STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the proposal of the **CHOICE ADVISORY COUNCIL** for a statewide customer education program and other related matters.	)	Case No. U-12133

At the July 25, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On March 7, 2001, the Commission issued an order reviewing a contested settlement agreement in accordance with Rule 333 of the Commission's Rules of Practice and Procedure, R 460.17333. The settlement proposed to implement the CHOICE Advisory Council's (Council)[1] statewide customer education program concerning electric retail open access and to resolve funding and other issues that the Council had been unable to resolve on the basis of a consensus of its participants. The order directed the parties to modify the settlement to address certain matters, including intervening changes in circumstances since the Council drafted the proposal, passage of the Customer Choice and Electricity Reliability Act, MCL 460.10 et seq.; MSA 22.13(10) et seq., the need to promote the economic development of power markets in Michigan, the possible

[1]The Council is a working group of representatives from Michigan utilities, ratepayer interests, alternative energy suppliers, and the Commission Staff.

integration of the CHOICE program with a similar effort being developed for gas utilities, and changes to the membership of the Council subcommittee that provides oversight of program expenditures.

As required by the order, the Commission Staff (Staff) recommended candidates for the 11 members of the Council subcommittee on March 16, 2001. The Commission finds that the Staff's recommendation should be accepted.

On April 27, 2001, the Staff submitted a new settlement agreement that supersedes the earlier one. The Staff, Consumers Energy Company (Consumers), The Detroit Edison Company (Detroit Edison), Alpena Power Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, Northern States Power Company-Wisconsin, Wisconsin Electric Power Company, the Michigan Electric Cooperative Association, Exelon Energy, Inc., Indiana Michigan Power Company, and Energy Michigan signed the new settlement. The settlement also attaches and incorporates a new proposal for customer education, which supersedes the earlier CHOICE proposal.

The overall structure of the new settlement and attached proposal are similar to those reviewed by the Commission in the previous order. However, they do make some modifications, of which the principal one is to expand the program and its funding to cover both the gas and electric utility industries in Michigan. The settlement provides a plan and 2½-year timetable (from mid-2001 to year-end 2003) to accomplish customer education for both industries' open access programs through a single initiative. In view of the possibility that the Commission may not wish to combine the two programs, the settlement presents the option of approving an "electric-only" program, which would effectively defer all issues relating to an education program for retail gas open access to a future case.

To meet the increased budgetary requirements of a combined electric and gas program, the settlement calls for funding of $33,250,000 plus $730,000 earmarked for an electric supplier communications initiative in accordance with the March 7, 2001 order, for total funding of $33,980,000. In the event the Commission decides to approve an electric-only program, the funding amount would be reduced to $26,757,000 plus $730,000 for the supplier initiative, or a total of $27,487,000.

For a combined electric and gas program, the proposed settlement allocates 60% of the funding responsibility to electric utilities and 40% to gas utilities, except for the supplier initiative funding, which is allocated entirely to electric utilities. To recover their respective shares of funding responsibility, the settlement authorizes each electric utility to impose a customer surcharge of 13¢ per meter per month for a combined program, or 18¢ per meter per month if the Commission approves an electric-only program. In view of the rate freeze provisions of MCL 460.6d; MSA 22.13(6d), the settlement authorizes Consumers and Detroit Edison to defer their electric surcharge until after the freeze expires. There is no provision for the cost recovery of the gas funding allocation, but the settlement states that the gas utilities' participation in a combined program, their cost allocation and recovery, and other gas-related issues will be considered and decided in other contested case proceedings.

The settlement further recommends that, in the event of a combined program, the membership of the Council subcommittee be expanded by two to include a representative from the gas utilities and a representative of gas ratepayers.

On May 2, 2001, Attorney General Jennifer M. Granholm (Attorney General) filed objections to the settlement. Because the Attorney General waived a contested case review pursuant to Rule 333, there was no hearing, and the settlement is now pending before the Commission.

The Attorney General's objections raise two points. First, the Attorney General says that it is inappropriate to authorize electric utilities other than Consumers or Detroit Edison to collect a surcharge this far in advance of open access in their service territories. However, paragraph 10 of the settlement recognizes that the electric cooperatives are not subject to the same statutory deadline as the investor-owned utilities and makes appropriate provisions to coordinate the timing of their surcharges with their open access programs. Because the law does not exempt the other electric utilities from making retail open access available to their customers, MCL 460.10a(1); MSA 22.13(10a)(1), it is appropriate that they begin to collect their share of the costs as set forth in the settlement.

Second, the Attorney General says that Consumers and Detroit Edison should not be permitted to implement the surcharges automatically after the rate freeze ends (i.e., without obtaining another order specifically approving the surcharge), although she does not object to the deferral of the cost recovery. However, the Commission does not find it necessary to require Consumers and Detroit Edison to apply again for authorization to collect the surcharge. Before the utilities could bill the surcharges, it would be necessary for them to file tariff sheets that would be subject to review by the Staff and other interested persons. If the authority to implement the surcharges were to be somehow misused, there would be an opportunity to object, and an objecting party could file a complaint if necessary. Furthermore, cost recovery is contingent upon the reconciliation procedure set forth in paragraph 14 of the settlement, which gives other parties an opportunity to review the expenditures and provides assurances that those expenditures will be consistent with the program approved by the Commission. As noted in the March 7, 2001 order, the Commission reiterates that it will permit cost recovery only if the utility's expenditures are "just and reasonable," order at 4, and that the costs "will remain subject to possible disallowance under the reconciliation procedure, prudence review, and other provisions of the settlement," id. at 20.

The proposed settlement provides a reasonable framework for accomplishing the educational objectives of retail open access. As for the two alternatives presented in the settlement, a combined electric and gas program or an electric-only program, the Commission's preference is to combine the programs. This approach promises to produce cost savings and efficiencies by introducing the concept of choice for two closely related energy industries through a single, integrated educational program.

