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PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
AN INVESTIGATION OF NATURAL GAS) **CASE NO. 2010-00146**
RETAIL COMPETITION PROGRAMS)

AFFIDAVIT

I hereby affirm that the foregoing document titled direct testimony of Nancy Brockway in the Matter of An Investigation of Natural Gas Retail Competition Programs, Case No. 2010-00146, is true and accurate to the best of my information and belief.

Nancy Brockway
Nancy Brockway

Subscribed and sworn to before me, a notary public in the Commonwealth of

Massachusetts, by Nancy Brockway, this 18 th day of June 2010.

Jason Rodriguez
Notary Public

JASON RODRIGUEZ
Notary Public
Commonwealth of Massachusetts
My Commission Exp. Mar. 26, 2015

My commission expires 3/26/2015

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DIRECT TESTIMONY OF NANCY BROCKWAY
JUNE 21, 2010

Filed on Behalf of AARP

LIST OF EXHIBITS

Q. Please state your name, business address, and affiliation.

A. Nancy Brockway, 10 Allen Street, Boston, MA, 02131. I am the proprietor of NBrockway & Associates, and offer legal and consulting services on energy and utility issues.

Q. On whose behalf are you testifying today?

A. My testimony is filed on behalf of AARP.

Q. Please briefly describe your qualifications.

A. Since 1983, my professional focus has been the energy and utility industries, with particular attention to the role of regulation in the protection of consumers and the environment. I was for several years a hearing officer and advisor to the Maine Public Utilities Commission and then to the Massachusetts Department of Public Utilities, where I served two years as General Counsel of the Commission. I was an expert witness on consumer and low-income utility issues for seven years, with the National Consumer Law Center. While there, among other things I negotiated terms and conditions for natural gas competition on behalf of clients in Massachusetts. I was then appointed as a Commissioner and served on the New Hampshire Public Utilities Commission from 1998 to 2003. While on the Commission, I was actively involved in the restructuring of the gas and electric industries in New Hampshire. Since leaving the New Hampshire Commission, I have been a consultant on regulatory utility issues to regulatory commissions, ratepayer advocates, low-income energy groups, and others. I also spent several months serving as the Director of Multi-Utility Research and Analysis with the National Regulatory Research Institute. My resume is attached as Exhibit NB-1.

Q. Have you previously testified before this Commission?

A. Yes. I testified in a Kentucky Power Company rate case in 1991 in Docket No. 91-066, in a LG&E Demand Side Management case in 1993, Docket No. 93-150, and in a LG&E Gas rate case in 2009, Docket No. 2009-00141. I filed testimony in Docket No. 2009-00549, the E.ON Gas and Electric Base Rate Cases.

Q. Have you testified on utility matters before other Commissions?

A. Yes. I have filed testimony in over 45 proceedings. I have appeared before fifteen state or provincial regulatory commissions.

Q. What is the purpose of your testimony today?

A. I have been asked by AARP to assist in determining whether natural gas retail competition programs would benefit consumers; and, if adopted, how such a program should be structured in order to protect consumers and to assure that the benefits of such a program are universally available, durable, and reliable.

Q. Please summarize your conclusion as to whether natural gas retail competition programs would benefit consumers.

A. I conclude that natural gas retail competition programs in Kentucky would not benefit residential consumers.

Q. What are the particular concerns of AARP regarding the prospect of natural gas competition in Kentucky?

A. AARP is concerned that natural gas competition cannot assure the 21 Safeguards identified by Commission Staff in the November 3, 2008 Letter, and the concerns expressed to the General Assembly in the December 7, 2009 Letter. AARP is particularly concerned with: (a) the impacts of deregulation on customer service and consumer protections, (b) the impact of deregulation on reliability of service and on the loss of obligation to serve, (c) the effects on rates under deregulation, as when they are no longer set on a cost-of-service basis with a reasonable ROE, when marketers try to "cream-skim" high-volume customers, when unbundling causes diseconomies of scope, or when default rates are made unpalatable in an effort to encourage movement to competitors, (d) the potential shift of strandable costs to non-shoppers; (e) the shift to non-shoppers of the costs associated with marketing and customer education; and (f) the impacts of deregulation on low-income assistance programs.

Q. How can these risks of deregulation be prevented?

A. These risks can be avoided by maintaining the present vertical integration of regulated gas supply for consumers, and continuing to regulate gas supply in Kentucky.

Q. If notwithstanding these risks from gas supply deregulation, the Commission is inclined to deregulate the gas supply function, what steps need to be taken to minimize the risk of such deregulation?

A. If the Commission is inclined to deregulate gas supply for consumers, it will be important to consider means of reducing the risks of deregulation, if possible. Efforts to reduce such risks would include regulating consumer protection issues such as gas supply cutoff and marketer disclosures, contracts and billing practices; denominating the incumbent utility as supplier of last resort (including making the transition to default service seamless); protecting former shoppers from disconnection on account of higher marketers' bills; preventing marketers from shifting costs such as their marketing expenses to non-shoppers; preventing the stranding of costs (e.g. by mandatory capacity assignment); fairly allocating volumetric costs among customers of market suppliers and gas utility customers; and establishing satisfactory financial assurances and penalties related to marketer performance and nonperformance. All these tools taken together are a distant second best to maintaining the gas utility obligation to serve in a stable supply situation without deregulation. Nonetheless, they must be addressed in the event the Commission deregulates or recommends to the General Assembly to deregulate gas supply.

Q. Taking the particular concerns of AARP regarding deregulation of gas supply one by one, please provide a brief summary of the reason for each concern.

A. The first concern I will address is that of the erosion of consumer protections and of the quality of customer service, brought about by the introduction of competition. Note that in this discussion and others in my testimony, I am not arguing that the offerings of all deregulated suppliers are always unsatisfactory. I am saying that the risks I describe are either unavoidable consequences of deregulating gas supply, or have been the experience of too many customers in areas where gas supply has been deregulated.

Q. Please discuss the impacts of supply deregulation on customer service and consumer protection.

A. In the natural gas industry, as in the electric industry, deregulation has spawned a number of suppliers who are not always careful to respect the customer or observe norms of consumer protection customers have enjoyed for decades. It is often difficult for a customer to know what the marketer is offering and what the customer agreeing to, even in such crucial elements as the price for gas supply. Marketers have followed the well-trodden path of hard-sell door-to-door solicitations, teaser rates for short periods, hard to read contracts, hidden fees, lengthy required contracts, penalties for "early cancellation," and complicated roll-over provisions that permit the supplier in effect to lock in customers for additional time. Some marketers provide no customer service once the contract is signed. Some marketers leave a state with no advance notice to their customers.

Q. Please provide an example of some of these problems.

A. A good example of what I am talking about occurred in Illinois. AARP joined with the Illinois Citizens Utility Board (CUB) in filing a complaint about U.S. Energy Savings Corp (now known as "Just Energy"). The Illinois Commerce Commission's own Consumer Services Division ("CSD") and CUB received an unprecedented volume of consumer complaints from USESC customers, and the marketer ultimately revealed that its own data showed total of 5,630 complaints during 2007 and 2008. A large portion of those complaints alleged various forms of misrepresentation by sales agents. The pattern of alleged marketing abuses included:

- USESC sales agents promising customers would save money by switching their gas supply.
- Sales agents claiming the USESC fixed price plan would protect customers from future utility rate increases.
- USESC switching gas supply without proper customer authorization.
- Sales agents claiming they represent Nicor, Peoples Gas, the ICC or some other independent agency or organization not affiliated with USESC.
- Misleading or not fully disclosing the exorbitant fees charged for early termination of the USESC contract.
- Agents taking advantage of non-English speaking or elderly customers who did not understand the transaction.[1]

Q. Why does competition not police the sales and marketing actions of the deregulated marketers?

A. The market does not police the sales and marketing actions of the deregulated marketers because the market is not adequately competitive. Pricing can be complicated, and understanding the market alternatives very difficult. Marketers can take advantage of the

[1] Docket No. 08-0175, Citizens Utility Board and AARP vs. Illinois Energy Savings Corp., d/b/a U.S. Energy Savings Corp. Complaint as to marketing practices in Chicago, Illinois Initial Brief of Citizens Utility Board and AARP, December 7, 2009

imbalance between their ability to complicate the transactions, and customers' difficulty in understanding the transactions. This factor is above and beyond the potential for market power to exist with a small number of oligopolistic suppliers; I discuss the market power problem later in my testimony.

