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MEMORANDUM

Date: December 30, 2015
To: Northern Illinois Municipal Natural Gas Franchise Consortium Members
From: Peter M. Friedman, Consortium Counsel
Re: Executive Summary -- Model Franchise Ordinance

On December 14, 2015, the Steering Committee of the Northern Illinois Municipal Natural Gas Franchise Consortium (“**Consortium**”) unanimously approved a new model Natural Gas Franchise Ordinance (“**Model Ordinance**”). The Model Ordinance was negotiated on behalf of the Consortium with the Northern Illinois Gas Company (d/b/a Nicor Gas Company) (“**Nicor**”).

This memorandum provides (i) important information regarding the required timing and approval of the Model Ordinance by Consortium members and (ii) a summary of the key financial and operational provisions of the Model Ordinance.

If you have any questions about any of these matters, please contact Mark Baloga (630-571-0480, ext. 223 or mbaloga@dmmc-cog.org) or Kate Buggy (630-571-0480, ext. 225 or kbuggy@dmmc-cog.org).

Adoption

- For each Model Ordinance to take effect, the Ordinance must be adopted by the Consortium member and Nicor must sign a Consent Agreement that is attached to the Ordinance as Exhibit A. As described further below, the important compensation provisions of the Model Ordinance are triggered by the Ordinance taking effect. Further, it is important for Nicor to see that the Model Ordinance is being adopted by the Consortium members. Accordingly, the Steering Committee requests that Consortium members adopt the Model Ordinance in January 2016.
- Each Consortium member has been provided a word version of the Model Ordinance, tailored to the extent possible for each specific member.
- One addition that will have to be made by each member prior to adoption is to insert in Section 12 of the Ordinance the appropriate contact information for purposes of notices under the Ordinance.
- Each Consortium member must adopt the Model Ordinance pursuant to the member’s standard procedures for adoption of ordinances.

- After the Ordinance is adopted, the certification (the second to last page of the document) should be completed and fully executed.
- As soon as the Model Ordinance has been adopted and certified, each Consortium member should notify and provide a copy of the adopted Ordinance to their respective Nicor representative.
- Also, please email Kate Buggy at kbuggy@dmmc-cog.org to confirm adoption of the Ordinance.

Background

- Most gas franchises either have expired recently or are expiring soon.
- Almost all of these franchises are very old, with writing styles often unclear, incomplete, and difficult to understand.
- These franchises include only basic, and now outdated, provisions. They do not adequately address many of the issues that arise with modern utility facilities located in crowded public rights-of-way.
- These franchises do not adequately protect the public health and safety. Nor do they adequately protect the public rights-of-way.

Key Points Regarding Model Ordinance

- A municipality's rights-of-way are among its most important resources and most valuable assets. The Model Ordinance includes new provisions designed to protect the municipality's rights-of-way, including requirements on construction, restoration, and maintenance.
- One of a municipality's foremost responsibilities is to protect the public's safety and welfare. The Model Ordinance includes new provisions designed to better protect the public health and safety, including emergency notice and response standards.
- The compensation provisions in the Model Ordinance better reflect the value of the municipality's right-of-way. The municipality may choose among free gas for municipal facilities or annual cash payments.
- The Model Ordinance includes modern provisions relating to annual meetings with Nicor, capital improvement plans, information sharing, triggers for future amendments based on Model Ordinance terms subsequently agreed to by Nicor.
- By working together as the Consortium, the member municipalities have been able to negotiate with Nicor a new, standard franchise document that is clear, comprehensive, and protective of the interests of both the municipalities and the gas companies.

Summary of Key Provisions of Model Ordinance

- **Term (Section 3).** The new franchise is for a term of 25 years (until January 1, 2041).
- **Effective Date and Consent Agreement (Section 15).** The effective date of the Model Ordinance will be as of January 1, 2016, even though the Ordinance will not be adopted

until after that date. The Ordinance must be adopted no later than March 1, 2016. However, as explained above, the Steering Committee urges each member to adopt the Ordinance in January 2016.

Within 90 days of the Effective Date (March 31, 2016), Nicor is required to execute the Consent Agreement attached to the Model Ordinance as Exhibit A. The purpose of this Consent Agreement is to ensure that Nicor is contractually bound to comply with the Model Ordinance.

- **Compensation for Use of Rights-of-Way (Section 5).** There are two options for compensation for Nicor's use of the public rights-of-way under the Model Ordinance.

