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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	Case No. 07 C 4483
v.	Hon. James B. Zagel
THOMAS FISHER, KATHLEEN HALLORAN, AND GEORGE BEHRENS Defendants.	Magistrate Judge Maria Valdez
	JURY TRIAL REQUESTED

AMENDED COMPLAINT

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

INTRODUCTION

1. From 1999 through 2002, defendants Thomas Fisher ("Fisher"), Kathleen Halloran ("Halloran"), and George Behrens ("Behrens") engaged in, or approved of, improper transactions, made material misrepresentations in financial statements and documents filed with the Commission, and failed to disclose material information regarding Nicor, Inc.'s ("Nicor") rigged reductions in gas inventory levels that enabled it to improperly manipulate its earnings and to increase Nicor's revenues under a performance-based rate plan ("PBR" or "PBR Plan") administered by the Illinois Commerce Commission ("ICC"). Fisher, Halloran, and Behrens also materially understated Nicor's expenses during the first and second quarters of 2001 by improperly bundling a weather-insurance contract with an agreement to supply gas to its

insurance provider at below-market prices. Fisher, Halloran, and Behrens caused the losses on the supply agreement with its insurance provider to be charged to Nicor's customers, which they knew was prohibited by the ICC. As a result, Nicor's expenses were understated. These transactions allowed Nicor to manipulate its earnings to achieve its earnings targets for the PBR. By entering into these manipulative transactions, Nicor materially overstated 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. By their conduct, the defendants violated the antifraud provisions of the federal securities laws and aided and abetted Nicor's violations of the reporting provisions of the same laws.

2. In addition to engaging in materially improper transactions, Fisher, Halloran, and Behrens failed to make disclosures required by Generally Accepted Accounting Principles ("GAAP") about the effects of LIFO inventory liquidations on Nicor's reported income. Nicor, through Fisher, Halloran, and Behrens, failed to disclose in either its Management's Discussion & Analysis ("MD&A") section of its 2000 and 2001 annual and quarterly reports, or in its financial statements filed with those reports, that it had recorded material increases to income resulting from the liquidation of its LIFO inventory, and that the continued liquidation of Nicor's low-cost inventory was not sustainable. The income realized in the PBR program from LIFO inventory liquidations amounted to as much as 23% of pre-tax income in a quarterly reporting period. By their conduct, the defendants violated the antifraud provisions of the federal securities laws and aided and abetted Nicor's violations of the reporting provisions of the same laws.

3. During the relevant period, Nicor filed the following periodic reports with the Commission pursuant to Section 13(a) of the Securities Exchange Act of 1934 ("Exchange Act")

and the rules and regulations promulgated thereunder, each of which contained the consolidated financial statements of Nicor:

Period	Date Filed	Form
Year ended Dec. 31, 1999	3/20/00	10-K
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
Quarter ended March 31, 2002	4/25/02	10-Q
Quarter ended June 30, 2002	8/14/02	10-Q

During the relevant period, Fisher signed Nicor's annual reports and reviewed and approved its quarterly reports, Halloran signed Nicor's quarterly and annual reports, and Behrens reviewed and approved its quarterly and annual reports.

4. Nicor filed with the Commission false and misleading annual reports on Form 10-K and quarterly reports on Form 10-Q commencing with the fourth quarter of 1999 through the third quarter of 2002. During that same time, Nicor also filed with the Commission registration statements pursuant to the Securities Act of 1933 ("Securities Act") that incorporated those periodic reports. The periodic reports on Forms 10-K and 10-Q contained false financial

statements for current and prior periods. The financial results reported in the Form 10-K included statements of income for both the current period and each of the prior two years, while the financial results reported in the Form 10-Q contained comparative results for the current period and the prior year. The footnotes to those annual financial statements contained material misstatements and omissions regarding Nicor's accounting policies and financial results. The fraudulent financial reporting, as well as other false and misleading statements regarding the PBR plan were repeated in quarterly and annual press releases, annual reports, and annual shareholder letters. Fisher, as CEO and Halloran, as CFO were frequently quoted in the fraudulent press releases.

5. After the fraud was discovered, on March 10, 2003, Nicor restated its financial statements for the fiscal years ended December 1999, 2000, and 2001. It also restated its financial statements for each of the first three quarters in 2000, 2001 and 2002.

6. Fisher, Halloran, and Behrens, 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. Fisher, Halloran, and Behrens, 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 Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

8. Fisher, Halloran, and Behrens by aiding and abetting Nicor's false filings with the Commission, 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] thereunder.

9. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §77t(b) and 77t(d)] and Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §78u(d) and (e)] for an order permanently restraining and enjoining the defendants, requiring disgorgement and prejudgment interest from the defendants, imposing civil penalties on the defendants, prohibiting the defendants from acting as officers or directors of any issuer whose securities are registered pursuant to Section 12 of the Exchange Act [15 U.S.C. §78*l*], and required to file reports under Section 15(d) of the Exchange Act [15 U.S.C. §78o(d)] 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) and 78aa] and 28 U.S.C. §1331.

11. In connection with the acts, practices, and courses of business alleged in this complaint, the defendants, Fisher, Halloran, and Behrens, 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.

DEFENDANTS

13. At all relevant times, defendant Fisher served as Chairman, Chief Executive Officer and President of Nicor and of Nicor's principal subsidiary, Nicor Gas. Fisher began his career with the company in 1967 and has held various positions at Nicor Gas and Nicor. He served as Chief Financial Officer of both companies as well as Nicor's Vice President of operations. Fisher retired from his position at Nicor in April 2005. Fisher is about 61 years old and a resident of Aurora, Illinois.

14. From May 1999 to November 2003, defendant Halloran was the Executive Vice President and Chief Financial Officer of Nicor and Nicor Gas. Prior to 1999, Halloran held many financial-related positions at Nicor, including Treasurer and Controller. In November 2003, Halloran became Nicor's Executive Vice President and Chief Risk Officer. Halloran resigned from her positions with Nicor in August 2004. She is an unlicensed certified public accountant. Halloran is about 54 years old and a resident of St. Charles, Illinois.

