

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

NICOR, INC. AND
JEFFREY L. METZ

Defendants.

Case No.

07C 1739

Judge

Magistrate Judge

JUDGE LEINENWEBER

MAGISTRATE JUDGE NOLAN

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (the "Commission"),
alleges the following:

INTRODUCTION

1. Between 1999 and 2002, defendant Nicor, Inc. ("Nicor") engaged in improper transactions, made material misrepresentations and failed to disclose material information regarding its gas inventory layers in order to meet earnings targets and to increase its revenues under a performance-based rate plan administered by the Illinois Commerce Commission. This conduct violated the antifraud and reporting provisions of the federal securities laws. During this time, Jeffrey L. Metz ("Metz") was Assistant Vice President and Controller of Nicor and violated and/or aided and abetted Nicor's violations of these same federal securities laws.

2. Nicor is a gas utility holding company. Its principal business, representing approximately 90 percent of its consolidated operating income in a typical year, is gas distribution. Under its traditional regulatory framework, Nicor was not permitted to make a return on the sale of natural gas. Accordingly, Nicor had no incentive to access the value (approximately \$170-\$500 million) of its low-cost LIFO (last-in-first-out) gas inventory.

3. During the relevant period, Nicor filed the following periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, each of which contained the consolidated financial statements of Nicor:

Period	Date Filed	Form
Quarter ended March 31, 2000	5/12/00	10-Q
Quarter ended June 30, 2000	8/8/00	10-Q
Quarter ended Sept. 30, 2000	11/7/00	10-Q
Year ended Dec. 31, 2000	3/12/01	10-K
Quarter ended March 31, 2001	5/9/01	10-Q
Quarter ended June 30, 2001	8/1/01	10-Q
Quarter ended Sept. 30, 2001	10/31/01	10-Q
Year ended Dec. 31, 2001	3/8/02	10-K

Period	Date Filed	Form
Quarter ended March 31, 2002	4/25/02	10-Q
Quarter ended June 30, 2002	8/14/02	10-Q

4. In 1999, Nicor, acting through Metz and senior officers, devised a method by which it could profit by accessing its low-cost LIFO layers of inventory. As a result, from 1999 through 2001, Nicor, with the assistance of Metz and senior officers, entered into a series of improper transactions designed to shift inventory off of its books in order to create the appearance that Nicor had sold a substantial portion of its low-cost LIFO layers of inventory. These transactions allowed Nicor to ensure that it met its earnings targets. By entering into these transactions, Nicor inflated its reported income for the years ending 2000 and 2001, and for each of the quarters within those years (“Reports”) and the financial statements filed with those Reports.

5. Additionally, Nicor through Metz failed to disclose, in either its Management’s Discussion & Analysis section of its Reports, or in its financial statements filed with those Reports, that it had recorded material credits to income resulting from LIFO liquidations.

6. Nicor and Metz, directly or indirectly, have engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business, which violate Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§77q(a)(1), 77q(a)(2), and 77q(a)(3)].

7. Nicor and Metz, directly or indirectly, have engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business, which violate Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§78j(b)] and Rule 10b-5 [17 C.F.R. §§240.10b-5] thereunder.

8. Nicor and Metz, directly or indirectly, or by aiding and abetting, have engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business, which violate Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13].

9. The Commission brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §78u(d) and (e)] for an order permanently restraining and enjoining defendants, seeking disgorgement from the defendants, imposing civil penalties on the defendants, prohibiting Metz for five (5) years from acting as an officer or director of any issuer whose securities are registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78l], and granting other equitable relief.

JURISDICTION

10. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e), 78aa] and 28 U.S.C. §1331.

11. In connection with the acts, practices, and courses of business alleged in this complaint, the defendants Nicor and Metz, directly or indirectly, have made use of the means or instrumentalities of interstate commerce and/or of the mails.

12. Certain of the acts, practices and courses of business constituting the violations alleged herein occurred within this judicial district.

DEFENDANT

13. At all relevant times, defendant Nicor was an Illinois corporation with headquarters located in Naperville, Illinois. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

14. At all relevant times, defendant Metz was a resident of Batavia, Illinois. From October 2000 to January 2004, Metz was Assistant Vice President and Controller of Nicor and Nicor Gas and from January 2004 to January 2005 he was Vice President and Controller of Nicor and Nicor Gas. Prior to that, he was general manager of accounting at Nicor.

