PUBLIC DISCLOSURE FILING

BEFORE THE PUBLIC SERVICE COMMISSION OF NEBRASKA

In the Matter of the Commission, on its own motion, seeking to review policies and practices relating to the administration of customer choice programs for natural gas services offered within the State of Nebraska.	))))))	**Application No. NG-102 /PI-225**

COMMENTS OF CONSTELLATION NEWENERGY – GAS DIVISION, LLC

On August 6, 2019 the Nebraska Public Service Commission ("Commission") opened a docket to gather information regarding customer choice programs for natural gas service as well as to review the administration of such programs offered within the State of Nebraska ("Choice program"). The Commission held a workshop, sought comments and on October 29, 2019 issued Progression Order No. 1 which set forth a series of recommendations and expectations for the Choice program. Constellation NewEnergy – Gas Division, LLC ("CNEG"), as a certificated competitive natural gas provider ("CNGP") in the Nebraska Choice program, was actively engaged in the workshop and provided comments.

On March 10, 2020, the Commission issued Progression Order #2, requesting comments and scheduling another workshop to be conducted on June 17, 2020. In Progression Order #2, the Commission identified eight (8) topics on which it sought comments and supporting documentation.

CNEG is a full-service provider of natural gas supply and transportation-related services to retail customers throughout North America. CNEG is one of the top three US retail natural gas suppliers and serves gas Choice customers throughout the country. CNEG and its predecessors have reliably served residential, commercial and agricultural customers in the

Nebraska Choice program since 1999.[1] CNEG appreciates the opportunity to respond with these comments to the issues identified by the Commission and looks forward to continued discussion on the Choice program at the June 17th workshop.

<u>CNEG Comments</u>

1. **2020 Selection Period.**

   a. **Did the 2020 selection period run smoothly? What went well? Were any issues encountered that should be addressed for coming years?**

   CNEG believes the 2020 selection period went well. As described more fully below, the only issue that arose for us was Black Hills Nebraska Gas, LLC ("BHNG" or "Black Hills"), the administrator of the Choice program, e-mailed suppliers, i.e. the CNGPs, informing them that Black Hills would not be providing suppliers with any reports of their accepted Delegation Agreements ("DA") until closer to the start of the selection period. This prevented CNEG from mailing confirms throughout the pre-sign period to those customers who had signed a DA selecting CNEG as their supplier and instead restricted us from sending confirms until near the start of the selection period. CNEG had planned to provide confirms throughout the pre-sign period as we believe timely notice to customers greatly minimizes customer confusion during the selection period.

   b. **Was anything different in the 2020 selection period, as compared to past years?**

[1] Additional information about CNEG can be found in the CNEG comments filed on September 13, 2019 in this proceeding.

Yes, there were two important differences. First, the pre-sign period, the time during which a CNGP can have a customer sign a DA, was shortened by two (2) weeks lessening the amount of marketing time for suppliers. Suppliers were not allowed to market to any customers, both current and prospective customers, prior to January 15, 2020. In addition, for the first time, all suppliers were required to include an offer price on any pre-sign solicitation letters. CNEG believes this requirement was very beneficial in getting customers to better understand any commitment they were making with a supplier prior to the selection period and recommends that is should remain a requirement for suppliers in future years.

2. Customer Education.

a. Has your entity increased its customer outreach and education regarding the Choice program? If so, what was done, and what was the customer response?

Yes. In 2020 we started sending a special pre-sign offer to all existing default customers that clearly explained that they have the option to choose their natural gas supplier and that no additional cost was involved if they exercised that option, trying to encourage additional customer selections. Our goal was to increase awareness among this segment of customers.

In 2019 we introduced another new education tool. For all customers who remained in multi-year agreements, prior to the start of the selection period we sent them a communication with a reminder that their current agreement was not set to expire and thus they did not need to make a selection. Our goal was to avoid unnecessary submissions that the utility would reject and improve customer's understanding. This was very effective, so we continued this outreach in 2020.

In 2020 CNEG's had also planned to send confirm letters to customers each month, to shorten the time between the customer's decision and receiving confirmation of their selection from us. As we learned last year, faster receipt of a confirmation from a supplier significantly reduces customer confusion.

In 2019 the pre-sign period began on January 1st, two (2) weeks earlier than it did this year. Once the pre-sign period started in 2019, when a supplier submitted a signed DA from a customer, BHNG would send the supplier back a timely report acknowledging if the supplier's submission was accepted by BHNG or not. If it was rejected, that would inform the supplier that the customer has previously submitted a DA with another supplier and therefore was not enrolled with us and we would not send that customer a confirm letter. An accepted DA signified a successful customer enrollment and we then sent a confirm to the customer.

