

U.S. DISTRICT COURT
CLERK

UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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FILED-EDS

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

KEVIN M. STOFFER,
ANDREW J. JOHNSON,
JOHN FRINGER, and
JOHN F. WEIR,

Defendants.

Case No.

03C 8910

Judge

Magistrate Judge

JUDGE RONALD GUZMAN

MAGISTRATE JUDGE DENLOW

COMPLAINT

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

INTRODUCTION

1. Defendants, using Nicor Inc. ("Nicor") as a conduit, intentionally or
recklessly, made material misstatements, and/or omitted to state material facts, to the investing
public regarding Nicor Energy LLC's ("Nicor Energy") financial condition and results of
operations for its fiscal year ended December 31, 2001.

2. Defendants intentionally or recklessly took accounting positions that were not
in compliance with Generally Accepted Accounting Principles ("GAAP") in order to inflate
Nicor Energy's 2001 net income. Specifically, defendants knowingly or recklessly overstated
Nicor Energy's unbilled revenue accounts, understated Nicor Energy's accounts receivable (bad

debt) reserve, shifted 2002 income into 2001 and shifted 2001 expenses into 2002, in order to inflate Nicor Energy's 2001 net income by more than \$11 million. Defendants did so in order to achieve earnings targets and because their bonuses were to be tied to net income. As a result of the fraud, Nicor Energy erroneously reported to its parents – Nicor and Dynegey Inc. (“Dynegey”) – net income of \$4.097 million instead of losses of \$7.47 million for 2001:

Net Income Reported to Parents	\$ 4.097
Corrections:	
Unbilled Revenue	\$ (4.49)
Bad Debt Reserve	\$ (1.64)
ComEd Settlement	\$ (0.52)
BP Amoco Settlement	\$ (0.49)
Electric Supply Commitments	\$ (0.67)
Storage Credits	\$ (1.17)
Project Alpha	\$ (2.59)
Net Income (Loss) Corrected for Fraud	\$ (7.47)

The figures in the chart above are in millions. The defendants' misstatements had the added effect of masking a change in Nicor Energy's earnings trends, showing an increase in net income from \$3.442 million in 2000 to \$4.097 million in 2001, instead of a decrease of \$7.47 million.

3. Defendants knew or were reckless in not knowing that Nicor would report their misstatements to the public in Nicor's Form 10-K and otherwise.

4. On March 8, 2002, Nicor filed with the Commission its 2001 Annual Report on Form 10-K in which it reported net income for fiscal year 2001 of \$143.7 million. Nicor's net income figure included 50% of Nicor Energy's net income. Had the defendants properly stated Nicor Energy's financial results, Nicor would have reported net income of only \$137.9 million.

5. Defendants, 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 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).

6. Defendants, 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(b)(5) of the Exchange Act (15 U.S.C. §78m(b)(5)) and Rule 13b2-1 (17 C.F.R. § 240.13b2-1).

7. Defendant Stoffer, as a controlling person under Section 20(a) of the Exchange Act (15 U.S.C. §78t(a)), has engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business that violate Sections 10(b) and 13(b)(5) of the Exchange Act (15 U.S.C. §§78j(b) and 78m(b)(5)) and Rules 10b-5 and 13b2-1 (17 C.F.R. §§240.10b-5, 240.13b2-1).

8. 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, imposing civil penalties on the defendants, prohibiting defendants from acting as an officer or director of any public company, and granting other equitable relief.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act (15 U.S.C. §§78u(e) and 78aa). Venue lies in this Court pursuant to Section 27 of the Exchange Act (15 U.S.C. §78aa).

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

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

DEFENDANTS

12. At all relevant times, defendant Stoffer, a resident of Naperville, Illinois, served as Nicor Energy's President and Chief Executive Officer ("CEO").

13. At all relevant times, defendant Johnson, a certified public accountant and a resident of Elmhurst, Illinois, served as Nicor Energy's director of financial services. In that position, defendant Johnson was Nicor Energy's senior-most financial officer.

