

A.15-11-011 ALJ/EW2/jt2

AGLR will be a wholly-owned first-tier corporate subsidiary of Southern. Central Valley's position within AGLR's corporate structure will remain unchanged.

Central Valley will continue to be a wholly owned subsidiary of Nicor Energy Venture Company, a wholly owned subsidiary of Ottawa Acquisition LLC, which in turn is a subsidiary of AGLR. The sole change will be that AGI R will be a wholly owned subsidiary of Southern.

2.3. Requested Authority

The Joint Applicants submit their application pursuant to Public Utilities Code Section 854.

California Public Utilities Code Section 854(a) requires authorization from the Commission before a company may "merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state . . ." The purpose of this and related sections is to enable the Commission to review proposed transactions and to take action in the public interest, as a condition of the transfer, before any transfer of public utility authority is consummated.¹ Absent prior Commission approval, § 854(a) provides the transaction is "void and of no effect."

2.4. Compliance With Rule 3.6

California Public Utilities Commission Rules of Practice and Procedure, Rule 3.6² sets forth requirements for an application to acquire or control a utility. The application complies with those requirements.

¹ See *San Jose Water Co.* (1916) 19 CUC 56.

² Title 20, California Code of Regulations.

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The most recent Annual Report to Shareholders, proxy statement, and financial statements from the Annual Report on Form 10-K for AGLR are attached to the application as Exhibit 3, Exhibit 4, and Exhibit 5, respectively. The most recent Annual Report to shareholders, proxy statement, and financial statements from the Annual Report on Form 10-K for Southern are attached to the application as Exhibit 6, Exhibit 7, and Exhibit 8, respectively.

A copy of the Agreement and Plan of Merger is submitted with the Application as Exhibit 9. Pursuant to the terms of the Merger Agreement and subsequent to obtaining all applicable regulatory approvals, Southern will acquire AGLR by purchasing its common stock at a price of \$66 per share. To finance this purchase, Southern plans to issue approximately \$3 billion in new Southern equity between now and the end of 2019 and to issue approximately \$5 billion in new debt at the Southern level.

3. Discussion

3.1. Standard of Review

The standard generally applied by the Commission to determine if a transaction should be approved under § 854(a) is whether the transaction will be "adverse to the public interest."³ While on occasion the Commission has also inquired whether a transfer will provide positive ratepayer benefits, this additional assessment cannot be applied readily to an entity like Central Valley, which is not a traditional investor owned public utility with captive ratepayers.

³ See, for example, *Quest Communications Corp.*, D.00-06-079, 2000 Cal PUC LEXIS 645, *18. This is also the standard applied by D.03-06-069 (2002 CalPUC LEXIS 975), in which the Commission authorized the transfer of control to EnCana, and by D.05-12-007 (2005 CalPUC LEXIS 527), which authorized the transfer of a 50% interest in the parent of Lodi Gas Storage, L.L.C.

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In fact, the Commission has not considered “ratepayer benefits” in its review of other change of control applications by independent gas storage providers.⁴

Public Utilities Code Section 854, subsections (b) and (c) do not apply to this transaction because, according to Joint Applicants, neither AGLR, Southern, nor any of either company’s affiliates has gross annual California revenues exceeding \$500 million.

3.2. The Proposed Transaction Is Not Adverse to the Public Interest

The Commission has previously expressed its intent to exercise its regulatory authority to review and approve proposals for a change in control of California’s independent gas storage providers and stated:

We think it prudent public policy to review and approve changes in the ownership and control of certificated natural gas storage utilities, whether those changes occur directly, or indirectly through corporate intermediaries. Such review should help to ensure the continued economic viability of such utilities and to prevent market manipulations that may affect not only their own customers but also larger ratepayer groups.⁵

In this instance, Central Valley’s proposed change in ownership is due to the proposed merger of AGLR and Southern. This proposed merger is not anticipated to have an impact on Central Valley’s operations, and Central Valley will continue to be responsible for operating and maintaining safety and environmental oversight under its CPCN. After the transaction is completed, Central Valley will continue to hold the CPCN for its storage facility issued in

⁴ See, D.11-05-030 (2011 Cal. PUC LEXIS 284) and D.14-12-013 (2014 Cal. PUC LEXIS 587).

⁵ D.05-12-005, 2006 Cal. PUC LEXIS 527 quoting D.03-02-071, 2003 Cal. PUC LEXIS 133.

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D.10-10-001 and will continue to be bound by the terms and conditions of its CPCN.

The proposed indirect change of control will also not affect Central Valley, its customers nor the market place. Joint Applicants state:

Notwithstanding the indirect change in ownership, Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission. In addition, the transaction will not result in the transfer of any certificates, assets or customers of Central Valley.⁶

Joint Applicants state that an affiliate of Central Valley, Sequent Energy Management (Sequent), has, since Central Valley's CPCN application filing and subsequent transfer of ownership to AGLR, entered into a small number of gas storage and gas transportation transactions on the West Coast.⁷ However, neither Southern nor its affiliates own gas storage facilities and pipeline assets in California or the West Coast, hold any firm natural gas storage capacity rights in California or the West Coast, or hold any natural gas transportation capacity in California.⁸ Therefore, the proposed transaction will have no significant impact on competition or the marketplace.

⁶ Application at 2.

⁷ The application states Sequent has two storage contracts in California, one at PG&E's Citygate and the other at Southern California Gas Company's (SoCalGas) Citygate. Both are for 2 Bcf Maximum Storage Quantity, expiring March 31, 2016. Sequent also states it has a storage services master agreement with Central Valley but does not currently have any active storage transactions there. Along with being active in the daily interruptible transmission capacity market on PG&E's system, Sequent also holds transportation capacity on Kern River Gas Transmission with firm deliveries into SoCalGas' system at Kramer and Wheeler Ridge points, expiring April 30, 2018. In addition, Sequent delivers landfill gas into California.

⁸ Application at 11.

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These transactions do not provide Sequent, Central Valley or any other affiliates with control of gas storage assets amounting to market power. In light of the foregoing, the merger will have no significant impact on competition in the relevant marketplace.

The application acknowledges the Commission required, by D.10-10-001, Central Valley to maintain \$50 million of general liability insurance per occurrence and in the aggregate (with certain inflation adjustments) and to obtain the insurance either directly or through Nicor. AGLR assumed this responsibility from Nicor, pursuant to the Commission's approval of Central Valley's transfer of ownership from Nicor to AGLR by D.11-05-030. Under the terms of the proposed transaction, Southern will replace AGLR as Central Valley's ultimate parent and, therefore, Southern shall replace AGLR as the responsible party and shall be authorized to obtain insurance on behalf of Central Valley.

Central Valley will benefit from Southern's combination with AGLR. The merger will combine two companies with complementary expertise and skill sets and will create a combined company with a more geographically diverse footprint. The overall size of the combined company and Southern Company's strong financial position is anticipated to be beneficial to AGLR and Central Valley. The Joint Applicants anticipate the combined company will have the financial resources to enable Central Valley to continue to meet all of its capital needs and to continue providing provide safe and reliable services to California customers.

Finally, the merger will have no adverse impact on safety. Central Valley will continue to function as an independent natural gas storage provider and the existing operating staff will continue to oversee day-to-day activities. Operations

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will remain consistent with current safety standards and Central Valley's Revised Natural Gas System Operator Safety Plan.

The change of ownership and control may be completed and future operations conducted with the assurance that it is not adverse to the public interest. The Merger Agreement is essentially a "paper" transaction which can be accomplished without any effect on Central Valley's operations and without a significant impact on competition in the relevant marketplace. Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission in the same manner it does today. Therefore, the transaction is not adverse to the public interest.

4. California Environmental Quality Act Compliance

Under to the CEQA⁹ and Rule 2.4 of the Commission's Rules of Practice and Procedure, we are required to consider the environmental consequences of projects that are subject to our discretionary approval.

We acknowledge that in some cases, it is possible that a change of ownership and/or control may alter an approved project, result in new projects, or change facility operations in ways that have an environmental impact. However, Joint Applicants state that the transaction at issue involves the indirect transfer of ownership of Central Valley as a result of the proposed merger. This transfer of ownership will not result in any direct or indirect change in the environment. Further, Joint Applicants note that Central Valley will continue to be obligated to operate its storage facility in the manner approved in D.10-10-001

⁹ Public Resources Code § 21000 *et seq.*

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and comply with all environmental conditions imposed in its CPCN and the Mitigated Negative Declaration.¹⁰

We conclude that under these circumstances, the proposed project qualifies for an exemption from CEQA pursuant to § 15061(b)(3) of the CEQA guidelines¹¹ as it can be seen with certainty that the project will have no significant impact upon the environment. Therefore, the Commission need perform no further environmental review for this application.

5. Conclusion

We find that the Application should be approved. This approval does not modify in any way the terms and conditions associated with the CPCN granted to Central Valley in D.10-10-001. However, once indirect ownership and control of Central Valley is transferred from AGLR to Southern, Southern shall assume responsibility for all obligations imposed on Nicor in D.10-10-001, including the requirement to obtain, if Central Valley cannot, an insurance policy to provide \$50 million (as adjusted) of general liability insurance coverage on behalf of Central Valley.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3368, the Commission preliminarily determined the category of this proceeding to be ratemaking, and that a hearing was not necessary. We affirm that categorization.

¹⁰ See Application at 12-14.

¹¹ Title 24, California Code of Regulations, § 15000 *et seq.*

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7. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Eric Wildgrube is the assigned Administrative Law Judge in this proceeding.

8. Comments on Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g)(1), the proposed decision of the Administrative Law Judge in this matter was mailed to the parties on February 10, 2016. Comments to the proposed decision were not filed.

Findings of Fact

1. Central Valley is a Delaware limited liability company and is duly registered to transact business in California. Its principal place of business is Lisle, Illinois.
2. Central Valley was issued a CPCN in D.10-10-001.
3. The Application seeks authorization for an indirect change in control of Central Valley as the result of a proposed merger between AGLR and Southern.
4. Neither AGLR, Southern, nor any of either company's affiliates has gross annual California revenues exceeding \$500 million.
5. Central Valley is a wholly-owned subsidiary of Nicor Energy Venture Company, which is a wholly owned subsidiary of Ottawa Acquisition LLC, which is a wholly owned subsidiary of AGLR.
6. On August 23, 2015, AGLR and Southern executed a Merger Agreement which provides AGLR will become a wholly owned subsidiary of Southern.
7. Under the Agreement and Plan of Merger, Central Valley will become an indirect wholly-owned subsidiary of Southern.
8. The proposed transfer will result in the change of ownership and control of Central Valley but will not result in the transfer of any certificates, assets or

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customers. Central Valley will continue to be bound by the terms and conditions prescribed by the Commission in D.10-10-001.

9. The proposed transfer will not result in any change to the services provided by Central Valley, or to the rates or terms and conditions under which services are provided.

10. The proposed transaction is not anticipated to have an impact on Central Valley's operations.

11. Neither Southern nor any of its subsidiaries own gas storage facilities or pipeline assets in California or the West Coast.

12. The proposed transaction will have no significant impact on competition or the marketplace.

13. The proposed transaction will not have an adverse effect on the public interest.

14. The proposed transaction will have no adverse impact on safety.

15. Central Valley will continue to operate as an independent natural gas storage provider subject to the jurisdiction of the Commission.

16. This change of ownership and control will have no significant effect on the environment since Central Valley will continue to be operated as previously authorized by this Commission, including all environmental mitigation measures and all monitoring requirements and restrictions imposed in D.10-10-001.

Conclusions of Law

1. Central Valley is subject to the Commission's jurisdiction and will continue to be subject to jurisdiction of the Commission in the same manner as it is today.

2. Public Utilities Code Section 854(a) provides that no person or corporation shall merge, acquire, or directly or indirectly control a public utility organized

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and doing business in California without first securing authorization from the Commission.

3. The transaction proposed constitutes a change of control, within the meaning of Public Utilities Code Section 854.

4. The standard generally applied by the Commission to determine if a transaction should be approved under Section 854(a) is whether the transaction will be "adverse to the public interest."

5. The Application should be granted under Public Utilities Code Section 854(a).

6. Public Utilities Code Section 854, subsections (b) and (c) do not apply to this transaction.

7. Central Valley should continue to be bound by the terms and conditions imposed on it as part of the CPCN granted in D.10-10-001.

8. Upon completion of the proposed transaction, Southern should be authorized to replace AGLR as the responsible party who may obtain the general insurance required in D.10-10-001 on behalf of Central Valley.

9. This change of control qualifies for an exemption from CEQA under CEQA guidelines § 15061(b)(3) and therefore, additional environmental review is not required.

10. The preliminary determinations in Resolution ALJ 176-3368 should be confirmed.

O R D E R

IT IS ORDERED that:

1. The Application of Central Valley Gas Storage, LLC, AGL Resources Inc. and The Southern Company for a change in the ultimate ownership and control

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of Central Valley Gas Storage, LLC, from AGL Resources Inc. to The Southern Company is approved pursuant to Public Utilities Code Section 854.

2. Central Valley Gas Storage, LLC, and its owners shall continue to be bound by all terms and conditions of Central Valley Gas Storage, LLC's certificate of public convenience and necessity, as granted by Decision 10-10-001.

3. Upon completion of the proposed merger of AGL Resources Inc. and The Southern Company, The Southern Company shall be authorized to obtain the general insurance required in Decision 10-10-001 on behalf of Central Valley Gas Storage LLC.

4. The authority granted by this Order shall expire if not exercised within one year from the effective date of this Order.

5. Application 15-11-011 is closed.

This order is effective today.

Dated March 17, 2016, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIJANE M. RANDOLPH
Commissioners

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
H. DOUG EVERETT
TIM G. ECHOLS
LAUREN "BUBBA" McDONALD, JR.
STAN WISE



FILED
MAY 12 2016
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May 12, 2016

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, GA 30334

Re: Docket No. 39971

Joint Request of Atlanta Gas Light Company, AGL Resources, Inc., and The Southern
Company for a Finding That Southern Company's Merger With AGL Resources, Inc.
Complies With Applicable Law

Docket No. 9574

Southstar Energy Services LLC d/b/a Georgia Natural Gas; Application for a Natural Gas
Marketer Certificate of Authority

Dear Mr. McAlister:

On behalf of the Georgia Public Service Commission, enclosed for filing please find the Order
Adopting Settlement Agreement.

We have furnished an electronic and/or a copy by mail of of this filing to all parties in this
docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey C. Stair".
Jeffrey C. Stair
Attorney

Enclosures

Cc: All parties of record (w/enclosures)

COMMISSIONERS:

CHUCK EATON, CHAIRMAN
LAUREN "BUBBA" McDONALD, JR.
TIM G. ECHOLS
H. DOUG EVERETT
STAN WISE



FILED

MAY 09 2016

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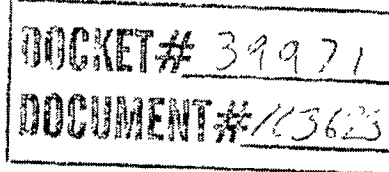
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DOCKET NO. 39971

RE: Joint Request of Atlanta Gas Light Company, AGL Resources Inc., and The Southern Company for a Finding that Southern Company's Merger with AGL Resources Complies With Applicable Law.

ORDER ADOPTING SETTLEMENT AGREEMENT

APPEARANCES:

On behalf of the Georgia Public Service Commission:

JEFFREY STAIR, Attorney
NANCY GIBSON, Attorney
PRESTON THOMAS, Attorney

On behalf of Atlanta Gas Light Company:

MARK CAUDILL, Attorney

On behalf of AGL Resources, Inc.:

ROBERT HIGHSMITH, Attorney

On behalf of Georgia Power Company and
Southern Company:

KEVIN C. GREENE, Attorney
BRANDON MARZO, Attorney

On behalf of SouthStar Energy Services, LLC
d/b/a Georgia Natural Gas:

ROBERT B. REMAR, Attorney

On behalf of Fireside Natural Gas and True
Natural Gas:

ROBERT B. BAKER, Attorney

On behalf of Gas South, LLC:

D. MARK BAXTER, Attorney
THOMAS McCLENDON, Attorney

On behalf of Georgia Association of Manufacturers:

CHARLES B. JONES, III, Attorney

On behalf of Georgia Industrial Group:

RANDALL D. QUINTRELL, Attorney

On behalf of Georgia Watch and The National
Housing Trust:

CHARLES HARAK, Attorney
JENIFER BOSCO, Attorney

On behalf of Liberty Utilities:

RUSSELL BRITT, Attorney

On behalf of Resource Supply Management:

JIM CLARKSON

On behalf of SCANA Energy Marketing, Inc.:

WILLIAM BRADLEY CARVER, Attorney
JOEL McKIE, Attorney

On behalf of Walton EMC Natural Gas:

JIM BOTTONE

BY THE COMMISSION:

1. BACKGROUND AND PROCEDURAL HISTORY

This matter comes before the Georgia Public Service Commission ("Commission") to consider the Joint Request of The Southern Company ("Southern"), Atlanta Gas Light Company ("Atlanta Gas Light"), and AGL Resources Inc. ("AGLR") (collectively "Joint Petitioners") for a finding that Southern Company's merger with AGL Resources complies with applicable law (the "Application"). On December 15, 2015, the Commission issued its Procedural and Scheduling Order setting forth the dates for the filing of testimony and briefs, as well as the date for hearings in this matter. These proceedings were held to encompass complex litigation pursuant to O.C.G.A. § 9-11-33. The Procedural and Scheduling Order was also issued in Docket No. 9574, which was consolidated with this proceeding for purposes of hearing, to consider the application of SouthStar Energy Services, LLC d/b/a Georgia Natural Gas for Amendment to Interim Certificate No. GM-0017 Reflecting a Change in Ownership at the Holding Company Level filed on December 7, 2015. In addition, the Commission joined Georgia Power as a party to this proceeding.