STATEMENT OF FACTS

A. Background

15. Nicor and Metz's improper conduct stems from Nicor's implementation of a performance based rate plan (the "PBR Plan") on January 1, 2000. Historically, Nicor operated under a regulatory framework that required it to pass on its commodity cost to its customers. In other words, under its traditional regulatory framework, Nicor was not permitted to make a return on the sale of natural gas. In contrast, under the PBR Plan, Nicor's total gas supply costs were to be compared to a market sensitive benchmark ("benchmark") which allowed for profits to be made (or losses to be incurred) in part, based on Nicor's cost of acquiring the gas. Savings and losses relative to the benchmark were to be shared equally (50/50) between the company and customers.

i. Nicor's LIFO Layers

16. During the relevant period, Nicor valued its inventory using the LIFO cost method. Under this method, the inventory consisted of gas layers priced at historical prices from 1954 to 1996. The top (or more recently injected) 30% of Nicor's LIFO layers were priced at close to current market prices as of 1999. The lower cost layers consisted of about 75-100 billion cubic feet (bcf) of gas. At the end of 1999, the difference between the market value and the cost at the time of injection of these lower layers of gas was approximately \$170 million. By the end of 2000, skyrocketing gas prices caused this difference to balloon to about \$500 million.

17. Under its traditional regulation plan, Nicor had no incentive to tap into these lower layers of gas as it was required to pass its cost of gas directly to customers (i.e., if the lower cost layers of gas were used, customer prices would drop and Nicor would not get increased profit margins). Around early 1998, Metz approached Nicor's then Treasurer to explore Nicor's PBR options and informed him about Nicor's LIFO layers as a potential asset. A short time later, Nicor's then Treasurer, after discussing the issue with other Nicor senior officers, responded to Metz and told him to assemble a team at Nicor to address the issues.

18. In March 1998, Metz along with other Nicor employees met and examined various possible ways that Nicor could capture the value of Nicor's LIFO layers. After discussing the pros and cons of several approaches, the team concluded that implementing a PBR Plan was the best way for Nicor to capture the value from the LIFO layers.

19. The team presented their findings and recommendations to Nicor's senior officers some time in late 1998 to early 1999. Among the reasons highlighted for recommending a PBR Plan was the fact that the benefit Nicor was expecting to reap from the LIFO layers was not

explicit. In other words, proceeding with a PBR Plan was beneficial because that method allowed Nicor to hide its true motives – monetizing its lower layers of LIFO gas.

20. During or shortly after that meeting, Nicor’s senior officers issued a directive that employees be careful not to highlight the LIFO benefit in its filings with the ICC. In furtherance of that directive, Metz authored a memorandum to file in August of 2000, noting that on an interim basis, Nicor “will need to be careful to not highlight the LIFO benefit. In the actual year-end PBR computation, the LIFO benefit will be very difficult to recognize. It may be more transparent on an interim basis.” That memorandum was shared with Nicor’s then Chief Financial Officer and Treasurer.

21. In mid-1999, Nicor’s senior officers authorized their subordinates to prepare and file with the ICC an application for approval of a PBR Plan. The application was approved on November 23, 1999 and Nicor’s PBR Plan went into effect on January 1, 2000.

ii. **The Performance Based Rate Plan**

22. The purported purpose of the PBR Plan was to give Nicor an incentive to lower ratepayers’ gas costs. Under the PBR Plan, Nicor’s total gas supply costs were to be compared to a market sensitive benchmark. This benchmark reflected commodity costs, transportation costs, storage costs, and credits generated by gas supply activities to approximate as closely as possible the gas costs that Nicor would have incurred that year under traditional rate regulation. This benchmark would then be compared to Nicor’s actual gas costs for that year and the difference, either losses or savings, would be shared equally between the Company and its ratepayers.

23. Nicor did not disclose to its shareholders the motives behind the PBR Plan. For instance, in his letter to shareholders in Nicor's 1999 Annual Report to Shareholders (1999 ARS), which was sent to shareholders on or about March 8, 2000, Nicor's then Chief Executive Officer stated that, "in our gas distribution business, a performance-based rate plan went into effect January 1, 2000. The plan establishes economic incentives for Nicor Gas to further reduce already low gas costs." In the Operations Review section of the 1999 ARS, Nicor stated that, "Nicor has a proven track record as a low-cost provider of natural gas, and the PBR provides economic incentives to lower gas costs even further through innovative practices in areas including gas supply acquisition, pipeline transportation and storage management." Nicor failed to disclose that one of its motivations in implementing a PBR Plan was to capture the value inherent in its inventory.