14. At all relevant times, defendant Fringer, a resident of Naperville, Illinois, served as Nicor Energy's Vice President of Power Services and Regulatory Affairs.

15. At all relevant times, defendant Weir, a resident of Trevor, Wisconsin, served as Nicor Energy's Director of Gas Services and Major Markets.

ENTITIES INVOLVED

16. At all relevant times, Nicor Energy, a limited liability company based in Lisle, Illinois, was a retail supplier of natural gas, electricity and energy-related services in the Midwest. Nicor and Dynegy each own 50% of Nicor Energy. Nicor Energy was one of the more significant interests that Nicor owned. As stated in Nicor's 2001 Annual Report, Nicor's energy-related businesses, including Nicor Energy, were "important drivers of future growth" and "Nicor Energy [was] one of the largest and fastest growing retail suppliers of natural gas, electricity and energy-related services in the Midwest."

17. Nicor is a company headquartered 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.

18. Dynegy is a company headquartered in Houston, Texas. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

19. At all relevant times, Arthur Andersen LLP ("Andersen") was a partnership of public accountants that provided auditing services. Andersen audited Nicor Energy's 2000 and 2001 year-end financial statements.

BACKGROUND

20. In March 2002, Andersen informed Nicor that it was having difficulty completing its audit of Nicor Energy's 2001 financial statements. On or about April 10, 2002, two Nicor executives ("Nicor Executives") along with members of Andersen's audit team, went to Nicor Energy's offices in order to resolve the problems Andersen had encountered.

21. During the course of their visit, the Nicor Executives and the Andersen audit engagement partner interviewed Johnson. At the end of that interview, after the Andersen audit engagement partner had left the room, Johnson confessed to the Nicor Executives that he had purposely overstated the unbilled revenue accounts to achieve earnings and bonus targets for 2001.

22. Around the same time, Fringer confessed to members of the Andersen audit team that in 2001, with the full knowledge of Stoffer, Johnson and Weir, he had purposely structured a settlement with ComEd so as to shift part of a 2001 expense into 2002.

23. Shortly thereafter, Nicor Energy's owners – Nicor and Dynegey – commenced an internal investigation of Nicor Energy, and Andersen commenced a more detailed fraud audit of Nicor Energy's books and records.

24. During their internal investigation, representatives of Nicor and Dynegey interviewed Nicor Energy's senior management. During the course of those interviews, members of Nicor Energy's senior management admitted that they knowingly used improper accounting to inflate net income with the express purpose of hitting earnings targets.

25. On July 18, 2002, more than two months after Andersen had issued its fraud audit report and Nicor Energy had finalized its 2001 financial statements, Nicor issued a press release announcing that results for its second quarter 2002 and the six months ending June 30, 2002 were negatively affected by two significant factors:

(1) "Other income included a pre-tax loss of \$9.3 million and \$10.1 million for the quarter and six-month period, respectively, related to the company's 50% ownership in Nicor Energy LLC, a retail energy marketing joint venture. Negative pre-tax adjustments were recorded for the quarter and six-month period of \$1.6 million and \$4.3 million, respectively, and resulted from a year-end 2001 independent audit. The quarter also includes a \$3.7 million pre-tax adjustment associated with a revision of the joint venture's first quarter estimate for accrued unbilled revenue and a pre-tax charge of \$2.6 million related primarily to previously unrecorded liabilities. In the second quarter, the owners of the venture and new Nicor Energy management commenced a review of Nicor Energy's business strategy, accounting practices, controls and financial results. It is unknown at this time whether additional adjustments will be required. However, the review process to date uncovered irregularities in accounting at Nicor Energy that were part of the reason for the adjustments referred to above;" and

(2) "Second quarter results also include reversal of the \$2.9 million pre-tax earnings estimate for the company's gas distribution segment's performance-based rate (PBR) program made in the first quarter. As a result of this reversal, the current six-month period financial results do not include any earnings impact for the PBR program."