15. At all relevant times, defendant Behrens was Vice President Administration and Treasurer of Nicor. Prior to that position, he was Vice President and Controller. Behrens received a bachelor's degree in accounting in 1976 and a master's degree in finance in 1982. Behrens resigned from his position with Nicor in June 2006. Behrens is an unlicensed certified public accountant. Behrens is about 51 years old and a resident of Aurora, Illinois.

RELATED ENTITY

16. Nicor Inc. is a gas utility holding company headquartered in Naperville, Illinois. Its principal business is gas distribution. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. On July 15, 2002, an anonymous whistleblower faxed to the Citizen's Utility Board, a public utility advocacy group, a

detailed memorandum claiming that Nicor's officers and managers were manipulating Nicor's PBR plan. Around July 15, 2002, Nicor's board of directors appointed a special committee to conduct an inquiry into the allegations raised by the whistleblower. After the allegations of Nicor's improper accounting were revealed, Nicor's stock dropped by over 40%. On October 28, 2002, the consultant that had been retained by Nicor's special committee to investigate the whistleblower's allegations issued a report to the special committee of Nicor's board detailing his findings and conclusions. On October 29, 2002, Nicor issued a press release explicitly accepting the findings and conclusions of the report. On March 29, 2007, the Commission filed an action (*United States Securities and Exchange Commission v. Nicor Inc. et al.,* Civil Action No. 07 C 1739) against Nicor and a former controller alleging that they violated the antifraud provisions of the federal securities laws, that Nicor violated the reporting provisions of the federal securities laws, and that a former controller aided and abetted Nicor's violations of the same laws. On the same day, without admitting or denying the allegations in the Commission's complaint, Nicor and its former controller co-defendant consented to the entries of Final Judgments and both paid substantial financial penalties. The Final Judgments against Nicor and the former controller were entered on April 30, 2007.

STATEMENT OF FACTS

I. Background

A. Nicor's LIFO Inventory and the Inventory Value Team

17. Fisher's, Halloran's and Behrens' improper conduct stems from Nicor's implementation of the PBR Plan on January 1, 2000. During the relevant period, Nicor valued its natural gas inventory using the LIFO cost method. Under this method, the inventory consisted

of gas "layers" priced at historical prices from 1954 to 1996. In late 1999, Nicor's inventory totaled approximately 105 billion cubic feet ("bcf") of gas. The most recent layers of Nicor's LIFO inventory consisted of about 30 bcf of gas and were carried at costs that approximated current market prices as of 1999. The remaining layers consisted of about 75 bcf of gas and were carried at very low unit costs, reflecting prices that prevailed during the 1950s and the 1960s. At the end of 1999, the difference between the market value and the LIFO cost of Nicor's gas inventory was approximately $170 million. During calendar year 2000, the unit cost of gas skyrocketed from $2 to $10 per million British Thermal Unit ("btu"). Those increasing gas prices caused the difference between the market value and the LIFO cost basis of Nicor's gas to balloon to about $500 million.

18. Under its traditional regulatory plan, Nicor had no incentive to tap into lower cost layers of gas as it was required to pass its cost of gas directly to customers without a mark up (i.e., if the lower cost layers of gas were liquidated, customers would be billed at those lower costs). In March 1998, Nicor's senior management including, Fisher, Halloran, and Behrens, among others, assembled a group of Nicor employees into the Inventory Value Team, and charged them with determining how Nicor could capture the value of Nicor's LIFO inventory. In mid-1998, the Inventory Value Team prepared a report – The Inventory Value Team Report – that analyzed various ways to "capture" the value of the LIFO inventory. After discussing the pros and cons of each approach, the Inventory Value Team, in its report, concluded that implementing a performance based rate plan was "the recommended method for the Company to capture the value from the LIFO layers."

19. Generally, a performance based rate plan is a plan whereby a utility compares its actual cost of gas distribution against a market-sensitive benchmark. To the extent that the actual costs are lower than the benchmark, the savings are shared between the utility and its customers. To the extent that actual costs are higher than the benchmark, the resulting losses likewise are shared between the utility and its customers. The percentage of savings/losses attributed to each are often the subject of negotiation between the utility, the public advocate for consumers, and the regulator.

20. The Inventory Value Team presented its report and findings to Fisher, Halloran, Behrens, and other senior Nicor executives at a meeting in late 1998 or early 1999. During the meeting, the Inventory Value Team discussed the reasons why it had concluded that the PBR plan was the recommended method to capture the value of the LIFO layers. Among the important benefits of a PBR plan that was discussed was the fact that the benefit Nicor was expecting to reap from the LIFO inventory liquidations was "not explicit." Indeed, during or shortly after that meeting, Nicor officers, including, Fisher, Halloran, and Behrens issued a directive that Nicor employees be careful not to highlight the LIFO benefit in Nicor's filings with the ICC. In an August 2000 memorandum to the file, Nicor's then controller wrote 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." This memorandum was shared with, at least, Behrens and Halloran.

21. On March 8, 2002, Behrens filed testimony with the ICC which excluded any reference to LIFO inventory liquidations when describing how Nicor achieved savings under the

PBR Plan. In subsequent testimony before the ICC on June 23, 2003, Behrens acknowledged that he made a conscious decision to exclude from his March 8, 2002 testimony any reference to LIFO related savings.

22. In mid-1999, Fisher, Halloran, and Behrens authorized their subordinates to prepare and file with the ICC an application for approval of a performance based rate plan. As Fisher, Halloran, and Behrens knew, Nicor's stated reasons for the PBR plan were false and misleading. The primary purpose of the PBR Plan was to give Nicor the ability to capture the market value of its low-cost LIFO gas inventory, a feat that could not be accomplished under the traditional ICC regulatory framework.

B. The Performance Based Rate Plan

23. The purported purpose of the PBR Plan was to give Nicor an incentive to lower ratepayers' gas costs. Under the PBR plan, Nicor's savings and losses relative to the market-sensitive benchmark were to be shared equally between the company and customers. Nicor's PBR Plan was subject to further review after two years by the ICC.

