

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**            )  
  )  
**Nicor Gas,**                    )  
  )  
**Respondent.**                 )

**DOCKET NO. TSCA-HQ-2015-5017**

**COMPLAINANT’S MOTION TO COMPEL COMPLIANCE WITH PREHEARING  
ORDER AND MOTION FOR EXTENSION OF TIME**

In accordance with 40 C.F.R. §§ 22.16(a) and 22.19(g) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, Complainant, the Acting Director of the Waste and Chemicals Enforcement Division of the United States Environmental Protection Agency, through counsel, submits this Motion to Compel Compliance with the Prehearing Order and Motion for Extension of Time.

Complainant hereby requests this Court to compel Nicor Gas ("Respondent") to comply with the Administrative Law Judge Christine D. Coughlin’s April 18, 2016 Prehearing Order ("Prehearing Order"), specifically Paragraphs 3(A)-(D).

Paragraph 3 of the Prehearing Order requires that Respondent shall submit the following as part of its Prehearing Exchange [emphasis added]:

- (A) a copy of any documents *in support of the denials made in the Answer*;
- (B) a copy of any documents *in support of the allegations in Respondent's affirmative defenses, asserted in the Defenses section of the Answer*, and an explanation of its arguments in support of such affirmative defenses;
- (C) all factual information *Respondent considers relevant to the assessment* of a penalty and any supporting documentation; and
- (D) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and *a copy of any and all documents upon which it intends to rely in support of such position*.

Respondent's Prehearing Exchange contains over 140<sup>1</sup> exhibits of which none have been characterized reflecting which ones: (1) will be used to support the denials made in the Answer as set out in Paragraph 3(A) of the Prehearing Order; (2) will be used to support allegations in Respondent's affirmative defenses as set out in Paragraph 3(B) of the Prehearing Order; (3) Respondent considers relevant to the assessment of a penalty as set out in Paragraph 3(C) of the Prehearing Order; and (4) Respondent is relying on in asserting that the proposed penalty should be reduced or eliminated on any grounds as set out in Paragraph 3(D) of the Prehearing Order. Respondent's failure to include this information prejudices Complainant's ability to adequately defend its position in this matter.

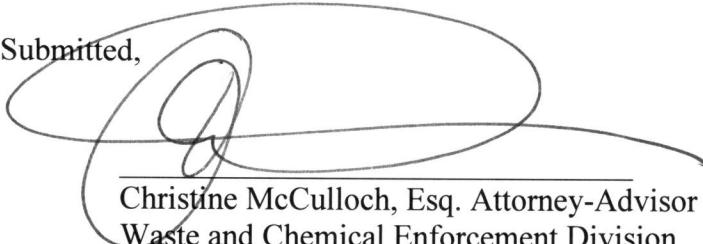
WHEREFORE, Complainant requests that this Court issue an Order granting Complainant's Motion to Compel Compliance with the Prehearing Order, requiring Respondent to provide the information as set out in Paragraph 3 of the Prehearing Order. Additionally, Complainant requests that this Court grant Complainant a two week extension for filing its Rebuttal Prehearing Exchange following Respondent's compliance with any Order by this Court granting the relief requested herein.

If the Motion to Compel is not granted, Complainant then requests four weeks so it has an opportunity to review each exhibit and make an educated guess as to which exhibits submitted are associated with a particular subparagraph specified in Paragraph 3 of the Prehearing Order.

Prior to filing this Motion, the undersigned contacted the opposing party as to the relief requested herein and understands the Respondent opposes the Motion and indicated Respondent will explain its view in a responsive filing.

Respectfully Submitted,

8/31/2016  
Date



Christine McCulloch, Esq. Attorney-Advisor  
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(Certificate of Service)

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<sup>1</sup> Respondent's certificate of service indicates that "Documents with business confidentiality claims were mailed in accordance with 40 C.F.R. § 22.5(d)(2) via UPS to ... Christine McCulloch." At this juncture EPA is not in receipt of the CBI attachments mentioned in the certificate of service.

**UNITED STATES**  
**ENVIRONMENTAL PROTECTION AGENCY**  
**BEFORE THE ADMINISTRATOR**

**In the Matter of:**                    )  
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**Nicor Gas,**                            )  
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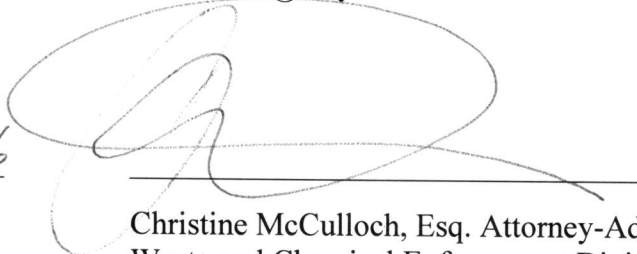
**CERTIFICATE OF SERVICE**

I hereby certify that the original of the Complainant’s Motion to Compel Compliance with Prehearing Order and Motion for Extension of Time, Docket No. TSCA-HQ-2015-5017, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email to:

Mark R. Ter Molen  
Mayer Brown LLP  
mtermolen@mayerbrown.com

Date: 8/31/2016



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