

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. NG-102/PI-225
Commission, on its own motion,)
seeking to review policies and)
practices relating to the) PROGRESSION ORDER #1
administration of customer)
choice programs for natural gas)
service offered within the)
State of Nebraska.) Entered: October 29, 2019

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission"), on its own motion, opened the above-captioned investigation for the purpose of gathering information regarding, and reviewing the administration of, customer choice programs for natural gas service offered within the State of Nebraska ("Choice Programs").

Pursuant to the order opening this docket, the Commission requested comments relating to the Choice program. Specifically, the questions posed by the Commission in this order focused upon topics relevant to residential customers within the Choice program. Comments were received from seven parties:

Black Hills Gas Distribution ("BHGD" or "the utility")
Black Hills Energy Services Company ("BHES")
CenterPoint Energy Services, Inc. ("CenterPoint")
Constellation NewEnergy Gas ("CNEG")
Heartland Natural Gas, LLC ("HNG")
Public Alliance for Community Energy ("ACE")
Vista Energy ("Vista")
WoodRiver Energy ("WoodRiver")

Following submission of the comments, the Commission held a workshop on September 25, 2019. Based upon the comments submitted, the Commission prepared an agenda and distributed it to parties in advance. Representatives of each party submitting comments participated in the workshop, as well as Commissioners and Commission staff.

D I S C U S S I O N A N D R E C O M M E N D A T I O N S

The Commission may, under Neb. Rev. Stat. § 66-1855, authorize customer choice programs such as the Choice Program reviewed within this docket. The Commission is further authorized by Neb. Rev. Stats. §§ 66-1848 and 66-1849 to certificate competitive natural gas providers ("CNGPs"), to promulgate rules and regulations relating to CNGPs, and to resolve disputes involving the provision of natural gas services by CNGPs.

Based upon the comments submitted and the discussion held during the September 25th workshop, the Commission makes the following recommendations and limited findings.

Customer Education

The Commission solicited discussion regarding how the utility, certified natural gas providers ("CNGPs" or "suppliers"), and the Commission can better educate customers about the Choice program, as well as what each entity's role should be. In written comments and during the workshop, parties generally stated support for increased customer education, including increased information available on parties' websites, social media, and press releases. Parties questioned how increased education would be funded, and suggested that costs could be shared between the parties if necessary.

Parties also suggested that the Commission website could include additional information for consumers, including lists of questions for consumers to ask potential suppliers, a list of frequently asked questions ("FAQs") regarding the Choice program, and informational videos. Parties generally stated support for the Commission promulgating increased information, as a neutral party that is not in a position to market to consumers.

Parties also expressed a need for caution in educating consumers so as not to cause confusion. Specifically, concerns were raised regarding education being focused on Nebraska residents who are eligible for the Choice program without confusing those who are not. Some suppliers further expressed concern that customers may be confused or frustrated if historic pricing information is posted outside of the selection period.

Finally, concerns were raised regarding customer education on the difference between the utility Black Hills Gas Distribution ("BHGD") and the supplier Black Hills Energy Services ("BHES").

These concerns mainly arise from the similar names and logos of the parties. Both parties asserted that they have made efforts to differentiate between the two entities, including changes to the logo, and disclaimers on BHES' website and in the customer information packet distributed by BHGD.

The Commission finds that customer education regarding the Choice Program should be encouraged and facilitated by all parties. The Commission agrees that it is uniquely situated to provide neutral information and assistance to customers regarding the choice program. For the purpose of furthering customer education, the Commission hereby commits to reviewing its own educational materials and practices for customers, and to improving such materials and practices to the extent possible and appropriate. The Commission's goal will be to raise the profile of its Consumer Choice Program webpage and include more information as suggested by the parties in this docket. The Commission also requests that parties keep Commission resources in mind and to refer customers to the Commission website if they are seeking further information.

The Commission is cognizant of the concerns of Black Hills regarding confusion by customers who are not eligible to participate in the Choice Program. The Commission will work to ensure clarity on this issue on its website. The Commission further intends to explore a greater focus on press releases and social media to assist in raising awareness of the choice program.

As all parties work together to facilitate customer education regarding the choice program, the Commission welcomes and seeks open communication with the utility and participating suppliers regarding such efforts, including feedback regarding Commission communications.

Annual Reports

The Commission requested feedback on the annual reports suppliers are required to submit to the Commission regarding the Choice Program. Many written comments submitted supported the current structure of the reports. Other comments, submitted by BHGD and ACE, suggested additional information could be required which would aid in providing consistency between reports. Such suggested additional information included requesting that the utility provide the percentage of customers actively enrolling in Choice and the number of customers changing suppliers. Additional suggested information to be received from suppliers included the highest and lowest fixed rate per therm offered during the

Selection period and the highest and lowest rates assigned through Delegation Agreement ("DA").¹

During the workshop, suppliers emphasized that they would prefer that customers be provided with sufficient education to understand the contents of the annual report. Parties also expressed support for a centralized website where information from the annual reports could be found.