B. Nicor Reported Falsely Inflated Income for 2000 and 2001 By Engaging in Improper Transactions In Order to Access Its Low-Cost LIFO Layers

i. 1999 Sale of DSS Gas

24. On December 10, 1999, less than a month before Nicor implemented the PBR Plan, Nicor entered into a transaction with a third party gas marketing company designed to shift Nicor's high cost LIFO layers off of its books. Pursuant to the agreement, Nicor sold 18.8 bcf of gas to a third party and recorded \$41.4 million in proceeds from that sale as a reduction in gas costs and as an 18.8 bcf reduction in its gas storage inventory (sale of DSS gas).

25. As a part of the agreement, Nicor simultaneously agreed to repurchase the inventory from the third party in early 2000. The pricing for the sale and repurchase was established at the time of the deal: the third party was to buy the gas at \$2.20 per unit, and then resell a portion of it at the purchase price, and the remaining portion at current market prices.

Nicor sold the gas to the third party at current market prices, but significantly below its cost (Nicor incurred a \$13.5 million loss on the transaction). The transfer of gas to the third party did not result in a sale under Generally Accepted Accounting Principles and should not have reduced Nicor's high cost LIFO layers of gas inventory.

26. On December 8, 1999, a meeting was held at Nicor to discuss the impact of Nicor's sale of DSS gas to the third party prior to the start of the PBR Plan. Metz along with a number of Nicor officers attended the meeting. Nicor officers were concerned that if the transaction occurred after January 1, 2000, under the PBR, it would have an adverse impact on Nicor's PBR results. At the meeting it was acknowledged that a purpose of this transaction was to eat into the more expensive LIFO layers in preparation for the new PBR Plan.

ii. Storage Prefill Transactions

27. Nicor entered into a second series of improper transactions, which it called storage prefill transactions, to gain access to the remaining lower cost LIFO layers. These transactions allowed Nicor to liquidate its low-cost LIFO layers of gas by filling its on-system storage with gas that Nicor would commit to purchase, but for which the holder would be an unaffiliated third party. Storage prefills allowed Nicor to fill its storage fields (an operational necessity) without creating, from an accounting perspective, new high-cost LIFO layers that would prevent continued access to the remaining low-cost layers.

a. The Terms Of The Prefill Arrangements

28. Nicor entered into a series of agreements with third parties to purchase large quantities of gas at a pre-determined price (the price of the gas at the time of injection). Under

these agreements, Nicor committed to purchase the quantities of gas over a set time period.

Nicor also agreed to pay the third party its carrying costs, or interest, running from the date the agreement was settled until Nicor actually exercised its option to purchase and paid for the gas.

Finally, Nicor also agreed to pay all storage costs associated with storing the prefill gas in its storage fields. In return, the third party agreed to inject the gas into Nicor's storage fields, where it would remain until Nicor exercised its option to purchase the gas at the agreed upon terms.

The third party also agreed to give up any rights it might have to withdraw the prefill gas once it was injected into the storage field. In some cases, the end of the future time period was reached, and Nicor still did not wish to exercise its option to purchase. The parties renegotiated the terms at that time.

b. Using Storage Prefills to Meet PBR Plan Targets

29. Prefills provided Nicor with the ability to manage its earnings by allowing Nicor to control the extent to which it liquidated gas storage inventory and accessed low-cost LIFO layers. By entering into significant volumes of prefill transactions during the summer months, Nicor could choose to purchase any portion of the prefill transactions at year-end, and thereby determine the magnitude of its permanent, year-end LIFO liquidation (and therefore, its yearly performance under the PBR Plan).

30. Nicor officers, including Metz, had long, daily meetings at the end of 2000 and 2001 during which they would determine what level of LIFO decrement was required in order to meet Nicor's PBR financial targets. Working backwards, they determined the LIFO decrement that needed to be realized to meet financial targets. They then established the year-end inventory level that Nicor had to achieve and achieved that inventory level by exercising Nicor's option to purchase the appropriate amount (if any) of prefill gas. The remainder of Nicor's prefills was

deferred to the following year, and did not affect Nicor's earnings for the current period. In this fashion, Nicor was effectively able to recognize any size LIFO decrement it required, and as a result, Nicor met its yearly performance under the PBR Plan.

31. The prefill transactions enabled Nicor to manage PBR earnings much akin to "cookie jar" reserves used in other manipulative reporting schemes. As illustrated by the chart below, they further masked Nicor's highly volatile earnings experience with the PBR.

