

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff, Case No. 07 C 4483

v.

Hon. James B. Zigel

THOMAS FISHER,  
KATHLEEN HALLORAN  
AND GEORGE BEHRENS,

Magistrate Judge  
Maria Valdez

Defendants.

**DISTRIBUTION PLAN**

**Introduction**

1. The Securities and Exchange Commission (the “Commission”) commenced this action against Defendants on August 9, 2007. By order dated August 3, 2010, the Court entered Final Judgment as to Defendant Thomas Fisher pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Pursuant to the Final Judgment, on September 7, 2010, Fisher paid a total of \$825,000 of prejudgment interest and disgorgement to the Clerk of this Court (the “Distribution Fund”). The Distribution Fund was thereafter deposited in an interest-bearing account, account number \*\*\*\*\*5527, under the case name designation “*U.S. Securities and Exchange Commission v. Thomas Fisher, et al.*, 07 C 4483 (N.D. Ill.)”

2. Additional funds have since been deposited into the Distribution Fund account in connection with settlements by other defendants and pursuant to Final Judgments by the Court. Funds were also deposited into an account being held by the Commission at the U.S. Treasury in connection with the settlements in this case. To date, the total amount of the Distribution Fund

(including funds being held by the Clerk of the Court and the funds being held by the Commission) is approximately \$1,260,708.23.

3. On March 28, 2011, the Court appointed Damasco & Associates as the Tax Administrator to fulfill the tax obligations of the Distribution Fund. (Docket # 101)

4. On January 28, 2016, the Court appointed The Garden City Group, Inc., now known as Garden City Group, LLC (“Garden City”) as the Distribution Agent to oversee the distribution to injured investors of the disgorgement and prejudgment interest paid by Defendants pursuant to Final Judgments in this matter. (Docket # 235)

5. This distribution plan will seek to distribute the Distribution Fund to further compensate the injured investors who previously received and cashed checks or otherwise negotiated their distribution payments in the Commission’s related case, *SEC v. Nicor, Inc. et al*, Case No. 07-cv-1739 (N.D. Ill). The distribution shall be made on the same basis as the distribution plan in the *Nicor* case, the terms of which are incorporated herein and which shall remain in full force and effect except as specifically modified by this Distribution Plan. (*See Nicor Distribution Plan, Nicor Docket # 56, also attached as Exhibit A.*)

### **Defined Terms**

5. Terms defined in the *Nicor* Distribution Plan shall have the same meaning as in this Distribution Plan, except as specifically modified.

6. “**Affiliate**” shall have the meaning set forth in Section 101(2) of Title 11 of the United States Code, 11 U.S.C. § 101(2).

7. “**Days**” shall mean calendar days, unless specified otherwise.

8. “**Distribution Agent**” shall mean Garden City, the Distribution Agent approved by the Court to assist with the administration and distribution of the Distribution Fund.

9. **“Distribution De Minimis Amount”** shall mean the minimum Distribution Payment amount of \$10.00. No Eligible Investor shall receive a payment unless their pro-rata share of the Net Available Fund results in a Distribution Payment of at least the Distribution De Minimis Amount.

10. **“Distribution Fund”** and/or **“Fisher Distribution Fund”** shall refer to the disgorged funds and prejudgment interest assessed against the Defendants in compliance with the Final Judgments in this case, plus any accumulated interest and earnings thereon as may be provided by future Court orders or agreements in related cases. The Fisher Distribution Fund consists of amounts being held both by the Court and by the Commission.

11. **“Distribution Payment”** shall mean the pro-rata amount of the Fisher Distribution Fund allocated to an Eligible Investor pursuant to their Eligible Loss Amount.

12. **“Distribution Plan”** shall mean this distribution plan as approved by the Court.

13. **“Eligible Investor”** shall mean the injured investors who were identified and deemed Eligible Claimants in the Commission’s related case, *SEC v. Nicor, Inc. et al*, Case No. 07-cv-1739 (N.D. Ill.), and who previously received and cashed checks or otherwise negotiated their distribution payments in the Commission’s related *Nicor* case. Excluded from the Eligible Investors are:

- a. Any individual named defendants in this action;
- b. Any individual named defendants in *SEC v. Nicor, Inc. and Jeffrey Metz*, Civ. Action No. 07-cv-1739 (N.D. Ill.)
- c. Any employee or former employee of Nicor, Inc. who has been terminated for cause, or has otherwise resigned, in connection with the

conduct described in the Commission's complaint in this case or in *SEC v. Nicor, Inc. and Jeffrey Metz*, Civ. Action No. 07-cv-1739 (N.D. Ill.);

- d. Any defendant in any action brought by the Commission or any class action lawsuit related to the conduct described in the Commission's complaint in this action or any related Commission action unless and until such defendant is found not liable in all such civil suits;
- e. Any Person who has been the subject of criminal charges related to the violations alleged in the Commission's complaint in this action or any related Commission action, unless and until such defendant is found not guilty in all such criminal actions;
- d. Any Affiliates, assigns, creditors, heirs, distributees, spouses, parents, children, subsidiaries, or controlling entities of any of the foregoing Persons or entities described in Paragraph 13 a - 13 f;
- e. Any Person who assigned their right to obtain a recovery in the Commission's action against Defendants; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance, devise or operation of law; or
- f. The Distribution Agent, its employees, and those persons assisting the Distribution Agent in its role as the Distribution Agent.