Q. What is one result of the complexity of deregulated gas suppliers' offers and contracts?

A. As the case in Illinois illustrates, gas marketers do not always treat consumers fairly, even when the law requires them to do so. Marketers have been able to under-quote the actual cost of their service. They have represented their offering as being less expensive than the alternative, default utility service. Customers of deregulated marketers have been confused by the various offerings presented to them, usually in different formats. Customers often lack a basis for making an apples-to-apples comparison between the present rate and the rates they will pay to a given marketer. This is so even where the regulator takes pains to make comparison information available. Customer switching has often been solicited by door-to-door salespeople, often agents paid by commission, who sometimes have provided false information to customers. For example, customers in New York have been assured that they will not have to pay a sales tax on their deregulated supply, without also knowing or being told that they do not have to pay a sales tax to their gas utility in the state in question.

Q. Please give an example of suppliers giving prospective customers inaccurate or misleading information, leading to a customer making an improvident choice.

A. Last year in New York, a doctor who had switched to a deregulated supplier (which we will call Supplier X) spent time developing the comparison between what he had paid the supplier and what he expected to pay. He wrote about his experience in his local newspaper.[2] He had checked the supplier out on the Commission's web site, and there was no suggestion that the sales pitch was in any way misleading. When he did the comparison of his gas supply bills for the year before, he found that the promises made in the solicitation of his account were false, and wrote about his experiences in his local paper. He compared his bills from Supplier X to what his bills would have been if he had stayed with his regulated utility. Paraphrasing from his op-ed, the inaccurate or misleading representations made by Supplier X included the following.

1 - SUPPLIER X initially assured me that their rates would be lower than the gas utility's. That proved to be false for all 12 months of 2008.

2 - SUPPLIER X said that they would guarantee me a 7% lower rate than my gas utility for the first two months of my service. That did not happen.

3 - SUPPLIER X said that I would save due to not to having to pay sales tax on their supplied electricity. Turns out that I didn't have to pay it on my utility's either, so this was a misleading, phantom benefit.

4 - The state sponsored website shows SUPPLIER X's rate as being 6.75¢/ KWH. for my area. The actual LOWEST monthly rate I paid for the last year was 9.75¢/KWH, roughly 50% higher than their proclaimed rate. Again, that was the lowest, so this 6.75¢ is totally inaccurate.

5 - SUPPLIER X said I would get an annual 1% rebate. That came through.

This gentleman, after making four calls to Supplier X and contacting the complaint section of the New York Commission, eventually received a payment to compensate him

[2] The newspaper article is available at http://www.empirepage.com/2009/1/9/nys-and-energy-a-case-study, last viewed June 18, 2010.

for the discrepancy between the marketing pitch and the actual bills rendered. But if a person with a post-graduate degree who has done due diligence on a supplier's offer cannot protect himself from being overcharged, it is unreasonable to expect others to avoid being overcharged.

Q. Is there reason to believe that all deregulated suppliers will respect consumers and deal fairly with them?

A. No. In markets for all kinds of commodities and services, even the most prestigious firms have been caught engaging in misleading practices. However, based on the experience with electricity and gas deregulation in other states, unscrupulous marketers will solicit customers and from time to time, other marketers may try to gain an unfair advantage by unfair dealings with unsuspecting or unprotected consumers.

Q. Please provide another example of unfair dealing in the deregulated natural gas supply market.

A. In Ohio, one customer's experience[3] illustrates an experience too frequently faced by customers who switch to deregulated suppliers. A gentleman signed up for a fixed-rate natural-gas contract, in the expectation that his heating bills would drop. Instead, he was faced with larger gas supply bills than when he took service from the utility. He was quoted as saying of the salesperson from the deregulated supplier that "They told me there were no extra charges." The customer stated that he had been misled. As a disabled worker subsisting on disability insurance, he could not afford to make the wrong choice for natural gas. His plan with the deregulated marketer costs about $20 per month more than he would have paid his Ohio gas utility. When he signed with the marketer, he did not realize he faced extra charges, such as a gas transportation fee and sales tax. He

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[3] See Some Feel Scammed by Gas Contracts, Columbus Dispatch, March 15, 2009

was also unaware that he had agreed to a $125 cancellation fee to withdraw before the term's end. He filed a complaint with the Public Utilities Commission of Ohio (PUCO) and was told by the agency that the marketer had followed the law. Because of the cancellation fee, the consumer was locked into unfairly high gas costs.

Q. Have states had to take steps to protect consumers from unreasonable practices?

A. Yes. Illinois by statute limits early termination fees to $50.[4] This provision is included in a statute (Public Act 95-1051) by which Illinois has had to address a number of unfair and misleading practices by natural gas marketers.

Q. Please describe the provisions of the Illinois consumer protection statute.

A. I have included a summary of the Illinois natural gas marketing consumer protection statute as my Exhibit NB-2. Public Act 95-1050 took effect April 10, 2009. The law prohibits behavior that locks customers into unfair contracts. It specifies a 10-day rescission period for rejection of the agreement after it is first signed. As I have noted, it limits early termination fees to $50. In addition, it also allows a consumer to cancel a gas supply contract without paying any early termination fee, if done within 10 days of receiving the first bill with the marketer's charges. The statute provides for detailed disclosures of such important elements of the contract as price, terms and conditions, any penalties for early termination, the rights to rescind, and notices of switches to other suppliers with a right of rescission. Under the Illinois statute, marketers must comply with Illinois law regarding solicitation and sales verification, requirements applicable to in-person solicitation (including door-to-door solicitation), telemarketing, consumer-

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[4] A summary of protections for consumers in the Illinois deregulated natural gas supply space is available at the Illinois Commerce Commission website by the links to Natural Gas Choice to Consumer Education and scrolling down to Consumer Protection.

initiated calls, and internet enrollment. Customers can get their names on a "do not call" list maintained by the gas utility. As part of these protections against unfair or deceptive sales practices, the statute specifically bars a marketer from misrepresenting an affiliation with the gas utility, government, or consumer groups. These statutory protections were required because consumers in the deregulated supply market were harmed by all the practices prohibited, and did not receive from deregulated suppliers the disclosures required and the protections provided.

Q. Please describe some other violations of consumer rights that have been experienced in the deregulation of natural gas supply.

A. As we have seen in the telephone and electricity markets, customers have been "slammed." That is, without the consumer actually having agreed to take service from a marketer, the marketer has the utility switch their gas supply over, usually on some pretext about the interaction between consumer and supplier. States have had to require a third-party verification of a decision to switch utility services, and undertake vigorous prosecutions of slammers through administrative proceedings, in order to keep this practice at a minimum.

Q. Many states have a consumer protection statute that applies to most otherwise unregulated consumer transactions, and that gives the customer a three-day grace period after signing up with a marketer to rescind the agreement, no questions asked. Is that kind of rescission opportunity sufficient protection for customers who feel they have been given the hard sell and been confused by the sales pitch of the marketer?

A. No. The common 3-day right to rescind, available under many state consumer protection acts, does not help the typical victim of misleading sales practices in marketing deregulated gas supply. After all, the bill that alerts the customer to the actual charges he will face does not come until some time after the expiration of the rescission period, often a month or two months later. It is for this reason that the Illinois statute included a right to rescind without penalty *after* the first bill with charges from the marketer.

Q. If a customer can show that he was misled by the marketer and fraudulently induced to sign a gas supply contract that turns out not to provide the savings the customer expected based on the sales pitch, does he not have resort to lawsuits or complaints to the state Attorney General or similar consumer protection officer?

A. No. There may be a legal right to sue, but the amounts in controversy are so small relative to the transaction costs of legal process, that the right is unavailable as a practical matter. Similarly, Attorneys General usually are not staffed sufficiently to allow full investigation into every complaint of consumer protection violations. Often a state Attorney General office will take action only after a pattern of misbehavior is observed over time, based on consumer complaints. In the meantime, individual consumers have little or no recourse.