26. In response to this press release, the stock price of Nicor plummeted from \$38.01 to \$22.75 (a 40% decline). Journalists and analysts attributed this decline in part to the disclosure of accounting irregularities at Nicor Energy. In fact, several analysts noted in their research reports that the irregularities called into question Nicor and Nicor Energy managements' integrity.

DEFENDANTS' FRAUDULENT SCHEME

27. Defendants engaged in several improper accounting mechanisms in order to inflate net income for the 2001 fiscal year. Specifically, they: (1) overstated unbilled revenue for 2001; (2) understated the bad debt reserve for 2001; (3) shifted 2001 expenses into 2002; and (4) shifted 2002 income into 2001. The effect of the improper accounting was to inflate net income for fiscal year 2001 by more than \$11 million, taking Nicor Energy from a net loss of approximately \$7.47 million to a net gain of more than \$4 million.

A. Defendants Overstated Unbilled Revenue by Approximately \$4.5 Million for 2001

28. In April 2002, after substantially completing its audit field work, Andersen informed Nicor's management that Nicor Energy apparently had not corrected systemic problems relating to the unbilled revenue accounts that Andersen had first raised during the previous year's audit, and that the unbilled revenue accounts were overstated by approximately \$4.5 million.

With respect to the unbilled revenue issues, Andersen ultimately reported that,

“[d]uring each quarter of 2001, we asked management for analyses of its gas and electric unbilled revenues but none were provided. Through discussions with management, we determined that unbilled revenue was knowingly over accrued (which management had hoped would have been cured by a cold winter). The winter was mild and the problem remained. The issues were not, in a timely or upfront manner, communicated to the Executive Committee of NE, its owners or Andersen. Also, Nicor, Inc. accounting personnel had originally planned to assist

NE in estimating its 2001 unbilled revenues, but such assistance did not take place.”

29. On about April 10, 2002, in a meeting with the Nicor Executives, Johnson confessed that he had purposely overstated the unbilled revenue accounts in order to meet earnings and bonus objectives and that Stoffer was aware of what he had done.

30. Johnson subsequently made similar admissions to other Nicor and Dynegy investigators. In fact, Johnson admitted that he knew that unbilled revenue accounts were overaccrued as early as May 2001. Johnson further informed the investigators that he discussed the problem with Stoffer on six different occasions. In fact, in October 2001, Stoffer told Johnson that he would take responsibility for the problem if the inflated unbilled revenue numbers were exposed.

B. Defendants Understated Nicor Energy's Bad Debt Reserve by Approximately \$1.6 Million for 2001

31. In March 2002, during the course of its audit of Nicor Energy's 2001 financial statements, Andersen noted that Nicor Energy had continued to use a flawed approach to determine the level for the bad debt reserve. In addition, Andersen had noted during its audit work that the recoverability percentages for Nicor Energy's customer and aging buckets (or categories of receivables) were highly subjective and unsupported by historical trends. Specifically, Andersen observed that the uncollectibility percentage for unbilled revenues was far less than the uncollectibility percentages for any other class or receivable. Under Andersen's approach, Nicor Energy's bad debt reserve was understated by approximately \$2.8 million.

32. Johnson, as the senior-most financial officer at Nicor Energy, was responsible for setting the level of the bad debt reserve. In setting the level of the reserve, Johnson did not employ any objectively verifiable methodology. Rather, in violation of GAAP, Johnson set the

reserve based on his gut feel. In addition, Stoffer pressured Johnson to purposely understate the bad debt reserve.

33. Subsequent to Nicor's issuance of its 2001 Form 10-K, Nicor Energy resolved the dispute relating to the bad debt reserve by setting the adjustment equal to the middle point between the number produced using the Andersen methodology and the number Johnson had proposed, which still resulted in a bad debt reserve that was understated by \$1.6 million.