On December 17, 2016, the Joint Petitioners filed their Application. Simultaneously, the Joint Applicants filed the direct testimony of Ann P. Daiss, Gregory N. Roberts, Henry P. Linginfelter and the panel of Timothy S. Sherwood, Michael J. Morley and John M. Cogburn. On March 15, 2016, the Commission conducted hearings on the Joint Petitioners' direct case.

In addition to the Commission Staff ("Staff"), several parties intervened in this Docket. Interventions were filed by Georgia Industrial Group ("GIG"), True Natural Gas, Fireside Natural Gas, LLC ("Fireside"), Georgia Association of Manufacturers ("GAM"), Georgia Watch and the National Housing Trust, Resource Supply Management ("RSM"), Infinite Energy ("Infinite"), Gas South, LLC ("Gas South"), Scana Energy Marketing, Inc. ("Scana"), Walton Energy d/b/a Walton EMC Natural Gas ("Walton") and Liberty Utilities ("Liberty").

On April 1, 2016, Georgia Watch and the National Housing Trust filed the direct testimony of Dana Bartolomei. On April 4, 2016, the Staff filed the direct testimony of Richard Baudino and the panel testimony of Tom Bond and Lane Kohen.

On April 7, 2016, a Settlement Agreement that would resolve all issues relating to the Application was filed with the Commission. The Settlement Agreement, attached hereto as Attachment A and incorporated herein by this reference, was executed on behalf of Southern, Georgia Power Company, Atlanta Gas Light, AGLR, Staff, Gas South, Scana, Infinite, Walton, Fireside, True Natural Gas, Georgia Watch and the National Housing Trust, GAM, GIG, Liberty and RSM. On that same date, the Commission Chairman issued an order cancelling the hearings scheduled for April 14, 2016 and May 3, 2016, entering the direct testimony of Georgia Watch and National Housing Trust witness Dana Bartolomei and the testimonies of Staff witnesses Richard Baudino and the panel of Lane Kollen and Tom Bond into the record of these proceedings, and scheduling a Special Administrative Session on Thursday, April 14, 2016 following the 10:00 a.m. Energy Committee to consider issuing decisions in this proceeding.

At its April 14, 2016 Special Administrative Session, the Commission voted to adopt the Settlement Agreement in its entirety.

II. JURISDICTION

This Commission has jurisdiction over Southern Company's merger with AGL Resources for several reasons. Pursuant to an order issued on February 6, 1996, in Docket No. 6295-U, the Commission authorized a restructuring of Atlanta Gas Light, a gas utility that provides distribution and intrastate pipeline service pursuant to the regulation of this Commission, as a wholly-owned subsidiary of AGLR and reserved jurisdiction over that restructuring. As a result of that restructuring, Atlanta Gas Light retained its status as a gas utility with certificated operations subject to the jurisdiction of the Commission. AGLR has an ownership stake in one natural gas marketer, SouthStar Energy Services LLC, which operates as Georgia Natural Gas ("SouthStar"). Joint Petitioners have requested that the Commission determine the proposed reorganization to be lawful with Atlanta Gas Light continuing to own gas utility assets pursuant to its certificates and continuing to conduct all of its certificated gas utility operations, including all of its operations as an electing distribution company pursuant to O.C.G.A. § 46-4-154. The Commission also has jurisdiction over Georgia Power, which is a direct competitor of Atlanta Gas Light and SouthStar, and is a separate wholly-owned subsidiary of Southern.

In accordance with, O.C.G.A. § 46-4-25(a) requires the Commission to consider the following factors:

- Whether existing gas pipelines or distribution systems are adequate to meet the reasonable public needs;
- The volume of demand for such gas, and whether such demand and that reasonably to be anticipated in the future can support already existing gas pipeline and distribution systems, if any, and also the pipeline or distribution system proposed by the applicant,
- The financial ability of the applicant to furnish adequate continuous service and to meet the financial obligations of the service which the applicant proposes to perform;
- The adequacy of the supply of gas to serve the public;
- The economic feasibility of the pipeline or distribution system and the propriety of the engineering and contracting fees, the expenses, and the financing charges and costs connected with the pipeline or distribution system; and
- The effect on existing revenues and service of other pipelines or distribution systems, and particularly whether the granting of the certificate will or may seriously impair existing public service.

Most of these factors are more pertinent when an applicant is seeking a new certificate of public convenience and necessity, proposing to own or operate new gas distribution facilities, or proposing to serve a new area. They do not specifically address the circumstances where a corporate reorganization proposes no change in a subsidiary corporation's existing certificated authority and instead proposes a change of control through the acquisition of the voting stock of the ultimate parent holding company. Here the change in ownership is indirect and involves AGLR coming under common shareholder ownership with Georgia Power.

Section 46-4-25(b) of the Georgia Code provides that the Commission is not limited to consideration of the factors listed in O.C.G.A. § 46-4-25(a). In light of the constitutional prohibition of legislation that "authorize[s] any contract or agreement which may have the effect of or which is intended to have the effect of defeating or lessening competition," GA CONST. art. 3, § 6, ¶ 5(c)(1), the Commission's specific responsibility to protect competition in Georgia's deregulated natural gas marketplace pursuant to the Natural Gas Competition and Deregulation Act O.C.G.A. § 46-4-150 et seq., and the preservation of certain competition and prohibition of anticompetitive practices in the Georgia Territorial Electric Service Act, O.C.G.A. § 46-3-1 et seq., the Commission considered the effect of the proposed transaction upon the availability of gas and electric utility service, the cost of service, availability of service and competing sources of supply as authorized and required by law.

Pursuant to O.C.G.A. § 46-2-20 et seq., the Commission has, *inter alia*, general supervision authority over Georgia Power. This includes the authority to examine its affairs, the authority to establish a system of accounts for Georgia Power, and to ensure preservation of adequate and dependable electric service at just and reasonable rates.

III. FINDINGS AND CONCLUSIONS

1.

After a thorough and complete review of the evidence in the record, the Commission finds and concludes that the terms of the Settlement Agreement are reasonable and that the resolution of this matter, as provided in the Settlement Agreement, are appropriate and in the public interest of the State of Georgia.

2.

The Commission finds and concludes that Southern's merger with AGLR complies with applicable law and should be approved subject to the additional terms and conditions set forth in the Settlement Agreement that shall become obligations of the Joint Applicants, as well as Georgia Power Company and SouthStar following completion of the merger. (Settlement Agreement, paragraph 1)

* * *

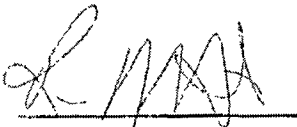
WHEREFORE IT IS ORDERED, that the Commission hereby adopts as an Order of this Commission, the Settlement Agreement attached hereto as Attachment A and incorporated herein by reference.

ORDERED FURTHER, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

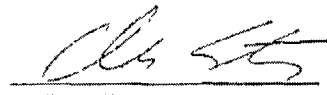
ORDERED FURTHER, that a motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as the Commission may deem just and proper.

The above by action of the Commission in Special Administrative Session on the 14th day of April, 2016.



Reece McAlister
Executive Secretary



Chuck Eaton
Chairman

5-5-16

Date

5/9/16

Date

Attachment-A

SETTLEMENT AGREEMENT FOR DOCKET NO. 39971

1. The Southern Company ("Southern"), Atlanta Gas Light Company ("Atlanta Gas Light"), and AGL Resources Inc. ("AGLR") (collectively "Joint Petitioners"), Georgia Power Company ("Georgia Power"), the Georgia Public Service Commission Staff, Gas South, LLC, SCANA Energy Marketing, Inc., Infinite Energy, Inc., Walton Energy d/b/a Walton EMC Natural Gas, True Natural Gas and Fireside Natural Gas, LLC agree that Southern's merger with AGLR (the "merger") complies with applicable law and should be approved subject to the following additional terms and conditions that shall become obligations of the Joint Petitioners, as well as Georgia Power Company ("Georgia Power") and SouthStar Energy Services LLC, d/b/a Georgia Natural Gas ("GNG"), following the completion of the merger. The Notices of Change in Corporate Ownership filed by SouthStar shall likewise be approved.
2. The Merger shall not cause Georgia Power or Atlanta Gas Light to operate, at any time, in a manner that harms their respective customers.
 - a. Merger Transaction Costs¹ are not recoverable through the ratemaking process.
 - b. Georgia Power and Atlanta Gas Light shall continue to devote resources necessary to maintain current service quality and reliability levels and standards under existing Commission orders (Dockets 1194², 15293, et al), or as standards are modified in future proceedings by the Commission. Atlanta Gas Light shall continue to be subject to and shall comply with all State and Federal Minimum Pipeline Safety Requirement.
 - c. Neither Goodwill³ costs nor fair value in excess of net book value is recoverable through ratemaking process and neither Georgia Power nor Atlanta Gas Light will seek to recover such costs through the ratemaking process. All Goodwill shall be recorded at Southern and shall not be "Pushed Down"⁴ beyond the AGLR level for accounting purposes. All fair value in excess of net book value shall be recorded at AGLR.
 - d. Neither Goodwill nor fair value in excess of net book value shall be "pushed down" to the regulated utility level for accounting purposes; and, therefore it shall not be included in any rate base costs, operating expenses, or in the cost of capital in any future Georgia Power or Atlanta Gas Light rate proceeding, rate plan, or regulatory monitoring/reporting.

¹ Merger Transaction and Transition Costs are defined as provided in subsection g herein.

² Goodwill is defined as the excess of the purchase price over the fair value of the regulated company.

³ Pushed Down accounting shall be defined as recording Goodwill created in the future, transfers of assets to an unregulated utility, recognition of other intangible assets, and/or the related increases in common equity and common equity ratio.

- e. All Merger Transaction Costs shall be recorded by Southern and/or AGLR. No Transaction Costs shall be charged or allocated to Georgia Power or Atlanta Gas Light for accounting purposes except as provided for herein.
- f. No Merger Transaction Costs shall be included in any rate base costs, operating expenses, or in the cost of capital in any future Georgia Power or Atlanta Gas Light rate proceeding, rate plan, or regulatory monitoring/reporting.
- g. Merger Transaction Costs shall be defined as "costs incurred in pursuing and executing the merger" (response to STF 3-1(a)) and shall include, but are not limited to:
 - i. Legal, consulting, and other professional advisor costs to initiate, prepare, consummate, and implement the merger, including obtaining regulatory approvals, and compliance with regulatory conditions
 - ii. Rebranding AGLR and affiliates as Southern Company affiliates
 - iii. Directors and Officers ("D&O") tail insurance
 - iv. Executive change in control (severance) costs
 - v. Executive retention agreement costs
- h. No Merger Transition Costs shall be included in any rate base costs, operating expenses, or in the cost of capital in any future Georgia Power or Atlanta Gas Light rate proceeding, rate plan, or regulatory monitoring
- i. Merger Transition Costs shall be defined as costs incurred to combine and integrate operations of Southern and AGLR after the Merger closes. Merger Transition Costs will be incurred prior to and following the closing of the Merger, including expenses incurred to align differing technology platforms in support of the combination and integration of operations between Southern Company and AGLR.⁴ Southern and AGLR will account for and track Merger Transition Costs separately using manual cost tracking techniques and by utilizing specific accounting codes to identify these costs before the merger closing and after the closing through December 31, 2019.
- j. Merger Savings shall be defined as savings achieved as a result of combining and integrating operations of Southern and AGLR before and after the Merger closes. In determining Merger Savings, parties shall utilize the methodology used in the Concentric study filed by AGILC on December 9, 2013 in Docket No. 31647 to

⁴ Cost incurred in the ordinary course of both or either Georgia Power's or Atlanta Gas Light's business that would have been incurred by either or both companies irrespective of the merger, including but not limited to technology or automation upgrades or improvements and/or functional reorganizations, shall be considered neither Transaction nor Transition Costs. To the extent that parties disagree as to the proper designation of any cost, the Commission shall make the determination.

calculate the Nicor merger savings in Docket No. 31647, except as modified in this Stipulation.

Net Merger Savings shall be defined as the difference between Merger Savings and Merger Transition Costs. However, Net Merger Savings shall never be negative.

The Joint Applicants will take reasonable and prudent steps to integrate the companies and identify and implement efficiencies and cost savings. Neither Georgia Power nor Atlanta Gas Light shall seek recovery of any Transition Costs incurred. Georgia Power and Atlanta Gas Light shall be allowed to retain the entirety of the actual Merger Savings achieved in each of the three calendar years following the merger. Following the initial three years, all Merger Savings shall be shared on a 60/40 basis between ratepayers and the companies for an additional three year period. Thereafter, all Merger Savings shall be flowed through to customers of Georgia Power and Atlanta Gas Light either through base rates or through a surcredit rider.

Georgia Power and Atlanta Gas Light each shall file at the end of the first quarter following two full calendar years following the Merger closing, a report with detailed schedules showing:

- i. Goodwill Costs and fair value write-ups in excess of net book value by account/subaccount recorded on its accounting books, if any; including, but not limited to, any charges from either Southern Company Services or AGL Services Company;
- ii. Merger Transaction Costs by account/subaccount recorded on its accounting books, if any, including, but not limited to, any charges from either Southern Company Services or AGL Services Company;
- iii. Merger Transition Costs, by account/subaccount recorded on its accounting books, including, but not limited to, any charges from either Southern Company Services or AGL Services Company;
- iv. Calculation and demonstration of Merger Savings and Net Merger Savings, including all assumptions, data, calculations, electronic workpapers with formulas intact, and other support;
- v. Status of the merger and reorganization process affecting AGLR and Southern, Southern Company Services ("SCS"), AGL Service Company ("AGLSC"), Georgia Power, and Atlanta Gas Light covering the following categories:
 - a. Organization Structure, Executive Management, and other changes in the 12 functional areas below, with particular attention to departments, positions and/or assets consolidated and/or eliminated:

1. Legal
 2. Finance
 3. Accounting
 4. External Affairs
 5. General Counsel
 6. Gas Supply
 7. Environmental
 8. Information Technology
 9. Human Resources
 10. Marketing
 11. Supply Chain
 12. Georgia Regulated Utility Operations
- b. Affiliate transactions
 - c. Distribution maintenance
 - d. Customer billing
 - e. Customer service
 - f. Accounts payable
 - g. Cash management
 - h. Procurement
- h. Prior to January 1, 2020, AGLC shall absorb all Merger Transition Costs and shall retain 100% of Merger Savings. If AGLC files to increase base rates for rates that will be effective prior to January 1, 2020, all Merger Transition Costs and all Merger Savings shall be excluded from the test year. Effective January 1, 2020, 60% of Merger Savings shall be returned to ratepayers via a surcredit for three years or until such savings can be incorporated into base rates in the next Atlanta Gas Light base rate proceeding and 40% of Merger Savings shall be retained by Atlanta Gas Light for the same period. At the conclusion of this three year period, ratepayers shall receive 100% of Merger Savings.
- c. In furtherance of securing an agreement on the merger application, and in light of the fact that this merger presents the unique combination of an electric utility and a gas utility both under the jurisdiction of this Commission, the current 2013 Georgia Power accounting order shall continue in effect without further rate adjustments under Paragraph 6 of Attachment 1 of that Accounting Order until December 31, 2019 and Georgia Power shall file its next retail rate case, or request for an accounting order, on July 1, 2019. For purposes of calculating the ROE in the annual surveillance reports for each year, none of the Merger Transition Costs or Merger Savings shall be included. Georgia Power shall absorb all Merger Transition Costs and shall retain 100% of Merger Savings. The funding provided in Paragraph 23 of Attachment 1 of that Accounting Order shall continue during the 3 year continuance and may be used for expert assistance in reviewing annual surveillance filings and compliance with this order. GPC shall file a rate case on July 1, 2019 for rates to be effective January 1, 2020 with a test year beginning August 1, 2019. No Merger Transition Costs and all Merger Savings shall be reflected in the test year and in the forecasts of any years in a

proposed accounting order. Effective January 1, 2020, and for three years thereafter, 60% of Merger Savings shall be returned to ratepayers via base rates or a surcredit and 40% of the Merger Savings shall be retained by Georgia Power for the same period. At the conclusion of this three year period, ratepayers shall receive 100% of Merger Savings.

4. Increases in Credit Costs³ directly related to the merger shall not be recovered through rate-making process. Georgia Power and Atlanta Gas Light shall report any future downgrades in their credit quality, or the credit quality of Southern, within 20 days of such a downgrade, along with an explanation of the basis for such downgrade, for the Commission to evaluate under the circumstances at the time.

