

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to establish uniform terms and conditions for)	
the provision of voluntary gas customer choice)	Case No. U-12550
programs offered in Michigan.)	
_____)	

At the October 13, 2000 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

Almost five years ago, the Commission initiated a legislative hearing in Case No. U-11017 to examine the potential benefits of making natural gas transportation available to all customers in Michigan. Eventually, the Commission's initial inquiries led to the implementation of voluntary pilot programs for retail customer choice by Consumers Energy Company (Consumers), Michigan Consolidated Gas Company (Mich Con), and SEMCO Energy Gas Company (SEMCO).

On August 4, 2000, the Commission issued an order in this proceeding to facilitate the expansion of gas customer choice to all customers within the state. In so doing, the Commission noted that the pilot programs established by Consumers, Mich Con, and SEMCO have included widely different terms and conditions. Accordingly, to begin the development of uniform terms and conditions for the provision of

gas customer choice to all customers within this state, the Commission directed that the Commission Staff (Staff) should undertake a collaborative process involving Consumers, Mich Con, SEMCO, and other interested persons for the purpose of developing uniform terms and conditions for the provision of gas customer choice to all end-users in this state. Pursuant to the Commission's August 4, 2000 order, the Staff held collaborative meetings on August 17, 24, and 31 and September 7, 2000. Between 50 and 75 interested persons attended each meeting. The participants included Consumers, Mich Con, SEMCO, other local distribution companies (LDCs), gas marketers affiliated with LDCs, unaffiliated gas marketers, Attorney General Jennifer M. Granholm (Attorney General), a labor union, an alliance for fair competition, and others.¹

On September 22, 2000, the Staff posted its report and recommendations to the Commission (Staff Report) on the Commission's website. Subsequently, on September 29, 2000, the Staff distributed a memorandum to the participants in the collaborative process that contained proposed tariffs, rate sheets, a gas supplier agreement, and a supplier/marketer registration form.²

Pursuant to the Commission's August 4, 2000 order, interested parties were given until October 6, 2000 to file comments regarding the Staff Report. Comments were received from Consumers, Mich Con, SEMCO, the Attorney General, Wisconsin Public Service Corporation (WPS Corp), Michigan Gas Utilities (MGU), Dominion Resources, Inc. (Dominion), Energy America-Michigan (Energy America), PowerSpring, Inc., Eastcoast Gas, Inc. (EastCoast), The Heat and Warmth Fund (THAW),

¹ A list of participants, meeting agendas, meeting results, and comments submitted during the collaborative process are posted on the Commission's website at: <http://cis.state.mi.us/mpsc/gas/cmeetings.htm>.

² This information is also posted on the Commission's website.

the Michigan Alliance for Fair Competition (MAFC), Unicom Energy/Exelon Energy (Exelon), and ANR Pipeline Company (ANR). In addition, joint comments were received from the Michigan League for Human Services (MLHS), the Michigan Community Action Agency Association (MCAAA), the Salvation Army, THAW, and the Michigan Environmental Council (MEC).

The Staff Report clearly identifies the areas where the participants in the collaborative process were able to reach a consensus. For those areas in which a consensus could not be reached, the Staff Report includes the Staff's recommendations to the Commission on those issues. After considering the Staff Report and the proposed registration form, supplier agreement, rate sheets, and tariff rules, the Commission finds that they should be adopted subject to the following specific modifications.

Participation by Small LDCs

Pages 7 through 9 of the Staff Report contain a discussion of how implementation of the gas customer choice program should take into account the significant operational differences between large and small LDCs. With regard to the three smallest regulated LDCs, Xcel Energy (Xcel)³, WPS Corp, and Peninsular Gas Company (Peninsular), the Staff Report recommends that the Commission require Xcel, WPS Corp, and Peninsular to develop, within three years, customer choice programs that are reasonably consistent with the program features approved by the Commission for the larger LDCs. However, the Staff Report also indicates that Xcel, WPS Corp, and Peninsular should be given an opportunity to show good cause for not proceeding with a customer choice program within three years.

The consensus recommendation in the Staff Report was the subject of a comment by the Michigan Electric and Gas Association (MEGA). It was MEGA's concern that Xcel, WPS Corp, and Peninsular

³ Xcel was formerly known as Northern States Power-Wisconsin.

could be unduly burdened if they are required to show cause why it is not practical or efficient for them to implement a customer choice program within three years. MEGA would prefer that the Commission indicate that Xcel, WPS Corp, and Peninsular may implement customer choice programs at their discretion after a determination of customer and supplier interest and economies of implementation.