24. During the proceeding, at which the ICC approved the PBR, Nicor indicated that "the primary reason for entering into an alternative regulatory plan for its gas costs was to enable it to respond to changes in the gas supply markets, which offered both challenges and opportunities to aggressively pursue cost minimization through innovative, non-traditional means." Nicor also indicated the PBR was based on three objectives: "(1) an alignment of shareholder and ratepayer interests by providing economic incentives for Nicor to improve its performance in providing ratepayers with the best gas prices available, while recognizing the need for continued reliability and security of supply; (2) encouraging the appropriate use of

competitive market opportunities and risk management mechanisms for the procurement of gas supply, transportation and storage services by establishing a reasonable balance between risk and reward; and (3) a reduction of regulatory costs by establishing an objective, market-based standard for evaluating gas supply purchasing, planning, and management, while also eliminating after-the-fact prudence reviews."

25. Despite these representations to the ICC, Nicor actually was using the PBR to financially benefit itself from the liquidation of low-cost LIFO gas. An executive in Nicor's Gas Supply Department ("Gas Supply") testified before the ICC that he believed that "the proposal to develop a PBR was not so much driven by what we could do from a supply operation standpoint to profit under a PBR but was largely driven by the potential value of liquidating the LIFO layers."

II. Fisher, Halloran, and Behrens Knowingly or Recklessly Permitted Nicor to Engage in Sham Transactions In Order to Access Nicor's Low-Cost LIFO Inventory Layers

26. Nicor used sham transactions to manipulate the reductions in its reported inventory levels and to manipulate its PBR earnings while it actually maintained control over much higher inventory levels in connection with its duty under the Illinois Public Utility Act to ensure the availability of gas to its ratepayers.

27. In order to access Nicor's low-cost LIFO gas, Fisher and Behrens knowingly or recklessly permitted the DSS transaction described below, and Fisher, Halloran, and Behrens knowingly or recklessly permitted the prefill transactions described below. These transactions had the effect of overstating the PBR Plan profits and, therefore, Nicor's reported income.

28. Moreover, Fisher, Halloran, and Behrens failed to disclose in Nicor's annual and quarterly reports, and in the financial statements filed with those reports, that Nicor had recorded

material increases to income resulting from the liquidation of its low-cost LIFO inventory. By so doing, Fisher, Halloran and Behrens misrepresented and failed to disclose material information about the PBR plan.

A. 1999 Sale of DSS Gas to Third Party

i. DSS Transaction

29. DSS is a delivered storage service provided by Natural Gas Pipeline Company of America. The gas supplied under this arrangement was accounted for as inventory by Nicor.

30. Nicor's Financial Policy Committee, which included among others, Fisher, Halloran and Behrens, met in late November or early December, 1999 to decide whether Nicor would accept the terms of the PBR Plan as approved by the ICC. Fisher, Halloran and Behrens were present at the meeting to approve the adoption of the PBR Plan. In connection with their adoption of the plan, they discussed with Gas Supply executives the proposed release (assignment) of Nicor's DSS gas agreement with Natural Gas Pipeline ("NPGL") to a third party marketer of gas. Under Federal Energy Regulatory Commission ("FERC") regulations, the shipper of the gas under this arrangement was required to hold title to the gas. It was a foregone conclusion that the DSS gas inventory would be sold or title would be transferred if the third party assignee was to adhere to the terms of the NPGL tariff.

31. Fisher and Behrens knew that DSS was a no-notice storage service and was therefore an integral part of Nicor's balancing of its daily gas receipts and customer demand requirements during the peak winter demand. DSS represented a significant percentage of Nicor's storage capacity and Fisher, Halloran, and Behrens knew that Nicor required control and access to the DSS gas to meet swings in customer demand during the peak winter heating season.

The Gas Supply Department structured a transaction that allowed Nicor to retain all the risks and rewards of ownership, thereby negating the purported sale transaction described below. Fisher and Behrens either knew or were reckless in not knowing the structure of the transactions. Ultimately, after the conclusion of its internal investigation, Nicor admitted that this transaction was improper and should not have been recorded as such.

32. On December 10, 1999 Nicor entered into a transaction with a third party designed to artificially shift Nicor's last remaining high-cost layer off of its books. This maneuver set the stage for Nicor to begin liquidating its low-cost gas inventory once the PBR program took effect. Under the agreement, Nicor sold 18.8 bcf of gas to a third party and recorded $41.4 million in proceeds from that sale and an 18.8 bcf reduction in its gas storage inventory. As a part of the agreement, Nicor was obligated to repurchase the inventory from the third party; in fact, Nicor needed the DSS gas inventory in order to meet peak customer demand during the winter season. The pricing for the sale and repurchase was established at the time of the sale: the third party was to buy the gas at $2.20 per unit, and then resell to Nicor 2.8 bcf of gas in December at the purchase price and the remainder of the 18.8 bcf of gas in early 2000 at the then prevailing market prices.

33. Based on a side agreement with Nicor, the third party purchased gas futures contracts in December 1999 for Nicor's account, and for its benefit, effectively hedging Nicor's market risk to rising prices during the repurchase period. With the hedges in place, Nicor effectively sold the gas to the third party at $2.20 in December and bought it back at the same price in the period from January through March. The transfer of gas to the third party did not result in a sale under GAAP and should not have reduced Nicor's high cost LIFO layers of gas

inventory. By its restatement of its financial statements, Nicor has conceded that the transfer of gas to the third party was not a sale.

34. 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. A number of Nicor officers, including Behrens, attended the meeting. The major topic of discussion was whether the proposed transaction would hurt ratepayers since Nicor would be selling gas to the third party at current market prices which were below Nicor's cost of the DSS gas that was to be sold. This loss would be borne entirely by the ratepayers, rather than shared with Nicor, as would have been the case if the sham sale had not taken place and the related gas was then distributed to Nicor's customers during the early winter months of the PBR program.

35. Nicor officers were concerned that if the purported sale occurred after January 1, 2000, under the PBR, it would have an adverse impact on Nicor's PBR results. An argument for completing the DSS transaction prior to January 2000, which was discussed at the meeting on December 8, 1999, was to allow the third party to lock in financial hedges on behalf of Nicor for the month of January. According to the head of Nicor's gas supply accounting department, the real motive behind this transaction was to "eat into the more expensive LIFO layers in preparation for the new Performance Based Rate [Plan]."

