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 framed by Staff in its August 2, 2001, Meeting Summary (hereinafter "Summary").

NEM submits the following responses to the issues raised in the Summary:

1) Customer Switching, Enrollment Provisions and Returning to a Market-Based Rate

a) How much choice should a Choice customer have?

Choice must exist in order to serve the public interest and it should not be complicated or expensive. True measures of a competitive market are the number of customers that have choice and the number of providers ready to serve those customers. One measure of the quality of choice is the number of customers that, in fact, exercise choice. NEM urges that all customers be given meaningful, competitive choices at the earliest possible date.

Excessive non-cost based fees, filing requirements, formal contracts with signatures, complicated forms and processes, and multiple monthly bills inhibit competition and the ability of customers to choose alternative energy suppliers. NEM supports rules, rates, tariffs and operating procedures that provide the maximum ease, flexibility and a minimum of paperwork, licensing and administrative burdens for customers who choose to switch energy suppliers. Indeed, the customer's ability to quickly and painlessly choose an alternate supplier is the ultimate consumer protection and provides the maximum assurance of quality control.

b) When should they be able to exercise that choice?

As stated in NEM's previously filed comments, consumers' ability to exercise choice should not be subject to artificial constraints such as MGU's proposed two month enrollment period or SEMCO's proposals to require customers to stay with a competitive supplier for twelve months or to prohibit customers from switching until a competitive supplier submits a de-

enrollment file to the utility.

c) Who should enforce the Supplier agreement with the customer?

Any matters attendant with enforcing a supplier's agreement with its customer should be governed by pre-existing rules and laws pertaining to commercial transactions. Reference to the Uniform Commercial Code (UCC), state privacy laws and local laws against unfair trade practices imbues the marketplace with meaningful and enforceable guidelines to implement the final unbundling of the natural gas industry. Incorporating these laws and the years of court cases interpreting these laws protects all purchasers of energy without imposing new and costly regulations, licensing requirements, paperwork and administrative burdens.

d) How much price protection should GCR Sales customers have from the effects of returning Choice customers? (i.e. to what extent should there be a market based rate for returning choice customers.)

As noted in NEM's prior comments, customers should be subject to a market-based rate when returning to the utility, but the term of service should not be set forth in such a way that it inhibits a customer from participating in the Choice program. There should be no "minimum stay" requirements with this arrangement, allowing customers the option to choose another marketer.

An option proposed in the Summary for returning choice customers is the application of a market-based rate for a 60-day period during which time a customer can sign up with a different supplier after having been forced backed to a sales rate because of marketer default. The utility therefore has 60 days to plan to supply the returning customer with the GCR sales rate. On its face the option to appears to be a barrier to competition. It should be made clear that after the 60-day period in which a customer is subject to market-based rates, the customer is not restricted in its ability to choose a competitive supplier.

2) Supplier of Last Resort

a) **In the context of being the SOLR, should the LDC plan for 100% of all choice customers returning to a GCR sales or should appropriate levels be reserved as determined in the LDCs' GCR plan cases?**

b) **Should a reasonable level of cost be permitted to be included in the GCR cases to serve the returning choice customers (i.e. capacity and commodity)?**

c) **If any costs from item b above become unreasonable for the GCR sales customer to absorb, should the LDC be permitted to recover (at least in the short term) reasonably incurred costs through a transition cost mechanism that would be paid by both sales and choice customers?**

As stated in NEM's previously filed comments, the SOLR function should be competitively bid in the marketplace, and the LDCs' role should be recast as an obligation to deliver.

However, if the utility does serve as the SOLR, the 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. Otherwise, there will be a strong disincentive for utilities to shed SOLR customers.

NEM also asserts that LDCs should not maintain an unreasonable supply of "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.

3) Daily Delivery Obligation, Failure Fees and Balancing Fees

As stated in NEM's previously filed comments, if any fees are imposed, they should be cost-based. NEM submits that reasonable 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.

4) Capacity Assignment

a) **Should there be any pipeline capacity assignment?**

b) **Should a Supplier be required to demonstrate it holds primary peak day capacity for the winter time period?**

c) **What should any assigned pipeline capacity be priced at?**

As previously noted by NEM, 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 in NEM's Comments of July 20, 2001. 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.

The Summary sets forth an additional proposal for consideration whereby suppliers would have the option of demonstrating they are holding primary firm capacity or if the supplier wanted capacity held by the LDC, the LDC would be required to assign it at the LDC's cost. The issue of whether this would be at the LDC's average cost or actual cost by pipeline was not determined. Suppliers would be able to use a combination of assignment and demonstration. As previously argued by NEM, suppliers should not be forced to purchase firm capacity unless and until a market exists for such capacity at market-based prices. The imposition of such a requirement would in effect create a new commodity for which a market does not exist. Inasmuch as LDCs will be in control of this new and relatively scarce commodity, there would be an enormous amount of upward pressure on prices and an incentive for LDCs to withhold the commodity. The creation of a "firm primary peak day capacity commodity" would increase the costs to competitive suppliers of doing business in

the market. Consumers would then bear these increased costs in terms of higher prices and/or fewer competitive offerings in the marketplace.

5) Buy/Sell Agreements

As previously stated by NEM, 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 relationship with their customers. Marketers should have the option to bill customers. 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 and will limit marketers' ability to consolidate gas and electric products upon the beginning of electric choice in 2002.

NEM appreciates the opportunity to submit comments on these vital issues 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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