

May 8, 2006

Via E-file

Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

**Re: In the matter of the application of Consumers Energy Company for authority to increase its rates for the distribution of natural gas and for other relief.
MPSC Case No. U-14547**

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced case the *Reply Brief of The National Energy Marketers Association* and *Proof of Service*.

If you should have any questions, please contact me.

Very truly yours,

Jennifer L. Frye

JLF:jkt

Enclosures

cc: Hon. James N. Rigas
All Parties of Record

LANSING 34563-1 362094v5

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for authority to increase its rates for the)
distribution of natural gas and for other relief)
_____)

Case No. U-14547

REPLY BRIEF OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

I. INTRODUCTION

More than five years have now passed since the Michigan Public Service Commission (“the Commission”) implemented the Gas Customer Choice program (the "Choice program" or “program”) for the large Local Distribution Companies (LDC’s)¹ to open the residential and small commercial markets in the state to competition.² The Commission Staff (“Staff”) and a number of interested parties made recommendations to the Commission through a collaborative process and the Commission fashioned those recommendations into a program available to 94% of Michigan retail customers.³ Michigan’s program has some unique qualities and other characteristics that resemble programs in other states. The parties have now had five years of experience with the rules and the time has come to evaluate the program and identify areas for improvement.

¹ The larger LDCs include Consumers Energy, Michigan Consolidated Gas (MichCon), and Semco.

² See August 4, 2000 MPSC Order in Case No. U-12250.

³ See October 13, 2000 MPSC Order in Case No. U-12550 dated October 13, 2000.

NEM has done exactly that by calling for a reevaluation of the program and identifying a small change (i.e., aggregate reconciliation) that, if adopted by the Commission, would mitigate the impact of the competitive disadvantage that suppliers realize in the annual reconciliation process. Although only a minor tariff change would be needed to enable aggregate reconciliation, nothing would change regarding deliveries or delivery schedules and nothing would change in the rules applied to the imbalance at the end of the year. There would still be a volumetric and financial reconciliation, and the utility would still be made whole for any gas they had to provide on behalf of GCC customers (and, in fact, the application of the SEC charge would apply no matter when customers entered the program, an increase in protection of the GCR). The only substantive change that would occur is that excess gas delivered for a group of customers paying one price could be used to offset the needs of a group of customers paying another price on the utility's balance sheet so that only the net imbalance, for both price and volumes are reconciled.

As stated in NEM's Initial Brief, aggregate reconciliation could be accomplished by the following minor changes to Consumers' tariff⁴:

Proposed Section H1.Q:

The annual load requirements, delivery schedules, Supply Equalization Charges, **and** delivery shortfall Failure Fees, ~~and annual reconciliation~~ shall apply separately to each Supplier-designated pricing category. **The annual load requirements, delivery schedules, and delivery shortfall Failure Fees shall also apply separately to** ~~and~~ each of the two customer groups within that category, i.e. those enrolled as of April 1, and those enrolled after April 1 in each program year.

Proposed Section H1.E

If a supplier adds customers ~~after April 1 of a~~ **during the** program year, the monthly remittance to the Supplier for the gas supplied to those customers will be

⁴ See NEM's Initial Brief, pp. 10-11.

adjusted by a Supplier Equalization Charge. The Supply Equalization Charge shall be equal to the product of (a) and (b) where (a) equals the Company's weighted average monthly cost of gas purchased and produced for the months from the preceding April through the current billing month less the Supplier specified customer billing price per Mcf, converted to MMBtu using the monthly system average Btu content, and (b) equals the increase for that month, if any, in the amount by which the cumulative Mcf quantity billed to those customers subject to the Supply Equalization Charge for the program year, converted to MMBtu using the monthly system average Btu content, exceeds the cumulative Supplier deliveries for those customers for the program year in MMBtu. The charge shall not be less than zero. This program year is the year beginning in April 1 and ending the following March 31.

