STATE OF MARYLAND
PUBLIC SERVICE COMMISSION

In the Matter of Columbia Gas of Maryland, Inc.	**)**	**#28, 7/6/11 AM;**
COMAR 20.59 Competitive Gas Supply	**)**	**ML #126119, 129548,**
Compliance Plan	**)**	**131642, 132242, 136863,**
	)	**TG-73**

RESPONSE TO REQUEST FOR RECONSIDERATION AND REHEARING OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits its response in support of the Request for Reconsideration and Rehearing filed by the City of Hagerstown Wastewater Treatment Plant [hereinafter "Hagerstown"] on February 1, 2012 at Maillog 136863. In its filing, Hagerstown seeks rehearing of the Commission's January 5, 2012, Letter Order [hereinafter "the Order"] eliminating the choice program in the Columbia Gas of Maryland, Inc. [hereinafter "Columbia"] service territory and directing Columbia to develop a plan to return choice customers back to utility default service. (Order at 1-2). Hagerstown seeks reconsideration and rehearing of the Commission's decision, "to end natural gas choice in the Columbia Gas of Maryland service territory" and seeks the opportunity, "for customers like the City of Hagerstown's Wastewater Treatment Plant to have a say in the decision."

[1] The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

As the basis for its request for reconsideration and rehearing Hagerstown offers the following grounds:

> 1) Hagerstown received, "no notice that an end to retail choice was pending;"
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> 2) Consumers should have the continued ability to, "negotiate for better service, better products, and better prices;" and
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> 3) Ending Columbia's choice program will have a significant negative impact on Hagerstown as it will cause it to forego the cost savings realized through negotiations with competitive retail natural gas suppliers, with a resultant cost impact on Hagerstown's own customers.

NEM supports Hagerstown's request for reconsideration and rehearing of the Order. NEM offers the following additional rationales for reconsidering the Order, all of which hinge on providing proper notice of what is in effect a new rule in the Columbia service territory to end the choice program and the associated impacts on choice customers.

I. The Potential Elimination of Columbia's Choice Program Is a New Rule Which Should Have Been Promulgated Pursuant to the State Administrative Procedures Act Requirement for Due Process.

The January 2012 letter Order was ruling on a revised compliance plan from Columbia to implement COMAR 20.59. Columbia's initial compliance plan was filed in October 2009 after the completion of a lengthy stakeholder process to develop the COMAR 20.59 regulations. Columbia's initial compliance plan did not propose to end its choice program. It was only in Columbia's revised compliance plan filed in March 2011 that

Columbia even raised the possibility of ending the choice program as one of five potential alternatives. However, the suggestion of entirely ending choice as a means of complying with the Commission's competitive gas supply regulations was actually wholly nonresponsive to the issue at hand, which should have appropriately been what had Columbia done and what did it plan to do to put the COMAR 20.59 regulations in place.

A utility compliance filing should not affect a sea change in Commission policy. Stakeholders, including customers such as Hagerstown, would not have reasonably contemplated such a result. In fact, the significant substantive issue of the potential elimination of Columbia's overall choice program constitutes a new rule. As such, it should properly have been subject to the requirements of the State Administrative Procedures Act that requires that potentially affected parties be provided with notice that the Commission was contemplating such a decision and to afford such parties with the opportunity to be heard. It was not reasonable for customers such as Hagerstown, or other entities, to contemplate or take notice that the outcome of ending the choice program would be made in the context of reviewing Columbia's compliance plan to implement regulations that were intended to *enhance* the availability of choice.

II. In Eliminating Columbia's Choice Program, the Commission's Order Did Not Consider the Other Options Presented on the Record.

Columbia's revised compliance plan in March 2011 included five options for "complying" with the Commission's gas choice regulations. These were: "A) Continue to implement all current components of COMAR 20.59 regulations and orders and recover the costs in the form of a POR discount applicable to participating customers

over various time periods; B) Continue to implement all current components of COMAR 20.59 regulations and orders and recover the costs in the form of a Rider applicable to eligible customers over various time periods; C) Forego programming any additional changes and offer customers Columbia's existing Choice program; D) Change from a POR discount model to a supplier pro-rata payment method; E) Eliminate the Choice program for residential customers on Columbia and offer participating nonresidential customers the opportunity to move to the gas transportation program. (Columbia Filing at page 2)." Staff recommended that the utility implement Option B of the choices presented under which, "Columbia implements all COMAR 20.59 regulations with Purchase of Receivables and any other requirements as a result of any order issued by the Commission and recovers those implementation costs through a Rider charged to all customers who are eligible to participate in Columbia's mass market Choice program."[2] NEM and other competitive suppliers likewise supported Option B as an, "equitable resolution of the cost recovery issue," that would actually represent a, "bona fide opportunity to support mass market choice in the service territory." In response to the Commission's concerns about the impact of cost recovery on consumers, four competitive suppliers subsequently offered $160,000 to offset program implementation costs.