Q. What other adverse impacts can a shopper face under deregulated gas supply contracts?

A. As in other markets, marketers sometimes include an automatic renewal clause in their contracts, with a penalty fee for early cancellation. As we have seen, that locked the Ohio customer into an unsatisfactory deal. Worse yet, in that same contract, the automatic renewal feature extended the penalty for "early" termination into the new contract term. The automatic renewal feature also does not state the price that will apply. If a customer did not read the fine print and the supplier did not take pains to explain these provisions, she might enter into a contract only to find that after the first year the terms changed for the worse, and she had no recourse. In the case of one Ohio consumer, her late husband had signed up with the supplier, and the widow was not aware of the roll-over and price terms of the agreement until her bills shot up dramatically one winter.[5] Again, Illinois had to address this type of unfair dealing by statute; market forces did not drive out marketers who resorted to these practices.

Q. You say that information provided by regulators about price comparisons cannot protect consumers adequately from misleading or confusing offers. Why is that?

A. The comparison of a customer's present utility gas service to a marketer's offer is actually quite complicated. It is hard to provide an easy-to-use tool that customers can use to make informed shopping choices. For example, the Ohio Commission maintains an "apples to apples" chart on its website that provides comparisons of current offers by natural gas suppliers. Using the tools available, I found it difficult to compare the marketers' offers to the default service offered by the utilities. I have attached as my Exhibit NB-3 copies of some pages a customer would have to use in order to make the "apples to apples" comparison. The data are complete, and the PUCO has made an effort through buttons and links to make the data available. However, I found it hard to navigate the site. In fairness to the Ohio Commission, I tried to use a bill calculator offered by a consumer advocacy group in New York State, with similar inability to get it to estimate a customer's bill.

Q. Have all states deregulated customer service protections as well as price when introducing residential supply deregulation?

A. No. For example, the New York State Public Service Commission pursued a deregulated structure under which marketer behavior towards customers in areas such as billing, collection and the like would not be regulated. The effect of this was to undermine

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[5] Dan Gearino *Taking Heat*, Columbus Dispatch, May 3, 2009, available at http://www.dispatch.com/live/content/local_news/stories/2009/05/03/gas_main1__new_.ART_ART_05-03-09_A1_HADNK51.html.

significant protections against unfair treatment that had been legislated for gas consumers. When the Commission persisted in its policy of complete deregulation, the legislature intervened, and in 2002 restored important customer protections for those who obtained their gas supply from marketers.

Q. It may be argued that the Commission should not burden the transaction between the customer and the market supplier with any consumer protection obligations, as this would discourage marketers from entering the state. How do you respond to this argument?

A. The proposal that a market should be created by eliminating existing consumer protections is another of the numerous unreasonable attempts to create a deregulated gas market by shifting costs and risks to consumers. In this case, the consumers at risk would be those who venture into the deregulated supply market. In fact, they may not realize when they sign up with a marketer that in doing so they have relinquished valuable protections against unfair dealings. If the result of requiring basic fairness on the part of marketers dampens the interest of marketers to enter the state, that fact in itself would be an indication that the margins available in a market with customer rights are not sufficient to support fair competition. The objective should be to create an industry structure that leads to improved service and lower prices for consumers. It is not to create an industry structure that permits certain firms from making profits at the cost of the abandonment of consumer protections.

Q Turning now to the question of supply prices, please discuss the effect of gas deregulation on rates and ultimately customer bills, in a situation where rates are not set based on cost of service plus a reasonable return on equity. Please explain the basis for this concern.

A. From the customer's point of view, the promise of deregulation is lower rates, and thus lower gas bills. Without such lower bills, there is no point to deregulation. Sales are ultimately based on price alone. The gas commodity cannot be divided into different aspects of natural gas, in the way that a telecommunications competitor can offer more or fewer features in a cell phone package. And shopping for natural gas supplies is difficult, time consuming and for many customers a low priority for use of time in their busy lives. The claim that competition is the only route to provide desirable rate design options for customers is not credible. Choices of tariff designs, if desirable, can be adopted by a regulated utility.

Q. Doesn't economic theory say that competitive markets will produce lower prices for consumers?

A. It is important to distinguish between an abstract economic theory, such as the general superiority of competition, and the reality in specific situation, such as gas supply deregulation. Competition has to be effective in order for it to produce benefits. There are several reasons why deregulation of gas supply for small customers does not produce *lower* bills, but often produces *higher* bills. As we have seen, there is evidence that customer service suffers under gas deregulation. As we have learned in the last three decades, competitive approaches have not worked as promised in many aspects of the utility industry. There are reasons to be concerned that rates for shoppers and non-shoppers in Kentucky will increase with gas supply deregulation.

Q. Please provide an example of the failure of deregulation to provide lower bills for consumers.

A. According to the 2009 annual report of the Columbia Gas "Choice" program, as of March 2009, "Choice customers have saved ($3,799,598). " This figure is calculated as the amount paid by customers compared to the amount the customers would have paid if they had not opted to be supplied by a marketer in the first place. The $3.8 million figure is in parentheses. In other words, those Kentucky residents in the Columbia service area who took service from a competitive supplier actually paid in aggregate $3.8 million more than they would have paid if there were no gas supply deregulation, and their gas utility continue to supply the commodity.

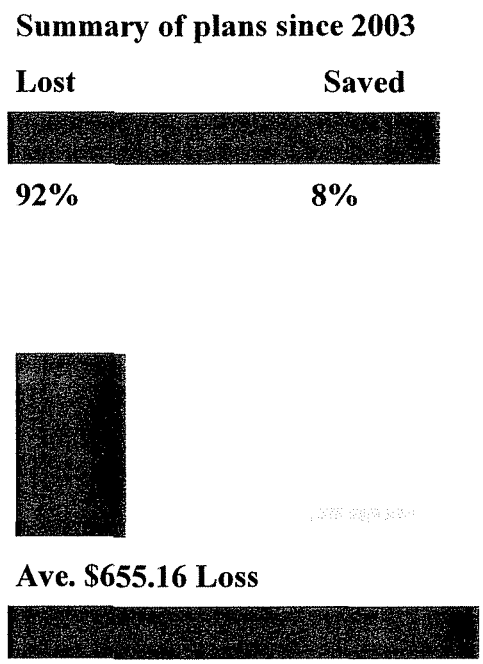
Q. Please discuss the risk of higher gas costs in the event the market is split between shoppers and those who remain with the gas utility.

A. Economic forces will push marketers to seek out the customers with the largest volume of business and the largest margins. Customers who remain with the gas utility will thus tend to be customers with less attractive loads. All things equal, the cost of supply for non-shoppers will rise, as larger margin customers migrate.

Q. Please provide some examples of situations in which deregulating gas supply for residential customers has produced higher rates.

A. Attached to my testimony as Exhibit NB-4 is a chart prepared from data gathered by the Illinois Citizens Utility Board (CUB) about winners and losers in residential natural gas shopping, from the beginning of residential supply deregulation to the present. CUB was created by statute to represent the interests of residential utility customers. The gas supply shopping winners have saved money relative to the price they would have paid to the utility had they remained on utility supply service. Losers have lost money relative to the regulated commodity price. Each bar on the chart shows the results for a marketer. If the marketer offered or offers different plans (fixed and variable pricing) the chart reflects the average for all of that marketer's customers, and also the results for each pricing plan separately. [Thus, there are more bars than there have been suppliers]. Only one of the twelve suppliers provided its customers a better deal than the utility supply service. The savings of customers of that lone supplier over its contract term was under $10. Customers of all other Illinois marketers lose money over the term of their contract. The largest loss is over $1,300. A summary of all the results for all residential gas shoppers in Illinois since residential supply deregulation was begun is shown below.

Gas Deregulation:
Percent and Level of
Losers and Winners
Among Shoppers



As of June 16, 2010[6]

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[6]Source: Illinois CUB Market Monitor, available at http://www.citizensutilityboard.org/GasMarketMonitor.php

Q. Are their further structural reasons that prices may be higher under deregulation?

A. Yes. Moving to deregulation imposes costs on the industry that are not incurred in the case of the vertically integrated distribution utility. Competition cannot eliminate the incremental costs associated with moving to gas deregulation. These include the costs of "unbundling" what had been a set of complementary services provided efficiently by one entity. For example, under deregulation, multiple suppliers would have to purchase gas, sign up customers, handle customer complaints and otherwise duplicate the efforts of their competitors or the gas utility.