The Commission agrees that additional information suggested would be beneficial in monitoring the Choice program and gauging the effectiveness of any educational campaigns and efforts. Therefore, the Commission finds that beginning with the report submitted in 2020, in conjunction with the requirements currently set forth in 291 Neb. Admin. Code § 9-018.02F, participating CNGPs shall include the following information in their annual Choice program reports:

1. The number of customers served by the supplier broken down by residential and commercial class;
2. The highest and lowest fixed rate per therm offered during the Selection period;
3. The highest and lowest rates offered through Delegation Agreement ("DA"); and
4. The default rate assigned to customers not actively making a selection.

The Commission further orders that BHGD, as part of its annual Choice program report, shall include the following information:

1. The number of BHGD customers eligible to make a choice during the selection period broken down by residential and commercial class;
2. The percentage of customers making an active selection in each class; and
3. The number of customers who changed suppliers.

¹ Suppliers are also currently required to provide the rate for customers that did not make a selection, also referred to as the "rollover" or "default" rate. Comments indicated that this requirement should continue.

Code of Conduct

The Commission sought input as to whether the current Choice Program Code of Conduct is sufficient, and whether any modifications should be made to the Code of Conduct. Parties generally expressed satisfaction with the Code of Conduct, but expressed a variety of opinions regarding its enforcement.

Several parties expressed that they would like a more transparent investigative process, including sharing investigative steps. Parties also expressed a desire for suppliers to receive more feedback regarding the outcome of complaints. At the workshop, the parties discussed the possibility of greater transparency, including posting ongoing investigations and results to a centralized website. However, concerns were also expressed on this topic that such postings may confuse consumers, and that false allegations could be posted which would damage a supplier's reputation.

BHGD expressed a willingness to respond to suppliers with a general statement about the outcome of any investigation in response to a concern expressed. The idea of "closing the loop" on the investigation seemed generally agreeable to all parties. BHGD indicated it would take steps to possibly implement some sort of response in the future.

Generally, all parties agreed that Commission involvement in the day to day management of complaints between suppliers was unnecessary. Most agreed such complaints are rare. When questioned directly, there seemed to be general agreement that the formal complaint process at the Commission was sufficient for the needs of the program at this time.

The Commission recommends that the utility review its own practices with regard to complaints received regarding potential Code of Conduct violations, and whether investigations and enforcement actions can be made more transparent, including follow-up communication with the party making the complaint.

Delegation Agreements

The Commission requested information regarding the current practices regarding Delegation Agreements ("DAs").² Specifically, the Commission sought information regarding whether DAs are appropriate for use with residential customers, and whether customers should be provided with confirmation letters when they have successfully signed a DA. In comments and during the workshop, the parties all generally expressed support for continuing to use DAs with the commercial and agricultural customer classes.

With regard to the use of DAs for residential customers, the utility noted that the usage of DAs has changed dramatically in recent years, and that their primary use is now as a marketing tool. The administrative burden associated with the heavy use of DAs for residential customers is substantial, and the timely processing of DAs is difficult given their volume. Most suppliers generally expressed support for the use of DAs, but agreed that there are administrative limitations to the use of DAs for residential customers, and that implementation of their use for residential customers has been problematic in recent years. Many suppliers also requested that the successful execution of a DA depend upon the first DA to reach the utility, rather than the date each DA was signed.

Parties generally agreed that customers should receive a confirmation letter when a DA is successfully executed. Parties expressed that the confirmation letter should include information including the price agreed to and the term of the agreement. Parties also expressed concerns about sending confirmation letters when they cannot be sure a customer has not already signed a DA; however, the point was raised that a confirmation letter could also include language clarifying that the DA would be considered void in such a circumstance.

The Commission recommends that the utility review the use of DAs for residential customers, including reviewing its practices as to determining which DA is binding in cases where more than one DA is signed by the same customer. If DAs continue to be used for all customer classes in the upcoming year, the Commission also recommends reviewing the form and providing separate forms,

² DAs, as currently used, allow a customer to agree with a given supplier that the supplier will make a selection on behalf of that customer during the selection period. The general practice has been for the supplier making the agreement with the customer to select themselves as the customer's supplier.

specific to the State of Nebraska Choice Program, for each customer class. The Commission also recommends that the utility issue guidance to suppliers regarding the appropriate timing of confirmation letters following the signing of a DA, as well as what the contents of the confirmation letter should be.