C. Defendants Improperly Shifted Approximately \$515,000 of Expenses Relating to a 2001 Settlement with ComEd into 2002

34. In 2001, a dispute arose between Nicor Energy and Commonwealth Edison ("ComEd") in which ComEd claimed that Nicor Energy owed it approximately \$3 million. Nicor Energy determined that liability would be approximately \$1 to \$1.2 million, and accordingly booked a reserve for that amount. Ultimately, Nicor Energy agreed to settle the dispute by agreeing to pay ComEd approximately \$1.2 million. However, Nicor Energy's management, including the defendants, did not want to recognize the entire expense in 2001. Accordingly, Stoffer directed a reversal of a portion of the already-booked reserve. Fringer then, acting under Stoffer's direction, intentionally structured the settlement to shift \$515,987.49 of the settlement expense into 2002. The defendants undertook this transaction in order to meet year-end earnings targets.

35. On or about April 4, 2002, ComEd transmitted a final invoice for \$515,987.49 dated April 4, 2002 to Fringer with the "For Service" field blank. The invoice related to the 2001 dispute, not any services provided in 2002. Nonetheless, Nicor Energy improperly recognized the \$515,987.49 expense in 2002 instead of 2001.

36. Fringer modified the blank "For Service" field on the invoice to read "For Service from 03/01/02 to 03/31/02," in order to support recording the invoice amount in 2002.

37. Later in April 2002, while investigating the nature and circumstances of the settlement, Andersen observed irregularities relating to the April 4 ComEd invoice for \$515,987.49. Around the same time, Nicor Energy's assistant controller approached members of the Andersen audit team and stated that he was also concerned about the invoice, but had been told not to ask any questions.

38. Concerned that the invoice, and the resulting payment, were improper, one of the Andersen auditors contacted Fringer. After initially claiming that the invoice was proper, Fringer confessed to the Andersen auditors that he had actually lied about the invoice, and that the payment in April 2002 related to the 2001 settlement with ComEd. He told the Andersen auditors that he had purposely structured the settlement to shift part of the expense into 2002 in order to meet year-end earnings targets.

39. Fringer also informed the Andersen auditors that everyone in Nicor Energy's senior management, including Stoffer, Johnson and Weir, was aware that Nicor Energy had not recognized the entire settlement expense in 2001.

40. One of the Andersen auditors had a similar set of discussions with Johnson. Like Fringer, Johnson also admitted that he, along with Stoffer and the entire management team had known all along that the \$515,987.49 payment in 2002 was part of the 2001 settlement expense.

D. Defendants Improperly Shifted Approximately \$490,000 of Expense Relating to a 2001 Settlement with BP Amoco into 2002

41. In 2001, a dispute arose between Nicor Energy and BP Amoco in the amount of \$425,000. The dispute stemmed from the fact that in 2001, Nicor Energy short-paid a BP Amoco invoice by \$425,000.

42. During the second half of 2001, Stoffer asked Weir to effect a transaction that would settle the dispute with BP Amoco while treating the settlement expense as a 2002 expense. Stoffer expressly told Weir that the purpose of the transaction was to shift the settlement expense into 2002 in order to assist Nicor Energy in meeting its 2001 earnings targets.

43. Stoffer, Weir and Johnson arranged to settle the dispute with BP Amoco by buying gas from BP Amoco in 2002 at a price \$490,000 above market prices (the additional \$65,000 over the disputed amount represents interest). Fringer also was involved in, or had knowledge of, this transaction. BP Amoco agreed to reissue the 2001 invoice that Nicor Energy had short-paid with a \$425,000 credit. Dynegy facilitated the transaction between Nicor Energy and BP Amoco by effectively guaranteeing the payment.

44. Prior to Weir finalizing the transaction with BP Amoco, Johnson had a discussion with Weir regarding the accounting principles that would govern the kind of transaction that he, Weir and Stoffer were contemplating.

E. Defendants Improperly Shifted Approximately \$666,000 of 2001 Expenses Relating to Dynegy Electric Supply Commitments into 2002

45. In October 2001, Nicor Energy entered into an agreement with Dynegy, whereby Nicor Energy would pay below market rates for electricity for October 2001 through December 2001 in exchange for paying above-market rates from January 2002 to May 2002.

