National Energy Marketers Association

STATE OF MICHIGAN

BEFORE THE PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE NATIONAL ENERGY MARKETERS ASSOCIATION ON MID-SIZED LDC PERMANENT GAS CUSTOMER CHOICE PROGRAMS

The National Energy Marketers Association (NEM) hereby submits additional Comments on the issues raised by Staff on the submissions by MGU and SEMCO for mid-sized LDC permanent gas customer choice programs.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing both wholesale and retail marketers of energy and energy-related products, services, information and technologies throughout the United States. NEM's membership includes: small regional marketers, large traditional international wholesale and retail energy suppliers (as well as wind and solar power), billing and metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, information technology providers and manufacturers and suppliers of advanced distributed generation. Membership includes both affiliated and unaffiliated companies.

Affiliated and independent marketers have come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM is committed to working with representatives of state and federal governments, large and small consumer groups and utilities to devise fair and effective ways to implement the competitive restructuring of natural gas markets.

NEM submits the following responses to the issues raised by Staff:

1. ***Supplier of last resort***

a. **Should the LDC assign pipeline capacity to marketers participating in the program?**

During the initial phases of market opening, marketers should be assigned pipeline capacity. Such an assignment will be necessary until the Commission institutes a mechanism such as the capacity market proposal set forth herein in 1(d). If LDCs are to assign pipeline capacity

to marketers participating in their programs, the released capacity should consist of a slice of the firm capacity of each of the interstate pipelines serving the LDC and be priced at no more than the maximum rate for each respective pipeline. LDCS should not be permitted to unilaterally assign or release the more or most expensive capacity to competitive suppliers.

b. Should the cost of maintaining all or a portion of the Aexcess capacity@(i.e. capacity equivalent to the load picked up by marketers) be assigned to all customers or the GCR customers?

NEM questions whether, in fact, there is or should be any "excess capacity." Particularly if capacity is made available to marketers in the manner set forth below in 1(d), there should not be a need for LDCs to maintain "excess capacity." If however, it is determined that there is a cost associated with maintaining "excess capacity," it should be borne by all consumers in a competitively neutral fashion.

c. Should LDCs be held harmless for the costs of being the supplier of last resort?

The proposal that LDCs be held harmless for the costs of being the supplier of last resort should be rejected. Implementation of this measure would create a large disincentive for utilities to shed Supplier of Last Resort (SOLR) customers and therefore stunt the development of the competitive market. Any SOLR program should be a market-based program that exposes the SOLR provider to the risks of the market and exposes consumers to proper pricing signals.

d. Should marketers be required to demonstrate they have sufficient firm primary peak day capacity for the five winter months?

The PUC should not force marketers to demonstrate that they own a commodity that does not exist. The imposition of such a requirement would in effect create a new commodity for which a market did not previously exist. Inasmuch as LDCs are in control of this new and relatively scarce commodity, there would be an enormous amount of upward pressure on prices. The creation of the firm primary peak day capacity commodity would thereby increase the costs to competitive suppliers of doing business in the market. Consumers would then bear the effects of the increased costs in terms of higher prices and/or fewer competitive offerings in the marketplace.

NEM suggests that in order to satisfy reliability concerns a more appropriate course of action would be to provide a market-based framework for the availability of capacity. NEM proposes the following approach:

1) Marketers must have access to the assets currently used to reliably deliver natural gas to consumers. Furthermore, the assets must be accessed at true, market-based prices, to enable the creation of a competitive marketplace. To accomplish these goals, it is suggested that utilities, marketers and Staff work to create a Michigan Capacity Market. Utilities will put up for bid the capacity and other delivery assets currently allocated to

participating consumers. Creation of such a Michigan Capacity Market Electronic Bulletin Board would facilitate the market clearing requirements of such a program, with utilities posting available capacity and assets and marketers bidding on those assets. The assets should be released to the winning marketer via normal capacity release rules.

In order to ensure reliability is not compromised, stringent conditions should be placed on the release of delivery assets. These conditions should include, but not be limited to, the right of the releasing utility to recall the capacity during peak periods if the capacity is not being used to serve the Michigan market. During periods of recall, a marketer's obligation to pay for released capacity should be suspended and the costs of capacity should become a normal part of the utilities' cost of gas. Marketers that fulfill their delivery obligations using capacity not obtained in the release program should not be subject to recall. However, in the event of a critical or force majeure period, utilities should have the option to recall all capacity not being used to serve the Michigan market.