	PBR Results for 2000			PBR Results for 2001		
	9 mos <u>Sept. 2000</u>	4th Qtr <u>2000</u>	Full Year <u>2000</u>	9 mos <u>Sept. 2001</u>	4th Qtr <u>2001</u>	Full Year <u>2001</u>
	(amounts in millions)			(amounts in millions)		
Nicor's Actual PBR Performance (losses)	15.2	(19.6)	(4.4)	(26.3)	36.3	10.0
Lifo Liquidation Credits Taken to PBR Income	0.0	28.8	28.8	41.2	(21.4)	19.8
Total PBR Income	<u>15.2</u>	<u>9.2</u>	<u>24.4</u>	<u>14.9</u>	<u>14.9</u>	<u>29.8</u>
Nicor's 50% share	<u>7.6</u>	<u>4.6</u>	<u>12.2</u>	<u>7.5</u>	<u>7.5</u>	<u>14.9</u>

iii. The Income Statement Effect of These Improper Transactions

32. Had Nicor properly accounted for its 1999 sale of gas and storage prefills, it would not have been able to create the appearance that it had accessed its low-cost LIFO layers, and thus, would not have been able to record income resulting from LIFO liquidations. By improperly accounting for transactions designed to shift high-cost LIFO layers off its books and prevent the creation of new high-cost LIFO layers, Nicor improperly inflated its reported income for the years ending 2000 and 2001, and each of the quarters during those years. The chart below summarizes the income realized from the LIFO inventory liquidations reported by Nicor (figures in millions):

	YE 2000	Thru - 1Q01	Thru - 2Q01	Thru - 3Q01	YE 2001
Nicor's Actual Performance vs. PBR Benchmark	(2.2)	(10.9)	(15.4)	(13.15)	5.0
Income Realized from Inventory Liquidations	14.4	13.4	19.6	20.6	9.9
Reported PBR Income (Pre-Tax)	12.2	2.5	4.2	7.5	14.9
Reported Income (Pre-Tax)	209.1	58.3	99.0	149.9	217.1
Income from Inventory Liquidations as a Percent of Pre-Tax Income	6.9%	23.0%	19.8%	13.7%	4.6%

C. Nicor Failed to Disclose in Its 10-Ks for 2000 and 2001 and Its 10-Qs for 2001 That It Had Significant Credits to Income Resulting from LIFO Liquidations.

33. As discussed above, the vast majority of Nicor's reported PBR income for the years ended 2000 and 2001 and the interim quarters in 2001, was the result of credits to income from LIFO liquidations, a fact that Metz and Nicor knowingly or recklessly failed to disclose to the Commission and Nicor's investors.

i. Nicor's Senior Executives, Including Metz, Knew That the Majority of PBR Income Resulted from LIFO Liquidations.

34. During 2000 and 2001, prior to the end of a quarter, Nicor's financial reporting department prepared and transmitted a packet of information to Nicor's Financial Policy

Committee – a committee consisting of Nicor’s then Chief Executive Officer, then Chief Financial Officer, then Executive Vice President and then Vice President, Treasurer. Metz, while not a formal member of the Financial Policy Committee, routinely attended committee meetings and drafted or supervised the drafting of some of the packets in question during this period.

35. Every quarter, except for the 4th quarter 2000 and the 4th quarter 2001, the Financial Policy Committee received a document that discussed what income Nicor was planning to record as income resulting from the PBR Plan. The document broke PBR income into two categories: (1) income resulting from the “actual performance versus the Benchmark;” and (2) income resulting from the “Impact of Potential Permanent Inventory Reduction.”

36. With respect to the year-end results, shortly after the end of the year, Nicor’s gas supply department prepared a “Final Buckets Analysis” which was transmitted to Metz and several of Nicor’s senior executives including the then Executive Vice President, and Vice President – Treasurer. That document broke PBR income for the year into two categories: (1) “PBR performance without Decrement;” and (2) “Decrement Value.”

37. Based on these documents, Metz and other Nicor’s senior executives knew that the overwhelming majority of income that Nicor reported as PBR income for the years-ended 2000 and 2001, and for the quarters-ended March, June and September 2001, resulted from LIFO liquidations.

ii. **Nicor Failed to Disclose to the Commission and its Investors that the Majority of its PBR Income Resulted from LIFO Liquidations.**

38. Prior to filing its quarterly and annual reports with the Commission, Nicor’s financial reporting department would download a “GAAP Disclosure Checklist” from a public