Q. Please discuss other reasons why deregulated marketers' rates would be higher than those of the gas utility.

A. As noted above, consumers can be induced to take service under contracts that are in fact disadvantageous to the consumer. One of the ways in which a marketer can charge more than the default price is by offering a flat rate service, and persuading the regulator to move default customers to more volatile, frequently changing rates. While this would not appear on the surface to provide a way to charge *higher* rates, it can do so if default service is not available on a flat rate basis. In effect, marketers represent their "fixed price" offering as being less expensive than the comparable default utility service, whereas in fact it is not. Customers are not able to gauge whether the "hedging premium" included in a marketer's flat rate offering is excessive, and end up overpaying for a relative stability that is an artifact of the way the supply business was deregulated and default service was arranged.

Q. Are there other factors that can lead to higher prices in the deregulated gas supply market than are charged by regulated gas utilities?

A. Yes. If one or more firms are a dominant force in the marketplace, they may exert their market power to keep prices above the level that true competition should produce. Where the number of marketers is small, a few firms can achieve oligopoly status, enabling them to maintain above-competitive prices. This phenomenon may have been the cause behind the suspiciously high prices experienced in the Atlanta, Georgia natural gas supply market in 2001. As described by a senior economist with the National Regulatory Research Institute,[7] observers noted that marketer gas was selling at a high price relative to prices charged by neighboring gas utilities, for several months. Since May 2001, the average price of gas in sampled southeastern states was lower than the commodity cost in the deregulated Georgia market. For example, the report showed that in September of 2001 the average price of gas in the Georgia deregulated market (including both fixed-price and variable-price service) was about 54 percent higher than the average price of gas sold by a sample of eight gas utilities in southeastern states. The researcher did not have sufficient evidence to prove or disprove that market power had been exercised. However, he noted that the small number of marketers (four marketers had over 90% of the market among them) and the dominance of one marketer (the deregulated supply affiliate of the gas utility) were indications that market power could have been a key reason for the excessive prices in the deregulated market.

Q. Don't some economists theorize that no firm can maintain market power for any length of time where new entrants can come into the market and undercut the dominant player's ability to maintain prices above a competitive level?

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[7] Ken Costello, *Gas Marketing Market Power: The Competitiveness of the Georgia Deregulated Gas Market,* The National Regulatory Research Institute, prepared for the Georgia Public Service Commission, January 2002.

A. There are some economists who theorize that a firm cannot exert market power so long as competitors could enter the market and take away business by offering service at a competitive price. This is the so-called "contestability" theory. But even if one ascribes to the theory, a precondition for a contestable market is one where competitors could in fact enter and gain market share. There are significant barriers to entry in the deregulated gas supply business, making it less likely that the market power of dominant players can be dampened by the threat of competition.

Q. What are some barriers to entry into the deregulated gas supply business?

A. As NRRI senior economist Ken Costello said in the report referenced above on market power in the Georgia gas supply market:

> Entry barriers are a major source of market power. Prospective marketers.... would have to expend money in marketing, sales and advertising. Customer acquisition cost can be quite high for new entrants. There are also traits of economies of scale in entry where a marketer's average cost of attracting and acquiring customers (especially residential customers) declines as more customers are signed up.

Q. If a small number of suppliers can exercise market power as oligopolists, does it not follow that the Commission should take all steps possible to lower entry barriers for competitors?

A. Many of the market barriers facing entrants into the gas supply business are simply the result of the market being uneconomic in the case of customers with small loads.. A regulator should not lower marketers' entry barriers by shifting their risks and costs to others.

Q. Please turn now to your concerns about natural gas deregulation's impacts on reliability. In what ways would gas supply deregulation pose risks of eroding reliability?

A. The risks to reliability, and risks associated with elimination of the obligation to serve are related. Under the vertically-integrated structure that has served gas customers for decades, the gas utility is responsible for ensuring that adequate supply is delivered to the city gate and to the customer. The gas utility has a well-established obligation to serve customers. The gas utility is subject to the supervision of the Commission. By contrast, the marketer may have a contractual obligation to supply a particular customer, but in the case of default, a lawsuit is the only means to obtain redress for the marketer's failure. For the amounts in question with small consumers, lawsuits are not a practical means of redress.[8] This is true by definition when the supplier not only fails to perform, but actually goes out of business, via bankruptcy or withdrawal from the State. Contract law is all about sorting out who is responsible if things go wrong, and the reason for the law is the expectation that they *will* go wrong. By contrast where the gas seller is a regulated utility, reliant on the Commission for approval of its rates and terms and conditions, the utility has a more continuous relationship with supervisory authority. It has a positive obligation to obtain and provide sufficient supply, and this alone provides a greater assurance that sufficient supplies will be provided than individual contracts.

Q. Have deregulated gas suppliers gone bankrupt or otherwise been unable or unwilling to provide service in states that have deregulated gas supply?

A. Yes. As has been the case with other efforts to open low-volume markets to marketers, unprofitable suppliers have often started up in a state, and left their customers without

[8] In some cases, businesses have been successful in limiting their customers to arbitration under rules that consumer advocates argue limit customer rights.

service upon closing down their business in the state. The result of this is to dump their customers on to the utility, which must therefore be prepared to serve the customers without much notice. The unreliability of deregulated suppliers thus means that the default supplier (in almost every state, the utility) must incur costs to have sufficient capacity and supply if and when a supplier ceases operation.

Q. Are there further reasons to be concerned about supply reliability under a deregulated structure?

A. Yes. Inherent in the gas supply responsibility is the need to have sufficient supply for the future. The future by definition and in principle is unknown to a utility. But for a gas supply competitor, future supply needs are harder to forecast than for a utility. Customers can and do come and go during the year, absent regulation of the contract such through limitations on open enrollment. Even with annual open enrollment limitations, the numbers of customers of any marketer will vary from year to year, even if the customer base in the service area as a whole remains stable. This produces the risk that deregulated suppliers may under-forecast supply requirements. Deregulated suppliers may have financial obligations to the gas utility in the event that they under-forecast, but the utility's redress for non-payment, like that of the individual consumer, is through the court system. In addition, to protect the utility and its customers from the risk of supplier mis-forecasting, the costs for balancing services must be compensatory.

Q. How should the risk of mis-forecasting on the part of marketers be dealt with?

A. The distribution utility should have in place tariffs that penalize failure to balance daily quantities. The balancing provisions should encourage deregulated suppliers to meet their obligations to bring the right amount of gas to the city gate to serve their customers, and compensate the distribution utility for balancing penalties it may incur because some of those delivering gas to its city gate have triggered the utility to violate the balancing requirements of its capacity contracts.

Q. Please discuss the issue of strandable costs. First, what are strandable costs in the context of gas supply deregulation?

A. In the context of gas supply deregulation, strandable costs are any costs incurred by the gas utility on behalf of customers that the customers may avoid by leaving the utility and taking supply from a competitor. These typically include capacity obligations, but can include any long-term obligation made by the gas utility on behalf of the shopping customer that the customer would avoid when switching suppliers.

Q. How would strandable costs unfairly increase the rates of non-shopping consumers?

A. If a customer can begin to take gas supply from a deregulated supplier, the question arises who should pay the strandable costs. If the shopping customer does not pay them, they could be added to the cost burden of the remaining, non-shopping customers. The only other alternative in such a case would be for the gas utility shareholders to pay for them. As might be expected, gas utilities are likely to argue that their shareholders should not be responsible for such costs.

Q. On whose behalf were so-called strandable costs incurred?

A. By definition, they are costs that were accrued for the benefit of the customer who is now shopping.

Q. What options are there to address costs that might be stranded in a switch to deregulated supply?

A. There are several options including costs incurred on behalf of a customer who then switches from the gas utility to a competitive supplier should follow that customer and shareholders of the utility could absorb the costs

Q. If stranded costs are assigned to customers who switch service, what impact would that have on the extent of switching to a non-utility market supplier?

A. Mandatory assignment of capacity costs and other provisions to eliminate stranded costs and fairly allocate costs incurred to serve departing customers would likely dampen customer interest in switching, and marketer interest in soliciting customers' business. I recall when the New Hampshire Commission was considering the introduction of gas supply competition. The parties had extensive negotiations concerning such issues as mandatory capacity assignment. When we determined that capacity assignment would be mandatory, the marketers expressed disinterest in pursuing residential customers in our state.

Q. If mandatory capacity assignment (and other fair allocations of strandable costs to the customers for whom they were incurred) dampens marketer interest, should capacity assignment not be voluntary, to encourage competition?