14. **"Net Available Fund"** shall mean Fisher Distribution Fund, plus accumulated interest and earnings thereon, less fees and costs of administering the Fisher Distribution Fund

and implementing the Distribution Plan, and paying any taxes that may be assessed against the Fisher Distribution Fund.

15. **“Person”** shall mean a natural individual, as well as a legal entity, such as a corporation, partnership, limited liability company or government entity. All nouns, pronouns, and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

16. **“Plan of Allocation”** shall mean the methodology by which an Eligible Investor’s Distribution Payment is calculated.

**Plan of Allocation**

17. The Net Available Fund will be allocated to Eligible Investors on a pro rata basis, based on the Eligible Investor’s pro rata share as determined in accordance with the Nicor Distribution Plan.

18. The Distribution Agent shall determine each Eligible Investor’s pro rata share of the Net Available Fund , based on the Eligible Investor’s pro rata share as determined in accordance with the Nicor Distribution Plan.

**Plan and Procedures**

19. The Distribution Agent shall oversee the administration of the distribution as provided in this Distribution Plan.

20. Within sixty days of the Court’s approval of this Distribution Plan, the Distribution Agent shall:

- a. Create a database, consisting of the existing information of the Eligible Investors;

- b. Run a National Change of Address (“NCOA”) search to retrieve updated addresses for all records in the new database, thereby ensuring updated mailing information for Eligible Investors;
- c. Establish a website for the administration of the Distribution Fund, where Eligible Investors may locate information regarding this Distribution;
- d. Establish a toll-free telephone call-in number by which Eligible Investors can obtain information about the Distribution Fund; and
- e. Provide a final payee list to the Commission staff listing the names of the Eligible Investors, their respective pro rata percentages of the Net Available Fund, and each Eligible Investor’s Distribution Payment amount.

21. Upon the Commission staff’s review of the final payee list, the Commission staff shall move the Court to transfer funds being held by the Court under the case name designation “*U.S. Securities and Exchange Commission v. Thomas Fisher, et al.*, 07 C 4483 (N.D. Ill.)” and funds being held by the Commission in this matter, to the Distribution Agent for distribution pursuant to the Distribution Plan. In conjunction with the motion seeking transfer of the Fisher Distribution Fund to the Distribution Agent for distribution, the final payee list shall, upon request, be made available to the Court under seal.

22. Following the Court’s approval of the Commission’s motion for the transfer of funds to the Distribution Agent to distribute the funds to the Eligible Investors as provided for in this Distribution Plan, the Distribution Agent shall commence the distribution to all Eligible Investors as promptly as possible following such transfer of the funds.

23. Upon receipt of the monies from the Court and the Commission in this matter, the Distribution Agent shall sign a receipt acknowledging the receipt of the funds and deposit these monies in a bank account as described below:

- (a) The bank account will be maintained at a United States commercial bank (the “Bank”), to be proposed by the Distribution Agent and not unacceptable to the staff of the Commission.
- (b) The Distribution Agent shall then file the signed receipt with the Court and supply a copy of the receipt to counsel for the Commission in this matter within ten (10) business days of receipt of the monies.
- (c) Pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the staff of the Commission, the Distribution Agent and the Bank shall establish an escrow account in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund (“QSF”), as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following form: “*U.S. Securities and Exchange Commission v. Thomas Fisher, et al., 07 C 4483 (N.D. Ill.)*” as custodian for the benefit of investors allocated a distribution from the Distribution Plan in *U.S. Securities and Exchange Commission v. Thomas Fisher, et al., 07 C 4483 (N.D. Ill.)* (the “Distribution Fund Escrow Account” or “Escrow Account”). The Distribution Agent and the Bank shall also establish a separate deposit account (e.g. controlled distribution account, managed distribution account, linking checking and investment account) titled as set forth above for the purpose of funding checks to be distributed to investors by the Distribution Agent pursuant to the Distribution Plan.
- (d) All funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. Presented checks will be subject to “positive pay” controls before they are honored by the

bank, at which time funds will be transferred from the Escrow Account to the zero-balance account to pay the approved checks.

