

**STATE OF MICHIGAN**

**MICHIGAN PUBLIC SERVICE COMMISSION**

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**In the matter, on the Commission's own motion  
to establish a licensing procedure for alternative  
gas suppliers, pursuant to MCL 460.9b.**

**CASE NO. U-13694**

**COMMENTS OF THE NATIONAL ENERGY MARKETERS  
ASSOCIATION ON LICENSING PROCEDURES FOR  
ALTERNATIVE GAS SUPPLIERS**

**I. Executive Summary**

The National Energy Marketers Association hereby submits Comments pursuant to the Commission's request for comments in its February 5, 2003, Opinion and Order on licensing procedures for alternative gas suppliers.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial-related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy, financial services and technology firms has come together under NEM's auspices to forge consensus and to help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas, electricity and related products, services, information and technology in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;

- Competitively neutral standards of conduct that protect all market participants;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and
- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

## **II. Introduction**

As a general matter, NEM supports the approach taken in the proposed natural gas rules to mirror the existing rules for the electric market. Such an approach is favorable, particularly for suppliers that serve both electric and gas customers, because suppliers have already designed systems to support the electric rules therefore it will reduce the cost of implementing the gas rules and also reduce the costs of ongoing maintenance. Furthermore, suppliers will already have experience with how the rules apply and work in practice. Additionally, NEM supports the presumption of adequate financial, managerial, and technical capabilities of existing Alternative Gas Suppliers (AGS) and Staff's decision to require existing suppliers to file only Application Part I information.

NEM offers the following specific comments on the Proposed Rules:

## **III. Implementing the 2002 PA 634 Licensing Procedure (Exhibit A)**

### **A. Commission Staff Review**

Staff's proposal, Exhibit A (Exh. A), page 2, states that "[t]he staff review process time is variable." NEM submits that the review process should not be overly time-consuming and that specific timelines and deadlines for review be established to provide increased certainty to applicants. An extended time frame for review could unnecessarily limit the ability of marketers to enter the Michigan gas markets. In Case U-11915 on electric supplier licensing requirements, the Commission, stated that "the target timeframe for processing applications [for electric suppliers] under normal circumstances should be 30 days."<sup>1</sup> NEM recommends that the same target timeframe be explicitly stated in the Commission's Final Order establishing a licensing procedure for AGSs.

### **B. Bond Amount**

Exh. A, page 2 of Staff's AGS licensing proposal states that "[f]or the Alternative Gas Supplier application process, it is recommended that these items [pertaining to creditworthiness] are included explicitly in the initial application." However, Exhibit B (Exh. B), page 1, of the same Staff proposal states that such information is incorporated in Part II of the Application and is "not to be included with [the initial] application." NEM seeks clarification as to when such information is to be filed with the Commission and urges the Commission to narrowly define the information that is necessary to prove

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<sup>1</sup> Case U-11915, June 19, 2000, Opinion and Order, In the matter, on the Commission's own motion, to consider the implementation of a voluntary electric supplier license program, page 13.

creditworthiness. Additionally, requiring an AGS to submit an overview of its business plan including risk management strategy or policy is proprietary information that should not be part of an initial application that will be on record at the Commission. If the Commission nonetheless determines that an AGS must provide access to such proprietary information, NEM submits that this should be accomplished after the Commission or Staff reviews the relevant documents for sensitive information. However, the Commission must not require an AGS to keep competitively sensitive information on file at the Commission since even sealed records may be vulnerable to a Freedom of Information Act (FOIA) or similar request.

NEM also seeks clarification regarding the process used to determine the bond amount for an AES as the rules for AGS licensing are supposed to be similar. Staff's description in Exh. A of its proposal of the procedure for electric suppliers is not in line with the current wording in the AES license application. Exhibit A, page 2, of Staff's AGS proposal states that Staff "has mandated a bond or letter of credit in the amount of \$100,000 for all [electric] suppliers who are not rated BBB or better by a major financial rating service." However, the current Alternative Electric Supplier Application, line 12, reads, "the applicant shall propose the means and dollar amount of any bond or letter of credit that are appropriate for the Commission to require in order to ensure adequate service to customers in Michigan." NEM seeks reconciliation between these two different processes. Additionally, if an AES is allowed to propose "the means and dollar amount of any bond or letter of credit," NEM asserts that no reason exists to make the gas rules more stringent than the electric rules. NEM suggests that the rule regarding the bond amount for gas suppliers should not exceed that required of electric suppliers.