5. **Affiliate Transaction Standards**

5. The Affiliate Transaction Standards approved by the Commission for Georgia Power in Docket No. 9355-U shall also apply to Georgia Power's interactions with Atlanta Gas Light or any other AGL Resources subsidiary. Additionally, Georgia Power shall comply with the following Provisions from the SCS 2016 Cost Accountability and Control Manual⁴:

1. No company in the Southern system or AGL affiliate may enter into a transaction which would result in the financial subsidization of an affiliate company in violation of applicable FERC or PSC restrictions.
2. Managers initiating affiliate transactions are primarily responsible for ensuring that the transactions are appropriately priced and billed in accordance with this policy.
3. The Comptroller of each system company or AGL affiliate is responsible for overseeing pricing and billing for affiliate transactions in which the Comptroller's company participates.
4. The system's Comptroller organizations will provide assistance to managers in pricing and billing affiliate transactions. Managers are expected to consult with the designated contacts in the Comptroller organizations for their companies before entering into affiliate transactions.
5. The SCS Comptroller is responsible for overseeing and coordinating the system's affiliate transaction pricing and

³ Credit Costs shall be defined as incremental costs of common equity, costs of new issuances of long-term debt, and charges related to any down rating in corporate scale credit and/or utility-specific credit ratings, within ten years after announcement of merger, as well as the effects of any increases in common equity as a percentage of capitalization. These are measured solely on the impact of the cost of capital to the utility, where it is clearly linked to the costs of merger transaction.

⁴ SCS 2016 Cost Accountability and Control Manual ("CAM") was provided in response to STP-1-5 from Docket No. 10177. Hence, the changes "in" are from the CAM's Exhibit F - Southern Company Policy and Guidelines on Charges for Affiliate Transactions and Items "in" through "q" are from Exhibit G - SCS Affiliate Transaction Procedures.

- billing practices, and, if necessary, is the arbitrator with respect to system cost allocation issues.
6. Where appropriate to implement this policy, system companies or AGL affiliates should put in place, and adhere to individual company procedures consistent with this policy.
 7. Each SCS Leadership Council member is accountable for the proper billing of the products and services produced in his/her organization in accordance with the Southern Company policy.
 3. Each SCS Leadership Council member is responsible for educating all appropriate personnel in their respective organization with regard to the policy.
- b. Atlanta Gas Light shall continue to file Affiliate Transaction Reports with the Commission, but shall now include any Southern affiliates and costs after the Merger Transaction closes. Prior to making any changes to affiliate Transaction Cost allocations and reporting, Atlanta Gas Light representatives shall meet with the Staff to discuss any changes in AGSC allocation methodologies and reporting.
- n. There shall be no sale, purchase, transfer, or loan of Atlanta Gas Light or Georgia Power assets to other AGSC or SCS affiliates without Commission approval.
7. Market Conditions
- a. Except as otherwise provided herein, or as might later be amended by statute, regulation or by order of the Commission, all of the affiliate transaction requirements set for in the Interim Certificate Order of Southern Company Gas in Docket 15585 shall apply to interactions between Georgia Power and GNG. Atlanta Gas Light shall continue to comply with the standards of conduct under O.C.G.A. 46-4-159, and:
 - 1) No cross subsidization will occur between Georgia Power and GNG.
 - 2) GNG will file a copy of any "Services Agreement" between GNG and SCS with the Commission (Trade Secret)
 - 3) SCS cost allocation factors for GNG shall be filed with the Commission. Costs incurred by SCS related to GNG should not be passed on to the customers of Georgia Power (Trade Secret).
 - 4) No customer information maintained by Georgia Power or Atlanta Gas Light or GNG shall be shared with each other. No customer information maintained by SCS shall be shared with GNG

- 5) Any GPC rebates or policies to expand its electric system will be applied consistently throughout GPC's service territory regardless of the gas supplier(s).
- 6) GPC will continue its practice of not implementing policies that are uneconomic to its electric customer base with the sole or principal purpose of depressing gas sales.
- 7) GPC will not oppose any efforts by AGL, any gas distribution company, or any marketers to adopt rebate programs to encourage the end use of gas appliances or to expand the gas distribution network.
- 8) Existing interstate pipeline and storage capacity and other assets approved in the capacity supply plan and allocated to the marketers according to O.C.G.A. 46-4-155 shall not be negatively impacted by the merger. AGL will continue to work with gas marketers to ensure transparency in the capacity supply planning process, which will ensure that the planning process is for the benefit of firm end-use customers. AGL commits to create a working group that includes representatives of the certificated marketers and the commission staff with whom to consult between Capacity Supply Plan proceedings on interstate capacity and storage issues. All future changes to the array of interstate capacity, storage or other assets required to serve Atlanta Gas Light's obligations under O.C.G.A. 46-4-155 and its tariff will be reviewed and approved by the Commission under the Atlanta Gas Light's triennial Capacity Supply Plan procedures. Atlanta Gas Light may continue to prudently expand its intrastate distribution facilities and services to meet its then current and forecasted obligation to serve all natural gas customers under its tariff or other dedicated programs as approved by the Commission.
- a) GPC may continue to use rebates to encourage the use of electric end use products by its customers to lower costs to individual customers and to benefit the electric system. GPC may continue its line extension policies even if those policies result in "all electric communities" or all electric commercial developments when that justifies the investment in the line extension and keeps prices down for all other electric consumers.
- b. In addition to the market conditions noted above, the Additional Market Conditions set forth below shall remain in effect until and unless modified by the Commission:

GPC will not use its billing system to offer to GNG combination billing for electric and gas service.

GPC will not use the GPC sales team to conduct joint sales calls with GNG or otherwise favor GNG as the marketer of choice.

GPC will not use its economic development group to recommend or encourage the selection of GNG, or any particular gas marketer, as the marketer of choice.

Neither GPC nor AGL will provide advance notice of pending customer additions to GNG in any manner inconsistent with Commission rules pertaining to AGL.

GPC will not use its call center to encourage the selection of GNG as an affiliated gas marketer.

GPC call centers and customer service representatives will not express a recommendation for GNG or any particular gas marketer for gas service, but may direct electric customers to All Connect, or a similar entity, or to the GPSC or AGL website for gas marketer and gas service options.

GPC call centers and customer service representatives will not volunteer that GNG is an affiliate of GPC, but will be truthful if specifically asked by a customer. And even then, will not encourage the selection of GNG as an affiliated gas marketer.

GPC and GNG shall not co-brand with the other, including, but not limited to, joint use of logos or references to the other in their print, radio, television or electronic advertising or on their web sites.

GPC will not conduct joint marketing with GNG through the use of bill inserts.


No earlier than three years following the closing of the Merger, any party hereto or Staff may petition the Commission to conduct a proceeding in a separate docket to consider whether the Additional Market Conditions should be continued, modified or extinguished. The Commission will issue an order in that docket setting forth its findings within six months following the filing of such a petition.

The Additional Market Conditions are not a judgment on the effect, if any, of the Merger on the existing or future market, and will not be construed as precedent in deciding whether the Additional Market Conditions should be continued, modified or extinguished. The Parties have agreed to these Additional Market Conditions solely for the purpose of permitting the Merger to go forward while permitting the Commission to devote adequate time to fully examine the effect, if any, the Merger may have on Georgia market conditions.

- c. Atlanta Gas Light and Georgia Power shall continue to operate as two separate regulated utilities under separate oversight by the Commission. There shall be no unlawful conduct between the utilities to lessen the existing competitive/contestable market conditions, and each utility shall not unduly limit the availability of its products or services in a manner that could be reasonably construed as an attempt to limit customer choice for the benefit of the other utility.
 - d. Atlanta Gas Light and Georgia Power shall each separately apply criteria to determine whether to expand its facilities consistently throughout its respective service territory, without undue discrimination.
 - e. Atlanta Gas Light will continue to recover costs under Rules 7, 8 and 13 of its tariff, as the Commission may modify from time to time. Additional capital or O&M investments to extend its service territory or otherwise to expand the capacity or improve the performance of its distribution system will be recovered only under additional programs approved by the Commission, including other provisions of the Atlanta Gas Light's tariff where plant placed into service is added to Atlanta Gas Light's rate base.
8. The current Sequent Asset Management agreement will be extended for a period of three additional years until March 2020. The Sequent extension will be on the same existing terms and conditions and will include a provision that either the Commission Staff or Sequent may seek to renegotiate the terms should the assets under management materially change as a result of any intervening capacity supply plan approved by the Commission during the extended term.

[SIGNATURES ON FOLLOWING PAGE]

THE SOUTHERN COMPANY

By: 
Attorney for The Southern Company

Title:

ATLANTA GAS LIGHT COMPANY

By: _____


Title:

ACL RESOURCES INC.

By: _____

Title:

GEORGIA POWER COMPANY

By: 
Attorney for Georgia Power

Title:

THE SOUTHERN COMPANY

ATLANTA GAS LIGHT COMPANY

By: *[Signature]*

Title: *Attorney for Atlanta Gas Light Company*

AGL RESOURCES INC.

By: *[Signature]*

Title: *Attorney for AGL Resources Inc.*

GEORGIA POWER COMPANY

GEORGIA PUBLIC SERVICE COMMISSION

By: 
Jeffery Stair, Staff Attorney

Title:

GAS SOUTH, LLC

By: _____

Meredith Hodges

Title: Vice President of External Affairs and Human Resources

SCANA ENERGY MARKETING, INC.

By: _____

George Devlin

Title: Vice President & General Manager, SCANA Energy

INFINITE ENERGY, INC.

By: _____

Darin Cook

Title: Chief Executive Officer

GEORGIA PUBLIC SERVICE COMMISSION

By _____

Deputy State Solicitor General

File

Re: SOAH Dkt. No. 473-17-1172

By Deputy State Solicitor General

Attorney General

File: Vice President of External Affairs and Human Resources

CVNA ENERGY MARKETING, INC.

By _____

Deputy General

File: Vice President & General Manager, So. Area Zone

CVNA ENERGY, INC.

By _____

Deputy General

File: Vice President & General Manager, So. Area Zone

GEORGIA PUBLIC SERVICE COMMISSION

By: _____

Jeffery Starr, Staff Attorney

Title:

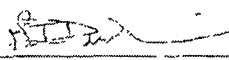
GAS SOUTH, LLC

By: _____

Meredith Hodges

Title: Vice President of External Affairs and Human Resources

SCANA ENERGY MARKETING, INC.

By:  _____

George Devlin

Title: Vice President & General Manager, SCANA Energy

INFINITE ENERGY, INC.

By: _____

Darin Cook

Title: Chief Executive Officer

GEORGIA PUBLIC SERVICE COMMISSION

By: _____

J. Terry Saur, Staff Attorney

Title:

GAS SCOTL, LLC

By: _____

Cassandra Hodges

Title: Vice President of External Affairs and Human Resources

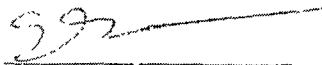
SCANA ENERGY MARKETING, LLC

By: _____

George Devlin

Title: Vice President & General Manager, SCANA Energy

INFINITE ENERGY, LLC

By:  _____

Dana Cross

Title: Chief Executive Officer

INFINITE ENERGY, INC.

By: _____

BRAD NELSON

Title: Chief Executive Officer

WALTON ENERGY d/b/a WALTON EMC NATURAL GAS

By: 

Jim Baione

Title: Director, Regulatory Affairs
Walton EMC Natural Gas

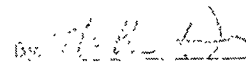
WALTON ENERGY a/b/a WALTON FUEL NATURAL GAS

By: _____

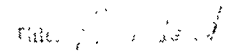
Chancellor

and

FRESHFIRE NATURAL GAS, LLC

By:  _____

Mark Davis

File: 

FUE NATURAL GAS

By: _____

Don Han

Don Han President and CEO

WALTON ENERGY d/b/a WALTON EMC NATURAL GAS

By: _____

Jim Bottone

Title:

HIPESIDE NATURAL GAS, LLC

By: _____

Mika Davis

Title:

TRUE NATURAL GAS

By: 

Dan Holt

Title: President and CEO

GEORGIA WATCH AND THE NATIONAL HOUSING TRUST

Re: (b)(7)(D) SEWELL

Charles Hook

and a person for GEORGIA WATCH NATIONAL HOUSING TRUST

GEORGIA ASSOCIATION OF MANUFACTURERS

By: Charles B. Jones, III

Charles B. Jones, III

Title: Vice President and General Counsel

GEORGIA INDUSTRIAL GROUP

By: _____

Title: _____

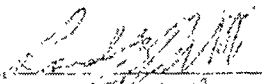
GEORGIA ASSOCIATION OF MANUFACTURERS

By: _____

Title: _____

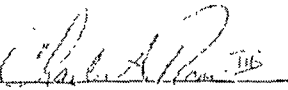
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By: 
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Title:

LIBERTY UTILITIES

By: 

Charles A. Rossi, III

Title: President, Liberty Utilities (Peach State Natural Gas) Corp

RESOURCE SUPPLY MANAGEMENT

By: Jim Clarkson

Jim Clarkson

Title: President

**CERTIFICATE OF SERVICE
DOCKET NOS. 39971/9574**

IN RE:

JOINT REQUEST OF ATLANTA GAS LIGHT)	
COMPANY, AGL RESOURCES INC., AND THE)	
SOUTHERN COMPANY FOR A FINDING THAT)	DOCKET NO. 39971
SOUTHERN COMPANY'S MERGER WITH AGL)	
RESOURCES INC. COMPLIES WITH)	
APPLICABLE LAW)	
)	
AND)	
)	
SOUTHSTAR ENERGY SERVICES LLC d/b/a)	
GEORGIA NATURAL GAS; APPLICATION FOR A)	DOCKET NO. 9574
NATURAL GAS MARKETER CERTIFICATE OF)	
AUTHORITY)	

I, the undersigned, do herewith certify that I have caused to be served the required copies of the enclosed Order Adopting Settlement Agreement. All parties are being provided an electronic copy:

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DOCKET NOS. 39971/9574

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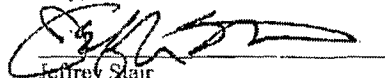
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Respectfully submitted, this 3rd day of
May, 2016


Jeffrey Starr
Attorney
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

REQUIRED CONDITIONS OF APPROVAL

Each of the conditions enumerated below has been approved in the Order in this docket to which this Appendix A is attached. Implementation of each condition shall be consistent with the stated rationale for such condition, as explained in the Order. Where any specific details of implementation are set forth in the Order, implementation shall include such details.

Employment/Union/Safety

1. Nicor Gas shall maintain, for a period of three years after closing of the Reorganization, 2,070 full-time equivalent employees ("FTEs") working in support of Nicor Gas' business, and shall maintain, for the same three-year period, that same level of FTEs working in the State of Illinois. Nicor Gas shall also honor and abide by all union contracts in effect prior to completion of the Reorganization.
2. For a period of two years following the closing of the Reorganization, the Joint Applicants shall maintain in Illinois the current number of FTEs - 51 full and 24 partial - in the following areas: Corrosion Control, the Technical Compliance Department, the Locating Services Department, the Transmission Integrity Management Program, and the Distribution Integrity Management Program.
3. For a period of two years following the closing of the Reorganization, the Joint Applicants shall maintain in Illinois management personnel directly responsible for the day-to-day supervision of the positions identified in paragraph 2.
4. For a period of two years following the closing of the Reorganization, the Joint Applicants shall maintain in Illinois the current level of training and quality assurance programs for compliance monitoring activities.
5. For a period of two years following the closing of the Reorganization, the Joint Applicants shall meet with the Commission Staff's Pipeline Safety Program Manager, or his designee(s), to discuss any proposed material change(s) to the job duties for any of the positions identified in paragraph 2.
6. Nicor Gas shall petition the Commission 90 days prior to the end of the two-year period to determine whether Nicor Gas' performance concerning pipeline safety issues is reasonably comparable to pre-reorganization levels at Nicor Gas, or requires an extension of the commitment period for the items identified in paragraphs 2 and 3 beyond two years.
7. Nicor Gas shall review the petition and pipeline safety performance with Staff 60 days before filing the petition identified in paragraph 6.

Financing/Cost of Service

8. If at any time within a three-year period following the date on which the Reorganization is closed, any proceeding involving Nicor Gas' rates is initiated, and insofar as Nicor Gas' cost of capital is addressed in such proceeding, Nicor Gas shall file a study analyzing the impact, if any, of Nicor Gas' affiliation with Southern Company and its other subsidiaries on the cost of capital of Nicor Gas.
9. The Joint Applicants commit that, to the extent necessary, Southern Company and/or AGL Resources shall provide sufficient capital to Nicor Gas to fully fund its capital plans as described in the five-year capital plan submitted in this Docket.

Charitable/Civic

10. In fulfillment of the overall goals of Section 7-204 that the Joint Applicants be committed to maintaining Nicor Gas' pro-active stance on supporting economic development in Illinois, the Joint Applicants shall continue such activities, at a minimum, at the same level as Nicor Gas' current commitments to various social and charitable programs throughout its Illinois service territories. This condition does not create any presumption of reasonableness for the recovery of expenses related to charitable contributions in any future rate case as such expenses will continue to be evaluated for reasonableness under Section 9-227 of the Act.