Two weeks into the pre-sign period this year, BHNG unilaterally notified suppliers that it would not timely report back to suppliers until sometime in March whether a submitted customer DA was accepted or not due to other resource constraints such as the WY rate case and billing system update. Thus, this year CNEG did not receive utility confirmation of our DA submissions during most of the pre-sign period and therefore could not send many of our customers more immediate confirm letters. This year it wasn't until March that BHNG provided confirmation of supplier DA submissions. After we received enrollment data from BHNG, we sent confirm letters which included a copy of the customer's signed DA; customers were very appreciative of the information.

Due to this delay in timely reports from BHNG, we modified our process during the 2020 pre-sign period. If a customer enrolled with us electronically, i.e. via email or our website, via email we immediately acknowledged our receipt of their digital DA, confirming the price and term they selected, and indicating we expected to receive confirmation of their selection from BHNG by April

In summary, we believe a best practice that improves the customer experience with the Choice program is when the utility provides timely confirmation after a DA is submitted by a supplier. This allows suppliers to timely confirm with their customers and avoids unnecessary customer confusion. Ideally, the utility confirmation should occur as frequently as possible, perhaps even weekly, but at minimum monthly. Beyond reduced customer confusion, knowing that a customer has already selected another supplier allows others to cease marketing to and contacting enrolled customers to minimize any potential annoyance and/or additional expense.

b. The Commission has increased the amount of customer education materials available on its website (https://psc.nebraska.gov/natural-

gas/consumers-choice-program). Is what is currently available sufficient, or should it be added to or otherwise improved?

One suggestion for improvement is to replace the current CNEG listing on the Commission website with the following updated information: www.nebraskagas.com and the toll free number of 877.274.5710. This information more quickly links a customer to the pertinent information regarding our Nebraska Choice program.

CNEG appreciates that the Commission implemented one of our suggestions in the comments filed last year in this proceeding. The additional information that the Commission has included on its website about the Choice program is a great improvement.

c. What can individual suppliers do to increase the level of customer education regarding the Choice program?

We continue to support our suggestion in comments submitted last year that BHNG periodically include a Choice bill insert that educates consumers about the Choice program and addresses common misconceptions to better ensure clear customer understanding of the program. An educational insert should regularly be included with utility invoices to inform customers about the Choice program and how it works. If necessary, suppliers could share in the cost of this insert.

If DAs are eliminated for residential customers as suggested by question 3. a., we anticipate that the number of residential customers on the default rate will increase as customers will have less opportunity, flexibility and control in making a selection. Certain customers may no longer make a selection as they will be limited to locking in a gas price only at the prices offered during the two- or three-week selection period, potentially experiencing less financial benefit in making a choice. No amount of customer education by suppliers can compensate for the loss of this option that has proven attractive to customers who have relied upon it for quite some time.

3. Delegation Agreements.

a. <u>For the administrator only</u>: During the previous workshop in this docket, BHNG indicated it did not intend to continue using delegation agreements ("DAs") for residential customers after the 2020 selection period. Does BHNG still plan to eliminate the use of Das for residential customers going forward? If not, what has changed?

While not directed to CNEG, we continue to advocate for the continued use of DAs for all customer segments. In looking at the market growth over the last five (5) years, pre-signs have been the driver. Restricting all residential customers to a two- or three-week window to make a decision greatly limits the time they have to evaluate pricing and options. It was our understanding that BHNG would review and thoughtfully take into consideration the impact of recent DA improvements prior to making a final determination as to their future. CNEG believes that the 2020 revisions to the DA have helped to reduce customer confusion with the previous process and that we should seek other improvements rather than eliminate a popular option.

b. Should DAs be available for commercial customers? If so, should small commercial customers be treated differently than large commercial customers?

Yes, all customers, both residential and commercial – whether they are large or small, should be eligible to pre-sign a DA. Opportunities for customers to select their desired offer with their preferred supplier should be preserved. No customer is obligated to pre-sign and execute a DA, but for those who want that option, it should be honored. Our goal should be to expand, not limit, the customer experience.

4. Selection Period.

a. <u>For the administrator only:</u> not applicable to CNEG

b. If any supplier has changed its opinion of the length of selection period since the previous workshop, how do you now see it and what made you change your view?

CNEG continues to recommend, as it did in its September 2019 comments, that the current two-week selection period be expanded to a three-week period. CNEG supports an additional week in the selection period, while keeping the pre-sign period the same as last year – January 15^{th} until the beginning of the selection period. The only other change would be to again have BHNG timely send confirms to suppliers during the pre-sign period as it did in 2019 to allow customer confirms to be more quickly sent since sending timely confirms reduces customer confusion. Notifying suppliers throughout the pre-sign period when a customer has already committed to another supplier can result in customers receiving less marketing once they've made their selection and is more cost-effective for both suppliers and utility.