The Commission remains committed to extending customer choice to all customers in this state. However, the Commission is aware of the significant operational differences that exist between LDCs of different sizes. Consumers, Mich Con, and SEMCO account for 94% of the retail customers in this state. Xcel, WPS Corp, and Peninsular collectively account for less than 1%. Accordingly, it is reasonable to anticipate that a customer choice program designed to meet the needs of one of the largest LDCs in this state would not be appropriate for a smaller LDC. For that reason, the Commission concludes that Xcel, WPS Corp, and Peninsular should not be mandated to implement customer choice programs within three years. However, the Commission finds that these smaller regulated LDCs should develop customer choice programs that are tailored to the operational characteristics of their systems, the unique needs of their customers, the interests of potential marketers, and their own time frames.

Customer Choice Education Programs

On pages 9 and 10 of the Staff Report, the Staff indicates that there was a consensus regarding the development and implementation of a statewide gas customer choice education program, which would be similar to the program developed by the Electric Choice Advisory Council for Michigan's electric industry. Further, the Staff recommended that the Commission specifically assign the responsibility for development of the proposed awareness and education program to the Staff.

After reviewing the comments submitted by the parties, the Commission is persuaded that the task of developing the customer choice education program should be performed by the Staff in conjunction with representatives of the other stakeholders. At a minimum, it is reasonable to give the LDCs, gas marketers, and organizations representing customer groups an opportunity to comment on the educational program before its implementation. Accordingly, the Staff is directed to involve interested stakeholders in the development of the education program.

Unbundling of Services

Pages 10 and 11 of the Staff Report contain a discussion of the definition of the term “unbundled service” and propose formation of an unbundling forum to facilitate the future unbundling of rates and services. Additionally, the Staff recommended that the Commission should direct that implementation of any unbundled service that is deemed appropriate by the unbundling forum should be implemented as a pilot program so long as the pilot program does not exceed a two-year period.

In response to the Staff’s recommendation regarding pilot programs, PowerSpring proposes that value added services, such as metering and billing information services, should be unbundled. The Commission recognizes the technologies that PowerSpring seeks to promote and finds that the unbundling of such services should be addressed in the unbundling forum. Moreover, the Commission finds that the unbundling forum shall have one year from the date of this order to complete the task of determining what additional services should be unbundled and to determine the scope and duration of the pilot programs for such services.

Early Termination of Pilot Programs

On pages 15 and 16 of the Staff Report, the Staff indicated that a consensus had not been reached

with respect to continuation of Mich Con's pilot program through the end of its scheduled termination on March 31, 2002. The Staff indicated that the collaborative progress was not an appropriate vehicle for the Commission to decide if Mich Con should be authorized to prematurely terminate its pilot program.

In its comments, Mich Con argues that it should be permitted to terminate its frozen gas commodity rate simultaneously with termination of Consumers' customer choice program on March 31, 2001. Mich Con insists that requiring LDCs to charge commodity prices that are significantly lower than available market prices will be a barrier to competition because existing suppliers may be forced to leave the market and new suppliers will be discouraged from entering the market. Further, Mich Con is concerned that continuation of its pilot program in the face of Consumers' permanent program would result in confusion for all participants, which could discourage additional marketers from participating in the third year of Mich Con's pilot program.

The Commission acknowledges Mich Con's desire to end its pilot program in conjunction with the termination of Consumers' pilot program. However, the Commission finds that Case No. U-12550 is not the appropriate forum for that determination. Rather, if Mich Con desires to prematurely terminate its pilot program, Mich Con should file an application to do so.

Monthly Administrative Fees

Pages 23 and 24 of the Staff Report contain a discussion of the monthly administrative fee that should be associated with each supplier-designated pricing program. According to the Staff, a consensus was not reached on this issue.

Consumers' existing pilot program requires suppliers to pay a monthly administrative fee of \$200 per supplier-designated pricing category. Predictably, LDCs supported retention of these charges, while

most of the marketers preferred that the charges be eliminated or be set based on cost. The Staff recommended a continuation of monthly administrative fees, but a reduction of the amount of the fee from \$200 to \$100 for each pricing pool requested. According to the Staff, such an approach would provide more flexibility to the marketers and would allow the LDCs to recover their administrative costs until cost studies and rate designs could be performed to determine a more appropriate fee.