However, the letter Order in conclusory fashion decided that, "the Choice program is not workable for the Company's customers at this particular juncture" (Order at 2) without addressing the other potential options that would have continued to afford customers in Columbia's service territory with some modicum of choice. In particular, the Order did

[2] Columbia Filing at page 12.

not consider maintaining the choice program as it currently existed without the enhancements and associated costs of COMAR 20.59. Columbia incurred costs to provide the choice program as it existed, presumably recovered from its customers, and that should have been a consideration in maintaining the program, at a minimum, in its then-existing form. Customers such as Hagerstown should have been provided with at least the measure of energy choice to which they had previously been afforded, and they should not reasonably have expected the elimination of choice altogether as a result of the filing of Columbia's compliance plan.

III. The Decision to End the Columbia Choice Program Was Made Before the COMAR 20.59 Program Changes Were Made and Results Evaluated.

The Order determines to end Columbia's choice program reasoning that, "the Choice program will still not be economically cost-effective in the Company's service territory given the low customer enrollment and supplier presence." (Order at 2). This rationale for ending choice in Columbia's service territory is deficient inasmuch as the program with a POR enhancement was never put in operation and given an opportunity to work. The conclusion that implementation costs were unjustified or not cost-effective was therefore premature, particularly since suppliers had offered to fund implementation costs.

Potentially affected entities did not have the opportunity to question Columbia or present evidence about the choice program constraints that have heretofore existed. These constraints made supplier participation difficult and caused the low resulting consumer participation rates experienced at Columbia. This bears directly on the different options raised for Commission consideration in Columbia's compliance plan and the relative

value of those options to suppliers and consumers in improving the choice program. The decision to end the choice program was not informed by this information.

IV. The Order Does Not Consider the Impacts on Current Choice Customers of Eliminating the Choice Program.

An important consideration that is wholly absent from the discussion in the Order is the impact on current choice customers of the elimination of the choice program. First, ending choice does not consider competitive suppliers existing contracts with their customers - customers that felt that switching to a competitive supplier represented a superior product to that which they were receiving on utility default service. Energy choice options should not be reserved for only the very largest commercial customers in Columbia's service territory. The individuals that by day work in the large commercial businesses that are allowed to shop for energy should be able to go home and have that same choice.

NEM also urges the Commission to consider that the issues associated with switching small commercial customers to transportation service have not been assessed. The Commission should evaluate the consequences and costs of making such a change. For example, since transportation service is designed for large commercial customers, the program requirements are likely designed in such a way that requiring small commercial customers to be served under the transportation program would effectively end choice as well. Additionally, large commercial customers are not eligible for consolidated billing service. Also of concern is that existing contracts may not work under the transportation program.

V. POR Program Implementation is a New Issue Before the Commission Related to its Longstanding Policy in Support of Energy Choice.

The Commission determined to end the Columbia choice program because, "the Company has too few customers enrolled in the Choice program to make it economically viable when funded through a purchase of receivables ("POR") discount rate as the Commission's long-standing policy requires." (Order at 1-2). Retail choice is a longstanding Commission policy but the Commission's decisions pertaining to POR programs and cost recovery are not. Indeed, the COMAR 20.59 regulations pertaining to competitive market rules, including POR, were only adopted in 2009. Utility cost recovery for POR implementation expenses and bad debt expenses is therefore a relatively new issue.

Although the Commission has had occasion to address the issue of POR program cost recovery for both gas and electric utilities, the electric discount rates were largely only recovering incremental POR implementation costs because the electric utilities had already progressed farther along in making IT improvements to support choice programs. And, with respect to Columbia, it is an entirely new issue which posed unique concerns given the utility's relative size and development of the retail market achieved thus far. These considerations in and of themselves would distinguish the manner in which POR was implemented at Columbia.

Moreover, requiring POR program costs to be recovered as a function of a supplier-funded discount rate may, in fact, be more appropriately viewed a reversal of longstanding Commission policy. This is because utilities have historically been allowed to recover implementation costs of this nature through surcharge mechanisms.

VI. Conclusion

For the foregoing reasons, NEM supports the request for reconsideration and rehearing and urges the Commission not to eliminate the Columbia choice program.

Respectfully submitted,

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Dated: February 14, 2012.