5. **Dispute resolutions.**

   a. **<u>For the administrator only:</u>** not applicable to CNEG

   b. **Is a standard policy of sanctions and remedies for violations of the Code of Conduct desirable? Why or why not?**

It is unclear if this question is asking about the Code of Conduct – Affiliate Cost Allocations and Transactions Under Choice Program, Sheet Nos. 138 to 140, or Code of Conduct – Supplier Conduct Under Choice Gas Program, Sheet No. 141, or both. CNEG assumes it's the Supplier Conduct Code and will limit our response at this time to Sheet No. 141. Further, we assume that the question is related to sanctions and remedies imposed by the Commission.

CNEG believes this question requires both further discussion and additional information. For instance, has the frequency and persistence of Code of Conduct violations been a serious problem? Have current measures available and taken by the Commission been unsatisfactory? Is the magnitude of violations large enough to warrant the development of a policy? Is there sufficient commonality across violations to standardize the response?

Intentional violations of the Code of Conduct may require action by the Commission, which could include penalty, suspension or even removal from the program depending upon their severity. However, accidental violations due to human error or extenuating circumstance, may merit a less harsh response. For example, something caused by human error may not merit removal from the program. Other considerations, such as the as the number of customers impacted, the associated dollar impacts, the time period over which the violation took place, any actions, or lack thereof, taken by the supplier to rectify the situation, whether it was an isolated event or an ongoing pattern of abuse, etc. may need to be evaluated. If a policy is established in order to determine the sanction or remedy without looking at the facts of the situation, unreasonable outcomes may result. In that case, CNEG would find it preferable for the Commission not to establish a rigid policy, but instead to consider other options such as potentially offering guidance as to what factors or principles the Commission may consider in determining what remedies or sanctions are justified or by articulating examples of various violations and the resulting remedies or sanctions the Commission deems reasonable for them. In any event, a supplier should be provided due process to respond to allegations against it.

c. During the September 25 workshop, BHNG stated is would follow up with a CNGP who submitted a complaint after the complaint was resolved. Is that currently being done? If so, is it helpful? Is it sufficient? If not, how can it be improved?

Since the September 25th workshop, CNEG has not had a complaint necessitating follow-up with us. We continue to assert that follow-up with the supplier is essential.

d. **Are the sanctions or remedies currently available effective? Are there other sanctions or remedies that should be available when violations occur?**

As CNEG is unaware of any Code of Conduct violations that resulted in sanctions or remedies, it's unable to offer any substantive insight as to whether the current sanctions or remedies are effective.

6. **Default pricing.**

a. **Questions for suppliers:**

i. **How do you determine the default rate for customers who do not make a selection? Does your methodology for determining the default rate vary from year to year?**

Similar to its other offerings, CNEG takes into consideration capacity, transportation costs, upstream and downstream costs, margin and gas commodity costs when it sets its default prices. This methodology is generally consistent year to year.

ii. **Using rates from the previous selection period, and assuming average usage based on class, what would be the difference in the average monthly and annual bill for:**

1. **Residential customers that select the average fixed rate offered during the selection period, versus those that receive the default rate;**

2. **Small commercial customers that select the average fixed rate offered during the selection period, versus those that receive the default rate; and**

3. **Large commercial customers that select the average fixed rate offered during the selection period, versus those that receive the default rate?**

Average Monthly and Annual Bill Differences between 2020 Selection Period Customers - Balloted and Default Customers (Fixed Rate Pricing)

			Bill Differences between Selection Period and Default Customers	
Bill Class	**Division**	**Avg Annual Volume***	**Annual**	**Monthly**
Residential	Central	[redacted]	[redacted]	[redacted]
Small Commercial	Central	[redacted]	[redacted]	[redacted]
Large Commercial	Central	[redacted]	[redacted]	[redacted]
Residential	West	[redacted]	[redacted]	[redacted]
Small Commercial	West	[redacted]	[redacted]	[redacted]
Large Commercial	West	[redacted]	[redacted]	[redacted]

*based on 2019 usage data

iii. **Does each supplier have one default rate for every customer assigned to them, or is there more than one default rate used by any single supplier? If there more than one default rate offered within a class of customers?**

Our response is limited to how CNEG handles default customers that are assigned to it. [redacted]

[redacted]

b. <u>For all parties:</u> **Should there be a limit on what customers who do not make a selection can be charged? Is so, what types of limits would you suggest? If not, why not?**

No, CNEG does not support such a limit. There are no limits on supplier prices during the selection period, so it would be very inconsistent to impose limits of default prices. If a customer is dissatisfied with their supplier's pricing, or even anything else about their supplier, they can change their supplier each year. All default customers are given every opportunity, and even encouraged, to select a pricing option and supplier each year. Retaining a pre-sign period is critical for default customers as it provides these reluctant shoppers a greater opportunity to view pricing options over a longer period of time in order to make an informed choice.