The first option ("**Annual Payments**") is an annual lump sum payment that Nicor will make in cash to the municipality. The amount of the Annual Payment is based on the following formula -- generally described as the municipality's "**therm allocation**" times the "**gas cost per therm**." A municipality's therm allocation is determined by the following parameters:

- 3.6 therms per person up to 10,000 of population
- 2.4 therms per person for the next 10,000 of population
- 1.2 therms per person for the next 80,000 of population
- 1.45 therms per person for the next 20,000 of population
- 1.8 therms per person for the population over 120,000

The gas cost per therm is the sum of (i) the actual three year average of the per therm cost of gas plus (ii) the then-current general gas service cost. Each member has been provided with the Annual Payment calculations based on the current population and gas cost per therm.

The second compensation option ("**Unbilled Gas**") is for the municipality to receive free gas for buildings, or parts thereof, used for municipal purposes. The maximum amount of free gas to be provided cannot exceed the municipality's therm allocation. Upon request, Nicor representatives will provide each municipality with historical usage information to assist in determining which compensation option is best.

Significantly, no later than March 1, 2016, each municipality must notify Nicor in writing whether it wants to receive Annual Payments or Unbilled Gas. If a municipality does not provide this required notice, it will receive Annual Payments. Thereafter, a municipality can change from Annual Payments to Unbilled Gas, or vice versa, every three years with notice to Nicor. If no notice of a change is provided to Nicor, the compensation option will remain unchanged for the subsequent three year period.

Annual Payments will be paid by Nicor during January of each year during the Term of the franchise, except for 2016 when the Annual Payments will be paid in March.

- **One-Time Renewal Payment (Section 5A1).** Each Consortium member adopting the Model Ordinance will receive a one-time cash renewal payment equal to 75 percent of the municipality's therm allocation multiplied by the gas cost per therm. These one-time renewal payments will be made by Nicor on or before March 31, 2016.

- **Municipal Regulations (Section 4B, 4C).** The Model Ordinance requires Nicor to utilize the public right-of-way in compliance with the Model Ordinance and with “Requirements of Law” – a term defined in the Model Ordinance (Section 1) as “any and all reasonable regulations which may now or hereafter be prescribed by general ordinance of the Municipality with respect to the use of the Public Right-of-Way or the conduct of Gas System Work”). This means that the Model Ordinance requires Nicor to comply with local, generally applicable right-of-way, building, and tree regulations.
- **Emergency Response (Section 4D).** The Model Ordinance requires Nicor to provide notice of emergencies to the municipality within 24 hours unless that is somehow not practicable. Nicor and the municipality will provide to each other emergency 24-hour contacts. Nicor is required to keep the municipality apprised of the status of the emergency and when the emergency has been resolved.
- **“Most Favored Nations” Clause (Section 7).** If Nicor enters into an agreement with another franchisor that includes compensation terms the municipality believes are more advantageous or protective than the provisions of the Model Ordinance, then the municipality can choose to incorporate those provisions into Model Ordinance.
- **Accounts and Records (Section 6).** The Model Ordinance requires Nicor to provide the municipality, upon request, with annual information on Nicor’s gross operating revenues within the municipality, broken down among various categories of users.
- **Insurance (Section 9).** The Model Ordinance requires Nicor to obtain and maintain various types of standard insurance against liabilities assumed under the Model Ordinance in the event that Nicor’s financial condition would significantly worsen to the extent that its stockholder equity falls below \$50 million.
- **Annual Meeting (Section 13).** The Model Ordinance requires Nicor to participate in an annual meeting upon the request of the municipality. The matters to be addressed at annual meetings include gas system work, current issues regarding Nicor’s use of the public right-of-way, efforts to promote energy efficiency and cost savings related to the use of gas supplied by Nicor, and anticipated capital improvement projects and coordination with the municipality related to those projects. Nicor and municipal representatives at annual meetings must have knowledge, experience, and authority to address and resolve issues discussed at the meeting. The Model Ordinance obligates the parties to work in good faith to resolve issues raised at the annual meetings.
- **Capital Improvement Plans and Information Sharing (Section 4E2).** The Model Ordinance requires Nicor to establish and maintain (and provide the municipality with access to) an information sharing platform for, among other things, capital improvement plans, gas system work, gas facility location information and maps, and work and maintenance status information.
- **Indemnification (Section 8).** The Model Ordinance contains mutual indemnification provisions. With regard to Nicor, these provisions require the gas company to protect the municipality against claims arising out of the gas company’s failure to comply with the Model Ordinance or any negligent, unlawful, or intentional wrongful acts related to work in and use of the public right-of-way.