Barring adoption of this tariff language as proposed, NEM is requesting that the Commission initiate a working group of interested parties to further analyze the proposed tariff revisions and permit the introduction of other ideas likely to improve the Gas Choice program in Michigan. A recent Energy Information Administration (EIA) study shows that switching in Michigan has steadily declined from 24.7% in 2000 to 6.7% in 2005.⁵ NEM submits that the anti-competitive nature of the current reconciliation process is one of the main factors negatively affecting the offers Michigan suppliers are able to make, and that this decline in participation warrants Commission action.

There has been no testimony filed in this case refuting NEM's conclusion that the current system of reconciliation is anti-competitive. With the understanding that each pool will be reconciled independently and that, under the current system, it is inevitable that each pool will have an imbalance, even if some imbalances are for excess gas and some reflect insufficient quantities of gas delivered, it means that the risks associated with being a choice supplier in Michigan are greater than in other states and that either suppliers will not participate, or those that do participate will have less frequent offers. Any offers that are made will likely have the

⁵ Energy Information Administration (EIA), Retail Unbundling – U.S. Summary, available at: http://www.eia.doe.gov/oil_gas/natural_gas/restructure/historical/2005/state/us.html.

additional risk premium built into their prices as a result of the pool by pool reconciliation procedure. Aggregate reconciliation alleviates this barrier to competition. Importantly, the concept has not been outright opposed by any of the parties to this case. The only party to comment on NEM's proposal is the Commission Staff itself, which seems to feel that no review of the Choice program is necessary given that the Commission already held a series of collaborative meetings (albeit more than five years ago). As discussed below, Staff's position ignores the Commission's responsibility to ensure competitive choice in the natural gas market⁶ and it is based on misconceptions regarding NEM's proposal.

II. NEM'S RESPONSE TO STAFF'S INITIAL BRIEF

The only party in this case to take exception to NEM's proposal is the Commission Staff.⁷ Staff's Initial Brief makes a blanket assertion that the current approach is "reasonable" without further analysis, evidencing reluctance on the part of Staff to even consider NEM's proposals for a tariff change and/or collaborative working group. This reluctance is both disturbing and curious, particularly in light of the recent steep declines in customer participation in the Choice program. Furthermore, Staff's position disregards the Commission's duty to oversee the Choice program and to ensure that the program is fair to all customers, including GCC customers.⁸

⁶ The MPSC's Mission Statement, as set forth on its webpage at www.michigan.gov/mpsc, states that it is the Commission's goal (among other things) to "[p]rovide customers with the opportunity to choose alternative electric, natural gas, telecommunications, and transportation providers." To the extent that the current gas Choice program is antithetical to this goal, the Commission should re-evaluate that program.

⁷ See Staff's Initial Brief, pp. 65-67.

⁸ Id. at 65.

Staff's Initial Brief asserts that reconciliation procedures are “fair and equitable and do not operate at a detriment to Choice customers” and that NEM's aggregate reconciliation proposal “**does not improve the current GCC reconciliation procedure.**” Staff's Initial Brief, p. 65 (emphasis added). Staff's opposition to even exploring NEM's allegation that the current system does not provide for fair and equitable procedures is surprising and is not in the best interest of the general public. Furthermore, Staff's assertion is not supported by any evidence. NEM's position that GCC customers are currently disadvantaged by the reconciliation process, on the other hand, is based on assertions by licensed Michigan Alternative Gas Suppliers (AGS's) who serve several hundred thousand customers in Michigan and have witnessed the effects of the uniform annual reconciliation process first hand.

Staff argues that NEM witness Scott White has not yet participated in an annual reconciliation process in the Consumers territory, thus implying that he does not have the requisite experience to recommend program changes. Staff's Initial Brief, pp. 65. As noted in Mr. White's testimony, however, the tariffs for Michigan's largest gas utilities are nearly identical,⁹ and Mr. White has participated in reconciliations for five years under the *same* reconciliation process in Michigan Consolidated Gas Company's (MichCon) territory. Therefore, Mr. White's experience is wholly applicable to this discussion on the Consumers' reconciliation process. In fact, given the almost identical language that exist in both the MichCon and Consumers' tariffs with respect to annual reconciliation procedures, if there are differences