- (e) During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term U.S. Treasury securities backed by the full faith and credit of the United States Government (“U.S. Government”) or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Investors, tax obligations and/or fees and expenses of the Tax Administrator and Distribution Agent, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided, however, that the AAA-rated Money Market Mutual Funds’ investments in short term U.S. Treasury securities will not be made through repurchase agreements or other derivative products.
- (f) The Distribution Agent shall provide duplicate original bank and/or investment statements on any accounts established by the Distribution Agent to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.
- (g) In consultation with the staff of the Commission, the Distribution Agent shall work with the Bank on an ongoing basis to determine an allocation of funds between the escrow and the deposit accounts that will preserve earnings, if

possible, without compromising safety and soundness by providing maximum protection for the Distribution Fund under the full faith and credit of the U.S. Government and/or the maximum available FDIC deposit insurance and pass-through deposit insurance.

24. All payments to Eligible Investors shall be preceded or accompanied by a communication that includes, as appropriate:

- (a) a statement characterizing the distribution;
- (b) a statement that checks will be void after one hundred and twenty (120) days; and
- (c) contact information for the Distribution Agent, to be used in the event of any questions regarding the distribution.

Any such information letter or other mailing to recipients characterizing their distributions shall be submitted to the Commission staff for review and approval. Distribution checks, on their face, or in the accompanying mailing will clearly indicate that the money is being distributed from a Distribution Fund established by the Commission.

25. Under no circumstances shall the Distribution Agent, its employees or its agents incur any liability to any Person in connection with a distribution made in accordance with the list of all Eligible Investors and their Distribution Payments as approved by the Court, and all Persons are enjoined from taking any action in contravention of this provision. Upon receipt and acceptance by an Eligible Investor of a distribution from the Fisher Distribution Fund, such Eligible Investor shall be deemed to have released all claims that such Eligible Investor may have against the Distribution Agent, its employees, agents, and attorneys in connection with the

Plan of Distribution and the administration of the Fisher Distribution Fund, and shall be deemed enjoined from prosecuting or asserting any such claims.

26. All checks will bear a stale date of one hundred and twenty (120) days from the date of the check. Checks that are not negotiated within the stale date shall be voided and the issuing financial institution shall be instructed to stop payment on those checks.

**Post Distribution**

27. The Distribution Agent shall reissue checks to Eligible Investors, upon the receipt of a valid, written request from the Eligible Investor. Such reissued checks will be void after sixty (60) days from issuance and in no event will a check be reissued after one hundred and twenty (120) days post-distribution.

28. Checks returned as undeliverable by the USPS and for which a new address has been provided by the USPS will be repackaged and sent to the new address. For checks returned as undeliverable by the USPS and for which no new address is provided, the Distribution Agent shall run a new NCOA search and/or an advanced address search, to the extent feasible. Additional efforts to identify new addresses for returned checks will be conducted as necessary and economically reasonable after consultation with the staff of the Commission. Where new address information becomes available, the Distribution Agent shall repackage the distribution check and send it to the new address. Where new address information is not available after a diligent search (and in no event later than one hundred and twenty (120) days after the initial mailing of the original check), the check shall be voided and the Distribution Agent shall instruct the issuing financial institution to stop payment on such check.

29. Furthermore, the Distribution Agent will take additional steps, as necessary, to follow up on the status of uncashed checks at the request of Commission staff and will reissue such checks if necessary, within one hundred and twenty (120) days post-distribution.

### **Tax Compliance**

30. The Fisher Distribution Fund is a “Qualified Settlement Fund” within the meaning of the regulations issued under Section 468B(g) of the Internal Revenue Code of 1986, as amended. The Tax Administrator is the administrator of such Qualified Settlement Fund, for purposes of Treas. Reg. § 1.468B-2(k)(3)(I), and shall satisfy the tax related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- a. obtaining a taxpayer identification number;
- b. timely requests for funds necessary for the timely paying of all applicable taxes, the timely payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- c. fulfilling any information reporting or withholding requirements required for distributions from the Fisher Distribution Fund.
- d. The Distribution Agent shall cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance.

### **Distribution Fund Reporting and Accounting**

31. The Distribution Agent shall provide Commission staff, who shall file with the Court, a progress report, pursuant to and in a format to be provided by Commission staff, within forty-five (45) days of Court approval of this Distribution Plan, and shall provide additional reports within twenty (20) days after the end of every quarter thereafter, and a final report when its duties are completed.

32. The progress reports shall inform the Court and the staff of the Commission of the activities and status of the Distribution Fund during the requested reporting period, and shall:

- a. Specify, at a minimum, the location of the account(s) comprising the Distribution Fund; and
- b. Include, among other things, an interim accounting of all monies in the Distribution Fund as of the most recent month-end, including the value of those accounts, all monies earned or received into these accounts, monies expended from the Distribution Fund to satisfy any fees, costs, taxes, and other expenses incurred in the implementation of this Distribution Plan, and funds distributed to Eligible Investors under this Distribution Plan.

33. The final report shall include, among other things, a final accounting of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, and a request for approval of any unpaid taxes.

34. The Clerk of the Court shall provide the Distribution Agent with any and all account information relating to funds held by the Court that may be required for the progress and final reports, including providing copies of any account statements that the Distribution Agent may request.