Before the Commission will be in a position to issue its final approval of the settlement, it is necessary to obtain assurances that the funding obligations allocated to the gas utilities for a combined electric and gas program will be satisfied. The CHOICE proposal requires financial commitments from both electric and gas utilities in order to secure the total funding necessary to undertake the combined program. Although the settlement makes provision for the electric utilities to provide their share of the funding, it defers those issues with respect to the gas utilities. Unlike the statutory basis for electric open access, the gas choice program is proceeding as a voluntary undertaking on the part of the gas utilities. In Case No. U-12550, the Staff recommended a framework for a statewide gas customer education program that is consistent with the combined CHOICE proposal in this case. Consistent with the October 13, 2000 order approving the Staff's recommendation in Case No. U-12550, the Commission directs gas utilities that are subject to the Commission's statutory rate jurisdiction to file statements in this docket within 30 days, in which each utility confirms, or declines to confirm, that it will participate in the combined educational program as outlined in the CHOICE proposal and, if it confirms such participation, further commits to provide its allocated share of the funding set forth in the CHOICE proposal.

The Commission will withhold final approval of the settlement and CHOICE proposal until after the gas utilities file those statements.

In addition to finalizing the participation and funding of the gas utilities, one other matter requires comment. Although the combined CHOICE proposal sets forth a timetable for accomplishing its objectives, it conditions the timetable as follows:

> At this time, it is difficult to project with reasonable certainty when the development of power markets necessary to make customer choice effective will reach a point that optimizes the benefits of natural gas and electric choice for all customers. Thus, it may become necessary to intensify or refocus educational efforts as supply markets develop and customers move toward electric choice.
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> The timeline developed for this Program builds in flexibility for both media commitment and media placement to meet changing regulatory and marketplace conditions. In other words, the launch phase may be delayed, as needed, to accommodate the approval process in Case No. U-12133 and the activity of alternative energy suppliers.
>
> The Council will not authorize mass media or other Program expenditures without evaluating whether the timing is appropriate. The Council will continually monitor any local market indicators that are readily available and, in addition, bring together grassroots intelligence provided by the Council, media reports, and analysis of customer communications via the call center and the Web site.

Settlement, Ex. A, pp. iii-iv. The Commission agrees that it is appropriate to provide for a flexible timetable to implement the CHOICE program. The Commission further determines that, in light of present circumstances, the existing timetable must be modified in material respects.

The CHOICE program envisions that the primary vehicle for creating widespread public awareness of open access will be a mass media campaign, which is the centerpiece of much of the educational plan. However, the current state of wholesale and retail markets in the gas and electric industries, as they affect Michigan customers, does not support the present timetable for launching the mass media campaign. It is not apparent that there will be an adequate number of alternative suppliers actively soliciting retail customers within the next few months, either nationally or within

Michigan, to form the nucleus of a sustainable competitive marketplace at this time. Without the widespread availability of competitive supply choices being marketed to the consuming public, well-functioning retail markets cannot be expected to take hold. One cause of this problem is the scarcity of physical generation and transmission plant in Michigan to provide competing sources of electric supply. Although this constraint should become less of a hurdle as more of the merchant plants now under development come on line in the near future and the transmission system is enhanced, the Commission continues to see a need for more generation projects. The Commission expects that the electric supplier initiative outlined in the CHOICE proposal will provide encouragement and incentives for independent, non-utility power projects in Michigan.

In light of these developments, the time is not now ripe to undertake the mass media campaign and the other activities that must be closely coordinated with them. As stated in the proposal, the Council (including gas participants) should, in the interim, continue to monitor local market indicators, including media reports and analyses of customer communications, in order to revise the timetable and identify a target launch date for the mass media campaign. The subcommittee[2] and the Staff should consult periodically with the Commission regarding the campaign timetable and should apprise it when they identify what they believe to be an appropriate launch date. Moreover, the subcommittee should begin to undertake preliminary planning and educational activities that are not contingent upon a particular launch date for the mass media campaign. Even though the mass media campaign will not go forward as soon as planned, the Commission anticipates that there will be resources available to provide information and responses to inquiries

[2]The subcommittee would expand to include representatives of gas-related interests once the combined program receives formal approval.

by the public regarding open access by the beginning of 2002. Moreover, the electric supplier initiative should go forward as soon as possible after the settlement receives final approval.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The Council subcommittee should be appointed as recommended by the Staff.

c. Within 30 days after the date of this order, each gas utility should file a statement that confirms or declines to confirm its participation in the combined educational program outlined in the CHOICE proposal and, if the statement confirms such participation, further commits the utility to providing its allocated share of funding in accordance with the funding provisions of the CHOICE proposal.

THEREFORE, IT IS ORDERED that:

A. The CHOICE Advisory Council subcommittee is appointed as recommended by the Commission Staff on March 16, 2001.

B. Within 30 days after the date of this order, each gas utility shall file a statement that confirms or declines to confirm its participation in the combined electric and gas CHOICE educational program outlined in the proposal attached to the settlement and, if the statement confirms such participation, further commits the utility to providing its allocated share of funding in accordance with the funding provisions of the CHOICE proposal. The persons signing the statement on behalf of each gas utility shall be a corporate officer or officers having the requisite authority to bind the company to the undertakings set forth in the statement.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of July 25, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Commissioner

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By its action of July 25, 2001.

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Its Executive Secretary

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<u>Suggested Minute</u>:

> "Adopt and issue order dated July 25, 2001 requiring gas utilities to file statements regarding whether they will participate in a combined electric and gas CHOICE educational program and commit their allocated share of the program funding, as set forth in the order."