⁹ See 7 Tr 1244, lines 3-9 (“Both utilities have the same tariff rules regarding reconciliation and deliveries. There may be some differences in the way Consumers manages the deliveries, the delivery requirements, and they may be a little bit better at estimating or making modifications to the supplier deliveries”). See also 7 Tr 1188, lines 10-11 (recognition by Staff itself that there are “relatively uniform terms and conditions for the Gas Choice Program”).

between the programs such differences can only result from a difference in interpretation of the tariff provisions, which further supports either adoption of NEM's proposal so that any such differences would be reduced or eliminated, or at a minimum supports the commencement of a collaborative group to review this issue and to address other recommendations aimed at making the Gas Choice program more equitable for all Michigan consumers.

Staff's Initial Brief attempts to cast doubt on the foundation for Mr. White's testimony. Yet, both the questions asked by Staff during cross examination of Mr. White as well as Staff's response to Mr. White's testimony in its Initial Brief demonstrate that Staff does not fully understand NEM's proposal. For example, Staff's cross-examination questions focused on the impact of aggregate reconciliation on under-deliveries and the impact on system integrity. See 7 Tr 1190 lines 14-16; 1193 lines 14-15; 1194 lines 8-9; Staff's Initial Brief, pp. 66-67. However, this line of questioning is largely irrelevant. While NEM recognizes and commends Staff's concern that the necessary amount of gas must be delivered into Consumers' system, the proposed change to the reconciliation would in no way alter the current delivery schedules and therefore have no effect on the amount of gas delivered by suppliers. As a result, Staff's primary criticism of NEM's proposal is misguided, and its rejection of a working group to further examine this issue is unfounded.

Staff also argues that Mr. White's responses to questions regarding how NEM's proposal would handle price reconciliation was "vague and confusing". Staff Initial Brief at 66. However, any "confusion" found in Mr. White's testimony is not due to any lack of knowledge on his part, but rather to the fact that many of the questions asked by Staff and the Attorney General were based on a misunderstanding of NEM's proposal, or at least were directed at the parties' attempts to understand the proposal. It is abundantly clear from Mr. White's cross-

examination that he answered the questions posed by Staff and the Attorney General directly and often, stating that under NEM's proposal, "there would be one result [from aggregate reconciliation]", and the resulting number would be utilized to complete the reconciliation under "one of the four [existing] reconciliation formulas." 7 Tr. 1239, lines 9-12. Mr. White stated that under the current system there are four possible results, each resulting in a potentially negative economic consequence, and that a marketer could experience all four results each year. Id. at 1235, lines 12-23. He further explained that this is possible because the results from each pool would be independently reconciled under one of four different scenarios, depending on whether the pool was over delivered or under delivered, and whether the price was over the GCR or under the GCR. Id. at 1236, lines 10-21. With respect to the price reconciliation, Mr. White on numerous occasions had to clarify that it is necessary to be cognizant of the GCR, since once the volumes were netted to arrive at an aggregate over or under delivery, the next step would be to complete the price reconciliation. The price reconciliation would be performed using the suppliers' weighted average cost of gas (or WACOG), which is the same way a single utility price is determined for the year. The WACOG prices would be used to determine whether the GCR is higher or lower than the suppliers' price for the reconciliation and would be applied to the single imbalance at the end of the program year.

Mr. White clearly stated how, under aggregate reconciliation, actual deliveries and the reconciliation rules would remain as they currently are, with the exception that instead of looking at the reconciliation pool by pool, total deliveries would be offset against total consumption, with one resulting number, and that number would then be utilized in the existing reconciliation rules. 7 Tr 1211 lines 10-24; 1212 lines 4-7, 12-17; 1213 lines 7-25, 1214 lines 1-2, 8-12. In fact, not only did Mr. White specifically state that NEM's proposal does not contemplate changing

anything with respect to what is done with the resulting imbalance with respect to the existing four possible reconciliation scenarios, he stated it several different times. Id.; 1210 lines 21-25. Mr. White clearly articulated the proposal and clearly stated that the effects of implementation of aggregate reconciliation would serve only to reduce the subsidies that currently exist as a result of pool by pool reconciliation. Id. at 1211 lines 10-24. When asked about the financial impact of moving to aggregate reconciliation, leaving the resulting number to be dealt with in the existing reconciliation matrix, Mr. White stated, “you would be taking volumes that are over-delivered and netting them out with volumes that are under-delivered and reducing the overall imbalance between the two companies. And then you would apply whatever it is you’re going to apply to that imbalance, and it could be what you are doing today.” Id. at 1213-1214.

