mr. Stiglic does not deny that there are ongoing investigations, but urges the Commission to press on and make a determination in this case, because it has adopted pipeline safety standards and is empowered to investigate safety concerns.¹⁶⁴ Another state agency's investigation is certainly relevant to the Commission's determinations, and Nicor can cite no authority that the Commission is limited only to considering safety incidents it has, itself, identified or investigated. Furthermore, Mr. Stiglic's attempt to distinguish a fire at a well near Nicor's Ancona gas regulating facility rings hollow.¹⁶⁵ While that facility may be a different type of infrastructure, the totality of that incident and what it may reveal about Nicor's capability, and whatever else the Attorney General may be investigating, should at minimum, be considered by the Commission here.

Additionally, Dr. Wright-Carter explained that the physical characteristics of Pembroke, as well as the lack of robust emergency services, make it particularly vulnerable in the event of a safety incident.¹⁶⁶ Arguing that it is accustomed to rural service territories, Nicor suggests that, in the event of an emergency, customers should contact the utility at 1-888-NICOR4U.¹⁶⁷ In short, Nicor does not intend to deviate from its normal construction practices and procedures to ensure the residents of Pembroke and its rare ecology are protected.¹⁶⁸

Dr. Wright-Carter explained that the winds that whip across the savanna in Pembroke are regularly 20 or more miles per hour.¹⁶⁹ Especially given other recent natural gas explosions, including at a Nicor natural gas well,¹⁷⁰ Dr. Wright-Carter expressed concern that an accidental

¹⁶⁴ Nicor Ex. 6.0 at 7.

¹⁶⁵ *Id.* at 7-8.

¹⁶⁶ PEJC *et al.* Ex. 1.0 at 17-18.

¹⁶⁷ Nicor Ex. 6.0 at 6.

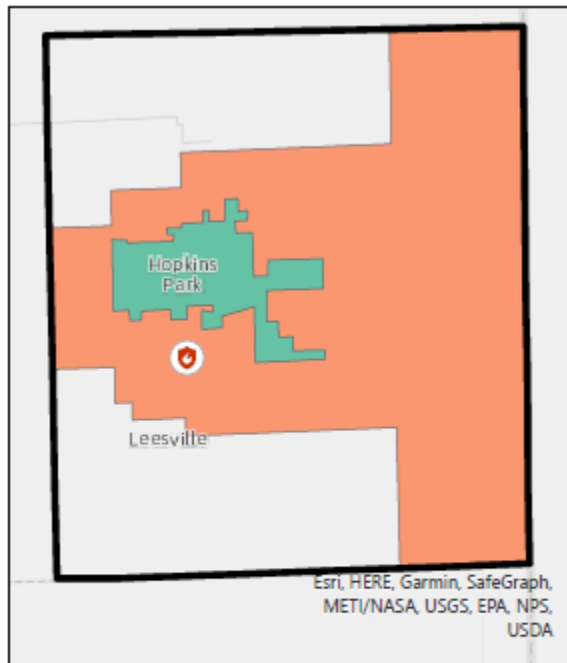
¹⁶⁸ Nicor Ex. 3.0 at 5.

¹⁶⁹ PEJC *et al.* Ex. 1.0 at 6-7.

¹⁷⁰ See <https://www.walls102.com/livingston-county-firefighters-battle-gas-well-fire/>

gas explosion could cause fires that spread quickly due to these high winds.¹⁷¹ This could irreparably harm the long-protected lands, and the people, animals and plant-life that call them home, before emergency services could arrive to control the fires.¹⁷²

Pembroke does not have its own police department, relying instead on the Kankakee Sheriff's Department.¹⁷³ The Township relies on a one-firehouse, all-volunteer fire department for its entire 54.2 square miles.¹⁷⁴ Those emergency services are far from many areas of Pembroke Township. Dr. Wright-Carter explained that, if she were to call for emergency services, her call would be routed through multiple call centers before reaching the Pembroke Fire Department, if needed.¹⁷⁵ The map below shows the location of the volunteer firehouse in Pembroke Township, which serves the entire shaded area:¹⁷⁶



¹⁷¹ PEJC *et al.* Ex. 1.0 at 6-7.

¹⁷² *Id.* at 7.

¹⁷³ PEJC *et al.* Ex. 1.0 at 7.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 8; PEJC *et al.* Ex. 1.2.

In addition to fire risks, a natural gas leak, particularly in more rural areas of the Township, could go undetected for a long time, releasing harmful greenhouse gases into the atmosphere.

Dr. Wright-Carter also explained that residents of Pembroke are disproportionately at risk from the health impacts of climate change, which is worsened by greenhouse gas emissions from natural gas. She also noted research regarding the health risks of natural gas combustion in buildings.¹⁷⁷ A physician and public health expert, Dr. Wright-Carter noted that those risks may be higher for low-income households in buildings that do not have proper ventilation.¹⁷⁸ Since Pembroke Township has not previously had natural gas service, it is likely that buildings there are not properly ventilated and would need additional investments.¹⁷⁹ These additional risks to the health and safety of Pembroke residents and the unique ecology of the area make it particularly critical that Nicor utilize more than just its typical 888- phone number and usual safety practices.

V. CONCLUSION

Nicor has not satisfied the requirements of Section 8-406 or 8-406.2 for a CPCN to expand its natural gas system to Pembroke Township. The Project is not necessary; least-cost, equitable or economic. Nicor did not consider alternatives to natural gas or consider the costs to customers to convert to and use natural gas. Public meetings were deficient for myriad reasons, and Nicor has not demonstrated that it is capable of safely managing construction and operation of the main extension project.

¹⁷⁷ PEJC *et al.* Ex. 1.0 at 8.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

It is paramount that Nicor and the Commission meaningfully consider what the residents of Pembroke want. That is only possible if residents have all of the information they need to understand what alternatives are available to their current energy sources, what the costs are, who benefits, who may be harmed, and any risks. Record evidence demonstrates that Nicor has not considered or provided that information, as it is required to do.

For these reasons, the Commission should deny Nicor's Application for a CPCN.

Dated: November 16, 2021

Respectfully submitted,

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