This transaction required Nicor Energy to re-price October and November deliveries that had been previously priced but not yet paid.

46. The express intent behind the transaction was to recognize higher margin in 2001 at the expense of 2002. Additionally, Fringer executed the transaction with the full knowledge of Stoffer and Johnson. Indeed, Stoffer instructed Fringer to execute the transaction.

F. Defendants Improperly Shifted Approximately \$1.2 Million of Income Relating to 2002 Storage Credits into 2001

47. In 2000, Dynegy paid Nicor Energy a \$5 million fee for the assignment of storage capacity. Nicor Energy recognized the entire payment as revenue in 2000. However, Andersen, in connection with their audit of Nicor Energy's 2000 year-end financial statements, noted that the \$5 million was a storage payment in exchange for storage services that straddled 2000 and 2001. Accordingly, Andersen took the position that approximately \$1.6 million of the fee was attributable to, and should have been recognized in, 2001. Andersen recommended to Nicor Energy's management that for all new contracts, revenue from transactions that straddled fiscal years be allocated over the storage/service period.

48. During the course of its 2001 audit, Andersen noted that Nicor Energy again had improperly accounted for storage credits paid by Dynegy. The effect of the improper accounting was that Nicor Energy recognized approximately \$1.2 million of 2002 income in 2001. Nicor Energy's senior management, including defendants, admitted in April 2002 to Nicor and Dynegy investigators that they knew that Nicor Energy's accounting treatment of the storage credits was improper.

G. Defendants Shifted Approximately \$2.5 Million of 2002 Income Relating to "Project Alpha" into 2001

49. In September 2001, Stoffer, Weir, and Johnson struck a deal with Dynegy that was sometimes referred to as "Project Alpha" that involved selling a large quantity of gas ("Inventory") to Dynegy at a price above the then-current spot market price, and then repurchasing it over 15 months at the same price plus interest ("Monthly Repurchases"). The Inventory covered by the contract had been acquired in the previous winter at a time of historically high gas prices. During the second quarter of 2001, Nicor Energy had been required to write down the value of this Inventory to meet the requirement that it be valued at the lower of cost or market price.

50. Initially, the defendants sought to record the Dynegy transaction as a sale and intended it as a method of reversing the effect of the write-down. Andersen informed Johnson in September 2001 that the transaction could not properly be viewed as a sale, and should be recorded as product financing. However, Andersen added that it would be permissible under GAAP for Nicor Energy to recognize as a gain the recovery of its loss if and to the extent that it was able to demonstrate that it had sufficient demand for the high-priced Inventory at prices above the original cost of the Inventory.

51. During that time, Nicor Energy persuaded some of its customers to covert from a conventional market-price based plan, to a fixed-price plan ("Fixed-Price Plan"). Nicor Energy tied the volume of its Monthly Repurchases from Dynegy to its monthly demand under its Fixed-Price Plan. Because the Fixed-Price Plan was priced at a level above the original (pre write-down) cost of the Inventory, and because Nicor Energy stated to Andersen that it had commitments sufficient to sell its Inventory, Andersen advised that Nicor Energy could record a

gain in the third quarter of 2001 to offset the write-down. Nicor Energy subsequently recorded a gain of \$5.1 million.

52. Consistent with the above-described arrangement, Nicor Energy bought back the first installment of gas in October 2001 from Dynegy at the agreed price and used it to supply its October commitment under its Fixed-Price Plan. However, by this time, Nicor Energy's senior management knew, or was reckless in not knowing, that the demand under its Fixed Price Plan had eroded to the point at which it no longer had demand sufficient to sell all of its high-priced Inventory.

53. After completing the October transaction, Weir, Stoffer, and Johnson renegotiated with Dynegy to take November and December 2001 Monthly Repurchases in January 2002. Nicor Energy filled its November and December 2001 commitments under its Fixed-Price Plan by purchasing gas on the spot market. The spot market purchases were at prices that were significantly lower than the price for the November and December 2001 Monthly Repurchases.