35. The Distribution Agent shall provide the Commission staff with interim invoices for payment of all professional services fees and case-specific expenses incurred by the Distribution Agent in the performance of its duties under this Distribution Plan.

#### **Wrap Up and Wind Down of Distribution**

36. The Distribution Agent will retain all claims materials in paper and electronic form for a period of six (6) years after approval of the final report and final accounting and

thereafter will transfer the documents to the Commission, pursuant to the Commission staff's direction. In addition, the Distribution Agent will shut down the website and customer service telephone lines established specifically for the administration of the Distribution Fund six months after the transfer of any remaining funds to the Commission, or at such earlier time as the Distribution Agent determines with the concurrence of the Commission staff.

37. No further claims shall be made against the Distribution Fund beyond the amount allocated to Eligible Investors. Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever.

38. Upon final distribution of the funds, the Distribution Agent shall make arrangement for the final payment of taxes and shall submit a final accounting to the Court in a standard accounting format provided by the staff of the Commission. The Distribution Agent will be eligible for discharge after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court, (2) all taxes have been paid and (3) any remaining, undistributed funds have been disposed of in accordance with further Motion by the Commission.

39. If, after the Distribution Agent makes all distributions to Eligible Investors and has exhausted good faith efforts to locate Eligible Investors who have not cashed their checks, and all taxes of the Fisher Distribution Fund have been satisfied and there are remaining funds in the Fisher Distribution Fund, those funds shall be returned to the Commission to be remitted to the United States Treasury.

40. Once the funds, if any, are returned to the Commission, no additional payments shall be made whatsoever and, in order to allow the full and final distribution of the Net Available Fund, no further claims shall be made against the Net Available Fund beyond the

amount allocated to Eligible Investors. Accordingly, this Distribution Plan, as approved by the Court, bars any further claims against the Net Available Fund beyond the amount allocated to Eligible Investors.

41. The Court reserves the right to amend this Distribution Plan from time to time.

**Miscellaneous**

42. The Distribution Agent is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted by him in connection with this Distribution Plan, except upon a finding by this Court of misfeasance, gross negligence, or reckless disregard of duty under this Distribution Plan.

43. The Distribution Agent is authorized to enter into agreements with financial institutions (“Institutions”) as may be appropriate or necessary in the administration of the Fisher Distribution Fund, provided that such Institutions are not excluded pursuant to other provisions of this Distribution Plan. In connection with such agreements, the Institutions shall be deemed to be agents of the Distribution Agent under this Distribution Plan.

44. To carry out the purposes of this Distribution Plan, the Distribution Agent is authorized to make such adjustments consistent with the purposes of the Distribution Plan as may be agreed upon between the Distribution Agent and the Commission and approved by the Court.

45. The Distribution Agent will take reasonable and appropriate steps to distribute the Fisher Distribution Fund according to this Plan. If there are any changes to the Plan that are determined to be material, Court approval is required prior to implementation by amending this Plan, which may be done upon the motion of any party, or upon the Commission’s own motion. Immaterial changes may be made by the Distribution Agent in consultation with and with the express approval of the staff of the Commission. For good cause, the Distribution Agent and/or

the Commission staff may extend any of the procedural dates set forth in this Plan. If any such extensions are made, the Court must be kept apprised of the status of the distribution, and/or such extensions in the progress reports to the Court pursuant to Paragraph 31 of this Distribution Plan.

46. All proceedings with respect to the administration, processing, and determination of claims and the determination of all related controversies, shall be subject to the exclusive jurisdiction of this Court.

47. The Court reserves the right to amend this Distribution Plan from time to time, and retains jurisdiction over this matter for this purpose and for any and all other matters that may arise under or relate to this Distribution Plan.

# **EXHIBIT A**

CH

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,  
  
Plaintiff,  
  
v.  
  
NICOR, INC. AND JEFFREY L. METZ,  
  
Defendants.

Case No. 07 CV 1739

DISTRIBUTION PLAN

INTRODUCTION

On March 29, 2007, the United States Securities and Exchange Commission (the "Commission") filed its Complaint in this action alleging that Nicor, Inc. ("Nicor") and Jeffrey L. Metz ("Metz"), the Assistant Vice President and Controller of Nicor, engaged in improper transactions, made material misrepresentations and failed to disclose material information regarding Nicor's gas inventory layers in order to meet earnings targets and to increase the company's revenues under a performance-based rate plan administered by the Illinois Commerce Commission.

On April 30, 2007, this Court entered final judgment (the "Final Judgment") against Nicor and Metz, to which Nicor and Metz consented without admitting or denying the allegations in the Complaint. On May 14, 2007, pursuant to the Final Judgment, Nicor paid a total of \$10,000,001.00 in disgorgement and civil penalties to the Clerk of the Court and on May 15, 2007, Metz paid a total of \$60,051.02 in disgorgement, prejudgment interest and civil penalties to the Clerk of the Court (collectively, the "Distribution Fund"). Pursuant to the Final Judgment, the Clerk deposited the funds in an interest-bearing account under the case name designation "SEC v. Nicor, et al."