Marketing & Selection Periods

The Commission also sought comments regarding the current framework for the marketing period and the selection period for residential customers within the Choice program. Specifically, the Commission asked whether a four-month marketing period and a two-week selection period are appropriate. Feedback on this question was varied. Some suppliers suggested that one or both periods could be extended significantly, with suggestions ranging from year-round marketing and/or selection, to marketing only be allowed just prior to the two-week selection period. Many parties noted other state programs that allowed different variations on when customers could select suppliers. Some parties noted that Wyoming's choice program, also administered by BHGD, has a 3-week selection period.

Many of the concerns regarding the use of DAs intersected with the discussion of marketing and selection periods. Some commenters suggested that increasing the length of the selection period beyond two weeks would allow use of the existing administrative framework associated with the selection period and alleviate the administrative burden of using DAs.

The Commission finds the discussion and consideration of the marketing and selection periods, together with the discussion of the use of DAs, beneficial. The Commission recommends the utility consider the possibility of extending the length of the selection period in coming years. However, the Commission understands that opinions on how long to extend the selection period vary greatly, and that determining the optimal selection period length may be difficult.

The Commission also recommends the utility review current customer education efforts regarding the marketing and selection periods, including but not limited to releasing additional press releases and/or informational materials to customers at key points during the marketing and selection periods.

During the workshop, the Commission requested that it receive courtesy copies of materials sent to customers. No objections were raised and all parties voluntarily agreed to provide copies to the Commission. Therefore, the Commission requests that the utility forward to the Commission copies of any standard forms used in the program, including the supplier contract, Delegation Agreement form, Marketing Agreement for the upcoming marketing and selection periods, and any other standard agreements used.

The Commission also requests that the utility provide to the Commission a copy of the information packet sent to customers prior to the beginning of the selection period. Additionally, the Commission requests the utility provide copies of all marketing materials approved to be distributed to customers to the Commission as well.

The Commission wishes to emphasize that its intent in making these requests is not to supplant the role of the utility in administering the program. The provision of these marketing materials will be for informational purposes only, so that the Commission may quickly and accurately respond to questions posed by consumers. Review of what marketing materials and strategies may or may not be appropriate is solely within the purview of the Choice program administrator, and it is the view of the Commission that this should remain the case going forward.

Customer Non-Selection and Default Rates

During the workshop, many parties noted that a significant number of customers do not make a choice during the selection period, and are thus given a "rollover" or "default" rate. Generally, default rates are higher than the rate the customer would have received if they had made a selection, even if they desired to remain with the same supplier. Some suppliers suggested that the default rates effectively subsidize lower rates for other customers. Some parties questioned whether customers may not understand that failing to make a choice may result in a different rate or higher rate than they received in the year previous. Many parties suggests that customer education may be needed in this area. The utility also noted that some customers may consciously decide not to make a selection, and that their decision should be respected.

The Commission is concerned about the high number of customers who default to a higher rate by simply not making a selection. The Commission feels that all parties, including the Commission itself, should undertake educational efforts to ensure customers understand the benefits of making a choice, especially if they wish to remain with the same supplier, and the fact that not making a choice may result in a higher rate.

C O N C L U S I O N

The Commission thanks all parties who have participated in this investigation to date. The Commission hopes the recommendations set forth above will be helpful to the utility and suppliers during the upcoming marketing and selection periods, and that the additional reporting requirements will be helpful to customers in coming years. It is the wish of the Commission that all parties to this docket will continue to strive for open communication, effective administration of the Choice program, and a high level of customer satisfaction.

The Commission notes that not all issues raised in the submitted comments were addressed in this workshop. This docket will remain open to address those and other issues within the Choice Program, and the Commission invites further comments and work on these issues in the meantime. The Commission anticipates that it will initiate a second request for comment, with discussion to follow, at the close of the 2020 selection period. In order to promote open communication and collaboration, the Commission requests that communication with the Commission on matters relating to this docket remain, to the extent possible, limited to filed comments and discussion at public meetings.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the statement of recommendations and expectations of the Commission regarding these matters as outlined above be, and are hereby, adopted.

IT IS FURTHER ORDERED that this docket shall remain open for the purpose of continuing to gather information regarding, and reviewing the administration of, customer choice programs for natural gas service offered within the State of Nebraska.

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IT IS FINALLY ORDERED that the CNGP and utility annual report requirements be modified as set forth above.

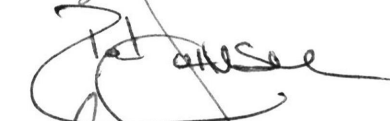
ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 29th day of October, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

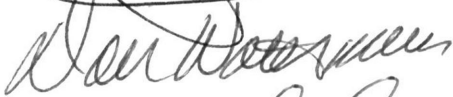
COMMISSIONERS CONCURRING:



Chair



ATTEST:





Executive Director