A. The question stands the issue on its head. If we were to allow departing customers to shift the costs incurred for them on to non-shopping customers, it might encourage greater shopping. But it would be uneconomic shopping. It would be shopping that was artificially bolstered by the transfer of cost responsibility from one group to another. That does not describe the kind of competition that is sought after when discussing natural gas supply deregulation. Rather, it describes a "market" for gas supply that is a creation of the regulatory assignment of costs.

Q. Please discuss the question of marketing costs. By whom should they be borne if the Commission deregulates the gas supply market for residential customers?

A. If the Commission were to deregulate the state's gas supply market, then AARP supports Commission-sponsored, neutral, customer education that informs consumers of the new regime, and of their rights and protections. However, marketing costs should be borne by the marketer seeking residential customers' business. Some have argued that to facilitate the development of a market, customers education should promote switching, and that this type of marketing should be paid by all customers, since in theory all customers can benefit from switching. As in the case of strandable costs, this argument seeks to justify moving costs from marketers and their shopping customers to the customers who do not move to a deregulated supplier. If and to the extent the market is not self-sustaining, able to pay its own way and earn sufficient profits, the answer should not be a government-enforced subsidy of the market. This is especially the case since education programs should not be designed to create a desire for the services of deregulated suppliers ,but rather to provide information.

Q. In your opening summary, you said that deregulation of gas supply could affect programs aimed at making gas affordable for low-income customers. Why would deregulation undermine low-income programs?

A. Deregulation of gas supply could withdraw a base of financial support for bill affordability.

Q. What utility bill assistance programs are offered in Kentucky at present?

A. Electric utilities offer bill credits under the "Home Energy Assistance" program. Louisville Gas & Electric sponsors a fuel fund for heating cost assistance, and provides a matching grant to the fund.

Q. How could gas supply deregulation affect utility bill assistance programs?

A. As gas supply marketers solicit the business of the highest-margin residential customers, they leave the utility with lower-margin customers on average. Suppliers will also avoid marketing to customers whose low income puts them at risk for inability to pay. Again, the proportion of payment-troubled households being served by the utility will rise. These effects put pressure on the available funds. Unless the Commission takes steps to require a fair contribution to such efforts from marketers, deregulated suppliers will not provide bill assistance or contribute to the utility programs. Also, gas supply deregulation could make it more difficult to introduce a larger bill assistance program, by placing all the costs on the remaining customers of the utility, unless all customers, including shoppers, contributed through a non-bypassable charge.

Q. Please provide some information on the extent to which residential customers have gone into the deregulated gas supply market for their gas supply in various states

A. In the State of New York, in the last few years, the percentage of residential customers using a deregulated gas supplier has fluctuated between 8% and 12%.[9] In California, the utilities commission has estimated that about 2% of customers use deregulated gas suppliers. In Maryland, approximately 12% of residential customers take supply from marketers. As shown in my Exhibit NB-5, the percentage of residential customers shopping in the deregulated supply market started at about 12% in 2002, and dropped to around 7% by 2004. While the percentage moves up and down slightly from year to

[9] See data provided at http://www3.dps.state.ny.us/W/PSCWeb.nsf/All/4759ECEE7586F24B85257687006F396E?OpenDocument.

year, the portion of Pennsylvania consumers using the deregulated market for their gas supplies has stayed at around 7% since then.

Q. What is the significance of such low percentages of customers using the deregulated gas supply option in states that have opened the supply business to marketers?

A. The low percentage of residential customers opting to take commodity supply from other than the regulated utility is an indication that gas supply deregulation does not provide an attractive value proposition for residential customers. It also reflects the fact, observed by more than one state commission staff in response to the Kentucky Commission's survey on these issues, that marketers do not find it very attractive to sell supply to customers with very small loads. This in turn prompts marketers to seek concessions in the design of the marketplace, which place unfair burdens on the utility or its non-shopping customers.

Q. In light of all your observations above, what do you conclude about the benefit to residential consumers of the deregulation of the gas supply market?

A. Gas supply deregulation does not provide net benefits to residential consumers. It does not bring the promised lower prices. It also brings with it new problems that are difficult for a state regulator to address with satisfaction.

Q. What do you recommend about the issue of deregulating natural gas supply in Kentucky?

A. I recommend that the Commission not deregulate the natural gas supply market.

Q. Many states have deregulated gas supply. Why should this state decline to do so?

A. As I have discussed above, there are many reasons why deregulation will not result in effective competition and will not produce prices lower than those the gas utility can offer. It is perhaps for this reason that only a small percentage of residential customers take gas from unregulated suppliers even where gas supply is deregulated.

Q. Assuming the Commission is inclined to open the gas supply market to competition, despite the issues you describe, how can the Commission minimize the risks of deregulation and best protect consumers, both shoppers and non-shoppers?

A. If the Commission decides to pursue natural gas supply deregulation, I recommend that the Commission convene a working group or collaborative effort comprised of Staff, representatives of all customer classes, marketers, gas utilities and other interested parties to develop a recommended framework for gas supply deregulation. Topics should include:

- consumer protections (including required disclosures, sales and marketing practices and remedies, limitations on the use of agents, protection against unfair disconnection, limitations on termination fees, protections against slamming, consumer privacy, etc),
- Identification and treatment of strandable costs,
- Provision of default supply, default supply procurement requirements and pricing options,
- Certification of marketers, including provisions regarding financial integrity and ability to serve,
- Safeguards and remedies relating to market power,
- Data collection and reporting responsibilities,
- Consumer education,
- Standards of conduct relating to affiliates of the local distribution utility,

- "Apples to apples" price comparisons,
- Protection of vulnerable customers such as low-income customers, and
- Any other aspects of residential gas supply reliability,

The participants should be charged with gathering current information about the experience of other states with these issues. The participants in the working group should then report back to the Commission with a recommendation as to the next steps in the deregulation of gas supply. If the group is unable to reach consensus, then the Commission could commence a proceeding to resolve open issues.

Q. Does this conclude your testimony?

A. Yes.

Exhibit NB-1

Nancy Brockway
NBrockway & Associates
10 Allen Street, Boston, MA 02131
nbrockway@aol.com
617-645-4018

Experience

Principal, NBrockway & Associates, utility consulting, 2003 to present
Director of Multi-Utility Research and Policy, NRRI, 2/08 – 10/08
Commissioner, New Hampshire Public Utilities Commission (1998-2003)
Utilities consultant and attorney, National Consumer Law Center (1991-1998)
General Counsel, Massachusetts Public Utilities Commission (1989-1991)
Staff Attorney, Assistant General Counsel, Massachusetts Commission (1986-1989)
Hearings Officer, Senior Staff Attorney, Maine Public Utilities Commission (1983-1986)
Executive Director, Maine Legal Services for the Elderly, Inc. (1981-1983)
Staff Attorney, Directing Attorney, Pine Tree Legal Assistance, Inc. (1979-1981)
Staff Attorney, UMass Student Legal Services (1977-1979)
Staff Attorney, Western Massachusetts Legal Assistance, Inc. (1976-1977)
Staff Attorney, Legal Aid Society of New York (1974-1976)

NARUC Committee Memberships and Public Service

NARUC Energy Resources and Environment Committee
NARUC Consumer Affairs Committee (Vice-Chair)
Consumer Affairs Committee, New England Conference of Public Utility Commissioners (Chair)
Steering Committee, National Council on Competition in the Electric Industry
ISO-NE Advisory Committee
NEPOOL Review Board Advisory Committee
NARUC Ad Hoc Committee on Competition in the Electric Industry
NARUC Committee on Communications
FCC Joint Conference on Accounting
North American Numbering Council
NBANC Board of Directors

Other Public Service

Board Chair, PAYSAmerica, Inc., 2004-2008
Member, New Hampshire Site Evaluation Committee, 1998-2003
Independent Conservation & Load Management Expert, MA Energy Office, 1991-1993.
Member, Massachusetts Energy Facility Siting Board
Member, Massachusetts Board of Registration of Allied Mental Health and Human Services Professional
Member, Energy and Transportation Task Force, President's Council on Sustainable Development

Bar Memberships

Massachusetts
New York State and Maine (inactive)

Education

B.A. with honors, 1970, Smith College, Northampton, MA
J.D., 1973, Yale Law School, New Haven, CT
Coursework in statistics, Northeastern University, Boston, MA