Furthermore, Staff's \$100,000 bond requirement was for electric suppliers not rated BBB or better. Line 13 of the proposed Application and Terms and Conditions Agreement for AGSs states that a "[l]ine of credit or bond in the amount of \$100,000 will be required for all applicants w/o demonstrated financial capability." (emphasis added). NEM urges the Commission to narrowly define "w/o demonstrated financial capability" and clarify whether this term is defined as "rated below BBB by a major financial rating service." Additionally, NEM urges the Commission not to set the bond too high as excessive bonding requirements will increase the costs associated with supplying natural gas.

#### **IV. Application and Terms and Conditions Agreement (Exhibit B)**

##### **A. Business Ethics**

Staff's proposal, Exh. B, page 1, paragraph 9 asks if the applicant has committed any violations of law or "business ethics" in connection with provision of energy or energy-related products and services. NEM urges the Commission to properly define "business ethics" since the term as used in the proposal is vague and therefore open to various interpretations.

##### **B. Legal Affidavit**

Paragraph 11, page 1 of Staff's proposal in Exh. B directs AGSs to submit a legal affidavit attesting to "the competence of the company's employees to market natural gas .

. . ." NEM requests the Commission to provide more clarity to the term "competence" as the quoted portion of the mandate is ambiguous. NEM requests the Commission to set forth specific criteria an AGS should consider in determining the "competence of its employees to market natural gas.

### **C. Michigan Office**

Staff's proposal, Exh. B, page 3, paragraph 2, directs an AGS to maintain a Michigan office. This rule is unnecessarily restrictive and costly and therefore may limit AGS participation in the Michigan market. Staff's concern that all Michigan customers be able to get in touch with their suppliers is more than satisfied by the second sentence in this paragraph which requires an AGS to make available a toll-free phone number, email address and Website. Additionally, any jurisdictional concerns related to out-of-state suppliers can be adequately addressed by requiring the out-of-state AGS to have a registered agent in Michigan to accept service on its behalf.

### **D. Customer Enrollment and Services**

Staff's proposal, paragraph 7, declares that slamming or cramming "constitute serious offenses in the enrollment process." NEM is concerned that such language does not protect an AGS from instances where customers are improperly transferred due to administrative error, buyers' remorse, or mistakes as to contracting parties. NEM suggests that the rule be rewritten so it is consistent with the AES slamming and cramming rules adopted in the Order in Case No. U-12640,<sup>2</sup> which states:

a fine shall not be imposed for a violation . . . [if] the violation was an unintentional and bona fide error that occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors.

### **E. Customer Confidentiality**

Staff's proposal, paragraph 10, states that "[a]ll information obtained by the supplier from a customer . . . is to be held in strict confidence." NEM agrees that certain customer information (i.e. social security number and account number) should be afforded protection against unwarranted disclosure to third parties. However, in the developing retail energy industry, there has been a proliferation of third party providers who offer services that are essential to, and necessary for, the efficient operation of retail choice programs including, but not limited to, services such as enrollment data exchange, exception management/resolution, and customer billing. In addition an AGS may also need to disclose a social security number to a credit reporting agency in order to perform a credit check. The proposed rule as written may prohibit disclosure of such customer information to such third party providers and credit reporting agencies. Customer

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<sup>2</sup> Case U-12640, November 20, 2001, Order Adopting Standards, In the matter, on the Commission's own motion, to implement Section 10a(3) of Public Act 141, Exhibit A, page 4.

protection can be adequately promoted by requiring AGSs to place third party providers acting as suppliers' agents on notice that disclosure of confidential information (i.e. account and social security numbers) to additional third parties for non-marketing purposes may be prohibited.

## **F. Reporting**

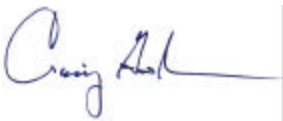
Staffs proposal, Exh. B, page 3, paragraph 14 states that "[a]lternative gas suppliers may be obligated to report statistical data regarding their retail sales and wholesale transactions to the Commission." NEM is concerned that proprietary information not be made available to potential competitors and that the paperwork burden not be too costly, or unreasonable. See also ¶ III B, Bond Amount, for NEM's position on submission of proprietary information by AGSs. The Commission should request switching and throughput statistics from the incumbent utility until the market has completely unbundled.

Paragraph 14 also mandates that "[b]ooks and records must be made available so that the Commission Staff can verify the accuracy of the statistical data reports." The paragraph should be amended to allow the AGS to take steps to protect any jurisdictional and relatively sensitive, confidential, or trade secret information from public disclosure. Additional language could be added to the paragraph stating that "jurisdictional and relevant records, which contain information deemed proprietary by the entity submitting the jurisdictional and relevant records, may be submitted under seal."

## **IV. Conclusion**

NEM appreciates this opportunity to submit comments on Staff's proposed licensing procedure for alternative gas suppliers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Goodman", followed by a vertical line.

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