B. Storage Prefill Transactions

36. The Inventory Value Team Report, which was presented to Fisher, Halloran, and Behrens, discussed a potential method to access Nicor's lower cost LIFO inventory—what later came to be known as storage "prefills." Through prefills, Nicor could continue to liquidate the low-cost LIFO layers by filling its storage system with gas for which the "title holder" would be

an unaffiliated third party and with gas that Nicor was theoretically obligated to purchase at some later date. Thus, Nicor could continue 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 gas layers. The purpose of the prefill was to engage in a transaction that would have three essential characteristics: (1) the gas that would actually be injected into Nicor's storage system; (2) the gas would be accessible by Nicor at its election at any time in the future but the seller retained title to the gas until Nicor purportedly purchased the gas; and (3) the gas would not be recognized as Nicor's inventory. The first ensured that Nicor could fill its storage fields—an operational necessity, and the third ensured that Nicor did not create a new high-cost LIFO layer through the process of refilling its storage fields.

i. The Terms of the Prefill Arrangements

37. 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 gas was injected until Nicor actually exercised its obligation 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.

38. In return, the third party agreed to inject the gas into Nicor's storage fields, where it would remain until Nicor exercised its obligation 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 purchase period was reached,

and Nicor still did not wish to exercise its obligation to purchase. The parties renegotiated the terms at that time.

39. Essential to the deal from Nicor's perspective, however, was the condition that the third party retained legal title to the gas, even though all of the risks and benefits of ownership had passed to Nicor: the gas had been injected into Nicor's storage fields, the third party relinquished any right to withdraw the gas, and Nicor bore the risks associated with changes in market conditions and the physical loss of the gas. However, according to the agreements, title transferred to Nicor only when Nicor notified the third party of its intent to purchase the gas and agreed to transfer funds for the gas. Through its restatement of its financial statements, Nicor has conceded that these transactions were not properly recorded on its books. Specifically, in its restatements, Nicor recognized that these transactions constituted Product Financing Transactions under FAS No. 49, and should have resulted in Nicor recording the gas as an asset on its financial records at the point of injection, not at the later point of purchase designated by Nicor.

ii. Using Storage Prefills to Meet PBR Targets

40. Prefills gave Nicor's management, including, Fisher, Halloran, and Behrens, the ability to manipulate Nicor's earnings by allowing Nicor to control the extent to which it liquidated its gas inventory thereby reducing its low-cost LIFO layers and increasing the PBR Plan profits. 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). The less Nicor purchased under the prefill arrangement, the more it could liquidate from its low-cost LIFO layers.

41. Behrens called daily meetings at the end of 2000 and 2001 during which Nicor officers would determine the level of LIFO decrement required in order to meet its PBR financial targets. After assessing its real or actual performance under the PBR, Nicor first determined the LIFO decrement that was required for Nicor to achieve the desired PBR earning target. Nicor then achieved the desired inventory level by electing to purchase the appropriate amount (if any) of prefill gas. The remainder of Nicor's prefills represented unrecorded inventory and were deferred to the following year. In this fashion, Nicor was able to manipulate any size LIFO decrement it desired, and, as a result, it met the yearly performance targets it had established for the PBR.

42. Two examples that illustrate Nicor's manipulation of its reported PBR income occurred during the months of December 2000 and December 2001. Nicor had operated at a profit under the PBR in each of the first three quarters of 2000 without resorting to the liquidation of LIFO inventories. In December 2000, at a meeting at which Behrens and other Nicor officers were present, Nicor's gas supply department discussed the PBR losses Nicor had incurred during the fourth quarter due to existing market conditions. During this meeting, a Nicor Vice President stated that Fisher wanted to report $10 million in PBR income for the year ending December 31, 2000. In their effort to manage the PBR to Fisher's $10 million earnings target, Nicor management liquidated a significant amount of their low-cost LIFO inventory during the month of December 2000 to offset operating losses Nicor had incurred earlier in the fourth quarter. Then by precisely limiting Nicor's purported purchasing of prefill gas at the end of December 2000, Nicor was able to report PBR earnings of $12 million, $2 million over the target amount.

43. Nicor continued to incur operating losses in each of the first three quarters of 2001 because it was unable to meet or better the PBR benchmark. Nicor offset those losses by purportedly liquidating low-cost LIFO inventories in each quarter, thereby producing income under the PBR based on the difference between the higher benchmark market price of gas and the lower cost LIFO inventory. The latter was compared to the PBR benchmark in determining whether Nicor had achieved any savings under the PBR sharing formula.

44. During the 4th quarter of 2001, Nicor experienced significant earnings in its actual PBR performance. The return to profitability in the 4th quarter 2001 meant that Nicor no longer needed the full amount of the $41.2 million of LIFO liquidation income that it had recognized during the first three quarters of the year. Therefore, Nicor management reduced the LIFO liquidation income during the 4th quarter 2001 by purportedly purchasing over 10 bcf of prefill gas at the end of December. This purported purchase had the effect of increasing Nicor's costs under the PBR program by approximately $21 million and thereby reducing its reported PBR earnings to keep them in line with the company's targets.

45. The prefill transactions enabled Nicor to manipulate PBR earnings. As illustrated by the chart below, Nicor's earnings management also masked the highly volatile earnings it experienced with the PBR, by allowing Nicor to falsely claim profits in connection with the PBR when, in fact, in 2000 and the first nine months of 2001 it had experienced significant losses.

	PBR Results for 2000			PBR Results for 2001		
	9 mos Sept. 2000	4th Qtr 2000	Full Year 2000	9 mos Sept. 2001	4th Qtr 2001	Full Year 2001
	(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 LiquidatonCredits Taken to PBR Income	0.0	28.8	28.8	41.2	(21.4)	19.8
Total PBR Income	15.2	9.2	24.4	14.9	14.9	29.8
Nicor's 50% share	7.6	4.6	12.2	7.5	7.5	14.9

iii. Fisher, Halloran, and Behrens Knew or Were Reckless in Not Knowing the Terms of the Prefill Transactions, and Fisher and Behrens Knew or Were Reckless in Not Knowing the Terms of the DSS Transaction

46. Nicor senior officers, including Fisher, Halloran, and Behrens, were members of Nicor's Financial Policy Committee. This committee met at least quarterly and annually to discuss and decide significant financial matters. The Financial Policy Committee also received and approved Nicor's financial reports.