The Final Judgment provided that the Commission may propose a plan to distribute the funds subject to the Court's approval, and that such plan may provide that the funds be distributed pursuant to the Distribution Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246(a). On February 3, 2009, the Commission submitted its Motion to appoint The Garden City Group, Inc. ("GCG") as the Fund Administrator to oversee the distribution to injured investors of the disgorgement and civil penalties paid by defendants Nicor and Metz pursuant to the Final Judgment.

On February 23, 2009, this Court granted the Commission's motion and entered an Order authorizing the appointment of GCG as the Fund Administrator (the "Order"). The Order also sets forth that GCG shall work with the Commission to create a Plan of Allocation for the Distribution Fund that the Commission will submit to the Court for approval. GCG, in consultation with staff of the Commission, prepared this Plan of Distribution, and the Commission submitted the Plan of Distribution to this Court for its approval.

This Court hereby approves this Plan of Distribution.

## ARTICLE I

### DEFINITIONS

As used in this Distribution Plan, the following definitions shall apply:

1.1 "Approved Claim Amount" shall mean the final amount of an Eligible Claimant's asserted claim that is ultimately approved for payment pursuant to the Distribution Plan by the Fund Administrator. The minimum payment threshold for an Approved Claim shall be the Minimum Distribution Amount as set forth below; claims that would result in a payment of less than the Minimum Distribution Amount shall not be approved for payment.

1.2 "Available Distribution" shall mean the Distribution Fund, plus interest, less taxes and less any amounts expended or to be expended for administering the Distribution Fund as approved by the Commission.

1.3 "Fund Administrator" shall mean The Garden City Group, Inc., ("GCG"), the Fund Administrator chosen by the Commission to assist with the administration and distribution of the Distribution Fund, and approved by the Court.

1.4 "Claims Bar Date" shall mean the date established in accordance with this Distribution Plan by which an Opt-Out Claimant's (defined below) Proof of Claim Form must be received by the Fund Administrator to avoid the barring of any right of the Opt-Out Claimant to participate in any distribution from the Distribution Fund. The Claims Bar Date shall be thirty (30) days after the Fund Administrator's mailing of Claims Packets to the last known addresses of the Opt-Out Claimants as set forth below.

1.5 "Claim Deficiency Notice" means the notice sent by the Fund Administrator to an Opt-Out Claimant whose timely filed claim is deficient in one or more ways (e.g., failure to provide required information or documentation). The Claim Deficiency Notice shall advise the Opt-Out Claimant of the reason(s) for the deficiency and the opportunity to cure such deficiency. A Claim Deficiency Notice shall be provided no later than twenty (20) days after the Claims Bar Date.

1.6 "Claims Packet" shall mean the materials relevant to submitting a claim that will be provided to the twenty-one (21) Opt-Out Claimants known to the Fund Administrator (attached hereto as Exhibit A). The Fund Administrator, in consultation with the staff of the Commission, shall prepare the Claims Packet, which shall include, at a minimum, a copy of the Distribution Plan Notice and a Proof of Claim Form.

1.7 “Class Action” shall mean *Singer v. Nicor Inc., et. al.*, No. 02-CV-5168 (N.D. Ill.). The court in that private litigation approved a settlement creating a \$39,000,000 settlement fund, the net proceeds of which were distributed on a *pro rata* basis to “authorized claimants” (as defined in the Notice of Proposed Settlement and Hearing Thereon and Right to Share in Settlement Proceeds of \$39,000,000 dated April 30, 2004) who purchased Nicor Common Stock during the period from trade date November 24, 1999 through trade date July 19, 2002. The Claims Administrator in the Class Action is the same as the Fund Administrator for this Distribution Plan.

1.8 “Class Action Authorized Claimant” shall mean a Potentially Eligible Claimant whose claim was authorized for payment by the Federal Court overseeing the Class Action. A Class Action Authorized Claimant is deemed an Eligible Claimant under this Distribution Plan with respect only to those Nicor Common Stock transactions during the Recovery Period for which a claim was previously authorized in the Class Action.

1.9 References to “days” shall mean calendar days.

1.10 “Distribution Fund” shall refer to all proceeds of Defendants Nicor and Metz’s payment of cash in satisfaction of the Final Judgment, including accumulated interest, appreciation, and earnings thereon, plus any additions thereto as may be provided by future Court order or agreements in related cases or otherwise, plus interest, less costs, fees, tax payments and other expenses paid or reimbursed pursuant to orders of the Court.

1.11 “Distribution Plan” shall mean this distribution plan as approved by the Court.