Costs/Savings

11. Achieved savings at Nicor Gas resulting from the proposed Reorganization if any, and any additional savings resulting from the proposed Reorganization that would otherwise be recognized under 83 Ill. Adm. Code Part 287 or prior Commission test year rulings, if any, shall be flowed through to Nicor Gas customers as part of costs associated with the regulated intrastate operations for consideration in any future rate case involving Nicor Gas.
12. The costs incurred in accomplishing the proposed Reorganization shall not be recovered through Illinois jurisdictional regulated rates in this or any future proceeding. For clarification, the "costs incurred in accomplishing the proposed Reorganization" are Transaction Costs, Change in Control Costs, Financing Costs, Separation Costs, and Legal and Other Professional Costs, which shall not be recovered through Illinois jurisdictional rates.

Accounting/Reporting

13. The Joint Applicants shall file the final disposition of all journal entries on e-Docket.
14. The Joint Applicants shall file a compliance report following the Reorganization, which shall include copies of post-merger Nicor Gas credit facilities; a complete copy of this filing shall be delivered contemporaneously to the Manager of the Commission's Finance Department.

Affiliate Related

15. Nicor Gas shall continue to abide by the Conditions set forth in the Commission's Order in Docket No. 11-0046 pertaining to the terms, conditions and implementation of the Operating Agreement and Services Agreement.
16. Nicor Gas shall conduct an annual internal audit of the Services Agreement, in the manner set forth in the Order in Docket No. 11-0046.
17. Nicor Gas shall conduct a triennial cost study of the services provided under the aforementioned Services Agreement, in the manner set forth in the Order in Docket No. 11-0046.
18. Nicor Gas shall make an annual filing of a Billing Report for the aforementioned Services Agreement, in the manner set forth in the Order in Docket No. 11-0046.
19. Sequent Energy Management, LP will not be a party to Nicor Gas' Operating Agreement.
20. There will be no right of last refusal for Sequent Energy Management, LP on spot purchases.
21. The Joint Applicants will consult with Staff and shall receive Commission approval before the Joint Applicants sign an asset management agreement.
22. The Joint Applicants will file with the Commission, for informational purposes, the final form of the service agreement between Southern Company Services and AGL Services Company as soon as practicable after they have finalized the terms and conditions of that agreement.

Board

23. AGL Resources shall have at least one non-employee individual resident of Illinois on its Board of Directors. AGL Resources has sole discretion in selecting qualified candidates and determining which individual is the best qualified for such nomination.

Compliance with Conditions

24. The Joint Applicants shall file a semi-annual compliance report on the Commission's e-Docket system reporting on the status of progress of all conditions imposed by the Commission in this case, and this reporting requirement shall remain in effect until all conditions have been satisfied or the Joint Applicants petition the Commission and receive approval to cease such reporting requirement, whichever comes first.
25. In order that the Commission is apprised of the compliance of the commitments identified in this exhibit, the CEO of AGL Resources, on an annual basis, shall appear before the Commission to report on the status of its compliance with this Order.

Conditions from Staff Direct Testimony

26. Nicor Gas will work with Pipeline Safety Program Staff to provide more detail regarding when and how Nicor Gas will implement a Pipeline Safety Management System, in line with American Petroleum Institute Recommended Practice 1173, in order to improve Nicor Gas' ability to recognize and react to the requirements of 49 CFR 192 and move beyond minimum efforts to simply achieve compliance towards a true safety culture.
27. The Joint Applicants shall file on the ICC's e-Docket system in Docket No. 15-0558 and send a copy of the same to AccountingMgr@icc.illinois.gov, the final disposition of the accounting entries. If the SEC or independent auditors determine any accounting entries are required, the Joint Applicants shall file on the ICC's e-Docket system in Docket No. 15-0558 and send a copy of the same to AccountingMgr@icc.illinois.gov, copies of the accounting entries to be recorded on the regulatory books of Nicor Gas, including preliminary amounts to be recorded, within 6 months after closing the reorganization, and further file the final accounting entries and amounts no later than 12 months after closing.
28. The Joint Applicants shall file the final amended executed Tax Allocation Agreement on the ICC's e-Docket system in Docket No. 15-0558 within thirty (30) days of the execution date and send a copy of the same to AccountingMgr@icc.illinois.gov.
29. The Joint Applicants shall file annually on the ICC's e-Docket system in Docket No. 15-0558, a copy of the FERC Form 60: Annual Report of Centralized Service Companies for Southern Company Services Inc., on the date it is due at the FERC and send a copy of the same to AccountingMgr@icc.illinois.gov.

Condition from AG/CUB Settlement Agreement

30. The Joint Applicants shall comply with the terms in Section 1 of the Settlement Agreement executed by the Joint Applicants, the Illinois Attorney General's Office, and the Citizens Utility Board, and filed in Docket No. 15-0558 on April 28, 2016.

Under that Settlement Agreement, the Joint Applicants agree that, no later than December 31, 2017, neither Prairie Point Energy, L.L.C. d/b/a Nicor Advanced Energy LLC ("NAE") nor Nicor Solutions, L.L.C. ("NiSol"), a subsidiary of SouthStar Energy Services LLC, will continue to use the Nicor name or logo to conduct business in Illinois. The period between legal close of the merger and December 31, 2017, shall herein be referred to as the "Transition Period." During the first six months after merger closing, NAE and NiSol may maintain normal levels of marketing activity. At a point in time after the first six-month period, NAE and NiSol shall market as necessary in order to promote the transition to a new brand. Any NAE or NiSol bill inserts or direct customer mailings made during the Transition Period, as well as NAE's and NiSol's website homepage and related "frequently asked questions" page, will include the following language:

Nicor Advanced Energy ("NAE") [or, Nicor Solutions] is not the same company as Nicor Gas Company, and the Illinois Commerce Commission ("ICC") does not regulate NAE's [or NiSol's] prices. You do not have to buy products or services from NAE [or NiSol] in order to receive the same quality of service from the gas utility. Nicor Gas does not set the price you pay for such service nor does the ICC regulate the prices offered by NAE [or NiSol].

After the completion of the Transition Period, other than Nicor Gas, no other Southern Company or AGL Resources affiliate that operates or may operate in Illinois under a business name that includes the word "Nicor", or any successor name of Nicor Gas, will offer a natural gas commodity product, or fixed-bill product, that includes all natural gas related costs, program administration fees and taxes, and is made available to residential natural gas customers in Illinois.

END OF REQUIRED CONDITIONS OF APPROVAL

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

The Southern Company, AGL :
Resources Inc., and Northern Illinois Gas :
Company d/b/a Nicor Gas Company :
: 15-0558
Application for Approval of a :
Reorganization Pursuant to Section 7-204 :
of the Public Utilities Act. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

In an application filed October 8, 2015, The Southern Company ("Southern"), AGL Resources Inc. ("AGLR"), and Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas") (collectively, the "Joint Applicants") petitioned the Illinois Commerce Commission (the "Commission") for approval, pursuant to Sections 7-204 and 7-204A of the Public Utilities Act (the "Act")¹, of a reorganization (the "Reorganization") by which AGLR will merge with and into a subsidiary of Southern, and AGLR will become a wholly-owned subsidiary of Southern. Under the terms of that application, Nicor Gas will continue to operate as a public utility with its headquarters remaining in Naperville, Illinois. The Joint Applicants also seek approval pursuant to Section 7-102 of the Act,² to the extent the Commission determines it applies to the proposed Reorganization. Additionally, the Joint Applicants seek re-approval of minor modifications to Nicor Gas' current operating agreement, which was previously approved by the Commission in Docket No. 11-0046 pursuant to Sections 7-101 and 7-204A(b) of the Act (the "Operating Agreement"). Furthermore, the Joint Applicants request additional approvals and findings in connection with the Reorganization, as more fully discussed in this Order.

The Citizens Utility Board ("CUB") and the Retail Energy Supply Association ("RESA") each filed a petition to intervene in the docket. The Illinois Attorney General's Office ("AG") filed an appearance. The petitions to intervene were granted by duly authorized Administrative Law Judges ("ALJs") of the Commission.

Pursuant to due notice as required by law and by the rules and regulations of the Commission, a prehearing conference was held in this matter before the ALJs at the Commission's offices in Chicago on October 26, 2015.

¹ Respectively, 220 ILCS 5/7-204 and 7-204A.

² 220 ILCS 5/7-102.

On January 15, 2016, the Joint Applicants filed an Amended Application requesting, in addition to the relief requested in its original application, approval of the Tax Allocation Agreement Among Members of the Southern Company (the "Tax Allocation Agreement") and the proposed amendment to include the AGLR companies, including Nicor Gas, pursuant to Sections 7-101 and 7-204A(b) of the Act. Together, the Application and Amended Application are referred to herein as the "Application."

On April 15, 2016, the Joint Applicants filed a Stipulation that they entered into with RESA. Attached to the Stipulation was a Settlement Agreement that resolved "all issues between the Joint Applicants and RESA presently pending in this proceeding." As a result of that Stipulation, RESA withdrew its testimony from this docket.

On April 20, 2016, an evidentiary hearing was held at the Commission's offices in Chicago. The Joint Applicants presented testimony and exhibits from the following witnesses: Art Beattie, Executive Vice President and Chief Financial Officer of Southern; Henry Linginfelter, Executive Vice President of Distribution Operations for AGLR; Mark S. Lantrip, President and Chief Executive Officer of Southern Company Services, Inc. ("SCS") and Executive Vice President of Southern; and Michael J. Morley, Managing Director of Rates and Regulatory Accounting of AGLR.

Staff presented testimony and exhibits from the following witnesses: Mark Maple, Senior Gas Engineer in the Energy Engineering Program of the Safety and Reliability Division; Bryan Pemble, Pipeline Safety Analyst in the Pipeline Safety Program of the Safety and Reliability Division; David Sackett, Economic Analyst in the Policy Program of the Policy Division; Scott Tolsdorf, Accountant in the Accounting Department of the Financial Analysis Division; Dianna Hathhorn, Accountant in the Accounting Department of the Financial Analysis Division; Michael McNally, Senior Financial Analyst in the Finance Department of the Financial Analysis Division; and William Johnson, Economic Analyst in the Rates Department of the Financial Analysis Division.

AG/CUB presented testimony and exhibits from the following witnesses: David J. Effron, a regulatory consultant; Patrick Hurley, Mediation Coordinator in the Consumer Fraud Division of the AG; and Patricia J. Leiser, a current customer of Nicor Gas. The Stipulation between Joint Applicants and RESA also was admitted into evidence.

On April 28, 2016, the Joint Applicants, AG and CUB filed a Stipulation and Settlement Agreement.

On May 16, 2016, the Joint Applicants submitted a Draft Order addressing all matters in the docket. The Draft Order was circulated and agreed to by Staff, AG, CUB, and RESA.

On May 17, 2016, the record was marked "Heard and Taken" by the ALJs.

II. RELIEF REQUESTED

In the Application, the Joint Applicants request the following findings and approvals by the Commission:

1. the Commission's approval, under Sections 7-204 and 7-204A of the Act, to engage in the Reorganization, through which AGLR will become a subsidiary of Southern;

2. the Commission's approval under Section 7-102 of the Act to engage in the Reorganization (to the extent required);
3. the Commission's re-approval, under Sections 7-101 and 7-204A(b) of the Act, of Nicor Gas' current Commission-approved Operating Agreement to reflect that AGLR will no longer have publicly traded common stock;
4. the Commission's approval, under Sections 7-101 and 7-204A(b) of the Act, of the Tax Allocation Agreement and the proposed amendment to include the AGLR companies, including Nicor Gas;
5. the Commission's approval of any required proposed accounting entries associated with the Reorganization; and
6. the Commission's authorization for taking such other measures in connection with the Reorganization as may be reasonably necessary for effecting the Reorganization.

III. THE PROPOSED REORGANIZATION

A. Identification of the Parties to the Reorganization and Their Affiliates

1. Southern and its Affiliates

Southern is an Atlanta-based public utility holding company currently providing electric utility service through four state-regulated operating companies in Alabama, Florida, Georgia, and Mississippi. Approximately 90 percent of Southern's net income comes from its regulated companies. Southern's state-regulated utilities serve more than 4.5 million customers throughout 120,000 square miles of regulated service territory. Southern's operating subsidiaries each have their own boards of outside directors and executive management teams that are responsible for each subsidiary's operations.

2. AGLR and Nicor Gas

AGLR is an Atlanta-based company whose principal business is in the distribution of natural gas through public utility operating companies in seven states. AGLR also is involved in several other businesses, including: retail natural gas marketing to end-use customers; natural gas asset management and related logistics activities for certain of its utilities and nonaffiliated companies; natural gas storage arbitrage and related activities; and the development and operation of high-deliverability natural gas storage assets. AGLR owns Nicor Gas. Nicor Gas is an Illinois public utility within the meaning of Section 3-105 of the Act³. Nicor Gas' service territory spans approximately 17,000 square miles in Northern and Central Illinois, includes 656 communities and serves approximately 2.2 million customers.

B. The Reorganization

Southern, AMS Corp. ("AMS"), a Georgia Corporation and a wholly-owned subsidiary of Southern, and AGLR, have entered into an Agreement and Plan of Merger, dated August 23, 2015 (the "Merger Agreement"). Pursuant to the Merger Agreement:

³ 220 ILCS 5/3-105.

(1) Southern will acquire the stock of AGLR, and (2) AMS will merge with and into AGLR with the surviving company remaining a wholly-owned subsidiary of Southern (the "Merger"). Upon consummation of the Reorganization (the "Closing"), AGLR will become a wholly-owned subsidiary of Southern. AGLR will continue to exist as a distinct corporate entity, but will no longer be a publicly traded company. Nicor Gas will retain its current name and headquarters in Naperville, Illinois, and will continue to operate as an Illinois public utility, subject to the Commission's jurisdiction and applicable Illinois law and regulations.

C. Asserted Results of the Reorganization

The Joint Applicants assert that the Reorganization will combine two companies with complementary expertise and skill sets and will create a combined company with a more geographically diverse footprint. The Joint Applicants also assert that the Reorganization will be seamless for Nicor Gas' customers because its core management team and day-to-day operations will remain the same. The Joint Applicants state that Illinois customers will continue to receive service from Nicor Gas in the same manner and pursuant to the same Commission-approved rates, and terms and conditions, upon which they now receive service.

The Joint Applicants assert that Southern is capable, willing, and ready to undertake the Reorganization. The Joint Applicants also assert that Southern has many years of experience running electric utilities effectively and efficiently, and providing safe, reliable, and affordable energy delivery and responsive customer-focused service. The Joint Applicants further assert that Southern understands the critical importance of Nicor Gas' public utility obligations and is positioned to make certain that those obligations are met. The Joint Applicants assert that Southern has investment-grade credit ratings, substantial financial resources, and a consistent track record of maintaining the financial strength of its locally-operated and regulated subsidiaries.

The Joint Applicants assert that AGLR has more than 150 years of experience operating gas utilities, and broad and deep capabilities in a wide range of areas related to the natural gas industry. The Joint Applicants also assert that the core of AGLR's management team, including the leadership team at Nicor Gas, will continue to oversee, direct, and execute Nicor Gas' business operations after the Reorganization. The Joint Applicants further state that, post-closing, the combined company will have the financial resources to enable Nicor Gas to meet all of its capital needs and to continue providing safe, reliable, and affordable service to its customers. The Joint Applicants emphasize positive employee relations as they have committed to maintain 2,070 full-time equivalent ("FTE") employees for three years from the date of Closing and to fully honor Nicor Gas' existing union contract. More particularly, Joint Applicants have made a dual commitment to maintain 2,070 FTEs working in support of Nicor Gas' business and working in the State of Illinois.

The Joint Applicants assert that Southern and Nicor Gas both have strong traditions of community service and commitment to the communities they serve, supporting a variety of civic, community, and philanthropic efforts, which will continue after the Closing. The Joint Applicants state that Southern and its affiliates take seriously their commitment to be a "Citizen Wherever We Serve." The Joint Applicants assert that Nicor

Gas' commitment is demonstrated through its continued investment in community programs and activities in Illinois.

The Joint Applicants state that Southern and Nicor Gas share a commitment to business diversity, which has resulted in Southern spending 25 percent of total procurement in 2014 directly with diverse businesses, including small businesses, businesses owned by minorities, women and veterans, and businesses in historically underutilized zones. The Joint Applicants assert that Nicor Gas plays an active role in the recently-formed Illinois Utilities Business Diversity Council.

The Joint Applicants state they do not seek to change Nicor Gas' distribution rates as a result of the Reorganization. The Joint Applicants state that the Reorganization will benefit customers, employees, shareholders, and the communities that Nicor Gas serves because Southern is committed to assuring that customers of Nicor Gas receive adequate, reliable, efficient, safe, and reasonably priced energy services, as well as high quality customer service.

IV. ANALYSIS OF THE EVIDENCE

A. Section 7-204(b): Reorganization Approvals

Section 7-204(b) requires that the Commission make a series of findings to ensure that the proposed reorganization will not "adversely affect the utility's ability to perform its duties under the Act."⁴ Each finding required by 7-204(b) is addressed below. In connection with the required findings under Section 7-204(b), the Joint Applicants made numerous commitments in support of the Application and also accepted certain additional conditions recommended by Staff. A list of the agreed-upon conditions to the Reorganization is found in Appendix A to this Order.