NANCY BROCKWAY: TESTIMONIES

Case name	Client Name	Topic	Jurisdiction & Docket No.	Date(s) Filed
In the Matter of WMECO Smart Grid Pilot Program, filed per Section 85 of the Green Communities Act	Low Income Weatherization and Fuel Assistance Program Network, Massachusetts Energy Directors' Association	Smart Grid pilot design	Massachusetts DPU Docket No. 09-34	5/5/10
Nevada Power and Sierra Pacific Power Integrated Resource Plans	Attorney General, Bureau of Consumer Protection	AMI security, privacy and customer acceptance	Nevada PSC Docket Nos. 10-02009 10-03023	4/26/10
Application of Louisville Gas & Electric Co. for an Adjustment of its Electric and Gas Base Rates	AARP	cost allocation and rate design	Kentucky Public Service Commission Case No. 2009-00549	4/22/10
In the Matter of NSPI Application to Approve Nova Scotia's Electricity Demand Side Management Plan for 2011	Consumer Advocate appointed by the Utilities and Review Board	DSM program design and evaluation	Nova Scotia UARB Docket No. P-884(3)	4/9/10
In the Matter of the NSTAR Smart Grid Pilot Program, filed per Section 85 of the Green Communities Act	Low Income Weatherization and Fuel Assistance Program Network, Massachusetts Energy Directors' Association	Smart Grid pilot design	Massachusetts DPU Docket No. 09-33	11/6/09

NANCY BROCKWAY: TESTIMONIES				
Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan	Pennsylvania Office of Consumer Advocate	Smart grid deployment; demand response and energy efficiency.	Pennsylvania PUC Docket No. M-2009-2123950	10/21/09
IMO Potomac Electric Company and Delmarva Power & Light Company Request for the Deployment of an Advanced Metering Infrastructure and Establishment of Regulatory Assets	Maryland Office of Public Advocate	Smart grid deployment; demand response and energy efficiency.	Maryland PSC Case No. 9207	10/20/09
Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan	Pennsylvania Office of Consumer Advocate	Smart grid deployment; demand response and energy efficiency.	Pennsylvania PUC Docket No. M-2009-2123951	10/16/09
IMO BG&E Authorization to Deploy a Smart Grid Initiative and to Establish a Surcharge Mechanism for the Recovery of Cost.	Maryland Office of Public Advocate	Smart grid deployment; demand response and energy efficiency.	Maryland PSC Case No. 9208	10/13/09
IMO DTA of FortisAlberta, Phase I/II, 2010-2011	Utilities Consumer Advocate of Alberta	Smart grid deployment	Alberta Utilities Comm'n App. No. 1605170	10/9/09
IMO Unitil and National Grid Smart Grid Plans per Section 85 of the Green Communities Act	Low Income Weatherization and Fuel Assistance Program Network, Massachusetts Energy Directors' Association	Smart Grid pilot design	Massachusetts Department of Public Utilities Docket Nos. 09-32 and 09-31	8/31/09
Columbia Gas Rate Case	AARP	SFV rate design, miscellaneous fees, recovery of uncollectibles via rider	Kentucky PSC Case No. 2009-00141	7/29/09

NANCY BROCKWAY: TESTIMONIES				
Appalachian Power Company, etc. ENEC proceeding	Covenant House and West Virginia CAG	Impact of proposed rate increase on low-income customers and means to improve collection procedures.	West Virginia PSC Case No. 09-0177-E-GI	5/26/09
In Re Combined Application of South Carolina Electric and Gas	Friends of the Earth	Need for and cost of proposed Summer nuclear power plant; alternatives including energy efficiency and renewables.	South Carolina Public Service Commission, Docket No. 2008-196-E.	Direct: 10/17/08 Surrebuttal: 11/17/08
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Proposed general rate increase, rate design.	Nova Scotia Utility and Review Board, P-886	12/07
Pike County Commissioners v. PCL&P	Pennsylvania Office of the Consumer Advocate	Options to address rate shock in transition to uncapped competitive POLR rates	Pennsylvania Public Utilities Commission, Docket No. C-20065942	11/06 (hearing in January 07)
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Extra Large Industrial Interruptible Rates	Nova Scotia Utility and Review Board, P-883	8/06
UGI/Southern Union, Proposed Merger	Pennsylvania Office of the Consumer Advocate	Impacts of the Proposed Merger on Ratepayers and Rates, Risks and Benefits of Proposed Merger, Synergies, Reliability	Pennsylvania Public Utilities Commission, Docket Nos. A-120011F2000, etc.	5/06
SEMCO Energy Services Gas Cost Recovery Plan	PAYS America, Inc.	Relationship Between DSM and Gas Costs	Michigan Public Service Commission, Docket No. U-14718	5/06 (not admitted)
Re: Electric Service Reliability and Quality Standards	Delaware Public Service Commission	Application of Proposed Rules to Competitive Suppliers and Cooperatives	Delaware Public Service Board, Docket No. 50	1/06
Exelon/Public Service Electric & Gas, Joint Petitioners	New Jersey Division of the Ratepayer Advocate	Impacts of Proposed Merger on Service Quality, Reliability, and Gas Safety, and Options to Maintain Historic Standards.	New Jersey Board of Public Utilities, BPU Docket No. EM05020106 OAL Docket No. PUC-1874-05	11/05-12/05
Exelon/Public Service Electric & Gas, Joint Petitioners	New Jersey Division of the Ratepayer Advocate	Risks and Benefits of Proposed Merger of Exelon and PSE&G, Options for Assuring Benefits and Mitigating Risk	New Jersey Board of Public Utilities, BPU Docket No. EM05020106 OAL Docket No. PUC-1874-05	11/05-12/05
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Economic Development Rates	Nova Scotia Utility and Review Board, P-882	10/05
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Revenue Requirements, Cost Allocation, Rate Design, Demand Side Management, Economic Development Rates	Nova Scotia Utility and Review Board, P-882	10/05 – 11/05
Bay State Gas Company	Local 273	Customer Service, Reliability, Low-Income Protections, Revenue Requirements	Massachusetts DTE, Docket No. 05-27	7/05

NANCY BROCKWAY: TESTIMONIES

Nova Scotia Power, Inc.	Nova Scotia Utility and Review Board	Domestic Consumer Perspective on Proposed Rate Case Settlement Agreement	Nova Scotia Utility and Review Board, P-881	1/05
Cincinnati Bell Alternative Regulation	Communities United for Action	Universal Service and alternative regulation of telephone service	PUCO, Case No. 96-899-TP-ALT	12/97
UGI-Electric Utilities, Inc.	Pennsylvania OCC	Universal Service issues in electric restructuring plans; including efficiency funding	PA PUC, No. R-00973975	1997
West Penn Power Co.	"	"	PA PUC, No. R-00973981	1997
Duquesne Light Co.	"	"	PA PUC, No. R-00974101	1997
PECO, Inc.,	"		PA PUC, No. R-00973953	1997
PP&L	"	"	PA PUC, No. R-00973954	1997
Met Ed.	"	"	PA PUC, No. R-00974008	9/97
Penelec	"	"	PA PUC, No. R-00974009	9/97
In the Matter of the Electric Industry Restructuring Plan	New Hampshire Legal Services	Low-income rates and DSM, impacts of restructuring on low-income consumers	New Hampshire Public Utilities Commission, D.R. 96-150	Nov., Dec. 1996
Notice of Inquiry/ Rulemaking. Establishing the procedures to be followed in electric industry restructuring.	Mass. CAP Directors Association, Mass. Energy Directors Association, named Low-Income Intervenors	Electric industry restructuring	Massachusetts Department of Public Utilities, D.P.U. 96-100.	to 10/98
Telecon Universal Service Docket	Pennsylvania Office of Consumer Advocate	Rate rebalancing, universal service, telephone penetration.	Pennsylvania Public Utilities Commission Docket No. I-00940035	1996
In Re: Complaint of Kenneth D. Williams v. Houston Lighting and Power Co.	Named Low-Income Consumers	Customer service, rate design, demand-side management, revenue requirements	Texas Public Utilities Docket No. 12065	1994-5
Open Access Non-Discriminatory Transmission Services ... and Recovery of Stranded Costs	Direct Action for Rates and Equality, Providence, Rhode Island	Open transmission access in interstate commerce, and stranded costs recovery.	FERC, Nos. RM95-8-000, RM94-7-000.	1994-5
Bath Water District, Proposed Increase in Rates	Maine Office of Public Advocate	Water district cost allocation, rate design, low-income water affordability	Maine Public Utilities Commission, Docket. No. 94-034	12/94, 3/95