1.12 “Eligible Claimant” shall mean all Class Action Authorized Claimants that have a recognized loss under the Plan of Allocation as well as Opt-Out Claimants who file a valid Proof of Claim Form with the Fund Administrator on or before the Claims Bar Date who is finally determined by the Fund Administrator to be eligible for a distribution from the Distribution Fund as provided herein because he or she purchased and held Nicor Common Stock during the Recovery Period.

1.13 “Eligible Loss Amount” shall mean the amount of loss an Eligible Claimant has incurred through the purchase of Nicor Common Stock during the Recovery Period, as determined by the Plan of Allocation.

1.14 “Nicor Common Stock” shall mean shares of common stock issued by Nicor.

1.15 “Minimum Distribution Amount” shall mean a specified dollar amount that an Approved Claim must equal or exceed in order for a distribution to be made to an Eligible Claimant. An Eligible Claimant’s Eligible Loss Amount shall be used as the basis for calculating whether an Eligible Claimant holds a claim that meets the Minimum Distribution Amount for an Approved Claim. The Minimum Distribution Amount shall be \$10.00.

1.16 “Opt-Out Claimant” shall mean those (21) Claimants who excluded themselves from the Class Action who submit a timely claim in connection with the Distribution Fund.

1.17 “Person” shall mean a natural individual as well as a legal entity, such as a corporation, partnership, limited liability company or governmental entity. All nouns, pronouns and any variations thereof in this Distribution Plan shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.

1.18 “Plan of Allocation,” for purposes of this Distribution Plan, shall be the product of (i) the Recognized Loss Per Share and (ii) the number of shares of Nicor Common Stock that the Eligible Claimant purchased during the Recovery Period, and continuously held or retained through July 18, 2002, as outlined in the Declaration of Stephen J. Cirami, dated June 3, 2009, which is attached hereto as Exhibit B.

1.19 “Proof of Claim Form” shall mean the form designed by the Fund Administrator in accordance with this Distribution Plan for the filing of proof of an Opt-Out Claimant’s claim. The form shall require, at a minimum, that an Opt-Out Claimant submit sufficient documentation reflecting that Claimant’s purchases and dispositions of Nicor Common Stock during the Recovery Period and the Tax Identification Number of the Claimant.

1.20 “Recovery Period” shall mean the period of time commencing on May 12, 2000 and continuing through the close of the markets on July 18, 2002.

1.21 “Recognized Loss Per Share” shall mean shall mean \$15.26 (fifteen dollars and twenty-six cents), as outlined in Exhibit B.

## ARTICLE II

### BACKGROUND

2.1 The present Settlement and Distribution Fund is the result of the settlement of the Commission’s action. As stated above, the Commission alleged Nicor and Metz failed to disclose material information, made misrepresentations and engaged in improper transactions relating to a performance-based rate plan administered by the State of Illinois. During this time, Metz was Assistant Vice President and Controller of Nicor and was alleged to have violated and/or aided and abetted Nicor’s violations of the antifraud and reporting provisions of the federal securities laws.

2.2 The Commission’s action is related to the settlement of a prior Class Action, *Singer et al. v. Nicor Inc., et al.*, in that Eligible Claimants in the Commission’s action are former class members in the Class Action. In the Class Action, all class members who purchased Nicor common stock during the period from November 24, 1999 to July 19, 2002 were eligible to participate in the \$39,000,000 cash settlement. GCG served as the Claims Administrator in the Class Action, and mailed approximately 89,000 Notices and Claim Forms to potential class members. In response, GCG received and processed 12,327 claims, of which 7,994 were deemed eligible for payment by the Claims Administrator and 4,333 were administratively rejected after potential class members were provided with sufficient opportunity to complete their claims. In its distribution order dated May 20, 2005, the court approved GCG’s determinations, including GCG’s application of a plan of allocation to calculate each claimant’s recognized loss in the Class Action. The losses of all authorized claimants in the Class Action

were calculated to be \$169,079,544.29. Therefore, in the Class Action, each authorized claimant received a pro rata share of the Class Action settlement fund, less costs, fees, and other expenses, resulting in a distribution of \$26,317,594.80 to 7,695 class members. This distribution was approved by the court presiding over the Class Action, the U.S. District Court for the Northern District of Illinois.

2.3 Class members had the right to opt-out of the settlement in the Class Action, and 21 persons chose to opt-out. In connection with the distribution of the Distribution Fund in the Commission's action, GCG, as Fund Administrator, will distribute funds to those Eligible Claimants, as described above, and potentially to certain Opt-Out Claimants, as more fully described below.

### **ARTICLE III**

#### **PREPARATION FOR THE DISTRIBUTION**

##### **A. Calculation of Recognized Losses for Eligible Claimants**

3.1 The Fund Administrator will build a database for purposes of administering the Distribution Fund, containing previously approved information for all authorized claimants in the Class Action and the claims received from Opt-Out Claimants, if any.