54. Stoffer, Weir and Johnson engaged in this renegotiation knowing, or recklessly disregarding the fact that the effect of the renegotiation would be to increase net income in 2001 at the expense of 2002. In fact, Stoffer, Johnson and Weir engaged in this renegotiation in order to meet Nicor Energy's earnings targets. Stoffer even told Weir that the impetus behind the renegotiation was the positive effect such a renegotiation would have on Nicor Energy's financial statements.

55. As an internal Nicor Energy analysis (reproduced below) shows, if Nicor Energy had continued to take deliveries under its original agreement with Dynegy, it would have recorded only \$237,421 in profit on its November and December 2001 sales under the Fixed

Price Plan. By putting off November and December 2001 deliveries, and fulfilling its November and December 2001 commitments under the Fixed Price Plan by purchasing on the spot market, Nicor Energy was able to record margin of \$2,827,978. Thus, by renegotiating to take November and December 2001 deliveries in January 2002, defendants were able reduce expenses and thereby overstate net income by \$2,590,557. The following table is a reproduction of an internal Nicor Energy analysis:

<u>Reconciliation of 2001 Impact</u>	
Actual Margin Earned in 2001 (if \$5.40 gas continued to be used)	
November 2001:	\$ 44,370
December 2001:	\$ 193,051
	<u>\$ 237,421</u>
Margin Recorded in 2001 (by substituting \$2.69 gas)	
November 2001:	\$ 822,327
December 2001:	\$ 2,005,651
	<u>\$ 2,827,978</u>
Difference over/(under)	\$ 2,590,557

56. The renegotiation eliminated Nicor Energy's rationale under GAAP for recording an inventory gain in the third quarter of 2001 to offset the earlier market-based loss. By uncoupling the high-priced Inventory from Nicor Energy's Fixed-Price Plan commitments, Nicor Energy no longer had any assurance that it would sell the Inventory at a profit. Indeed, in 2002, Nicor Energy recognized a loss of approximately \$2.6 million for the November and December 2001 Monthly repurchases that it repurchased in January 2002. Although the rationale

for the third quarter gain was eliminated, Nicor Energy failed to reverse the gain in 2001 and thereby improperly inflated net income.

**NICOR'S ROLE AS CONDUIT
FOR THE DEFENDANTS' MISSTATEMENTS**

57. Pursuant to its limited liability company agreement ("LLC Agreement"), Nicor Energy was required to transmit, on a monthly basis, a balance sheet and a statement of income, and on a yearly basis, audited financial statements, to both Nicor and Dynegey. Nicor Energy was required, according to the LLC Agreement, to prepare these periodic reports in accordance with GAAP. With respect to the annual reports, such reports were to be transmitted to Nicor and Dynegey within 60 days after the end of Nicor Energy's fiscal year, which ended on December 31.

58. Defendants knew or were reckless in not knowing that both Nicor and Dynegey would take Nicor Energy's reported net income figure and report it to the Commission, shareholders and the investing public through their respective annual reports and Forms 10-K. Indeed, Nicor did exactly that. For instance, in Nicor's Statement of Operations, filed with its 2001 10-K on March 8, 2002, Nicor reported net income of \$143.7 million (instead of \$137.9 million). Also, in its 2001 10-K section entitled "Management's Discussion & Analysis of Financial Condition and Results of Operation," ("MD&A"), Nicor specifically reported pretax nonoperating income for 2001 from Nicor Energy of \$2.4 million (reflecting Nicor's 50% share of Nicor Energy's). Both of these statements in Nicor's 2001 10-K are false as a direct result of defendants' misstatements.

CLAIMS FOR RELIEF

FIRST CLAIM

**Defendants Violated Section
10(b) of the Exchange Act (15 U.S.C.
§78j(b)) and Rule 10b-5 (17 C.F.R. §240.10b-5)**

59. Plaintiff repeats and realleges paragraphs 1 through 58 above.

60. Defendants Stoffer, Johnson, Fringer, and Weir engaged in the conduct alleged herein knowingly or with reckless disregard for the truth.