Staff's final argument asserts that Mr. White does not actually believe there is a problem to be remedied in this case. Staff states, “Mr. White seems to agree that the current system is working fine” because he acknowledged that Consumers' GCC management team has made diligent efforts to mitigate imbalances to the degree possible within the current framework. Staff's Initial Brief, p. 67. This statement takes Mr. White's statement out of context, since he was not answering a question about whether or not Consumers' reconciliation system was appropriate, but rather was agreeing that Consumers appears to make efforts to reduce annual over-deliveries and under-deliveries. An acknowledgement that Consumers appears to work diligently within the current framework does not in any way mean that the current framework is working or that it always operates in an equitable manner. Moreover, Mr. White made it clear that the current framework does not work because it creates multiple subsidies to the GCR customers, and he testified that this inequitable result could be mitigated very easily through an aggregate reconciliation process.

Finally, Mr. White explained in his testimony that “this case appears to be the only avenue currently available to NEM’s membership, including IGS, to address issues they have with Consumers’ gas tariff.”¹⁰ Instead of offering NEM an alternative to pursue the concerns of its members, Staff simply dismissed out of hand the suggestion that the Gas Choice program could be improved in any way, suggesting that Staff has no interest in examining the program for improvements. It would be inappropriate for the Commission to dismiss the concerns of any party when there is unrebutted testimony demonstrating that customers are being unduly harmed by program rules. For all of these reasons, NEM respectfully requests that the Commission either order that NEM's recommended tariff changes be put into effect, or, at a minimum, that the Commission direct Staff to reconvene the Gas Choice collaborative so that NEM's aggregate reconciliation proposal may be further explored and evaluated.

III. CONCLUSION

As noted in NEM’s Initial Brief, the Commission recognized nearly five years ago that "gas customer choice programs are still under development" and that, "as gas customer choice develops, changes and adjustments may be needed." November 20, 2001 MPSC Order in Case No. U-12550, pp. 3-4. Staff’s Initial Brief suggests that Staff has already rejected the notion that the program could ever possibly be improved. Staff’s recommendation should be rejected. NEM has presented a minor, yet effective, tariff modification that would improve the Michigan GCC program and reduce current subsidies to the GCR by creating a program whereby each customer class, whether it is GCR or GCC, would more closely pay its own costs for commodity supply.

¹⁰ 7 Tr 1178, lines 2-3.

NEM's proposal does not change the delivery requirements or the reconciliation rules. It merely reduces the amount of imbalance subject to the reconciliation process.

For these reasons, NEM respectfully requests that the Commission review and consider the testimony and other evidence submitted on the aggregate reconciliation issue, and: (A) order changes to Consumers' Choice tariff in line with those proposed by NEM; (B) order Consumers to take all reasonable steps to ensure that its annual reconciliation procedures are fair and equitable and do not operate at a detriment to Choice customers; and/or (C) initiate a working group through this docket or the U-12550 docket to resolve this issue as well as other issues associated with the delivery of gas to the customers of competitive gas suppliers participating in gas Choice programs in Michigan.

Respectfully submitted,

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Dated: May 8, 2006

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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for authority to increase its rates for the)
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Case No. U-14547

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

Jacqueline K. Tinney, being first duly sworn, deposes and says she is employed at Dickinson Wright PLLC; and that on May 8, 2006 she served a copy of the ***Reply Brief of The National Energy Marketers Association*** upon the attached service list via email.

Jacqueline K. Tinney

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 8th day of May, 2006.

Elaine M. Masters, Notary Public
Washtenaw County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires: 9/23/07

SERVICE LIST – MPSC CASE NO. U-14547

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