The comments submitted in response to the Staff's recommendation indicate that Consumers and Mich Con support retention of the \$200 per month fee. On the other hand, Dominion argues that there is no basis for the monthly administrative fee and Exelon insists that such fees should be cost-based and determined in contested case proceedings.

LDCs used fixed gas commodity rates during the pilot programs. The Staff recommends return to the gas cost recovery process embodied in 1982 PA 304, which would result in rates that will vary from year to year. It is reasonable to expect that marketers will need to expand the number of pricing pools in response to variable rather than fixed LDC rates. The Commission is persuaded that the likelihood of the increased costs associated with an increase in the number of pricing pools will have an adverse effect on marketers. Therefore, the Commission finds that the monthly administrative fees should be reduced to \$100 per month per pricing pool until cost-based rates can be determined in the context of a contested case proceeding.

Customer Lists

Page 27 of the Staff Report indicates that the parties were unable to reach a consensus on whether the expanded customer choice program should obligate an LDC to provide customer information to other suppliers for a fee. Currently, none of the pilot programs include this option. The LDCs oppose being

required to provide customer information due to privacy concerns and potential liability for releasing such information. However, the Staff Report notes that in other states certain customer information is currently being sold for \$0.05 per customer record.

Although acknowledging that the disclosure of customer information is at odds with most customers' expectation of privacy, the Staff indicated that access to certain customer information could prove helpful to both marketers and customers during the solicitation process. Accordingly, the Staff recommended that LDCs be required to provide lists of their customers' names and addresses to marketers for a fee of \$0.05 per record. However, the Staff also recommended that LDCs should offer their customers at least one opportunity every 12 months to remove their names from such solicitation lists.

The Staff's recommendation was criticized by many parties. Consumers and Mich Con argue that customer information should not be released because of privacy concerns, negative customer reaction, and additional administrative costs. Eastcoast does not support the Staff's recommendation because it believes that customers will act adversely towards anyone using such lists for solicitations. Dominion maintains that the Commission should require the LDCs to inform their customers that unless they specifically object, volumetric and account information, including account numbers, would be provided to potential suppliers. Dominion believes that more detailed account information is needed for a marketer to determine whether a customer should be solicited.

After considering the comments, the Commission finds that the Staff's recommendation should be rejected. While the Commission does not object to an LDC's disclosure of the names and addresses of customers who specifically request disclosure of such information to marketers, the Commission agrees with Consumers and Mich Con that customers have a general expectation of privacy and that the

widespread distribution of customer lists to marketers for solicitation purposes would likely do more harm than good at this point.

Code of Conduct

Page 29 of the Staff Report contains a discussion of the code of conduct that applies to the marketing, transportation, and sale of natural gas by LDCs and their affiliated companies. Several parties suggested changes to the consensus recommendation. The Commission finds that one of the provisions in the code of conduct should be clarified.

As pointed out by Dominion, the proposed code of conduct states that if an LDC provides a marketing affiliate with a discount or information relating to the transportation, sale, or marketing of natural gas that is not readily available or generally known to any other marketer or supplier, then the LDC must contemporaneously supply the same information to all potential marketers on its system that have requested such information. The flaw detected by Dominion is that the disclosure provision could be interpreted to place the burden on the third party to request specific information to determine whether there has been a preference. However, it is unreasonable to place the burden on the marketer to request information that the marketer is unaware has been disclosed to the LDC's affiliate. Accordingly, the Commission is persuaded that the code of conduct should be clarified to allow marketers to make a standing request of an LDC for contemporaneous disclosure of any discount or information related to the transportation, sales, or marketing of natural gas that the LDC provides to an affiliate.

Customer Assistance Programs

The MLHS, the MCAAAA, the Salvation Army, THAW, and the MEC maintain that low income customers should be the beneficiaries of education, bill payment assistance, and weatherization programs

with specific funding mechanisms. They also maintain that the Commission should create an advisory group to develop recommendations for the design and administration of such programs.

The Commission finds that education, bill payment assistance, and weatherization programs recommended by these parties should not be adopted at this time. However, the Commission is persuaded that creation of an advisory group is reasonable and should be adopted at this time.

Accordingly, the Staff is directed to contact organizations with low income customer constituencies, including those organizations commenting herein, to facilitate formation of an advisory group to advocate the interests of low income customers and to examine the Commission's authority to develop and implement such programs.