61. As a result of the activities described above, defendants Stoffer, Johnson, Fringer and Weir, using Nicor as a conduit, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

62. By reason of the foregoing, defendants violated Section 10(b) of the Exchange Act (15 U.S.C. §78j(b)) and Rule 10b-5 (17 C.F.R. §240.10b-5).

63. In addition, defendants Stoffer, Johnson, Fringer and Weir violated Section 10(b) of the Exchange Act (15 U.S.C. §78j(b)) and Rule 10b-5 (17 C.F.R. §240.10b-5) by knowingly providing substantial assistance to, and thereby aiding and abetting, Nicor Energy in its violations of Section 10(b) of the Exchange Act (15 U.S.C. §78j(b)) and Rule 10b-5 (17 C.F.R. §240.10b-5).

SECOND CLAIM

**Defendant Stoffer Violated Section
20(a) of the Exchange Act (17 U.S.C. § 78t(a))**

64. Plaintiff repeats and realleges paragraphs 1 through 58 above.

65. As discussed above, Stoffer, as President and CEO of Nicor Energy, actually exercised general control over the operations of Nicor Energy. Stoffer directed, participated in and was aware of the other defendants' efforts to misstate Nicor Energy's financial condition and results of operations.

66. As a result of the activities described herein, defendant Stoffer, as a controlling person under Section 20(a) of the Exchange Act (17 U.S.C. §78t(a)), is liable for Nicor Energy's violations of Sections 10(b) and 13(b)(5) of the Exchange Act (15 U.S.C. §§78j(b), 78m(b)(5)), and Rules 10b-5 and 13b2-1 (17 C.F.R. §§240.10b-5, 340.13b2-1).

THIRD CLAIM

**Defendants Violated Section
13(b)(5) (15 U.S.C. § 78 m(b)(5))
and Rule 13b2-1 (17 C.F.R. 240.13b2-1)**

67. Plaintiff repeats and realleges paragraphs 1 through 58 above.

68. Section 13(b)(5) of the Exchange Act (15 U.S.C. § 78 m(b)(5)) provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book record or account described in Section 13(b)(2)(A) of the Exchange Act and Rule 13b2-1 (17 C.F.R. 240.13b2-1) provides that no person shall, directly or indirectly, falsify or cause to be falsified any book, record or account subject to section 13(b)(2)(A) of the Exchange Act.

69. By reason of the foregoing conduct, defendants Stoffer, Johnson, Fringer and Weir knowingly circumvented Nicor's internal controls and knowingly falsified Nicor's books, records and accounts and thus violated §13(b)(5) of the Exchange Act (15 U.S.C. §78 m(b)(5)) and Rule 13b2-1 (17 C.F.R. 240.13b2-1).

70. In addition, defendants Stoffer, Johnson, Fringer and Weir violated §13(b)(5) of the Exchange Act (15 U.S.C. § 78 m(b)(5)) and Rule 13b2-1 (17 C.F.R. 240.13b2-1) by knowingly providing substantial assistance to, and thereby aiding and abetting, Nicor Energy in its violations of §13(b)(5) of the Exchange Act (15 U.S.C. § 78 m(b)(5)) and Rule 13b2-1 (17 C.F.R. 240.13b2-1).

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court:

I.

Issue findings of fact and conclusion of law that defendants committed the violations charged and alleged herein.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining defendants Stoffer, Johnson, Fringer and Weir, and their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them, from, directly or indirectly, engaging in the acts, practices of course of business alleged above, or in conduct of similar purport and object, in violation of, or that aid and abet violations of, Sections 10(b) and 13(b)(5) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78m(b)(5)), Rules 10b-5 and 13b2-1 (17 C.F.R. 240.10b-5 and 13b2-1).

III.

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act (15 U.S.C. § 78u(d)(2)) prohibiting defendants Stoffer, Johnson, Fringer, and Weir permanently and unconditionally, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. § 78l) or that is required to file reports pursuant to Section 15(d) of the Exchange Act (15 U.S.C. § 78o(d)).