3.2 The Distribution Fund will be distributed to investors who purchased Nicor Common Stock between May 12, 2000 and July 18, 2002 (i.e., the Recovery Period), a shorter period of time than the period covered in the Court-approved plan in the Class Action. The Class Action period began on November 24, 1999, the date Nicor announced the passage by the Illinois Commerce Commission of the PBR plan, and ran through July 18, 2002, the date Nicor announced the need to restate its prior financial results due to irregularities arising from the PBR plan. In comparison, the Commission's complaint alleges Nicor first filed an inaccurate and incomplete Form 10Q with the Commission on May 12, 2000. This later date is the appropriate start date for determining eligible investor claimants in the Commission's action. GCG will modify its previously created database of claimants in the class action to process claimants under the shorter period. Accordingly, transactions submitted by Eligible Claimants that precede May 12, 2000 (i.e., from November 24, 1999 through May 11, 2000) will not be considered for purposes of determining Recognized Losses in connection with this Distribution Fund.

3.3 The Fund Administrator will distribute Distribution Funds to Eligible Claimants pursuant to the Plan of Allocation, as described fully in Exhibit B.

##### **B. Identification of and Notice to Opt-Out Claimants**

3.4 The Fund Administrator has identified twenty-one (21) potential Claimants who excluded themselves from the Class Action and who may be eligible to file claims herein. A list of these potential Claimants is attached hereto as Exhibit A.

3.5 Within thirty (30) days following the entry by the Court of its Order approving this Distribution Plan, the Fund Administrator shall:

(a) run a National Change of Address search to retrieve updated addresses for both the 21 Opt-Out Claimants and for Class Action Authorized Claimants, to ensure that we have the most up-to-date mailing information for all potentially Eligible Claimants;

(b) mail by United States First Class Mail a Claims Packet, consisting of a Notice and Proof of Claim Form (such documents have been approved by the Commission staff and are attached hereto as Exhibits C and D), to each of the 21 Opt-Out Claimants;

(c) establish a link to case-specific information on the website for the Fund Administrator ([www.gardencitygroup.com](http://www.gardencitygroup.com)) where relevant documents relating to the Settlement and the Plan will be posted; and

(d) make available a toll-free telephone call-in number by which potentially Eligible Claimants can obtain information.

3.6 To avoid being barred from asserting a claim, on or before the Claims Bar Date, each Opt-Out Claimant must submit to the Fund Administrator a properly completed Proof of Claim Form reflecting the Opt-out Claimant's claim, together with all required supporting documentation.

3.7 Each Opt-Out Claimant will be put on written notice in the Claims Packet that no claim will be deemed submitted unless the Claimant receives an "Acknowledgement Postcard" from the Fund Administrator, which shall be the official acknowledgement that the Fund Administrator has received and will review the claim.

#### C. Notice of Deficient Claims and Opportunity to Cure

3.8 The Fund Administrator shall review each Proof of Claim Form received from an Opt-Out Claimant to determine the validity and amount of such Potentially Eligible Claimant's Eligible Loss Amount, together with any additional conclusions of the Fund Administrator on other issues relevant to the claim. Each Opt-Out Claimant shall have the burden of proof to establish the validity and amount of his or her claim, and that he or she qualifies as an Eligible Claimant; and the Fund Administrator shall have the right to request, and the Potentially Eligible Claimant shall have the burden of providing to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator.

3.9 The Fund Administrator shall provide to each Opt-Out Claimant whose claim is deficient in whole or in part, a "Claim Deficiency Notice" setting forth the reason or reasons why the claim is deficient. The Claim Deficiency Notice shall be provided to Opt-Out Claimants within twenty (20) days after the Claims Bar Date.

3.10 Any Opt-Out Claimant who has received a Claim Deficiency Notice shall have twenty (20) days from the date of the Claim Deficiency Notice to cure any deficiencies.

3.11 All determinations of the Fund Administrator that it makes in accordance with this Distribution Plan shall be final and not subject to appeal.

## ARTICLE IV

### DISTRIBUTION

4.1 Following the Fund Administrator's calculation of all Eligible Claims (including Class Action Eligible Claims and Opt-Out Eligible Claims), the Fund Administrator will supply the Commission with calculation reports showing each Eligible Claim and its eligible Recognized Loss amounts for approval to distribute the funds to Eligible Claimants.

4.2 The Fund Administrator shall distribute the Available Distribution to all Eligible Claimants who filed Approved Claims in the Class Action and to those Opt-Out Claimants who filed Approved Claims herein, only after all Proof of Claim Forms have been processed and all potentially Eligible Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to cure pursuant to the procedures set forth above.

4.3 In addition, all Class Action Claimants whose claims were deemed ineligible under the Class Action Plan because their claim showed no recognized loss during the Class Period, will be reviewed for eligibility to receive a distribution from the Distribution Fund based on the Plan of Allocation.

4.4 The Available Distribution shall be allocated among Eligible Claimants (including Class Action Authorized Claimants and Opt-Out Claimants who file timely eligible claims) who have Approved Claims as provided under the terms of this Distribution Plan. Payments shall only be made to Eligible Claimants who are entitled to receive a distribution of at least the Minimum Distribution Amount.