Inasmuch as marketers will know the conditions of the release prior to bidding on the assets, it is assumed that those marketers serving the Michigan market will place a higher value on the assets and will, in many instances, be capable of out-bidding marketers intending to use the assets to serve markets outside of the state. Marketers should also have the ability to post available assets for release on the Michigan Capacity Market Electronic Bulletin Board as they more fully develop their customer load requirements and seek to fine tune their capacity requirements.

2) The Commission should firmly commit to the creation of an open and competitive marketplace by establishing a date certain when utilities will exit the merchant function so that the market will develop to its full potential. Such a commitment will provide market participants with business and investment certainty and lower the risk of entry for potential market participants.

e. Should customers return to a market based rate as proposed by SEMCO and MGU?

Customers should be subject to a market-based rate when returning to the utility. However, this term of service should not be set forth in such a way that it inhibits a customer from participating in the Choice program. Also, there should be no "minimum stay" requirements with this arrangement, allowing customers the option to choose another marketer.

f. As an alternative to the LDC being the supplier of last resort, should LDCs issue a Request for Proposal for an alternative gas supplier to be the supplier of last resort?

Related to the proposal in (d) above, NEM submits that in a restructured environment the utilities' historical obligation to serve should be converted into an obligation to connect and deliver. Therefore, while the utilities should continue to provide transportation or distribution service for all customers, it is not necessary or desirable to establish the utilities, on a long-term basis at least, as the default provider of energy supply services. Indeed, the sooner the

competitive market can super-aggregate small customers the sooner true price competition can begin.

Retaining the utility as the default provider of energy supply and other competitive services long term in a restructured environment will present a major barrier to the development of competitive markets. When states mandate the selection of incumbent utilities for all consumers who fail to make timely supplier elections and set a non-competitive price for default service, it perpetuates the same non-competitive energy services that restructuring is designed to replace.

The costs to provide default service vary by customer group. Properly designed default service prices should reflect these differences to encourage competition for all customer classes. NEM asserts that the SOLR entity could be different by customer group. Inasmuch as the costs to provide services varies by customer class, the SOLR entity and SOLR pricing should be structured to reflect those real price differences, and as a result, will encourage competition for all customer classes. Furthermore, NEM asserts that the SOLR function should reflect all of the political, social and reliability concerns of providing last resort service. The SOLR function can include a hedging requirement as well as a reserve requirement as part of the request for competitive proposals.

With respect to reliability concerns related to the SOLR entity, NEM submits that risk management is a core competency for competitive suppliers. Utilities have relied primarily on the PSC to manage risks. The sooner market forces can monetize supply risk, the sooner price competition can occur. Additionally, if the political demands of the state require extra reliability then specific reserve margins can be specified in an RFP for the default supplier so that qualified suppliers can competitively bid for the extra reliability required. Marketers have long been involved in developing and aggregating natural gas supply and managing supply risks. Indeed, in many cases, marketers have supplied utilities with energy and related services on an outsourced basis for years. Competitive suppliers have extremely sophisticated trading operations unparalleled in the regulated paradigm.

2. *Start Date/Enrollment*

   a. **Should MGU be afforded a later start date?**

   b. **Is there sufficient reason for the mid-sized LDC=s to have different enrollment or sign up procedures? (i.e. does the MGU proposal to have a two month open season enhance customer and marketer participation in the program or result in other benefits?)**

The MGU proposal to allow customer switching during a two-month open season of March and April would unnecessarily inhibit consumers ability to exercise choice. Customers should be permitted and encouraged to switch at any time they want. There are no public policy reasons to restrict choice. In fact, restricting choice to a limited "open season" increases both the costs and risks of serving customers in the state.

3. Availability/Switching Marketers

a. Should the phase-in of customer participation be tied to volumetric limits instead of limits on the number of customers?

b. What should the volume or customer limits be?

Customer choice programs should be opened to as many customers as possible. NEM does not favor volume or customer limits. In order for competitive suppliers to achieve economies of scale in their operations, customer participation must be as broad and unfettered as possible. If the Commission must place limits on customer participation, customer limits by class are preferable to volume limits.