47. During committee meetings, significant business, financial, and accounting matters were evaluated and ultimately decided upon by its members. Nicor's liquidation of low-cost LIFO inventory and its impact on the savings, and therefore, the income to be reported under the PBR, were also approved by the Financial Policy Committee. During Financial Policy Committee meetings, Fisher, Halloran, and Behrens evaluated and approved the amount of the LIFO inventory reduction recommended by their staff. The defendants' actions, therefore, impacted the PBR income on a quarterly and annual basis.

48. The inventory reductions approved by the Financial Policy Committee at the end of each quarter typically described the inventory decrement in billions of cubic feet of gas and

justified the permanent nature of the inventory liquidation "based on the strategies in place as of the end of the current quarter." The "strategies" referenced in the 2001 Financial Policy Committee meeting materials consisted of the inventory prefill transactions contrived between Nicor and the third party.

49. In testimony before the ICC, a Gas Supply executive testified that the prefill concept was designed to control Nicor's injections into storage for purposes of managing the LIFO layer decrement value. It was a concept widely understood and agreed to by Nicor senior officers, including Fisher, Halloran, and Behrens. The vice president in charge of Nicor's Gas Supply operations testified before the ICC in July 2003 that Nicor's performance under the PBR was discussed every 4 to 6 weeks with senior officers and representatives of his department. Fisher, Halloren, Behrens and other senior officers attended these meetings. At these meetings, Gas Supply used "Bucket Reports" and other similar reports to discuss Nicor's current results under the PBR as well as projections for the future. The Bucket Reports were used by Nicor to help identify where value or savings were being derived under the PBR. The reports reflected the income attributable to LIFO inventory liquidations and disclosed the gas volume and dollar value of prefill gas injected into Nicor storage, as well as the incremental additional prefill gas that would be required to meet LIFO liquidation income forecasts for future periods.

50. Given the size of the inventory liquidations and Nicor's operational requirements to fill its storage fields prior to the winter season, prefills constituted the only strategy for filling Nicor's aquifers while continuing to report large reductions in LIFO inventory levels. Indeed, other monthly internal reports reflected prefill contract gas volumes that exactly or closely approximated the LIFO liquidation that Nicor planned to record in a given quarter.

51. The sham sale of DSS gas and the use of prefills made it appear that Nicor had reduced its physical inventory levels from 100 bcf at the beginning of the PBR program to less than 60 bcf at the end of 2001. In reality, Nicor retained control and assumed the risks and rewards of ownership over the approximately 40 bcf of off-balance-sheet inventory in order to meet its operational needs. An actual 40% reduction in Nicor's inventory levels would have significantly impacted Nicor's ability to provide its ratepayers with adequate gas supplies during peak winter demand.

52. Furthermore, Behrens organized year-end meetings in 2000 and 2001 during which Nicor officers would determine the level of LIFO decrement required in order to meet its PBR financial targets. During this time period, prefills were the primary vehicle through which the LIFO inventory reductions and PBR earnings targets were achieved. Behrens also participated in a December 1999 meeting at which the sale of DSS gas was decided.

53. Behrens, Fisher, and Halloran made false representations regarding the DSS transaction to the ICC. Behrens filed a sworn statement with the ICC stating that the statements contained in Nicor's Rider 6 annual report were true to the best of his knowledge and belief. The purported sale of DSS gas was hidden from the ICC by including the revenues from the sale as a reduction of the cost of "spot gas purchases" reported in the document. Fisher and Halloran signed representation letters addressed to Arthur Andersen & Co. ("Andersen"), Nicor's auditors, that they were responsible for the fair presentation of recoverable costs, revenues from gas charges, and the reconciliation balance, as included in the statements. They further represented that the statements had been prepared in accordance with the annual reconciliation provision of Section G of the Standard Rider 6 of the company's rate schedule in effect and on file with the ICC.

54. The sworn statement by Behrens and representations made by Fisher and Halloran to Andersen were false because the Rider 6 statements materially understated the cost of spot gas purchased for the month of December 1999 and Fisher and Halloran knew or were reckless in not knowing, that fact.

55. Given the information and recommendations provided by the Inventory Value Team, the Financial Policy Committee's responsibility for approving the actual amount of LIFO inventory reductions, the use of the prefill concept to manage LIFO liquidations, the significant gas volumes and dollar amounts involved in the inventory reductions and in the sham transactions, and their potential impact on Nicor's ability to service its customers, Fisher, Halloran, and Behrens either knew, or were reckless in not knowing, the terms of the prefill transactions which were part of the scheme to defraud.

56. In addition, Fisher and Behrens either knew, or were reckless in not knowing, the terms of the DSS transaction, which were an essential part of Nicor's fraudulent scheme to manipulate the PBR.

III. Nicor Materially Understated its Weather-Insurance Expenses

57. Fisher, Halloran, and Behrens also materially understated Nicor's expenses for weather-insurance by bundling a weather-insurance contract with an agreement to supply gas to its insurance provider at below-market prices.

58. For the fiscal year 2000, Nicor purchased weather-insurance to manage the risk of unpredictable weather variances. The weather during the 2000 calendar year was warmer than predicted, and thus Nicor's shareholders benefited from the weather-insurance it purchased. Based on this experience, Nicor determined that it would also purchase weather-insurance for the 2001 calendar year. Due in part to the larger than predicted pay-outs under the insurance policy

in 2000, Nicor Inc's weather-insurance providers sharply increased the premiums for similar weather-insurance policies for the 2001 calendar year.

59. In August 2000, Halloran contrived the idea of lowering the cost of insurance premiums by combining the purchase of weather-insurance with a "supply deal," in which Nicor would provide gas to its weather-insurance provider at below-market prices; the insurance provider was also a gas trader and had use for the gas in its trading business The deal Nicor struck with its weather-insurance provider lowered the insurance premiums that the weather-insurance provider charged Nicor to the extent of the discount from market prices that it received from Nicor on the supply of gas. Nicor's senior management, including Behrens and Fisher, were aware of, and involved in the structuring of the weather-insurance deal conceived of by Halloran. Fisher also approved the transaction.