Supplier Penalties

The pilot program currently operated by Consumers provides that a delivery shortfall by a marketer must exceed 5% before a delivery shortfall penalty is imposed. According to Consumers, given the experimental nature of the pilot program and the fact that suppliers were not previously required to arrange for their own pipeline capacity, it was reasonable to allow suppliers to fall short of the delivery schedule within specified limits. However, Consumers asserts that carrying such flexibility forward into the permanent customer choice program is neither necessary nor appropriate because the expanded gas customer choice program expressly places an obligation on suppliers to obtain sufficient pipeline capacity to meet their delivery obligations.

The Commission agrees with Consumers on this issue. Accordingly, Section G1(J) of the draft tariff circulated by the Staff on September 29, 2000 should be revised.

Enforcement

Dominion argues that an LDC should not be permitted to unilaterally determine whether a supplier may participate in the program. Rather, Dominion insists that only the Commission should have such authority.

The Commission finds that the initial determination of whether a supplier or marketer should be allowed to continue to participate in the customer choice program falls upon the LDC. In the event that an LDC refuses to allow a supplier or marketer to continue to participate in its customer choice program, the aggrieved marketer or supplier should appeal that determination by filing a complaint with the Commission that will be treated on an expedited basis.

Other Tariff Revisions

1. Paragraph G4(B)(4) of the proposed tariffs and Paragraph 4 of the supplier/marketer registration form require suppliers to provide accurate instructions on what customers should do during gas emergencies. Eastcoast suggests that suppliers should not be required to provide information regarding gas leaks or outages because LDCs are responsible for supplying that information.

The intent of the original language was to ensure that customers would be given appropriate information whether they called the supplier or the LDC. Eastcoast's comment has made the point that the LDCs are the best source for this information. Therefore, paragraph G4(B)(4) of the proposed tariffs and paragraph 4 of the supplier/marketer registration form should be changed to indicate that customer inquiries to a supplier that are related to gas emergencies, such as gas leaks or outages, should be directed to the customer's LDC.

2. At several places in the proposed tariffs, namely rules G1(C), G2(A), and G2(B), customer termination is discussed. Mich Con states that it may be unclear how customers terminate their selection of a supplier. A review of these three sections indicates that there may be some inconsistencies. In order to remove any inconsistencies, the Commission finds that the first sentence in Rule G1(C) should be revised to provide that a “customer’s selection of a supplier shall remain in effect until (i) terminated by the customer or the supplier, (ii) the supplier becomes disqualified from participating in the GCC program, or (iii) the company receives an enrollment for that customer from another supplier.”

3. Both Consumers and Mich Con have requested that the customer protection features for residential customers be available to all other customers or, at least, to small commercial customers. The residential customer protections are a direct result of experiences in the pilot programs.

The Commission finds that residential customers are more in need of these types of protections than other customers. While some small commercial customers may benefit from these protection features, many commercial customers would not want to be restricted by requirements that are intended for residential customers. However, the Commission encourages suppliers to utilize the residential customer protection features when soliciting small commercial customers, particularly those with loads that are similar to residential customers.

4. The supplier/marketer registration form and rule G4(B)(7) of the proposed tariffs require a supplier to work with an LDC to ensure that the supplier retains pipeline capacity sufficient to meet its customers’ requirements. Both Eastcoast and Mich Con commented that because suppliers are responsible for ensuring adequate pipeline capacity, LDCs should not be involved in such transactions.

The Commission agrees. Therefore, the second sentence of G4(B)(7) and the corresponding provision that appears on the supplier/marketer registration form should be stricken.

The Commission finds that:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedures, as amended, 1992 AACRS, R 460.17101 et seq.

b. The Staff Report and the proposed tariffs, rate sheets, gas supplier agreement, and supplier/marketer registration form should be adopted subject to the specific modifications set forth in this order.

c. The Staff Report and the proposed tariffs, rate sheets, gas supplier agreement, and supplier/marketer registration form, as modified by this order, constitute acceptable uniform terms and conditions for the provision of voluntary gas customer choice programs in Michigan.

THEREFORE, IT IS ORDERED that the September 22, 2000 report by the Commission Staff and the September 29, 2000 proposed tariffs, rate sheets, gas supplier agreement, and supplier/marketer registration form are adopted, as modified by this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of October 13, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

By its action of October 13, 2000.

Its Executive Secretary

In the matter, on the Commission’s own motion,)
to establish uniform terms and conditions for)
the provision of voluntary gas customer choice)
programs offered in Michigan.)
_____)

Case No. U-12550

Suggested Minute:

“Adopt and issue order dated October 13, 2000 establishing uniform terms and conditions for use in providing voluntary gas customer choice programs in Michigan, as set forth in the order.”