Increased consumer participation in the competitive market on a long-term basis must be encouraged. Consumer education programs are a key to achieving this participation. It is suggested that inasmuch as utilities are able to recover the costs of such programs they should bear these costs. All of the costs of the education programs incurred by the utilities should be available for recovery through a non-bypassable surcharge once the markets are fully open. Upon consumer participation reaching an accepted level of enrollment, utilities should aggregate the assets currently allocated to serve these groups of customers. As consumers continue to enroll, the utilities should continue to aggregate these customers with all of the other participants.

c. Can immediate enrollment as suggested by SEMCO work with monthly GCR Factors?

d. Should a de-enrollment file be processed before a customer can switch to a new marketer?

The utility should not mandate when a customer can or cannot switch, either by requiring a de-enrollment file from a marketer or by requiring the customer to remain with a marketer until their original contract term is up. This type of customer/contract management should be the responsibility of the marketer, not the LDC. As previously stated, the ability for a customer to exercise choice at any time is an integral part of a truly competitive market.

e. Should a customer be able to return to GCR sales service at the customer=s choice?

Customers should have the ability to return to the LDC's GCR sales service, as long as the customer requests to do so by contacting the marketer directly.

f. Should the LDC or the program features prohibit customers from switching marketers before their original contract is up?

As stated in NEM's previously filed comments the proposed one-year minimum stay requirement is inappropriate. Customers' ability to switch should not be impeded by such measures. Furthermore, a customer's ability to switch marketers should not be dictated by the terms of the LDC program. A customer's ability to exercise choice should only be influenced by the different products, services, information and technology offerings in the marketplace.

4. *Nature of Service*

a. **Are SEMCO=s Balancing Charge and Daily Delivery Obligation and MGU=s Daily Delivery Obligations proposals reasonable program features for mid-sized LDCs who do not have the gas storage facilities that the large LDCs in Michigan have?**

b. **Are the proposed cash out provisions reasonable?**

c. **Are the proposed penalties sufficient to encourage adherence to the delivery schedules?**

SEMCO proposed to assess a Balancing Charge of $0.25 per Mcf delivered by SEMCO to the customer during the month. MGU proposed to institute a Balancing Charge of $.36 per Mcf delivered during the month plus applicable fuel and transport commodity.

SEMCO proposed to assess a failure fee for all daily Dth deviations from the effective Daily Delivery Obligation (DDO) of $6.00 per Dth plus the higher of the cost of gas billed to sales customers pursuant to SEMCO's Rule B10, or the current highest spot price paid for gas delivered to ANR Pipeline Company, Panhandle Eastern Pipeline Company or at Chicago citygate for the corresponding date as published in Gas Daily plus associated pipeline delivery costs. All monthly imbalances are to roll-over and be netted against subsequent DDOs except when an aggregation agent or marketer chooses to exit the program.

MGU proposed that any delivery variation from the Daily Delivery Obligation be penalized at $6 Dth, or $10 Dth during periods of MGU declared supply emergency, plus the higher of the current cost of gas billed to sales customers or the current highest spot price paid for gas delivered to ANR Pipeline Company, Panhandle Eastern Pipeline Company, Trunkline Gas Company, or at the Chicago citygate for the corresponding date as published in Gas Daily plus associated pipeline delivery costs and and penalties. MGU proposes to cash out marketers on an annual basis. MGU further proposed there be no trading of imbalances.

As stated in NEM's previously filed comments, if any fees are imposed, they should be cost-based. NEM submits that delivery tolerances should be instituted within which reasonable fees or penalties will not be assessed. A true-up procedure should be performed every thirty, sixty, or ninety days to account for supply imbalances, and marketers should be allowed to engage in imbalance trading to minimize fees incurred.

5. Monthly Pooling

a. **Are SEMCO=s and MGU=s monthly pooling proposals reasonable?**

SEMCO and MGU both proposed to assess a pricing pool fee of $100.00 per month per pricing pool. SEMCO and MGU both proposed that marketers have as many pools as wanted subject to the utilities' right to require additional pools determined to be needed to meet operational requirements. All customers within a pool are proposed to be billed the same price designated by the marketer. NEM submits that the utilities' proposed pricing pool

fee should be cost-based.

6. ***Buy/Sell arrangement***

a. Are there operational or other reasons why the Buy/Sell arrangement approved for Consumers Energy will not work for the Mid-sized LDCs?

The Buy/Sell arrangement makes marketers the supplier for the utility instead of the supplier for the customer. This does not represent a retail market. Suppliers must have a direct conduit to their end use "customers." Retail marketers are not in business to supply utilities. Retail marketers serve end use customers. When customers choose another supplier, they should necessarily become customers of that supplier.

b. Do marketers have any specific preferences with respect to getting reimbursed for the gas delivered to the LDC?

c. If the Buy/Sell arrangement is not adopted for the mid-sized utilities should the marketers have the option to bill customers for its gas supplies?