IV.

With regard to defendants' violative acts, practices and courses of business set forth herein, issue an Order imposing upon them appropriate civil penalties pursuant to Section 21(d)(3) of the Exchange Act (15 U.S.C. § 78u(d)(3)).

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant Orders for such further relief as the court may deem appropriate.

Dated: December 10, 2003

Respectfully Submitted,



Asheesh Goel
One of the Attorneys for the Plaintiff
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U.S. DISTRICT COURT
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This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): United States Securities and Exchange Commission

Defendant(s): Kevin M. Stoffer, Andrew J. Johnson, John Fringer and John F. Weir

County of Residence:

County of Residence: DuPage County, Illinois

Plaintiff's Atty: Asheesh Goel
Division of Enforcement,
Securities and Exchange
Commission
175 West Jackson, 9th Floor,
Chicago, Illinois 60604
(312) 353-0626

Defendant's Atty:

03C 89 10

II. Basis of Jurisdiction: 1. U.S. Gov't Plaintiff

JUDGE RONALD GUZMAN

III. Citizenship of Principal Parties (Diversity Cases Only)

MAGISTRATE JUDGE DENLOW

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 850 Securities / Commodities / Exchange

VI. Cause of Action: 15 U.S.C. 78j(b) - Securities Fraud

VII. Requested in Complaint

Class Action:
Dollar Demand:
Jury Demand: No

VIII. This case IS NOT a refile of a previously dismissed case.

Signature: *Asheesh Goel*

Date: 12/10/03

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS

DOCKETED
 DEC 11 2003

In the Matter of

Eastern Division

United States Securities and Exchange Commission

v.

Kevin M. Stoffer, et al.

FILED - EDS
 03 DEC 10 PM 2:25

Case Number:

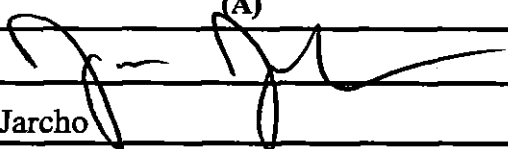


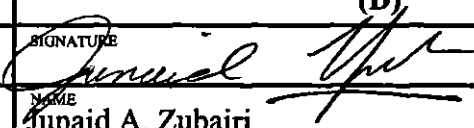
JUDGE RONALD GUZMAN

030 8910

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Plaintiff, the United States Securities and Exchange Commission

MAGISTRATE JUDGE BERLOW

(A)		(B)	
SIGNATURE 		SIGNATURE 	
NAME Jane E. Jarcho		NAME James A. Davidson	
FIRM United States Securities and Exchange Commission		FIRM United States Securities and Exchange Commission	
STREET ADDRESS 175 West Jackson Boulevard, 9th Floor		STREET ADDRESS 175 West Jackson Boulevard, 9th Floor	
CITY/STATE/ZIP Chicago, Illinois 60604		CITY/STATE/ZIP Chicago, Illinois 60604	
TELEPHONE NUMBER (312) 353-7390		TELEPHONE NUMBER (312) 353-7390	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6193642		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6206786	
MEMBER OF TRIAL BAR?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
		DESIGNATED AS LOCAL COUNSEL?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
(C)		(D)	
SIGNATURE 		SIGNATURE 	
NAME Asheesh Goel		NAME Sunaid A. Zubairi	
FIRM United States Securities and Exchange Commission		FIRM United States Securities and Exchange Commission	
STREET ADDRESS 175 West Jackson Boulevard, 9th Floor		STREET ADDRESS 175 West Jackson Boulevard, 9th Floor	
CITY/STATE/ZIP Chicago, Illinois 60604		CITY/STATE/ZIP Chicago, Illinois 60604	
TELEPHONE NUMBER (312) 353-7390		TELEPHONE NUMBER (312) 353-7390	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6229326		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6278783	
MEMBER OF TRIAL BAR?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
DESIGNATED AS LOCAL COUNSEL?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL?	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>