- 1. Finding No. 1: "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service"**

The Joint Applicants and Staff submitted testimony addressing whether the proposed Reorganization satisfies the criteria of Section 7-204(b)(1) of the Act. No other party presented testimony to address this requisite Commission finding.

a) Joint Applicants' Position

Joint Applicants witness Linginfelter testified that the Reorganization will not negatively impact Nicor Gas' day-to-day operations and will result in little or no change in terms of Nicor Gas' personnel and everyday operations. Joint Applicants witness Beattie testified that Southern understands the importance of providing adequate, reliable, efficient, safe and least-cost public utility services because it is a large electric utility holding company with operating companies currently providing regulated utility delivery and supply service throughout the Southeastern United States. Therefore, in order to ensure that Nicor Gas will continue to provide adequate, reliable, efficient and least-cost public utility service, Southern has committed to maintaining AGLR's and Nicor Gas' core management teams post-Closing. Southern has also committed to maintaining the

⁴ 220 ILCS 5/7-204(b).

applicable merger conditions resulting from the Commission's Order in Docket No. 11-0046, as reflected in Appendix A.

b) Staff's Position

Staff witness Maple recommended that the Commission find that the proposed Reorganization meets the requirements of Section 7-204(b)(1) of the Act. He testified that he had no reason to dispute the Joint Applicants' claim that the proposed Reorganization would have no negative impact on Nicor Gas' ability to provide adequate, reliable, efficient, safe and least-cost public utility service. He further observed, based on the Joint Applicants' testimony and the Application, that the Joint Applicants intend for the proposed Reorganization to have little or no effect on Nicor Gas customers and to be a seamless transition.

c) Commission Analysis and Conclusion

Based on the evidence in the record, including Staff witness Maple's recommendations, the Commission concludes that the Reorganization will not diminish Nicor Gas' ability to provide adequate, reliable, efficient, safe and least-cost public utility service. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(b)(1) of the Act.

2. **Finding No. 2: "the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers"**

and

Finding No. 3: "costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes"

The Joint Applicants and Staff submitted testimony addressing whether the proposed Reorganization satisfies the criteria of Sections 7-204(b)(2) and (b)(3) of the Act. No other party presented testimony to address these requisite Commission findings. The Joint Applicants and Staff also were the only parties to address Commission approval, under Sections 7-101 and 7-204A of the Act of the relevant affiliated interest agreements: (1) the Operating Agreement, as amended to reflect that AGLR no longer will have publicly traded common stock; and (2) the Tax Allocation Agreement, as amended to include the AGLR companies, including Nicor Gas.

a) Joint Applicants' Position

Joint Applicants witness Beattie testified that, in order to avoid unjustified subsidization of non-utility activities by the utility or its customers, the Joint Applicants are proposing to continue the affiliate arrangements in place that were previously approved by the Commission in Docket No. 11-0046, including the AGL Services Agreement that was previously approved by the Commission. Joint Applicants witness Linginfelter testified that the current Operating Agreement, which was approved by the Commission in Docket No. 11-0046, governs most transactions between Nicor Gas and affiliated

parties, including the use of facilities and services, asset sales, accounting, invoicing and payment for intercompany charges, and a cost apportionment methodology. The Joint Applicants propose only minor revisions to the previously approved Operating Agreement to reflect that AGLR will no longer have publicly traded common stock following approval of the proposed Reorganization.

Joint Applicants witnesses Beattie and Linginfelter testified that these agreements include transparent and auditable cost allocation methodologies and distinguish utility and non-utility activities in such a manner that will permit the Commission to identify those costs and facilities which are properly included by the utility for ratemaking purposes. Joint Applicants witness Linginfelter testified that, under the Operating Agreement, charges by Nicor Gas to its affiliates must be at or above prevailing price or, if there is no prevailing price, at fully distributed cost. Charges by affiliates to Nicor Gas must be at or below prevailing price or, if there is no prevailing price, at fully distributed cost. Under the AGL Services Agreement, AGL Services Company's ("AGSC") costs are directly charged, assigned, distributed, or allocated to Nicor Gas on a cost-causation basis or, to the extent that a cost-causation relationship cannot be determined, the costs will be charged by general drivers in the business used to approximate the cost-causation relationship.

The Joint Applicants provided evidence that they are committing to honoring all of the affiliate related commitments that were established in Docket No. 11-0046. The Joint Applicants also committed to file with the Commission, for informational purposes, the final form of the services agreement between SCS and AGSC. Joint Applicants witness Lantrip testified that the cost allocation methodologies utilized in the SCS services agreements ensure that there is no unjustified subsidization of costs and that the costs are easily identifiable. Therefore, the Joint Applicants provided evidence that the proposed SCS-AGSC services agreement is consistent with the requirements of Sections 7-204(b)(2) and (b)(3).

Finally, in addition to the Operating Agreement, the Joint Applicants seek approval of the Tax Allocation Agreement and the proposed amendment to include the AGLR companies, including Nicor Gas. The Joint Applicants have accepted the conditions to the Commission's approval of the proposed Reorganization, the Operating Agreement, and the Tax Allocation Agreement that were recommended by Staff witness Hathhorn in connection with her evaluation of the Joint Applicants' compliance with Sections 7-204(b)(2) and (b)(3) as discussed below.

b) Staff's Position

Staff witness Hathhorn recommended Commission approval of the Operating Agreement in light of the Joint Applicants' agreement to maintain the affiliate related conditions previously imposed by the Commission in Docket No. 11-0046. She also recommended Commission approval of the Tax Allocation Agreement and the proposed amendment with the condition that the Joint Applicants file the final amended executed Tax Allocation Agreement on the Commission's e-Docket system in Docket No. 15-0558 within 30 days of the execution date and send a copy of the same to AccountingMgr@icc.illinois.gov. Finally, she recommended that the Commission order the Joint Applicants to file annually on the Commission's e-Docket system in Docket No. 15-0558 a copy of the FERC Form 60 on the date it is due at FERC and send a copy of

the same to AccountingMgr@icc.illinois.gov. With the Joint Applicants' agreement to her two new conditions, along with the eight affiliated interest agreement related conditions proposed by the Joint Applicants (Joint Applicants' Commitments Nos. 15-22), she testified that the Joint Applicants are in compliance with the requirements of Sections 7-204(b)(2) and (b)(3).

c) Commission Analysis and Conclusion

Based on the evidence in the record, including Joint Applicants' acceptance of the conditions proposed by Staff witness Hathhorn, the Commission concludes that the proposed Reorganization will not result in the unjustified subsidization of non-utility activities by Nicor Gas or its customers. The Commission also concludes that Nicor Gas' costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities that are properly included by the utility for ratemaking purposes. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Sections 7-204(b)(2) and (b)(3) of the Act.

Also based on the evidence in the record and in light of the Joint Applicants' acceptance of the conditions proposed by Staff witness Hathhorn, the Commission approves the Operating Agreement and the Tax Allocation Agreement with the proposed amendment to include the AGLR companies, including Nicor Gas.

3. Finding No. 4: "the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure"

The Joint Applicants and Staff submitted testimony addressing whether the proposed Reorganization satisfies the criteria of Section 7-204(b)(4) of the Act. No other party presented testimony to address this requisite Commission finding.

a) Joint Applicants' Position

Joint Applicants witness Beattie testified that the credit rating agencies have responded positively to the announcement of the Reorganization and have suggested that the credit ratings of AGLR and its affiliates could potentially rise. He also testified that none of the credit agencies have concluded that the Reorganization will impair Nicor Gas' credit quality, its ability to raise capital on reasonable terms, or its ability to maintain an appropriate capital structure. He further testified that financing utility operations has always been one of Southern's strengths and, therefore, the proposed Reorganization will either maintain or favorably influence Nicor Gas' access to capital markets.

b) Staff's Position

Staff witness McNally testified that the effect of the proposed Reorganization on Nicor Gas' credit ratings will not significantly impair its ability to raise necessary capital on reasonable terms. He testified that, given its sound credit profile, Nicor Gas has access to capital markets on reasonable terms. He also testified that Southern's sound credit profile and credit ratings indicate that it has access to capital markets on reasonable terms. He therefore recommended that the Commission find that the proposed Reorganization will satisfy the requirements set forth in Section 7-204(b)(4).

c) Commission Analysis and Conclusion

Based on the evidence in the record, including Staff witness McNally's recommendations, the Commission concludes that the proposed Reorganization will not significantly impair Nicor Gas' ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(b)(4) of the Act.

4. Finding No. 5: "the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities"

The Joint Applicants and Staff submitted testimony addressing whether the proposed Reorganization satisfies the criteria of Section 7-204(b)(5) of the Act. No other party presented testimony to address this requisite Commission finding.

a) Joint Applicants' Position

Joint Applicants witnesses Beattie and Linginfelter testified that Nicor Gas will remain an Illinois public utility subject to all of the same utility laws, rules, regulations, decisions and policies that currently govern its operations. Joint Applicants witness Linginfelter additionally testified that, although AGLR will become a subsidiary of Southern, Nicor Gas will continue to do business in Illinois under the name "Nicor Gas" and will retain its corporate headquarters in Naperville, Illinois. Additionally, the Joint Applicants accepted the conditions to the Commission's approval of the proposed Reorganization that were recommended by Staff witness Pemble in connection with his evaluation of the Joint Applicants' compliance with Section 7-204(b)(5) as discussed below.

b) Staff's Position

Staff witness Pemble testified that the proposed Reorganization meets the requirements of Section 7-204(b)(5). In addition, he recommended that the Commission order Nicor Gas to comply with the following two conditions: (1) Nicor Gas must work with the Pipeline Safety Program ("PSP") Staff to provide more detail regarding when and how Nicor Gas will implement a Pipeline Safety Management System ("PSMS") in line with the American Pipeline Institute ("API") Recommended Practice ("RP") 1173; and (2) Nicor Gas must commit to a two-year extension of the conditions related to pipeline safety resulting from the Commission's Order in Docket No. 11-0046 (Joint Applicants' Commitments Nos. 2-7).

c) Commission Analysis and Conclusion

Based on the evidence in the record, including the Joint Applicants' acceptance of the conditions proposed by Staff witness Pemble, the Commission concludes that Nicor Gas will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(b)(5) of the Act.

5. Finding No. 6: "the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction"

The Joint Applicants and Staff submitted testimony addressing whether the proposed Reorganization satisfies the criteria of Section 7-204(b)(6) of the Act. Although RESA filed direct testimony relating to Section 7-204(b)(6), that testimony was withdrawn pursuant to a Stipulation and Settlement Agreement that resolved all of RESA's concerns related to competition. No other party presented testimony to address this requisite Commission finding.

a) Joint Applicants' Position

Joint Applicants witness Linginfelter testified that there will be no changes to Nicor Gas' tariffs or procedures governing its natural gas transportation or retail choice programs as a result of the Reorganization. Joint Applicants witness Beattie testified that, since Southern is not an active participant in the Illinois gas market, its merger with AGLR will not have a significant adverse effect on the competitive gas market in Nicor Gas' service territory. He also testified that Southern will look to AGLR's experience and leadership in the gas distribution industry to maintain a model that supports competition and protects Nicor Gas' customers.

b) Staff's Position

Staff witness Sackett testified that, since no Southern subsidiary currently provides any services in Illinois, the Reorganization will not result in the consolidation of market shares or other impact on any of the markets over which the Commission has jurisdiction. Mr. Sackett recommended that the Commission find that the proposed Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction as required by Section 7-204(b)(6) of the Act.

c) Commission Analysis and Conclusion

Based on the evidence in the record, including Staff witness Sackett's recommendations, the Commission concludes that the proposed Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(b)(6) of the Act.

6. Finding No. 7: "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers"

The Joint Applicants and Staff submitted testimony addressing whether the proposed Reorganization satisfies the criteria of Section 7-204(b)(7) of the Act. No other party presented testimony to address this requisite Commission finding.

a) Joint Applicants' Position

Joint Applicants witness Linginfelter testified that Nicor Gas will retain its existing Commission-approved rates while providing service to customers pursuant to the existing Commission-approved terms and conditions of service. Joint Applicants witness Beattie testified that the Reorganization will have no bearing on whether Nicor Gas seeks a future rate change.

b) Staff's Position

Staff witness Johnson testified that the Joint Applicants have demonstrated that the proposed Reorganization is not likely to result in any adverse rate impacts on retail customers and recommended that the Commission find that the proposed Reorganization complies with the provisions of Section 7-204(b)(7).

c) Commission Analysis and Conclusion

Based on the evidence in the record, including Staff witness Johnson's recommendations, the Commission concludes that the proposed Reorganization is not likely to result in any adverse rate impacts on retail customers. Accordingly, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(b)(7) of the Act.

B. Section 7-204(c): Treatment of Costs and Savings

Section 7-204(c) of the Act states that the Commission "shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated."⁵

1. Joint Applicants' Position

Joint Applicants witness Beattie testified that, given that any savings allocable to Nicor Gas resulting from the Reorganization will be passed through to customers in the normal course of the ratemaking process and the Joint Applicants are not seeking recovery of costs incurred in accomplishing the proposed Reorganization, there is nothing upon which the Commission must rule with respect to Section 7-204(c). However, the Joint Applicants proposed certain conditions to the Commission's approval of the proposed Reorganization (Joint Applicants' Commitments Nos. 11 and 12), which were supported by Staff witness Tolsdorf in connection with his evaluation of the Joint Applicants' compliance with Sections 7-204(c) as discussed below.

2. Staff's Position

Staff witness Tolsdorf testified that he believed the Commission was required to rule on the allocation of savings and the recovery of costs related to the proposed Reorganization under Section 7-204(c). He further testified that Joint Applicants' Commitments Nos. 11 and 12 address the requirements of Section 7-204(c) and, therefore, should be adopted by the Commission in the Order approving the Reorganization.

3. Commission Analysis and Conclusion

Based on the evidence in the record, including the Joint Applicants' Commitments Nos. 11 and 12, which Staff witness Tolsdorf recommended adoption of, the Commission finds that the proposed Reorganization satisfies the criteria of Section 7-204(c) of the Act.

⁵ 229 ILCS 5/7-204(c).

C. Section 7-204A of the Act

Section 7-204A(a) of the Act sets forth the minimum information that must be included in an application for approval of reorganization pursuant to Section 7-204.⁶ Section 7-204A(b) of the Act provides that an agreement involving the use of any public utility employee's services by an affiliated interest, or the transfer of assets between a public utility and an affiliate, is subject to the Commission's review "in the same manner as it may review any other public utility and its affiliated interest."⁷

1. Joint Applicants' Position

The Joint Applicants state that they have satisfied all the minimum filing requirements under Section 7-204A(a), including submission of copies of any proposed affiliated interest agreements in accordance with Section 7-204A(a)(5). As discussed above, the Joint Applicants seek approval of the Operating Agreement and the Tax Allocation Agreement, as amended, and Staff witness Hathhorn recommends Commission approval of both of these agreements.

The Joint Applicants contend that they have satisfied all the information filing requirements in the statute. No party challenges the Joint Applicants' contention.

2. Commission Analysis and Conclusion

The Commission finds that the Joint Applicants have met the minimum information requirements set out in Section 7-204A(a). Regarding Section 7-204A(b), the evidence presented by the Joint Applicants and Staff supports approval of the Operating Agreement and the Tax Allocation Agreement, subject to the conditions discussed above in connection with Sections 7-204(b)(2) and (b)(3) of the Act.

D. Section 7-102

1. Joint Applicants' Position

The Application references Section 7-102, which requires Commission approval whenever a "public utility may by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility."⁸ It also requires Commission approval for a public utility to "assign, transfer, lease, mortgage, sell (by option or otherwise), or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property..."⁹

The Joint Applicants note that Section 7-204(e) expressly provides that "[n]o other Commission approvals shall be required for mergers that are subject to this Section."¹⁰ The Joint Applicants maintain that neither Section 7-102(A)(c) nor (d) applies to the Reorganization, because the Reorganization does not involve a direct or indirect merger or consolidation of two utilities' businesses or property and is not a sale or disposition of a utility's business or property, but rather is a change of control transaction subject to

⁶ 220 ILCS 5/7-204A(a).

⁷ 220 ILCS 5/7-204A(b).

⁸ 220 ILCS 5/7-102(A)(d).

⁹ 220 ILCS 5/7-102(A)(c).

¹⁰ 220 ILCS 5/7-204(e).

Sections 7-204 and 7-204A. However, the Joint Applicants state that, if the Commission were to determine that the Reorganization also is subject to Section 7-102, the information submitted in support of the Application is sufficient to meet the requirements of Section 7-102, so that any approval deemed necessary pursuant to Section 7-102 should be granted.

2. Commission Analysis and Conclusion

As part of the application process, the Joint Applicants included Section 7-102 for Commission consideration. No other party in this proceeding commented on whether this section applies to the proposed Reorganization. The Commission agrees with Joint Applicants that this transaction does not involve a direct or indirect merger or consolidation of two utilities' businesses or property and is not a sale or disposition of a utility's business or property, but rather is a change in control transaction. Therefore, the Commission does not consider it necessary to rule on the applicability of Section 7-102 of the Act.