7. Energy Options.

a. How are transportation and capacity related costs currently allocated between customers? If this allocation method appropriate?

Every local distribution company ("LDC") has a methodology for how transportation and storage assets are allocated to customers within a defined customer Choice program. This methodology is typically based on an approach that incorporates peak period usage. For BHNG, the methodology provides a prorated allocation of contracted pipeline assets based on a given customer's usage in the peak usage months compared to the total system send out for the same months. For Nebraska, the peak usage is the average of the highest two months usage in the previous winter. For the program year of 2020-2021, BHNG is using February and March 2019 as the months for developing peak usage for Nebraska. For Wyoming it is using January and March 2019. This allocation is further broken down by customer class between commercial and residential.

The methodology adopted by any given LDC for allocating assets is typically replicated by the CNGP in its costing assumptions. The asset allocation methodology is a critical input for a CNGP to determine this material cost component of the asset stack in pricing a given customer or customer segment. A supplier can deviate from this LDC defined allocation methodology, but then it runs the risk of compiling a portfolio of customers with an underlying customer class and load factor mix which is incongruent with its pricing assumptions. This creates costing uncertainty for the supplier and exposure to gross margin variation. As a result, the supplier will likely adopt the allocation methodology created by the LDC for the applicable customer Choice program.

Regarding pipeline capacity allocation, it makes complete sense that assets are allocated in accordance with peak period usage of a given customer or customer class as a function of total system usage. This methodology could be based on peak day, peak month or, as in the case of BHNG, the average of the two highest peak month usages. Since underlying pipeline transportation and storage contracts are typically executed for annual terms, it is important to allocate those costs in accordance with the customer portfolio peak period usage. Since the LDC is required to ensure that its portfolio of assets is constructed in a manner to enable it to meet system demand during a “design” day, assets must be contracted in a manner that covers this requirement even though those assets will be significantly in excess of demand requirements during non-peak periods.

The allocation of transportation and storage assets based on peak period usage is a fair and equitable approach to the allocation of costs across customers. This starting point is the same for all customers. What creates differences in pricing, and what is many times a misunderstood cost allocation concept, is the impact of load factor of a given consumer. Load factor can be defined in several different ways mathematically but is, in essence, a ratio of non-peak period usage to peak period usage. Customers using much less usage in the summer period vs. winter are considered “low load factor” customers. These customers typically see a higher overall unit cost than "high load factor" customers, whose usage is more consistent across seasons, because the lower non-peak usage of a low load factor creates a higher unitized cost over an annual term.

The example below presents two theoretical customers that use the same usage during the two highest usage months of January and February. In this scenario, these two customers would be allocated an identical percentage of pipeline capacity assets under the BHNG Choice program. However, since Customer A's usage pattern utilizes more of the allocated asset throughout the term, i.e. has a high load factor, it's overall costs will be significantly lower than the low load factor Customer B.

Month	Customer A	Customer B
Jan	21	21
Feb	19	19
Mar	16	16
Apr	15	10
May	15	5
Jun	15	2
Jul	15	2
Aug	15	2
Sep	15	2
Oct	17	5
Nov	17	10
Dec	18	18
Total	198	112
Asset Cost	$ 400	$ 400
Unit Cost	$ 2.02	$ 3.57

b. What are the benefits and detriments of a pro rate allocation of transportation costs?

As discussed in depth in 7.b. above, the only reasonable allocation of pipeline assets and related costs for customer Choice programs is through a prorating methodology that is based on peak period usage. In this case, costs are appropriately allocated to the customers that are requiring the contracted assets during the highest usage periods on the LDC.

This is the standard methodology utilized by LDC's across the US. The main difference typically centers around the use of peak day vs. peak month vs. peak period assumptions. This allocation methodology ensures a fair and equitable allocation of total costs. However, as discussed, it does not create an even unitized annual cost due to the impact of a customer's load factor.

8. **Further Information. Are there any additional documents, articles, and/or materials related to the topics outlined above that the Commission and other interested parties should consider in their review of the issues discussed above? If so, please provide and explanation and supporting documentation.**

   None.

Thank you for the opportunity to furtherer comment on the BHNG Choice program. CNEG looks forward to participating in the upcoming Choice workshop on June 17th.

Date: May 29, 2020