4.5 The Plan of Allocation shall be used as the basis for calculating, pursuant to the procedures described below, whether an Eligible Claimant holds a claim that meets the Minimum Distribution Amount for an Approved Claim.

4.6 If, after the Fund Administrator makes the distribution to Eligible Claimants and pays all approved expenses, funds remain in the Distribution Fund in addition to tax reserves, those funds shall be paid to the Commission for transfer to the United States Treasury.

4.7 All checks issued to Eligible Claimants by the Fund Administrator shall bear a stale date of ninety (90) days. Accordingly, checks that are not negotiated within this period shall be voided and the issuing financial institution shall be instructed to stop payment on those checks. Where an Eligible Claimant's check has not been negotiated within the ninety (90) day period (the "check-cashing period") and has been voided by the Fund Administrator, that Eligible Claimant's claim shall be extinguished upon the occurrence of the stale date. All such funds will be returned to the Distribution Fund.

4.8 The Fund Administrator shall use all reasonable commercially available resources to locate all Eligible Claimants whose checks are returned to the Fund Administrator as undeliverable by the U.S. Postal Service. However, the burden is on the claimant to provide the Fund Administrator with any changes to his or her mailing address.

4.9 All distribution payments shall be preceded or accompanied by a communication that includes, as appropriate: a statement characterizing the distribution; a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his or her tax advisor for advice regarding the tax treatment of the distribution; a statement that checks will be void after ninety (90) days; and the name of a person or entity to contact, if the Eligible Claimant has any questions regarding the distribution. A copy of this "checkstub" to be sent along with all distribution payments is attached hereto as Exhibit E.

## ARTICLE V

### POST-DISTRIBUTION

5.1 The Fund Administrator shall reissue checks to Eligible Claimants, upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after thirty (30) days from issuance and in no event will a check be reissued after ninety (90) days post-distribution.

5.2 The Fund Administrator will perform an advanced address search for those checks that are returned as undeliverable, to the extent such search is feasible, and will reissue such checks so long as the new address is received within ninety (90) days post-distribution.

5.3 One hundred and twenty (120) days following the distribution, all approved final fees and expenses shall be paid, all outstanding checks shall be voided and any remaining funds shall be paid to the Commission for transfer to the United States Treasury upon receipt of written instructions by the Fund Administrator.

## ARTICLE VI

### WRAP-UP AND WIND DOWN OF DISTRIBUTION

6.1 The Fund Administrator will destroy all documents, including documents in any media, six months after the transfer of any remaining funds to the Commission. In addition, the Fund Administrator will shut down the toll-free number and website established specifically for the administration of the Distribution Fund six months after all checks are voided.

6.2 The Fund Administrator will prepare its final invoice following distribution, which will include an estimate for all wind-down expenses. At the same time, the Fund Administrator will prepare a final, detailed report for the Commission, explaining the process that was followed through Distribution, including a breakdown as to the amount and number of checks distributed to Eligible Claimants, the amount and number of check cashed and uncashed, and amount to be returned to the Commission, if any.

6.3 Once the Funds, if any, are returned to the Commission, no additional payments shall be made whatsoever and, in order to allow the full and final distribution of the Distribution Fund, any further claims against the Distribution Fund beyond the amount allocated to Eligible Claimants. Accordingly, this Plan of Distribution, as approved by the Court bars any further claims against the Distribution Fund beyond the amount allocated to Eligible Claimants, and

releases and discharges from any and all claims arising out of the claims administration, all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or otherwise involved in the administration of the Distribution Fund.

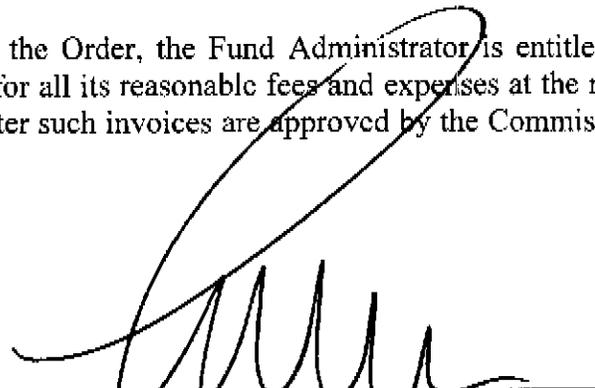
## ARTICLE VII

### PAYMENTS FROM THE DISTRIBUTION FUND

7.1 Subject to the procedures set forth in the Order, the Fund Administrator is entitled to receive payments from the Distribution Fund for all its reasonable fees and expenses at the rates previously negotiated with the Commission after such invoices are approved by the Commission staff.

SO ORDERED:

Dated: 6/30/2009



UNITED STATES DISTRICT JUDGE  
**HARRY D. LEINENWEBER**