E. Section 6-103

Under Section 6-103 of the Act, "[t]he capitalization of a public utility formed by a merger of two or more corporations shall be subject to the approval of the Commission."¹¹ Additionally, "[i]n any reorganization of a public utility; resulting from a forced sale, or in any other manner, the amount of capitalization...shall be such as is authorized by the Commission."¹²

1. Staff's Position

Staff witness Tolsdorf testified that, although the Joint Applicants do not anticipate any push down accounting to the books and records of Nicor Gas, the Commission should impose the following condition in its Order approving the Reorganization:

The Joint Applicants shall file on the ICC's e-Docket system in Docket No. 15-0558 and send a copy of the same to AccountingMgr@icc.illinois.gov, the final disposition of the accounting entries. If the SEC or independent auditors determine any accounting entries are required, the Joint Applicants shall file on the ICC's e-Docket system in Docket No. 15-0558 and send a copy of the same to AccountingMgr@icc.illinois.gov, copies of the accounting entries to be recorded on the regulatory books of Nicor Gas, including preliminary amounts to be recorded, within 6 months after closing the reorganization, and further file the final accounting entries and amounts no later than 12 months after closing

Staff witness McNally referenced Mr. Tolsdorf's condition in his testimony regarding the Joint Applicants' compliance with Section 6-103 of the Act. He testified that, to the extent Nicor Gas' post-merger balance sheet reflected push down accounting

¹¹ 220 ILCS 5/6-103.

¹² *Id.*

adjustments, the Commission would then have to determine whether the post-merger capitalization of Nicor Gas complied with Section 6-103 following the Reorganization. He further testified that, absent such accounting adjustments, Nicor Gas' capitalization would equal original cost and, consequently, would satisfy the requirements set forth in Section 6-103. In order to notify the Commission of Nicor Gas' capitalization post-Merger, he recommended that, as a condition to its approval of the Reorganization, the Commission require the Joint Applicants to make the filings recommended by Staff witness Tolsdorf.

2. Joint Applicants' Position

Joint Applicants witness Beattie testified that, although the Joint Applicants do not agree that Staff's proposed reporting requirement regarding Nicor Gas' capitalization post-Merger is necessary, the Joint Applicants have accepted the condition as proposed by Staff witnesses Tolsdorf and McNally.

3. Commission Analysis and Conclusion

Staff's proposed reporting requirement, which the Joint Applicants accept for purposes of securing merger approval, should be adopted. The Joint Applicants' acceptance permits the Commission to conclude that approval of the proposed Reorganization will result in compliance with Section 6-103.

V. RESOLUTION OF ISSUES BETWEEN THE JOINT APPLICANTS AND AG/CUB

AG/CUB presented testimony asserting that any Commission approval of the Reorganization should contain conditions addressing that: (1) Nicor Gas is earning in excess of its authorized rate of return in both 2014 and 2015 (AG/CUB Ex. 1.0; AG/CUB Ex. 4.0); and (2) that the retail affiliates of Nicor Gas should cease using the Nicor name and logo.

Specifically, AG/CUB witness Patrick Hurley testified that northern Illinois gas utility customers appear to be confused or feel they were misled when Nicor affiliated companies (that are not utilities) use the Nicor Gas name and logo when selling their products and services. That customer confusion, according to the complaints attached to his Direct testimony, is based upon the affiliate company's use of the same name and/or logo as the regulated utility, Nicor Gas, Mr. Hurley testified. He stated that that confusion apparently contributes to customers making a decision to purchase Nicor affiliate products that they might have otherwise rejected or, at the very least, investigated further. He recommended that the Commission condition approval of The Southern Company/AGL Resources Inc./Nicor Gas reorganization upon the Joint Applicants' agreement to cease using the Nicor name and logo on its affiliate company products and services.

AG/CUB witness Leiser testified that she contracted with a Nicor Gas affiliate to participate in the company's "Lock 12" program, a pre-determined monthly amount billing program based on the customer's prior 12 months of usage. Ms. Leiser testified that she believed that because the utility's name "Nicor" was attached to the product, she could be assured that she would either save money or at a minimum, pay no more than she otherwise would have if she was receiving gas through the Nicor utility. She testified that she trusted the Nicor name and assumed that these products would provide her with a fair price for her natural gas usage. Instead, she testified, as shown in AG/CUB Ex. 3.4,

during the 2014-2015 calendar year periods, she paid a total of \$430.62 more under the Nicor Gas affiliate Lock 12 program than she would have had she retained Nicor Gas as her default supplier.

It is the Joint Applicants' position that neither topic is properly before the Commission in this docket. Additionally, the Joint Applicants presented testimony that argued that the AG/CUB overearning claim was based on an inaccurate analysis. Specifically, Joint Applicants witness Morley testified that, among the reasons that AG/CUB witness Efron's analysis for 2014 was flawed, was that it failed to apply the principle of weather normalization to account for the 2014 "Polar Vortex," which brought extreme weather and record customer demand. Similarly, Mr. Morley testified that Mr. Efron's analysis of Nicor Gas' 2015 earnings was flawed for several reasons, including that it was based on an incorrect reading of a prior Commission Order.

Additionally, the Joint Applicants presented testimony that AG/CUB's overearning claim and proposed rate reduction would be more appropriately addressed in a rate case or other traditional rate-review proceeding. Joint Applicants witness Morley also questioned why AG/CUB had not brought its overearning claim before the Commission sooner, since Nicor Gas' 2014 financial data had been publicly available since March 2015.

As to AG/CUB's claim concerning the use of Nicor Gas' name and logo, Joint Applicants witness Linginfelter testified that an affiliate's use of the Nicor name complied with the Commission's rules, which allow for an affiliate's use of a public utility's name and logo provided that the affiliate complied with Section 550.30 of the Commission's rules. 83 Ill. Adm. Code § 550.30. Mr. Linginfelter also stated the use of a public utility's name and logo by an affiliate was an issue more appropriately addressed in a different proceeding, such as a rulemaking.

On April 28, 2016, the Joint Applicants and AG/CUB filed a Stipulation, with a Settlement Agreement (the "Agreement") attached, which resolved all issues between the parties.

The Agreement noted that it is "the result of give and take among the Parties, all of whom have been represented by counsel and memorializes the Parties' agreements." Pursuant to the Agreement: (1) AG and CUB will support the Joint Applicants' submission of an agreed-upon Draft Order within 21 days of the execution of the Agreement; (2) the agreed-upon Draft Order will contain a joint recommendation that the terms in Section 1 of the Agreement (discussed below in this Order) be made a condition of the Commission's approval of the proposed Reorganization; (3) AG and CUB will not oppose the proposed Reorganization moving to a final Commission Order as soon as practicable after the submission of the agreed-upon Draft Order in accordance with the Commission's regularly scheduled meetings; and (4) AG and CUB will not oppose a Commission Order approving the proposed Reorganization on terms consistent with the Application, the Joint Applicants' testimony and the Agreement, and agree not to seek rehearing or appeal of such an Order.

1. Section 1 of the Agreement

The Joint Applicants and AG/CUB jointly recommend that Section 1 of the Agreement be made a condition of the Commission's approval of the proposed Reorganization. Section 1 of the Agreement reads as follows:

1. Use of the Nicor Name and Logo

The Joint Applicants agree that, no later than December 31, 2017, neither Prairie Point Energy, L.L.C. d/b/a Nicor Advanced Energy LLC ("NAE") nor Nicor Solutions, L.L.C. ("NiSol"), a subsidiary of SouthStar Energy Services LLC, will continue to use the Nicor name or logo to conduct business in Illinois. The period between legal close of the merger and December 31, 2017, shall herein be referred to as the "Transition Period." The Joint Applicants' agreement to implement changes to NAE and NiSol's name and logo shall not constitute, and shall not be construed or interpreted to constitute, an admission that the use of a public utility's name or logo by an affiliated interest is inappropriate in any way, or appropriately is raised or considered in the context of a merger approval proceeding under Section 7-204 of the Public Utilities Act, 220 ILCS 5/7-204. Notwithstanding this Agreement, Nicor Gas, NAE, and NiSol and any of their successors, may reflect in written materials that they are Southern Company subsidiaries upon the merger closing and thereafter.

During the first six months after merger closing, NAE and NiSol may maintain normal levels of marketing activity. At a point in time after the first six-month period, NAE and NiSol shall market as necessary in order to promote the transition to a new brand. Any NAE or NiSol bill inserts or direct customer mailings made during the Transition Period, as well as NAE's and NiSol's website homepage and related "frequently asked questions" page, will include the following language:

Nicor Advanced Energy ("NAE") [or, Nicor Solutions] is not the same company as Nicor Gas Company, and the Illinois Commerce Commission ("ICC") does not regulate NAE's [or NiSol's] prices. You do not have to buy products or services from NAE [or NiSol] in order to receive the same quality of service from the gas utility. Nicor Gas does not set the price you pay for such service nor does the ICC regulate the prices offered by NAE [or NiSol].

After the completion of the Transition Period, other than Nicor Gas, no other Southern Company or AGL Resources affiliate that operates or may operate in Illinois under a business name that includes the word "Nicor", or any successor name of Nicor Gas, will offer a natural gas commodity product, or fixed-bill product, that includes all natural gas related costs, program administration fees and taxes, and is made available to residential natural gas customers in Illinois.

2. Commission Analysis and Conclusion

Based on the evidence in the record, the Commission finds that the agreement between the Joint Applicants and AG/CUB set forth in the Agreement reasonably and fully resolves the contested issues between the Joint Applicants and AG/CUB in this proceeding. The Commission additionally accepts the joint recommendation in the Agreement that the terms contained in Section 1 of the Agreement be made a condition of the Commission's approval of the proposed Reorganization. These terms shall be adopted as a condition to the Commission's approval of the proposed Reorganization and included in Appendix A to this Order.

VI. FINDINGS AND ORDERINGS PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Nicor Gas is an Illinois corporation that is engaged in the distribution of natural gas to the public at retail in the State of Illinois; Nicor Gas is a "public utility" as that term is defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) an Appendix ("Appendix A") should be attached and fully incorporated into this Order; it should contain the Required Conditions of Approval established by this Commission in this Order, which are indispensable conditions for approval of the proposed Reorganization and for approval of all other relief sought or granted in this Order;
- (5) for the reasons set forth in this Order, and subject to the conditions established in this Order (enumerated in Appendix A), the proposed Reorganization will not adversely affect Nicor Gas' ability to perform its duties under the Act, within the meaning of Section 7-204 of the Act; this finding is dependent upon the conditions established in this Order and would not be rendered in the absence of those conditions;
- (6) pursuant to Section 7-204 of the Act, and subject to the conditions established in this Order (enumerated in Appendix A), the Commission finds that:
 - a) the proposed Reorganization will not diminish Nicor Gas' ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
 - b) the proposed Reorganization will not result in the unjustified subsidization of non-utility activities by Nicor Gas or its customers;
 - c) under the proposed Reorganization, costs and facilities will be fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and

- facilities which are properly included by the utility for ratemaking purposes;
- d) the proposed Reorganization will not significantly impair the ability of Nicor Gas to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
 - e) after approval of the proposed Reorganization, Nicor Gas will remain subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities;
 - f) the proposed Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and
 - g) the proposed Reorganization is not likely to result in any adverse rate impact on retail customers;
- (7) for purposes of Sections 7-101 and 7-204A of the Act, the Operating Agreement and the Tax Allocation Agreement should be approved subject to the conditions described in this Order (enumerated in Appendix A);
 - (8) the Joint Applicants comply with the minimum information requirements set out in subsection 7-204A(a) of the Act for an application for approval of a reorganization;
 - (9) subject to the conditions established in this Order (enumerated in Appendix A), and in the manner described in those conditions, any savings resulting from the proposed Reorganization shall be allocated to Nicor Gas' ratepayers and no costs incurred in accomplishing the proposed Reorganization shall be recovered by the Joint Applicants, or by Nicor Gas individually, through Illinois jurisdictional regulated rates;
 - (10) it is unnecessary for the Commission to rule on the applicability of Section 7-102 of the Act insofar as this proceeding concerns the Joint Applicants' Reorganization application; and
 - (11) subject to compliance with the conditions set out in this Order (enumerated in Appendix A), the proposed Reorganization will not be inconsistent with Section 6-103 of the Act, insofar as that statute applies to the subject matter of this proceeding.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that, subject to each and all of the required conditions of approval set forth in this Order and enumerated in Appendix A, the Joint Applicants' request to engage in the Reorganization, through which AGL Resources Inc. will become a subsidiary of The Southern Company, is hereby approved.

IT IS FURTHER ORDERED that, subject to each and all of the required conditions of approval set forth in this Order and enumerated in Appendix A, as applicable, the Operating Agreement governing transactions between Nicor Gas and affiliated parties and the Tax Allocation Agreement Among Members of the Southern Company, as amended to include the AGLR companies, including Nicor Gas, are hereby approved.

IT IS FURTHER ORDERED that, in carrying out and completing the Reorganization, and in all subsequent Nicor Gas activities and operations subject to the jurisdiction of this Commission, the Joint Applicants shall comply with each and all of the required conditions of approval set forth in this Order and enumerated in Appendix A, unless expressly relieved of such obligation, in whole or in part, by directive of this Commission.

IT IS FURTHER ORDERED that, subject to the conditions established in this Order (enumerated in Appendix A), and in the manner described in those conditions, any savings resulting from the proposed Reorganization shall be allocated to Nicor Gas' ratepayers and no costs incurred in accomplishing the proposed Reorganization shall be recovered by the Joint Applicants; or, by Nicor Gas individually, through Illinois jurisdictional regulated rates.

IT IS FURTHER ORDERED that any objections, motions or petitions filed in this proceeding that remain unresolved should be disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final, it is not subject to the Administrative Review Law.

By Order of the Commission this 7th day of June, 2016.

(SIGNED) BRIEN SHEAHAN

Chairman

STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

ORDER NO 87529

IN THE MATTER OF THE MERGER
OF THE SOUTHERN COMPANY AND
AGL RESOURCES INC.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO 9104

March 31, 2016

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Appearances:

Carville A. Collins, Esquire; Mary Patricia Keefe, Esquire;
and Erica L. McGill, Esquire, on behalf of AGL
Resources Inc. and Pivotal Utility Holdings, Inc. d/b/a
Elkton Gas.

J. Joseph Curran, III, Esquire, and Christopher H.
Dewko, Esquire, on behalf of The Southern Company.

Ronald Herzfeld, Esquire, on behalf of the Maryland Office
of People's Counsel.

Annette B. Garofalo, Esquire, and Peter A. Woolson,
Esquire, on behalf of the Technical Staff of the Maryland
Public Service Commission.

Executive Summary

On November 4, 2015, pursuant to 6-105 of the Public
Utilities Article, Annotated Code of Maryland, The Southern Company
("Southern Company"), AGL Resources Inc. ("AGL Resources"), and
Pivotal Utility Holdings, Inc. d/b/a Elkton Gas ("Elkton Gas")
(collectively, "Joint Applicants") filed an application
("Application") to request authorization from the Maryland Public

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Service Commission ("Commission") for Southern Company to acquire the power to exercise substantial influence over the policies and actions of Elkton Gas ("Acquisition") upon the consummation of a merger between Southern Company and AGL Resources ("Merger"). AGL Resources is the parent company of Pivotal Utility Holdings, Inc. ("Pivotal"), and Elkton Gas is a division of Pivotal. Upon the closing of the Merger, AGL Resources will become a subsidiary of Southern Company, and Southern Company will become the ultimate parent company of Elkton Gas.

The Maryland Office of People's Counsel ("OPC") and Technical Staff ("Staff") of the Commission are parties to the proceeding. Pursuant to the procedural schedule established in the proceeding, OPC and Staff each filed direct testimony. After the submission of this testimony, the Joint Applicants, OPC and Staff were able to negotiate a unanimous settlement agreement in the matter. On February 24, 2016, a Joint Petition for Adoption of Stipulation and Settlement Agreement ("Joint Petition") was submitted in the matter. Each party also submitted testimony in support of the Joint Petition. On March 1, 2016, an evidentiary hearing was held to admit all the pre-filed testimony, exhibits and attachment submitted in the matter, the Joint Petition, the Stipulation and Settlement Agreement ("Settlement Agreement") and to hear testimony in support of the Settlement Agreement.

As discussed below, I conclude that the terms and conditions of the Settlement Agreement are reasonable and are in the public interest, and thus will grant the Joint Petition and

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approve the Settlement Agreement. Subject to the terms and conditions set forth in the Settlement Agreement, as discussed herein, I find that the acquisition by Southern Company of the power to exercise substantial influence over Elkton Gas as the result of the merger between Southern Company and AGL Resources is consistent with the public interest, convenience and necessity, including benefits and no harm to consumers, and that the factors enumerated in Public Utilities Article, § 6-105(g) have been satisfied. Accordingly, subject to the conditions set forth in the Settlement Agreement, which are incorporated by reference into this Proposed Order, I hereby grant the Application and authorize the acquisition by Southern Company of the power to exercise substantial influence over the policies and actions of Elkton Gas upon the consummation of the Merger.

Procedural History

On November 4, 2015, the Joint Applicants filed the Application,¹ which included a number of exhibits, including the testimony of Art P. Meattie, Executive Vice President and Chief Financial Officer of Southern Company,² and Henry ("Hank") P. Linginfelter, Executive Vice President, Distribution Operations of AGL.³

¹ Joint Appl. Exhibit ("Ex.") 4.