60. Regulatory requirements prohibited Nicor from intentionally engaging in a transaction that resulted in a loss to its ratepayers. The regulations also prohibited Nicor from including in the Purchase Gas Adjustment ("PGA") costs other than the cost of gas distributed to ratepayers. The costs of weather-insurance derivative contracts are a corporate expense that should not have been charged to the ratepayer. A senior manager at Nicor responsible for rate research and reporting to the ICC spoke to Halloran about the weather-insurance transaction, and explained to Halloran that the transaction was not permissible under the ICC regulations and the PBR. He also advised Halloran that he believed that the transaction was likely illegal. Halloran responded, representing that outside regulatory counsel had approved the transactions; however no such consultation took place. The senior manager believed that the concept that it is inappropriate to pass non-gas costs through the PGA was a very basic concept. Further, Nicor's then controller also questioned the propriety of the transaction, and began asking questions to

understand how the transaction was structured. Nicor's then controller was told to leave the transaction alone, as it had been approved "at the highest levels."

61. Fisher, Halloran, and Behrens knowingly engaged in the weather-insurance transaction described above, and inappropriately caused a $6 million loss on the gas supply portion of the agreement with its weather-insurance provider to be charged to Nicor's ratepayers during the first and second quarters of 2001. The resulting understatement of Nicor's corporate expenses amounted to 5% and 7% of the first and second quarters' pre-tax income, respectively. Halloran reviewed and signed an 8-K in the fall of 2000 that stated that insurance premiums for the succeeding year would be about the same as the prior year, a statement she knew to be false and misleading.

62. Fisher, Halloran, and Behrens knew about the loss associated with the weather transaction which was reported in Nicor's Bucket Reports. Halloran, during an interview in connection with Nicor's investigation of the whistleblower complaint, acknowledged finding the weather transaction resulted in a loss to ratepayers in a Bucket Report; however she failed to require that the accounting for the transactions be corrected at that time.

63. Behrens, Fisher, and Halloran misrepresented the nature of the weather insurance transaction to the ICC. Behrens filed a sworn statement with the ICC stating that the statements contained in Nicor's Rider 4 annual report were true to the best of his knowledge and belief, notwithstanding his knowledge that the loss on the weather insurance transaction had been included in the gas costs reflected in the Rider 4 report. Fisher and Halloran signed representation letters addressed to Andersen representing that they were responsible for the fair presentation of Rider 4, Gas Cost Performance Program for the year ended December 31, 2001 included in the information sheet. They further represented that the information sheet had been

prepared in accordance with Rider 4 of the company's rate schedule in effect and on file with the ICC. The sworn statement by Behrens and representations made by Fisher and Halloran to Andersen were false because the Rider 4 statements included the cost of weather insurance as a gas cost included in the PGA and Fisher and Halloran knew or were reckless in not knowing, that fact.

64. In sum, the DSS, prefill and weather-insurance transactions resulted in an overstatement of Nicor's pre-tax income of $6.75 million and $11.33 million in 2000 and 2001, respectively, excluding the additional impact of LIFO liquidations on Nicor's pre-tax income described below.

IV. Fisher, Halloran, and Behrens Failed to Disclose in Nicor's Forms 10-K for 2000 and 2001 and Its Forms 10-Q for 2001 That Nicor Had Realized Significant Amounts of Income from LIFO Inventory Liquidations

65. Nicor's reported PBR income for the years ended 2000 and 2001, and during the interim quarters in 2001, was derived principally from increases to income from LIFO liquidations, a fact that Fisher, Halloran, and Behrens hid from Nicor's investors and the markets. Fisher reviewed and signed Nicor's 2000 and 2001 Forms 10-K as Chairman, President and Chief Executive Officer. Halloran reviewed and signed Nicor's 2000 and 2001 Forms 10-K and its Forms 10-Q for 2001 as Executive Vice President, Finance and Administration. Behrens along with other members of Nicor's Financial Policy Committee reviewed and approved Nicor's financial reports. On August 14, 2002, pursuant to the Commission's June 27, 2002 Order which required officers of certain public companies to certify the accuracy of their Commission filings, Fisher and Halloran certified on Form 8-K that Nicor's 2001 annual and quarterly filings with the

Commission contained no untrue statement or omission of material fact. This certification was false.

66. Nicor's Form 10-Q for the second quarter of 2002 that was filed on August 14, 2002, included balance sheets as of June 30, 2002, June 30, 2001 and December 31, 2001; statements of operations for the three and six-month periods ended June 30, 2002 and June 30, 2001; and statements of cash flows for the six months ended June 30, 2002 and June 30, 2001. Nicor's 2001 annual report on Form 10-K included balance sheets as of December 31, 2001 and December 31, 2000 and statement of operations and statements of cash flows for each of the years in the three-year period ended December 31, 2001. All of these financial statements contained material misrepresentations and omitted material facts.

67. The effect of Fisher's, Halloran's, and Behrens' improper conduct on reported pre-tax earnings and their failure to disclose the amount of non-recurring income resulting from the liquidation of LIFO inventory is summarized in the chart below (figures in millions):

	Year Ended 12/31/00	Year to Date as of 3/31/01	Year to Date as of 6/30/01	Year to Date as of 9/31/01	Year Ended 12/31/01
Income Realized from Inventory Liquidations	14.4	13.4	19.6	20.6	9.9
Reported Income (Pre-Tax)	209.1	58.3	99.0	149.9	217.1
Income from Inventory Liquidations as Percent of Pre-Tax Income	6.9%	23.0%	19.8%	13.7%	4.6%

A. Fisher, Halloran, and Behrens Knew That the PBR Income Resulted Principally from LIFO Inventory Liquidations

68. On September 18, 2000, Fisher, Halloran, and Behrens participated in a meeting to discuss how the PBR performance results would be accounted for and reported. The applicable accounting guidance, memorialized in a memorandum written by Nicor's then controller on September 8, 2000 and reviewed during the meeting, stated, "The expected LIFO decrement is determined by subtracting the full year PBR forecast from the targeted PBR plan results . . . the best estimate within the range, as determined by the Financial Policy Committee, will establish the LIFO benefit to be booked in the interim period." LIFO liquidations were being used by Nicor to make up any shortfall in Nicor's actual operating earnings under the PBR compared to Nicor's earning targets for the PBR and Fisher, Halloran, and Behrens knew or were reckless in not knowing that fact.