As stated in NEM's previously filed comments in this proceeding, marketers should have the option to bill customers. As a customer of a marketer, the customer should be offered the choice of receiving one bill from that marketer. All indications suggest that customers would like to receive one bill for commodity and distribution charges. Current billing service that allows marketers to provide one bill for gas service by adding their charges to the LDC statement severely limits marketers' ability to offer more creative products to consumers. It also limits marketers' ability to consolidate gas and electric products which will become particularly relevant with the anticipated opening of electric choice in 2002. The option of receiving one bill from the marketer would also allow the marketer to have a conduit to communicate with customers.

d. If marketers are allowed to bill customers should there be a utility back-out or shopping credit for participating customers?

NEM asserts that in order to encourage the development of a competitive retail market, consumers in the SEMCO/MGU service territories must be eligible for a back-out credit that reflects the full energy supply and commercial costs associated with serving retail load that are currently included in utilities' fully bundled rates. Only if consumers have a fairly designed back-out rate to use to shop for energy can meaningful price competition occur. NEM supports the Commission order requiring the utilities to file comprehensive unbundled gas cost of service studies.[1] However, until fully unbundled rates are instituted, consumers must be given back-out credits to shop for the full panoply of competitive supplier products, services, information and technology offerings.

NEM argues that the back-out credit is meant to be a rough approximation of the fully bundled costs of serving retail load. This is the value that should be given to customers to pay for alternative supplies. Until the utilities disclose all of the costs of serving retail load,

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1 Case U-12550, Opinion and Order, dated July 11, 2001.

it must be presumed that a back-out credit is intended for a customer to replicate these services. NEM urges that the back-out credits reflect the full supply costs and full commercial costs of serving retail SEMCO/MGU customers currently included in fully bundled rates. If the back-out credit does not reflect these costs, then the utilities price to customers will be an artificially low, subsidized price because the utilities will be recovering the costs elsewhere in rates. Additionally, if back-out credits are not structured to include retail service costs, customers will have to pay for the costs twice - once to the competitive supplier and once to the utility.

All suppliers providing gas commodity service to customers at retail incur costs to do so in addition to the wholesale cost of the energy commodity. The energy supply costs associated with serving retail load include no notice service, pipeline capacity charges, city-gate delivery requirements, and related-commodity charges, a share of pool operating expenses, risk management premiums, load shape costs, commodity acquisition and portfolio management. The commercial costs associated with serving retail load include working capital, taxes, administrative and general expenses, the costs of metering, billing, customer care, collections, bad debt, information exchange, regulatory compliance and litigation, negotiating and managing contracts, load forecasting, environmental disclosure, marketing and an appropriate return on equity and debt.

Additionally, NEM urges that back-out credits should be flexible. Back-out credits should be structured to reflect movements in market prices to prevent serious misalignment. Fixed back-out credits put great pressure on competitive suppliers during times of wholesale price volatility. Back-out credits that are shaped or structured to adjust in response to wholesale market conditions provide better price signals to the market and help level the competitive playing field.

Finally, NEM asserts that back-out credits should be structured to reflect the cost differentials of serving customers in different customer classes. Costs of serving customers can vary significantly by customer class.

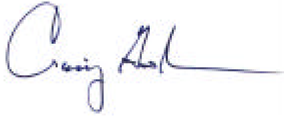
e. If marketers are allowed to bill customers for serviced provided, should the residential customers billing practices apply to the marketer?

NEM urges all states to implement the consensus positions set forth in the sections of the "***Uniform Business Practices for Retail Energy Markets***"[2] ("UBP") Report applicable to customer information, enrollment and switching, billing and payment processing and load profiling at the earliest possible date. NEM also asserts that customers should be given the option of determining what type of service and bill they wish to receive.

[1] Uniform Business Practices for the Retail Energy Market, November 2000 available at www.ubpnet.org. The UBP was sponsored by the Edison Electric Institute ("EEI"), the National Energy Marketers Association ("NEM"), the Coalition for Uniform Business Rules ("CUBR"), and the Electric Power Supply Association ("EPSA").

NEM appreciates the opportunity to submit comments on this vital issue and reiterates its commitment to working with regulators and other stakeholders on the development of competitive natural gas markets in Michigan.

Sincerely,



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Dated: July 20, 2001.