² Joint Appl. Ex. 5 ("Meattie Direct").

³ Joint Appl. Ex. 6 ("Linginfelter Direct").

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On November 5, 2015, the Commission delegated the matter to the Public Utility Law Judge Division, and, pursuant to § 6-105(g)(6) of the Public Utilities Article,¹ extended the 180-day period by which the Commission had to issue a final Order in the matter for an additional 45 days, or until June 15, 2016.

On January 29, 2016, OPC filed the direct testimony of Karl R. Pavlovic, Managing Director of and a Senior Consultant with PCMG and Associates LLC,² and Staff submitted the testimony of: Juan Carlos Alvarado, Director of the Telecommunications, Gas, and Water Division of the Commission,³ Patricia M. Stinnette, Director of Accounting Investigations Division of the Commission,⁴ and John J. Clementson, II, Assistant Chief Engineer of the Commission's Engineering Division.⁵

On February 10, 2016, a hearing for public comment was held in Elkton, Maryland. One Elkton Gas customer appeared and expressed his concern that he might experience a significant rate increase if the Merger were approved. No written public comments were received in the matter.

On February 19, 2016, the Joint Applicants filed an Errata to the Application and supporting documents.⁶

¹ OPC Ex. 1A (Public Version) and 1C (Confidential Version) ("Pavlovic Direct").

² Staff Ex. 1 ("Alvarado Direct").

³ Staff Ex. 2 ("Stinnette Direct").

⁴ Staff Ex. 3 ("Clementson-Direct").

⁵ Joint Appl. Ex. 7.

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On February 21, 2016, the Joint Applicants filed a Joint Petition for Adoption of Stipulation and Settlement Agreement,⁹ Stipulation and Settlement Agreement,¹⁰ and Panel Testimony of Wael W. Black and Mary Patricia Keefe.¹¹ Also, on February 24, 2016, OPC submitted the Supplemental Direct Testimony of Karl K. Pavlovic¹² and Staff submitted Settlement Testimony of Juan Carlos Alvarado, Patricia M. Stionette and John J. Clementson, II.¹³

On March 1, 2016, a hearing was held to admit the pre-filed testimony, exhibits and attachment and the Joint Petition into the record. The witnesses for the Joint Applicants and the witnesses for Staff, who filed testimony in support of the Settlement Agreement, appeared at the hearing to respond to questions of the Chief Public Utility Law Judge.¹⁴

Summary of Application and Testimony of Joint Applicants

Alkton Gas provides natural gas service to an approximately 64 square mile area in Cecil County, Maryland, and serves approximately 6,500 residential, commercial and industrial customers in this service territory¹⁵ through some 102 miles of

⁹ Joint Appl. Ex. 9.

¹⁰ Joint Appl. Ex. 8.

¹¹ Joint Appl. Ex. 10 ("Panel Testimony - Black and Keefe").

¹² OPC Ex. 3 ("Pavlovic Suppl.").

¹³ Staff Ex. 4 ("Staff Settlement Testimony").

¹⁴ Dr. Pavlovic was excused from attendance at the hearing as the Chief Law Judge had no questions for him.

¹⁵ According to Joint Applicant witness Keefe, 500 of the 6,500 customers are commercial customers, two are large industrial customers, and the remainder of the customers are residential customers. Transcript at 16.

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service main.¹⁶ Elkton Gas has seven full-time individuals and one part-time individual employed in Elkton, Maryland, where Elkton Gas has its headquarters.¹⁷ Its Maryland workforce utility operations are supplemented/supported by AGL Resources' accounting, financial, legal, engineering, and rates and tariffing personnel through a service agreement with AGL Services Company.¹⁸

Southern Company, AMS Corp.,¹⁹ and AGL Resources entered into an Agreement and Plan of Merger dated August 13, 2015 ("Merger Agreement").²⁰ Under the terms of the Merger Agreement, Southern Company will purchase the common stock of AGL at a price \$66 per share (or an aggregate purchase price of approximately \$8 billion).²¹ Upon consummation of the Merger, AMS Corp. will merge into AGL Resources and AGL Resources then will become a wholly owned first tier corporate subsidiary of Southern Company.²² After the Merger, AGL Resources will no longer be a publicly traded company.²³ To fund the Merger, Southern Company will issue approximately \$1.4 billion in new Southern Company equity between

¹⁶ Linginfelter Direct at 5.

¹⁷ Linginfelter Direct at 5.

¹⁸ Linginfelter Direct at 5, 14; Pavlovic Direct, Data Responses Referenced in the Direct Testimony of Karl R. Pavlovic, Joint Applicants' Response to Staff Data Request No. 2-23.

¹⁹ Southern Company explained that AMS Corp. was formed solely for the purpose of acquiring AGL Resources in the Merger and will cease to exist as a separate entity upon completion of the Merger.

²⁰ Application, Exhibit 2.

²¹ *Id.*; Beattie Direct at 12.

²² Application at 4; Beattie Direct at 12.

²³ Application at 4.

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now and the end of 2016.” The remaining financing needs for the Merger and other Southern Company needs will be provided from an additional approximate \$8 billion debt issuance that will occur prior to the closing.”

Southern Company is an Atlanta based public utility holding company currently providing electric utility service through four state-regulated operating companies in Alabama, Florida, Georgia, and Mississippi.” For the year ended December 31, 2014, approximately 94% of Southern Company's operating revenues were related to retail regulated utility operations.” Its state regulated utilities serve more than 4.5 million customers throughout 120,000 square miles of regulated service territory.” Southern Company is one of only two utilities listed in Fortune's annual "World's Most Admired Electric and Gas Utility" rankings for each of the last five years.” Currently, Southern Company's operating subsidiaries have their own boards of outside directors and executive management teams responsible for each subsidiary's operations, including making key decisions, such as long-term resource planning.” Southern Company will apply its same organizational approach to AGL Resources and Elkhon Gas.”

²⁴ Application at 4, 13; Beattie Direct at 12 (as corrected by the Brata).

²⁵ Application at 4; Beattie Direct at 12 (as corrected by the Brata).

²⁶ Beattie Direct at 4.

²⁷ Beattie Direct at 5.

²⁸ Beattie Direct at 5.

²⁹ Beattie Direct at 5.

³⁰ Beattie Direct at 11.

³¹ Id.

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Mr. Beatty characterized Southern Company as having a "strong financial position" which will benefit AGL Resources and Elkton Gas and thereby will inure to the benefit of customers."

AGL Resources, the parent company of Elkton Gas, also has its headquarters in Atlanta." Its principal business is the distribution of natural gas through regulated public utility operating companies in seven states: Maryland, Georgia, Tennessee, New Jersey (Elizabethtown Gas, which is also a division of Pivotal)," Florida (Florida City Gas; which is also a division of Pivotal)," Illinois, and Virginia." AGL Resources serves approximately 4.5 million customers through over 80 miles of pipeline and 14 natural gas storage facilities through its regulated natural gas distribution utility subsidiaries." AGL Resources acquired Elkton Gas in 2004."

The Joint Applicants stated that they will comply with federal law in executing the Merger, and have filed or will file all filings and notifications required by the Hart-Scott-Rodino Act and have filed a preliminary Proxy Statement with the Securities Exchange Commission on September 11, 2015, pursuant to Section 14(a) of the Securities Exchange Act of 1934."

" Beattie Direct at 19.

" Application at 6.

" Application, Exhibit J, AGL Resources - Corporate Organization Chart at 1.

" Id.

" Application at 6.

" Id.

" Linginfelter Direct at 6.

" Application at 13-14.

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Additionally, they note that the Merger requires approval by the California Public Utilities Commission, Georgia Public Service Commission, Illinois Commerce Commission, the New Jersey Board of Public Utilities, and the Virginia State Corporation Commission, which approvals are being sought contemporaneously with that of the Commission's.⁴⁰ Further, the Joint Applicants assert that neither the Joint Applicants nor key personnel associated with the Joint Applicants have violated any state or federal statute regulating the activities of public service companies.⁴¹

According to Mr. Beattie, the Merger is "not synergies-driven and will not result in any significant reduction in jobs at AGL's operation companies."⁴² He indicated that Elkton Gas would continue to operate similar or the same as it does today as an indirect subsidiary of AGL. He stressed that AGL would continue to use its more than 150 years of gas distribution operations experience for the benefit of Elkton Gas as it currently does. Further, he indicated that, should any synergy savings and efficiencies occur through the Merger integration process, Elkton Gas' portion of the net savings and efficiencies would be flowed through to Elkton Gas' customer through "the normal ratemaking process."⁴³

Mr. Beattie presented an overview of Southern Company and its operational philosophies. He discussed how each of the factors set forth in § 4-105(g) was satisfied to demonstrate that

⁴⁰ Application at 13, fn 3.

⁴¹ Application at 14.

⁴² Beattie Direct at 21.

⁴³ Beattie Direct at 21.

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the acquisition was in the public interest, convenience and necessity and resulted in benefits and no harm to the customer and no harm to the consumer. He also explained that the commitments that the Joint Applicants were making as conditions to the approval of the acquisition enhanced the benefits of the Merger and ensured the lack of harm to Elkton Gas' customers, to further show that the approval of the Acquisition is in the public interest, convenience and necessity.

Mr. Linginfelter, in his testimony, described the service territory and current operations of Elkton Gas, outlined the current and historical performance of Elkton Gas in provision of safe, reliable and affordable service to its customers, presented information to assist the Commission to evaluate the Merger under the criteria of Public Utilities Article § 6-105, and explained the positive benefits of the Merger and the lack of any adverse impact to Elkton Gas' rates, to Elkton Gas' provision of safe, adequate and affordable utility service, and to Elkton Gas' existing Maryland employees.

To further support their assertions that the Acquisition is in the public interest, convenience, and necessity with benefit and no harm to the customers, the Joint Applicants committed to certain actions or forbearance of action ("Application Commitments").⁴ Specifically, the Joint Applicants committed:

⁴ Application, Exhibit 1.

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- To amend Elkton Gas' current Asset Management Agreement ("AMA") with Sequent Energy Management L.P. to provide an increase in the amount paid to Elkton Gas of \$50,000, and flow the amount through to customers, with the increased payment to be made as a one-time payment, and the entire amount of the increase flowed through to customers without regard to existing revenue sharing provisions of the AMA.
- To accelerate the rate of the assessment of Elkton Gas' entire network of Alayl-A pipe. The Joint Applicants explained that of the 102 miles of pipe in Elkton Gas' distribution system, 73 miles is plastic pipe with 48.7 miles of the plastic pipe comprised of material known as Alayl-A.
- To not seek a change in rates as a result of the Merger; and, in a future base rate case, that Elkton Gas will not seek recovery in its rates of (i) any acquisition premium associated with the Merger; (ii) the cost associated with goodwill arising from the Merger; or (iii) any transaction costs incurred in connection with the Merger.
- That AGL and Elkton Gas will not issue debt or equity in connection with or to fund the Merger.
- For a period of two years from the closing date of the Merger, that Elkton Gas would not be assessed costs for services provided by an affiliate any greater than it would have been if the Merger had not occurred, regardless of whether the service is provided directly or indirectly by Southern Company Services, Inc., AGL Resources Service Company, or any other Southern Company affiliate.
- Although no immediate net savings to Elkton Gas have been identified as a result of the Merger, to the extent any net savings and efficiencies are realized through the Merger integration process, such net savings and efficiencies will be

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flowed through to Elkton Gas customers in the normal ratemaking process.

- For at least the first three years following the closing of the Merger, to maintain current employment levels within the Maryland workforce supporting Elkton Gas' operations.
- To maintain Elkton Gas' headquarters in Elkton, Maryland and that Elkton Gas will retain its corporate name and form and will continue to be a division of Pivotal.
- That AGL Resources will continue to have a separate board of outside directors for a minimum of five years following the close of the Merger.
- To increase the supplier diversity performance of Elkton Gas by increasing its Diverse Spend Ratio ("DSR"), as that term is defined in the May 29, 2009 Elkton Gas Supplier Diversity Memorandum of Understanding, by a factor of 4 during the period 2015 through 2017, as measured against Elkton Gas' 2014 DSR.
- Southern Company committed to sustain Elkton Gas' current level of community investment for a period of at least five years following the closing of the Merger and will continue to target charitable, workforce development, and economic development efforts in the Elkton Gas service area benefitting Elkton Gas customers.

OPC's Initial Position

OPC witness Pavlovic explained that his testimony was not intended to address "every potential harm and public interest issue that could be raised under Section 6-105, rather only those issues that, based on the information provided to date, appear to

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be the most significant to Elkton's customers."¹³ He expressed his concerns that (a) the potential of significant operation and cost synergies that will reduce Elkton Gas' costs, but would only be of benefit to the Elkton Gas customers if the tariff rates were revised to reflect these reduced costs;¹⁴ (b) the lack of showing by the Joint Applicants that the increase in the amount paid to Elkton Gas pursuant to the AMA of \$50,000 is either appropriate or will result in just and reasonable rates;¹⁵ (c) Elkton Gas may attempt to recover from the Elkton Gas customers the costs associated with the supplier diversity commitment, the community investment commitment, and the Merger transaction, including transition costs;¹⁶ and (d) Elkton Gas needed to accelerate the remedy of any system knowledge deficiencies in addition to the accelerated assessment surveys of the Aldyl-A pipe.¹⁷

To address his concerns, he recommended that the Commission include as conditions to any approval of the acquisition the following conditions:

- Require Elkton Gas to file a base rate case with a 2019 test year;¹⁸
- Require the Joint Applicants demonstrate that the \$50,000 one-time payment represents an appropriate and reasonable allocation of merger benefits to Elkton

¹³ Pavlovic Direct at 4.

¹⁴ Pavlovic Direct at 9.

¹⁵ Pavlovic Direct at 11.

¹⁶ Pavlovic Direct at 11-12.

¹⁷ Pavlovic Direct at 13.

¹⁸ Pavlovic Direct at 5, 14.

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Gas' customers or require a payment based on an appropriate and reasonable allocation of the merger's benefits to Elkton's customers;"

- Require a commitment by the Joint Applicants that Elkton Gas would not seek recovery from Elkton Gas' customers of the costs associated with (a) supplier diversity, (b) community investment, and (c) the merger transaction, including transition costs," and
- Require the Joint Applicants to accelerate the remedy of any Elkton Gas system knowledge deficiencies in addition to the accelerated assessment surveys of the Aldyl-A pipe."

Staff's Initial Position

Staff witness Alvarado's testimony addressed certain of the factors to be considered by the Commission pursuant to Public Utilities Article, § 6-105. He noted that the direct customer payment flowing from the Joint Applicant's one-time payment of \$50,000 to the Elkton Gas' customers would result in a payment "well short of customer credits approved by the Commission in past mergers."¹¹ He explained that Staff therefore recommended a higher one-time payment of \$52.15 per customer to reflect the ongoing nature of the increased payment to Elkton Gas under the AMA."¹²

¹¹ Pavlovic Direct at 5 6, 14.

¹² Pavlovic Direct at 5, 13.

¹³ Pavlovic Direct at 5, 13-14.

¹⁴ Alvarado Direct at 9.

¹⁵ Alvarado Direct at 9-10.

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Mr. Alvarado stated that Elkton's capital structure will not be impacted by the Merger because no debt or equity will be issued to finance the Merger by AGL or Elkton.¹⁰ He described the current Elkton Gas capital structure as consisting of 49.53% equity and 50.41% debt, which he observed is consistent with the capital structure of most regulated utilities in Maryland.¹¹ He indicated, however, that both AGL Resources and Southern Company hold riskier, more leverage financial positions often associated with publicly traded corporations.¹² To avoid any temptation by AGL Resources or Southern Company to shift some of the risk they face to Elkton Gas, Staff recommended that the Commission direct Elkton Gas maintain a rolling 12-month average annual equity ratio of at least 45%.¹³ Mr. Alvarado said that the condition would ensure that Elkton Gas did not become overly leveraged and assume too much risk.¹⁴

Staff also recommended that Elkton Gas file a base rate case with the Commission no later than four years after the close of the merger in order to review Elkton Gas' financial position and other issues identified in Staff's testimony in the matter,¹⁵ such as any change in employment levels upon expiration of the three-year commitment made by the Joint Applicants. Mr. Alvarado also indicated that by requiring Elkton Gas to file a base rate case

¹⁰ Alvarado Direct at 11.

¹¹ Id.

¹² Alvarado Direct at 11-12.

¹³ Alvarado Direct at 12.

¹⁴ Alvarado Direct at 12.

¹⁵ Alvarado Direct at 12.

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within four years of the closing of the merger, the Commission may assess whether the Joint Applicants have been able to identify savings or efficiencies that impact Elkton Gas' costs, and ensure the reduction flows through to the Elkton Gas' customers.⁴¹

While Staff commended the Joint Applicant for its commitment not to reduce Elkton Gas' community investment levels for five years after the Merger, Mr. Alvarado noted that Staff recommended that the Joint Applicants be directed by the Commission to increase the commitment from five years to ten years, consistent with previous Commission decisions.⁴²

Mr. Alvarado stated that the Merger did not raise any cross-subsidies or affiliate issues,⁴³ and, with the directive for filing a base rate case within four years of the closing of the merger, the Commission will be able to determine whether any costs of services provided to Elkton Gas by the Joint Applicant and other affiliates are included in rate base.⁴⁴

Mr. Alvarado stated that Staff did not oppose the commitment of the Joint Applicants to increase the DSR by a factor of 4, but would recommend that the condition be modified to require that the DSR remain at post merger levels indefinitely, and encourage Elkton Gas to increase its DSR towards the 25% target over time.⁴⁵

⁴¹ Alvarado Direct at 14.

