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Ex-Nicor execs accused of fraud by SEC

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The Securities and Exchange Commission Thursday filed a civil suit against three former top executives of Nicor Inc., alleging financial fraud.

Named were former Chairman and Chief Executive Thomas Fisher, ex-Chief Financial Officer Kathleen Halloran and former Treasurer George Behrens. Lawyers for the three denied their clients did anything wrong.

Naperville-based Nicor supplies natural gas to consumers in northern Illinois outside the city of Chicago. Beginning in 1999, the three executives allegedly manipulated the value of its natural gas so as to make the company appear more profitable than it was, according to the SEC's lawsuit.

"Fisher, Halloran and Behrens engaged in a scheme to manipulate Nicor's earnings through fraudulent transactions and misled investors by making improper disclosures regarding Nicor's financial performance," said Merri Jo Gillette, director of the SEC's Chicago regional office.

Nicor settled a related case with the SEC in March and paid a \$10 million penalty.

The Citizens Utility Board estimates the scheme cost consumers \$190 million and is pursuing a refund. The Illinois Commerce Commission is also investigating.

The SEC suit asks the courts to require Fisher, Halloran and Behrens to give up any ill-gotten gains, pay unspecified financial penalties and be barred from serving as a director or officer of any publicly traded company.

In 1999, the ICC approved a Nicor plan that was supposed to reward the company for obtaining cheaper natural gas for consumers. Nicor is supposed to sell gas to consumers at the price it pays, making a profit only on a delivery charge.

Nicor utilized gas stored in underground reservoirs, some of it purchased in the 1950s, when prices were far lower than today. Then, the company allegedly used accounting ruses to sell that gas to its customers, appearing to save them money. Under the state approved plan, Nicor shared in half the money purportedly saved by consumers.

In 2002, the ICC began to question Nicor's practices. Meanwhile, an anonymous tipster outlined the alleged scam to the Citizens Utility Board.

According to the SEC, the executives violated securities law by not disclosing what they were doing and by filing misleading financial statements. Court documents accuse Fisher, Halloran and Behrens of aiding Nicor in "sham transactions."

Meanwhile, the ICC and CUB continue to investigate whether consumers are due a refund. Consumer advocates contend that all savings from Nicor's dealings should have been passed on to consumers because they paid for the gas



decades ago.

The ICC and CUB inquiries were delayed for more than two years because of difficulties in obtaining tapes of gas-trading discussions and other documents needed to show what had taken place.

"It was a multiyear battle to get that evidence," said David Kolata, CUB's executive director.

Kolata said his organization is just now ready to examine the material. He could not say when the issue of a refund will be decided, except that it will not be anytime soon.

"It could be a huge amount of money," he said.

Beth Bosch, spokeswoman for the ICC, said, "The commission's concern in this case is whether the customers were charged something they should not have been charged for."

Annette Martinez, speaking for Nicor, said the company "is pleased its matter before the SEC was resolved earlier this year. We continue to cooperate with the ICC in regards to the proceedings and look forward to final resolution regarding this matter."

Fisher, who resigned from the company in 2005, denied wrongdoing in a written statement.

"The allegations in the SEC's complaint are just that, 'allegations,' and I look forward to demonstrating in court that I did not violate the securities laws in any way whatsoever," Fisher wrote.

Halloran resigned in 2004. Her attorney, Ann Tighe, said Halloran "always acted properly, in good faith and in what she believed were the best interest of Nicor, its shareholders and the public."

Dave Stetler, attorney for Behrens, who resigned from Nicor in 2006, said the charges are "seriously flawed."

"We are going to vigorously contest them in court," Stetler said.

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