NANCY BROCKWAY: TESTIMONIES

Application of Ohio Bell Telephone Co. for Approval of Alternative Form of Regulation	Legal Aid Society of Cleveland and Dayton	Definition of universal telecommunications service, proposal for Universal Service Access program (USA).	Public Utilities Commission of Ohio, Case No. 93-487-TP-ALT	5/4/94
Pennsylvania PUC vs. Bell Telephone of Pennsylvania	Pennsylvania Public Utility Law Project	Definition of "universal telecommunications service"	Pennsylvania PUC No. P-930715	filed 12/93
Joint Application for Approval of Demand-Side Management Programs, etc.	LG&E; Legal Aid Society of Louisville, other Joint Applicants	Cost-effective DSM programs for low-income customers; collaborative process to design DSM programs; cost allocation and cost recovery.	Kentucky PSC No. 93-150	11/8/93
Texas Utilities Electric Company	Texas Legal Services Center	Costs and benefits of DSM targeted to low-income customers	Texas PUC No. 11735	1993
Texas Utilities Electric Company	Texas Legal Services Center	Proposed Maintenance of Effort Rate for low-income customers	Texas PUC No. 11735	1993
Philadelphia Water Department	Philadelphia Public Advocate	Costs of Unrepaired System Leaks	Philadelphia Water Comm'r.	1992
New England Telephone	Rhode Island Legal Services	DNP for non-basic service	Rhode Island PUC, No. 1997	1991
Kentucky Power Co.	Kentucky Legal Services	Low Income Rate	Kentucky PSC No. 91-066	1991
Investigation into Modernization	Invited by Commission	Impact of modernization costs on low income telephone users	New York PSC	1991

Exhibit NB-2

Illinois Alternative Gas Supplier Consumer Protection Statute

Consumer Protection

All Alternative Gas Suppliers must be certified by the ICC to provide service to residential and small commercial customers. A new law (Public Act 95-1051) which took effect April 10, 2009 established consumer rights and protections that include:

Consumer Rights

- Consumers have the right to rescind their agreement without penalty within 10 business days after the date on the gas utility notice to the customer.
- A consumer may not be charged an early termination penalty that exceeds $50 and all early termination penalties must be disclosed to consumers.
- A consumer may terminate an agreement with an AGS without incurring an early termination penalty within 10 business days of the date the first bill is issued. This does not relieve the customer of the obligation to pay for services already received under a contract which was entered into lawfully.
- Consumers who prefer not to receive information or solicitations from suppliers may request to be added to their gas utility's "Do Not Contact List". AGS and their sales agents are prohibited from any direct marketing or soliciting consumers on the list. Consumers may use the following phone numbers to register with their gas utility's "Do Not Contact List":
  - Nicor Gas 1-888-642-6748
  - North Shore Gas 1-866-556-6004
  - People's Gas 1-866-556-6001

Obligations of AGS

- An AGS must obtain customer authorization before switching a customer to another supplier. At a minimum, the authorization must include the identity of the customer, confirmation that the person is authorized to make the change, confirmation that the person wants to make the switch, address where service is to be provided, the price of the service and the material terms and conditions of the service including any early termination fee.
- Before switching a customer, an AGS must clearly and conspicuously disclose in writing the prices, terms and conditions of products and services.
- An AGS must disclose a customer's right to rescind an agreement. The AGS must disclose that the gas utility will send a notice confirming the switch, that the customer has 10 business days from hat date to rescind the switch, that the customer can contact the utility or the AGS to rescind the switch, and the contact information for the utility.
- An AGS is required to disclose the amount of any termination penalty or fee that applies. If an early termination fee applies, the AGS must allow the customer to cancel the contract without any termination fee or penalty within 10 days after the date the first bill is issued. This does not relieve the customer of the obligation to pay for services already received under a contract which was entered into lawfully.
- An AGS must comply with Illinois law regarding solicitation and sales verification requirements applicable to in-person solicitation (including door-to-door solicitation), telemarketing, consumer initiated calls, and internet enrollment.

- Additional solicitation and sales verification requirements apply to in-person and telephone solicitations.
    - An AGS soliciting customers in-person, including door-to-door solicitation, must clearly and conspicuously disclose the salesperson's name and company's address, phone number and website; contact information for the ICC.
    - An AGS soliciting customers by telephone must disclose the name of the person making the solicitation, the name of the AGS, the purpose of the call and ask permission to continue the call.
- An AGS is prohibited from misrepresenting its affiliation with the gas utility, governmental bodies and consumer groups. An AGS is required to establish a call center and provide a toll-free number for customers to resolve complaints.
- An AGS may not obligate a customer to the terms of the agreement if that customer moves outside Illinois, to a location without a transportation service program or to a location where the customer will not require natural gas service. This does not relieve the customer of their obligation to pay for services already provided.
- An AGS may not assign the customer's agreement to another AGS unless that AGS is certified by the ICC, the rates and terms of the agreement do not change during the remainder of the time covered by the agreement, and the customer is given no less than 30 days prior written notice of the assignment including contact information for the AGS assigning the contract and the new AGS.

Source: Illinois Commerce Commission web site, Natural Gas Choice, Consumer Education, Consumer Protection.

PUCO
Apples to Apples Rate Comparison Chart

PUCO > Apples to Apples Rate Comparison Charts
The PUCO produces the *Apples to Apples* charts to provide consumers with a snapshot comparison of current natural gas and electric supplier price options and contract terms. The PUCO updates the *Apples to Apples* charts on a regular basis and verifies each supplier offer to ensure accuracy. The charts list only the certified suppliers that are actively enrolling new customers. As with all contracts, consumers should carefully read and understand all terms and conditions before signing any forms or agreeing to enroll with a supplier for natural gas service.

Natural Gas Apples to Apples Charts

Step 1: Select the Apples to Apples chart for your local natural gas company from the list below.

- Duke Energy Ohio: PDF version | HTML version
- Columbia Gas of Ohio: PDF version | HTML version
- Dominion East Ohio: PDF version | HTML version
- Vectren Energy Delivery of Ohio: PDF version | HTML version
- Apples to Apples Chart Archive
- Sign up to receive notification of changes to these charts

Viewing PDF files requires the Adobe Acrobat Reader.

Step 2: Compare the supplier offers contained in the chart.

Step 3: Use our Apples to Apples Interactive Calculator to determine potential savings.

Note: If you are part of a Governmental Aggregation, the natural gas or electric rate offers through the aggregation are directly comparable with any offers from the marketer's listed in the Apples to Apples Charts.
For natural gas, the aggregation rate can be input into the Interactive Calculator to determine potential savings vs. the local natural gas company. And you can compare the aggregation rate per mcf or ccf directly to a marketer's rate, and multiple the difference by your annual usage to determine the annual benefit.

Apples to Apples Interactive Calculator

Step 1. Verify that your local gas utility company is correctly selected below, if not please select your company.

- Duke Energy Ohio
- Columbia Gas of Ohio
- Dominion East Ohio
- Vectren Energy Delivery of Ohio

Step 2. Enter a supplier base rate from the Apples to Apples chart *Supplier Base Rate* column or supplier literature.

Step 3. Enter your annual gas usage (provided on your monthly bill).

per year

Step 4. Enter your county sales tax rate.

To obtain, call the Ohio Department of Taxation at (614) 466-7351, or access the Ohio Department of Taxation's online county tax map).

%

Step 5. Click calculate.

Calculate | Reset

Complete all information above and use the Calculate button to see the results.

Dominion East Ohio Apples to Apples Chart

Publication Date: June 17, 2010

The PUCO produces the Apples to Apples charts to provide consumers with a snapshot comparison of current natural gas supplier price options and contract terms for individual customers. You may also want to check with your local
government to see if your community has grouped together citizens into a buying pool to purchase gas. The PUCO updates the charts on a weekly basis and verifies each supplier offer to ensure accuracy. As with all contracts,
consumers should carefully read and understand all terms and conditions before signing any forms or agreeing to enroll with a supplier for natural gas service. For a description of Apples to Apples chart-related terms, please refer to
Chart Definitions .

The PUCO provides the tools you need to calculate your estimated cost. The **Self-Calculation Worksheet** that is available on the PDF version of the Apples to Apples Charts, walks you through the steps needed to manually
calculate your own estimated cost. Or, you can access the **Apples to Apples Interactive Calculator** to automatically calculate your estimated costs.