69. Furthermore, on or about March 16, 2001, during a Post-Board Information Meeting, Fisher, Halloran, and Behrens were informed, in part, that:

> This [LIFO] inventory was worth almost $500 million at year end. If we weren't able to exploit this asset through the PBR mechanism the PBR would be too risky, more so in the current pricing environment.

Also discussed at that meeting were the year 2000 results and the outlook for the year 2001. Central to the 2001 outlook was that Nicor could achieve the desired $25 million PBR profit through inventory liquidations, regardless of its performance in other areas, as shown by the following chart, which was included in a memorandum relating to the Post-Board Information meeting (amounts in parentheses represent expenses/losses):

<u>2000 Results (millions):</u>	
Pipeline contract costs	$15
Storage operation	$24
Commodity acquisition	$(40)
Inventory liquidation	$25
PBR savings/profit	$24

<u>2001 Outlook (millions)</u>	<u>Range</u>		
Pipeline contract costs	$18	-	$23
Storage operation	$12	-	$25
Commodity acquisition	$(44)	-	$(28)
Inventory liquidation	$39	-	$ 5
PBR savings/profit	$25		$25

70. A February 2000 memorandum, written by a Nicor former controller and reviewed at least by Halloran, discussed PBR Interim Earnings Recognition and stated that "forecast reliability may not be much of an issue because of our ability to manage PBR results through LIFO inventory liquidation . . . . We should be able to manage PBR results to any level of earnings desired." In her interview in connection with Nicor's internal investigation, Halloran admitted that LIFO layers were liquidated at the end of 2001 to generate income. She further admitted, in that same interview, that in 2001 "it was beginning to appear as if only the LIFO layers were creating cost savings under the PBR."

71. Moreover, during 2000 and 2001, prior to the end of a quarter, Nicor's financial reporting department prepared an agenda, and assembled information related to the agenda, for evaluation by Fisher, Halloran, and Behrens in their role as members of Nicor's Financial Policy Committee. For each quarter, except for the 4th quarter 2000 and the 4th quarter 2001, the Financial Policy Committee meeting materials contained documents that discussed the income Nicor would record from the PBR plan. The materials for the Financial Policy Committee

meetings presented the PBR income in two components: (1) income resulting from the "Actual Performance Versus the Benchmark;" and (2) income resulting from the "Impact of Potential Permanent Inventory Reduction." With respect to the year end results, shortly after the end of the year, Nicor's financial reporting department prepared a "Final Buckets Analysis" which was transmitted to several of Nicor's senior executives, including Behrens. That document also reported the PBR income for the year in two components: (1) "PBR performance without Decrement;" and (2) "Decrement Value." Based on the above documents, Fisher, Halloran, and Behrens knew that all, or substantially all, of the PBR income for the years ended 2000 and 2001, and for the interim quarters, resulted from LIFO inventory liquidations.

B. Fisher, Halloran, and Behrens Hid from Nicor Investors the Fact that the Reported PBR Income Resulted from LIFO Inventory Liquidations

72. Nicor's officers, including Fisher, Halloran and Behrens, hid from the ICC the fact that they intended to monetize Nicor's LIFO inventory because they were concerned that should the ICC become aware of Nicor's purpose in implementing a performance based rate plan, it would do one of two things: (1) either refuse to approve Nicor's application for such a plan; or (2) structure the sharing mechanism in a way that would provide more of the LIFO benefit to the customers.

73. Fisher, Halloran, and Behrens also hid from Nicor shareholders its true reasons for entering into the PBR plan. For instance, in his letter to shareholders in Nicor's 1999 Annual Report to Shareholders (1999 ARS), Fisher – Nicor's Chairman, CEO and President – stated that, "[I]n 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." This statement was materially misleading because it failed to disclose that the primary purpose of the PBR was to capture as PBR income the spread between Nicor's low-cost 1950s prices and high current market prices; something that Nicor was not allowed to do under its traditional regulatory framework with the ICC.

74. Similarly, Fisher's letter to shareholders in Nicor's annual report for the year 2000 contained a chart depicting earning per share ("EPS") data for each year in the five-year period ended 2000. The EPS for 2000 was stated at $2.94 and included undisclosed and non-sustainable income from LIFO inventory liquidations that approximated $.17 per share. Nicor's reported EPS represented a 12% increase in earnings from 1999 to 2000. However, Nicor's real EPS from operations for 2000, exclusive of the LIFO liquidation income effect, reflected growth of only 5% over the preceding year. This difference is clearly material to investors.

75. In addition, Halloran, during a September 2000 analyst call, stated, "Our expected recurring earnings improvement in the third quarter is primarily attributable to results at Nicor Gas, due mostly to positive contributions from our performance-based rate program." Fisher, Halloran, and Behrens failed to disclose that Nicor's primary motivation in implementing a PBR plan was to capture the value inherent in its inventory and that they considered a performance based rate plan too risky were it not for Nicor's ability to liquidate LIFO inventory and thereby manage the income that it reported under the PBR.

76. Furthermore, Fisher, Halloran and Behrens misled investors about Nicor's performance under the PBR. For example, in a Nicor report signed by Fisher, which was distributed to shareholders for the first quarter of 2001, Fisher stated:

> Performance-Based Rate (PBR) Plan Update. Nicor Gas' PBR plan continues to benefit financial results-providing $2.5 million in pretax income during the first quarter, compared with $1.2 million in the first quarter of 2000. The PBR plan provides the company with economic incentives to lower gas costs through innovative practices in areas including: gas supply acquisition, pipeline transportation and storage management.
>
> Nicor Gas' total gas supply costs are compared to a market-sensitive benchmark, and any savings or losses are shared equally with customers. In 2000, Nicor Gas posted pretax income of $12.2 million and reduced customer gas costs by an equal amount as a result of the PBR Plan . . ."