⁴² Alvarado Direct at 15.

⁴³ Alvarado Direct at 16.

⁴⁴ Id.

⁴⁵ Alvarado Direct at 18.

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In addition to the base rate case to be filed in four years, Staff recommended an annual filing be made by Elkton Gas until it files its base rate case to update the Commission on the status of each commitment the Joint Applicants are making and any additional conditions recommended by Staff."

Mr. Alvarado stated that the Merger will not result in harm to the customers provided Staff's recommendations are accepted by the Commission." Further, if all of Staff's recommendations are accepted by the Commission, he said that Staff was satisfied that the Merger will result in net benefits to the public and the Merger is consistent with the public interest, convenience and necessity."

Staff witness Stinnette discussed the ring fencing measures, in addition to those found in Mr. Alvarado's testimony, and code of conduct matters relevant to the Merger proceeding. Ms. Stinnette recommended that the Joint Applicants be directed to conduct an analysis of operational functional risk to determine the adequacy of existing and future ring fencing measures to be filed with the Commission no later than 90 days after the closing of the Merger, and annually with the information filing as recommended by Mr. Alvarado." She also recommended that Southern Company be directed to commit that Elkton Gas and its affiliates will comply with the statutes and regulations applicable to Elkton Gas regard-

" Alvarado Direct at 19.

" Alvarado Direct at 19.

" Alvarado Direct at 20.

" Stinnette Direct at 2, 5.

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ing affiliate transactions.⁷² Further, she recommended that the Joint Applicants agree that the Commission may, after an investigation and a hearing, order Southern to divest its interest in Elkton Gas upon the filing of information that Southern Company or any of its affiliates had experienced certain financial conditions or ratings downgrades by any two of the three major rating agencies or Southern Company or AGL Resources have committed a pattern of violations of the Maryland public utility law and do not cure such violations after due notice.⁷³ Ms. Stinnette also recommended that Elkton Gas resume filing its ring fencing report as required by COMAR 20.40.02.08.⁷⁴

Staff witness Clementson testified that, in the review of the Commission's Engineering Division's records regarding Elkton Gas' distribution system reliability and customer service, he did not find any pipeline safety-related issues in regard to either the distribution system or customer service.⁷⁵ The focus of Mr. Clementson's testimony was the commitment by the Joint Applicants to conduct an accelerated assessment survey of the Aldyl-A pipe in the Elkton Gas distribution system ("Infrastructure Enhancement") without recovering the costs of the assessment from the Elkton Gas customers.

⁷² Stinnette Direct at 2, 5.

⁷³ Stinnette Direct at 2-3, 5-6.

⁷⁴ Stinnette Direct at 5.

⁷⁵ Clementson Direct at 4-5.

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According to Mr. Clementson, the Aldyl-A¹⁹ pipe installed in the Elkton Gas distribution system was used by many natural gas distribution operators from the 1970s through the late 1990s.²⁰ He explained that the Aldyl-A piping material manufactured up until 1983 has been shown to be susceptible to deterioration known as "brittle-like cracking."²¹ He described the cracking as consisting of fractures formed by breakage or cracking of a material into discernible parts, from which no deformation or clean break can be identified.²² Mr. Clementson stated that, in 1983, DuPont modified the resin used to produce the pipe to correct the issues associated with brittle-like cracking, and this type of cracking has not been seen in the modified material.²³

Mr. Clementson therefore recommended approval of the commitment for the Infrastructure Enhancement.²⁴ He also recommended that the Joint Applicants be directed to file a copy of a completed accelerated assessment study (including any other deficiencies related to other piping material within Elkton Gas' distribution system that could lead to unsafe conditions that are discovered as a result of the assessment) with the Commission.²⁵ Finally, he recommended that the Joint Applicants be directed to

¹⁹ Aldyl-A was a material developed and manufactured by E.I. duPont de Nemours and Company ("DuPont"). Clementson Direct at 3.

²⁰ Clementson Direct at 3.

²¹ Id.

²² Id.

²³ Clementson Direct at 3.

²⁴ Clementson Direct at 2, 3.

²⁵ Clementson Direct at 2, 5.

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file a plan for remediating any of the deficiencies found with either the Aldyl-A and/or the other piping materials, as a result of the assessment."

Settlement Agreement

According to the Joint Petition, after the conduct of discovery and filing of testimony by the parties, the parties engaged in extensive and comprehensive negotiations with respect to all aspects of the Joint Application, and were able to reach a unanimous settlement in the matter, of which the terms and conditions of the agreements are set forth in the Settlement Agreement.³³ As a result, the parties agreed that, subject to the terms and conditions contained in the Settlement Agreement, Southern Company should be authorized to acquire the power to exercise substantial influence over the policies and actions of Elkton Gas pursuant to Public Utilities Article, § 6-105.³⁴ Many of the terms and conditions are similar or the same as the commitments offered by the Joint Applicants in the Application, and others either expand the offered commitments or are new commitments that appear to be based on the recommendations contained in the testimony filed by OPC and Staff.

³³ Clementson Direct at 2, 5.

³⁴ Joint Petition at 3.

³⁵ Id.

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Direct Customer Credits

The Direct Customer Credits offered by the Joint Applicants has been increased to be a direct customer rate credit funded from a \$100,000 increase in the amount paid through Elkton Gas's AMA, payable over two years: The first credit to occur within 120 days of the closing of the Merger, and the second credit to occur within one year thereafter." Additionally, the Joint Applicants have agreed to an additional direct customer rate credit to the customers, to occur within 120 days of the closing of the Merger, which will be funded as a result of savings associated with the avoidance of further regulatory litigation costs in the amount of \$100,000."

Assessment of Aldyl-A Pipe

The Joint Applicants' commitment to conduct an accelerated assessment of Aldyl A pipe at no cost to the Elkton Gas customers is included as a term and condition of the Settlement Agreement." In addition, the Joint Applicants have agreed to provide, within 60 days of completion, a copy of the completed accelerated assessment study of the Aldyl-A piping within Elkton Gas' distribution system, which will also include any other deficiencies identified in the course of performing that assessment that relate to the other piping materials within Elkton Gas'

¹⁰ Settlement Agreement, Condition 1 (SA Cond 1) 4.

¹¹ SA Cond. 3.

¹² SA Cond. 4.

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distribution system that could lead to unsafe conditions."¹⁸ Further, within 60 days of completing the accelerated assessment, Elkton Gas will provide to the Commission a plan for remediating any of the deficiencies found with the Aldyl-A and/or any other piping materials discovered as a result of the assessment."¹⁹ Finally, Elkton Gas agreed to continue to systematically remediate system knowledge deficiencies in accordance with established programs and procedures."²⁰

Rate Making Matters

The Joint Applicants have agreed to file a base rate case within two years of the closing of the Merger."²¹ In the interim, within 90 days of closing of the Merger, Elkton Gas agreed to file an annual financial report for the previous 12-month period, which shall include Elkton Gas' revenues and costs."²² The report also shall contain a calculation of the earned return on rate base and return on equity for Elkton Gas."²³ Elkton Gas will thereafter file a financial report the next 12-month period within 60 days of the 12-month period end."²⁴

Should the transition costs (costs incurred to achieve synergy savings of the Merger) exceed synergy savings during the

¹⁸ SA Cond. 13.

¹⁹ SA Cond. 14.

²⁰ SA Cond. 15.

²¹ SA Cond. 3.

²² SA Cond. 5.

²³ Id.

²⁴ Id.

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test year in Elkton Gas' next base rate case, the Joint Applicants have agreed to forgo cost recovery of the transition costs that exceed synergy savings." Additionally, Elkton Gas agreed that it will not seek recovery in its rates of: (i) any acquisition premium associated with the Merger; (ii) any cost associated with good will arising from the Merger; or (iii) any transaction costs incurred in connection with the Merger."

The Joint Applicants agreed that neither AGL Resources nor Elkton Gas will issue debt or equity in connection with, or to fund, the Merger." Also, for a period of two years following the closing of the Merger, the amount of costs assessed to Elkton Gas for services provided by an affiliate shall be no greater than it would have been had the Merger not occurred, regardless of whether such services are provided directly or indirectly by Southern Company Services, Inc., AGL Services Company, or any other Southern Company affiliate."

Supplier Diversity Enhancements

As initially offered as a commitment, the Joint Applicants agreed to increase the supplier diversity performance of Elkton Gas by increasing its DSP by a factor of 4 during the period 2015 through 2017, as measured against Elkton Gas' 2014 DSP." In

" SA Cond. 1

" SA Cond. 2 (The definition of "acquisition cost" is set forth in SA Cond. 21.

" SA Cond. 9.

" SA Cond. 10

" SA Cond. 11

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addition, the Joint Applicants agreed to maintain the DSR at post-merger levels going forward, and continue to aim to increase Elkton Gas' DSR over time to 25%.¹⁰⁰

Community Investment Enhancements

The Joint Applicants agreed to increase their commitment to sustain Elkton Gas' current levels of community investment from five years to ten years.¹⁰¹ The Joint Applicants also agreed to maintain the commitment that Elkton Gas will not seek recovery in its rates of costs related to these community investment activities.¹⁰²

Financial Integrity and Ring Fencing Enhancements

The Joint Applicants' agreed that Elkton Gas will maintain a rolling 12-month average annual equity ratio of at least 48 percent.¹⁰³ They also agreed that, within 90 days of closing of the Merger and annually thereafter, Elkton Gas will resume filing a ring fencing report as required by COMAR 20.40.02.08.¹⁰⁴ In addition, Elkton Gas agreed to file a cost allocation manual pursuant to COMAR 20.40.02.07 within 90 days of closing.¹⁰⁵

¹⁰⁰ *Id.*

¹⁰¹ SA Cond. 12.

¹⁰² *Id.*

¹⁰³ SA Cond. 16.

¹⁰⁴ SA Cond. 17.

¹⁰⁵ *Id.*

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The Joint Applicants also agreed to conduct an analysis of their operational and financial risk to determine the adequacy of their existing ring fencing measures, using the ring fencing conditions as set forth in a matrix attached to the Settlement Agreement, excluding the first three ring fencing conditions contained in the matrix.¹⁹⁶

Elkton Gas and its affiliates agreed to comply with the statutes and regulations applicable to Elkton Gas regarding affiliate transactions.¹⁹⁷

Southern Company agreed to promptly report to the Commission any change by at least two of the three major credit rating agencies of the rating of the senior unsecured long-term public debt securities issued by Southern Company, ACL Resources, or Pivotal by providing the rating letter and related explanatory note.¹⁹⁸

Secure Maryland Employment

As offered as a commitment in its Application, the Joint Applicants agreed, for at least three years following the closing of the Merger, to maintain current employment levels within the Maryland workforce supporting Elkton Gas' operations.¹⁹⁹

¹⁹⁶ SA Cond. 18.

¹⁹⁷ SA Cond. 1.

¹⁹⁸ SA Cond. 20.

¹⁹⁹ SA Cond. 21.

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Maintain Local Corporate Presence/Corporate Governance

Additionally, as offered in its commitments in its Application, the Joint Applicants agreed to maintain Elkton Gas' headquarters in Elkton, Maryland¹¹⁰, and to retain Elkton Gas' corporate name and form, and to continue its existence as a division of Pivotal.¹¹¹ Further, the Joint Applicants agreed that AGL Resources will continue to have a separate board of outside directors for a minimum of five years following the closing of the Merger.¹¹²

Most Favored Nation Provision¹¹³

The Joint Applicants agreed, within 60 days after the Merger closes, to file with the Commission a copy of the final Orders and/or Settlement Stipulations from the jurisdiction which they are seeking Merger approval following approval in each of the jurisdictions, along with an analysis indicating the total dollar amount of any direct customer credit approved in each jurisdiction and explaining the valuation of the direct customer credits awarded in that jurisdiction as compared to the value of the benefits provided for in paragraphs (2) and (3) of the Settlement Agreement (calculated in each case on a per-distribution customer basis.) The Joint Applicants further agreed that, to the extent, on a per-distribution customer basis, the direct customer credits provided

¹¹⁰ SA Cond. 22.

¹¹¹ SA Cond. 23.

¹¹² SA Cond. 24.

¹¹³ SA Cond. 25.

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to customers in other jurisdictions are materially more beneficial in the aggregate than the credits included in the Settlement Agreement, then the Joint Applicants will be obligated to provide additional direct customer credits to Elkton Gas' customers equivalent to such shortfall calculated on a per-distribution customer basis.

Further Conditions, Assertions, and Reservations

Among the other conditions, assertions and reservations, the Parties agreed that the Settlement Agreement represents a compromise of divergent positions in order to end litigation, and shall not be regarded as precedent with respect to any future case.¹⁴⁴ They agreed that the Commission's acceptance of the Settlement Agreement may not be deemed or constitute in any respect a determination by the Commission as to the merits of any of the contentions or allegations that might be made by any of the Parties to the Settlement Agreement in the absence of settlement.¹⁴⁵ In the event the Commission does not accept and approve the Settlement Agreement in its entirety, the Settlement Agreement will be deemed withdrawn and void, and the agreement and any matters associated with its consideration by the Commission, may not be considered or argued to be a waiver of the rights that any Party has for a decision in the matter.¹⁴⁶

¹⁴⁴ JA Cond. 260.

¹⁴⁵ SA Cond. 265.

¹⁴⁶ SA Cond. 269.

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Upon unconditional acceptance by the Commission of the Settlement Agreement without modification, the Parties agreed to waive their respective right to: (1) appeal a proposed order of the Public Utility Law Judge to the Commission; (2) seek rehearing of a Commission order; and (3) seek judicial review of a Commission order.¹¹⁷

Consideration and Findings

Under § 6-105(g)(5) of the Public Utilities Article, the Joint Applicants bear the burden of demonstrating that the Acquisition is consistent with the public interest, convenience and necessity, including benefits and no harm to consumers. Section 6-105(g)(2) provides guidance to the Commission on the factors that it must consider to assess whether the Acquisition is in the public interest, convenience and necessity, including benefits and no harm to the consumer. After its assessment, if the Commission finds the Acquisition is in the public interest, convenience and necessity, it may either approve the Acquisition with or without conditions. If it finds that the Acquisition is not in the public interest, convenience or necessity, it shall deny the Acquisition.

The evidence presented by the Joint Applicants suggests that the Merger will have little, if any impact, on the operations of Elkton Gas in the near future. The Joint Applicants, however, included certain commitments to enhance direct benefits to the

¹¹⁷ SA Cond. 24H

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Elkton Gas customers and to ensure that no harm to the customers resulted from the Merger. Neither Staff's initial position nor OPC's initial position opposed the approval of the Acquisition as long as the Commission included certain additional conditions in its approval. As a result, the Joint Applicants, OPC and Staff were able to negotiate an agreement that appears to balance the interests of all the parties and resolves the issues raised by OPC and Staff.

Below I consider each of the factors set forth in Section 6-105(g)(2) and assess each, based on the evidence and any conditions sought to ensure benefits and no harm to the consumer, as well as the public interest.

**The Potential Impact of the Acquisition on Rates and
Charges Paid by Customers and on the Services and
Conditions of Operation of Elkton Gas**

In its case-in-chief, the Joint Applicants asserted that there would be no change in rates paid by the Maryland customers of Elkton Gas as a result of the Merger. Additionally, the Joint Applicants committed that Elkton Gas, in a future rate case, would not seek to recover in its base rates any acquisition premium, goodwill or transaction cost that arose as a result of the Merger. According to the Joint Applicants, neither AGL Resources nor Elkton Gas will issue debt or equity in connection with or to fund the Merger. The Joint Applicants also indicated that its plan for operating Elkton Gas would not result in any adverse changes to the service and conditions of operation of Elkton Gas. Further, the

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Joint Applicants pointed to the conduct of an accelerated assessment of the distribution system to determine the condition of the Aldyl-A pipe as a means to increase the safety and reliability of Elkton Gas' pipeline system.

Both OPC and Staff each initially recommended that the Commission condition its approval of the Acquisition with a requirement that Elkton Gas file a base rate case within three to four years after the closing of the Merger. The purpose of the filing, according to each of OPC and Staff, is to ensure that the Elkton customers receive any benefits of any reduction in costs in the event savings and efficiencies result from the Merger, even though currently none are forecasted, as well as to ensure that Elkton Gas does not include the acquisition costs in its rates. The Joint Applicants have agreed that Elkton Gas will file a base rate case within two years after the date the Merger closes.

The filing of a base rate case within two years of the Merger closing date may well result in a change in base rates, but I conclude any such change in rates will not be from the recovery of costs or expenses associated with the Merger. Indeed, after the Merger closing, there may be some synergy savings that are found in the first several years after the closing, which then can be flowed to the Elkton Gas customers sooner than later. Further, there is no evidence in the record that suggests that the current services and operations of Elkton Gas will be materially changed in its Maryland service territory as a result of the Merger. Additionally, the Joint Applicants have committed to an