Dominion East Ohio's Rate

The Standard Choice Offer (SCO) Rate is based on the New York Mercantile Exchange month-end settlement price, plus a Retail Price Adjustment of $1.20. The SCO is a monthly variable rate and represents costs associated with
securing natural gas for DEO customers.

DEO's current Total SCO rate is **$8.1826** per mcf.
Effective **06/16/2010** through **07/15/2010**

...

This total SCO rate includes

The SCO Gas Rate of **$5.3550** per mcf, [which does not include applicable sales tax]

DUKE ENERGY OHIO
[showing font actual size from web page]

The PUCO produces the *Apples to Apples* charts to provide consumers with a snapshot comparison of current natural gas supplier price options and contract
terms for individual customers. You may also want to check with your local government to see if your community has grouped together citizens into a buying pool
to purchase gas. The PUCO updates the charts on a weekly basis and verifies each supplier offer to ensure accuracy. As with all contracts, consumers should
carefully read and understand all terms and conditions before signing any forms or agreeing to enroll with a supplier for natural gas service. For a description of
Apples to Apples chart-related terms, please refer to ***Chart Definitions*** that follows the ***Supplier Plans, Rates, Terms and Conditions*** section.

The PUCO provides the tools you need to calculate your estimated cost. The ***Self-Calculation Worksheet*** that follows ***Chart Definitions*** walks you through the
steps needed to manually calculate your own estimated cost. You can also visit ***www.PUCO.ohio.gov*** and click on the ***Apples to Apples*** link to access the

Apples to Apples Interactive Calculator and automatically calculate your estimated costs.
Duke Energy Ohio's Rate
Duke Energy Ohio's (Duke) current total rate is **$0.72100** per hundred cubic feet (ccf)
Effective from **June 02, 2010** to **June 30, 2010**
This total rate includes:
A Gas Cost Recovery (GCR) rate of .... **$0.60090** per ccf
A Gross Receipts Tax rate of .... **$0.02940** per ccf on the GCR
Transportation costs of .... **$0.09070** per ccf (gross receipts tax included)
Duke's GCR rate varies each month and provides a dollar-for-dollar recovery of costs incurred by the local utility to purchase natural gas. The GCR
rate allows Duke to correct any over or under collections of natural gas costs from previous periods if actual costs differ from cost estimates.
Contact information for Duke Energy Ohio: 139 East Fourth St., Cincinnati, OH 45201, (800) 544-6900, ***www.duke-energy.com***
. Total Usage Based Charge of **$2.8276** per mcf

Illinois Residential Gas Shopping Results, 2003 to present

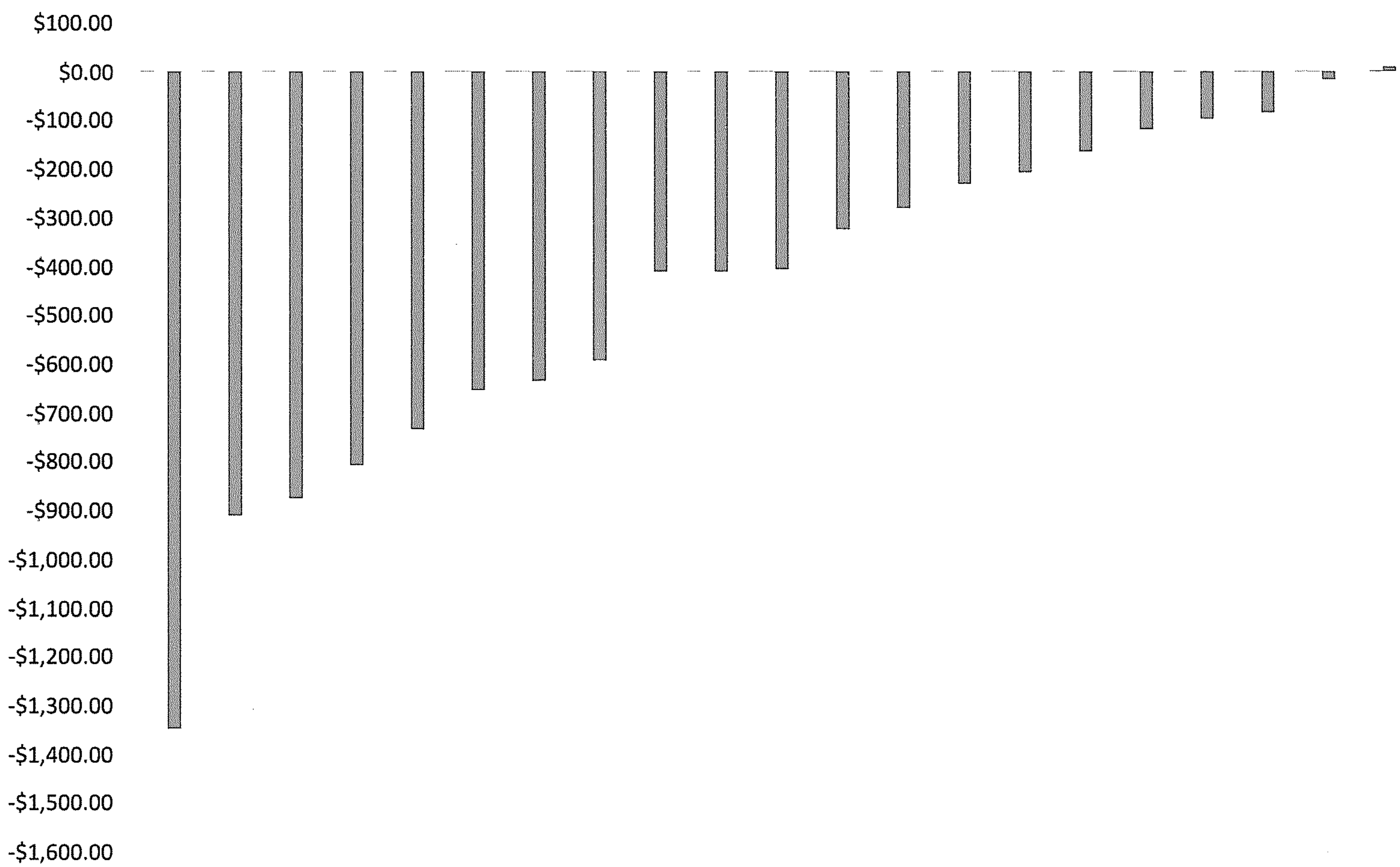
Supplier	Type of rate	Losers	Winners	Average "savings"*
Just Energy	fixed	99%	1%	($1,350.18)
Direct	fixed	100%	0%	($912.20)
MX Energy	fixed	97%	3%	($876.66)
MX Energy	all	98%	2%	($809.26)
Nordic	fixed	96%	4%	($735.04)
All Plans		92%	8%	($655.16)
Integrys	fixed	92%	8%	($635.88)
Integrys	all	90%	10%	($594.42)
IllinNatGas	all	100%	0%	($412.53)
IllinNatGas	fixed	100%	0%	($412.53)
Dominion	variable	78%	22%	($407.88)
Dominion	fixed	84%	16%	($325.47)
Nicor	fixed	100%	0%	($281.83)
MX Energy	variable	100%	0%	($231.24)
Cornbelt	fixed	91%	9%	($208.60)
IGS Energy	fixed	100%	0%	($165.25)
IGS Energy	all	81%	19%	($118.86)
Dominion	variable	100%	0%	($98.21)
IGS Energy	variable	67%	33%	($84.62)
Integrys	variable	69%	31%	($17.66)
Ambit	variable	0%	100%	$9.69

* **Figures in red and in parentheses are losses**

Figures in black without parentheses are gains

Source: http://www.citizensutilityboard.org/GasMarketMonitor.php, last viewed June 18, 2010.

WINNERS/LOSERS IN ILLINOIS GAS CHOICE



History of Residential Gas Shopping Statistics
Percent of Residential Customers
Taking Supply Service from a Marketer

Source: http://www.oca.state.pa.us/Industry/Natural_Gas/gasstats/GasStats.htm
All figures are for the quarter ending March 31 of the year

Year	Percent
2002	12.0
2003	10.1
2004	7.4
2005	6.9
2006	6.8
2007	6.7
2008	6.0
2009	7.1
2010	7.0

Percent PA Residential Gas Customers Shopping, 2002 - 2010