77. The statement in paragraph 60 was false and misleading because Nicor had actually incurred substantial losses under the PBR plan. Those losses, which were to be shared equally between Nicor and the ratepyers, amounted to $21.8 million in the first quarter of 2001, $39.2 in the fourth quarter of 2000 and $8.8 million for the full year 2000. Without the low-cost LIFO gas liquidations, Nicor was in fact unable to meet or better the PBR's market-sensitive benchmark and therefore, incurred substantial losses under the terms of the plan.

78. Nicor's true PBR loss of $21.8 million in the first quarter of 2001, when compared to a profit of $2.4 in the first quarter of the preceding year, represented a swing of $24.2 between the two years. That swing in profitability was material in relation to Nicor's total reported pretax earning of $58.3 million for the first quarter of 2001 and it reflected Nicor's exposure to significant market risks in the PBR plan that Fisher, Halloran and Behrens chose to hide from investors. In describing Nicor's exposure to market risks in its MD&A section of its Form 10-Q for the first quarter of 2001, Nicor reported that there had been no material change in

its exposure to market risks since December 2000. This statement was also false and misleading.

79. During the first quarter of 2001, Nicor also incurred $3 million of the $6 million in losses associated with the weather-insurance gas supply contract that was designed to improperly shift insurance costs from Nicor to its customers. The losses on the supply contract were 5% of Nicor's pre-tax income for the quarter and should have been recorded as a corporate expense. Instead, the loss was charged to Nicor's customers. Nicor's Form 10-Q report for the first quarter of 2001 describes its weather hedging activities in the MD&A section of the report, but hid the fact that Nicor's costs for the current year's weather hedge increased sharply in 2001 and that the hedge included losses that were improperly recorded so that Nicor could bill those costs to its customers. Nicor, and the defendants in this case, knew that such treatment was not allowed by the ICC.

80. By means of the DSS, prefill and weather-insurance transactions and its liquidation of low-cost LIFO inventory, Nicor materially misstated its annual financial results for 2000 and 2001, as well as, for each of the quarters in those years.

81. Based on the conduct described in paragraph's 1-80, Defendants Fisher, Halloran and Behrens knowingly engaged in a scheme to defraud the investing public by manipulating the income of Nicor.

82. Alternatively, even if Defendants Fisher, Halloran and Behrens did not knowingly engage in a scheme to defraud, the Defendants were either reckless or negligent participants in a fraudulent scheme as shown by the conduct described in paragraph's 1-80.

CLAIMS FOR RELIEF

COUNT I

Defendants Fisher, Halloran, and Behrens Violated Section
10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 Thereunder [17 C.F.R. §240.10b-5]

83. Plaintiff repeats and realleges paragraphs 1 through 82 above.

84. Defendants Fisher, Halloran, and Behrens engaged in the conduct alleged herein knowingly or with reckless disregard for the truth.

85. As a result of the activities described above, defendants Fisher, Halloran, and Behrens, 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.

86. By reason of the foregoing, defendants Fisher, Halloran, and Behrens 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].

COUNT II

Defendants Fisher, Halloran, and Behrens Violated Section
17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)]

87. Plaintiff repeats and realleges paragraphs 1 through 82 above.

88. At the times alleged in this Complaint, defendants, Fisher, Halloran, and Behrens, in the offer and sale of securities, by the use of the means and instruments of transportation and

communication in interstate commerce and by the use of the mails, directly and indirectly, have employed devices, schemes and artifices to defraud.

89. In the offer and sale of securities and as part of the scheme to defraud, defendants Fisher, Halloran, and Behrens made false and misleading statements of material fact and omitted to state material facts to investors and prospective investors as more fully described above.

90. Defendants Fisher, Halloran, and Behrens knew, or were reckless in not knowing, the facts and circumstances described above.

91. By reason of the activities described above, defendants Fisher, Halloran, and Behrens violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

COUNT III

Defendants Fisher, Halloran, and Behrens Violated Sections
17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)]

92. Plaintiff repeats and realleges paragraphs 1 through 82 above.

93. As described above, defendants, Fisher, Halloran, and Behrens, in the offer or sale of securities, by use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: (a) obtained money or property by means of untrue statements of a material fact 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; and/or (b) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchaser.

94. Defendants Fisher, Halloran, and Behrens acted at least negligently with respect to the facts and circumstances described above.

95. By reason of the activities described above, defendants Fisher, Halloran, Behrens violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §77q(a)(2) and (3)].

COUNT IV

Aiding and Abetting Violations of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1 and 13a-13 Promulgated Thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13]

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

97. During the relevant period, Nicor failed to file with the Commission, in accordance with the rules and regulations prescribed by the Commission, such annual and quarterly reports as the Commission has prescribed; and Nicor failed to include, in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they are made, not misleading.

98. By reason of the activities described above in paragraphs 96 and 97, Nicor violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13].

99. Defendants Fisher, Halloran, and Behrens knowingly provided substantial assistance to Nicor in the activities described in paragraphs 96 through 98.

100. By reason of the activities described in paragraphs 96 through 99 above, defendants Fisher, Halloran, and Behrens aided and abetted Nicor's violations of 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] promulgated thereunder.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusion of law that the defendants Fisher, Halloran, and Behrens 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, restraining and enjoining defendants Fisher, Halloran, and Behrens from future violations of Sections 17(a)(1), (a)(2) and (a)(3) of the Securities Act [15 U.S.C. §§77q(a)(1)(2), 77q(a)(2) and 77q(a)(3)] and Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§240.10b-5, 240.12b-20, 240.13a-1, and 240.13a-13].

III.

Issue an Order prohibiting defendants Fisher, Halloran, and Behrens from acting as officers or directors 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)], pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)].

IV.

Order defendants Fisher, Halloran, and Behrens to disgorge all ill-gotten gains that they have received as a result of the acts complained of herein, with prejudgment interest thereon.

V.

Order defendants Fisher, Halloran, and Behrens to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

VI.

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.

VII.

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

Dated: February 25, 2008

Respectfully submitted,

s/Andrea R. Wood

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CERTIFICATE OF SERVICE

I, Andrea R. Wood, an attorney, hereby certify that I caused a copy of the foregoing **Amended Complaint** to be served upon the following counsel:

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by the Court's CM/ECF system this 25th day of February, 2008.

s/Andrea R. Wood____