

Energy Choice Matters

March 27, 2008

Universal Tells Michigan of Changes, Defends Complaint Stats

Universal Gas & Electric has changed several of its solicitation policies and has updated marketing materials and scripts to alleviate the Michigan PSC's concerns about a high number of customer complaints against the competitive gas retailer (Matters, 2/27/08).

While only a "very small number of UGE's agents have engaged in misconduct," UGE is continually making changes to its marketing practices and agent tracking to eliminate opportunities for potential agent misconduct, it told the Commission (U-15509).

"UGE desires to have a long-term, beneficial relationship with its customers and such a relationship cannot be fostered if the customer believes he or she did not receive a fair deal at the beginning of the contract," UGE observed.

"Therefore, UGE desires to educate its customers so that they appreciate both the risks and the rewards of entering into a contract with UGE."

UGE, for a 30-day trial period, has suspended its practice of having agents ask for and, with permission, take the customer's most recent LDC bill, which UGE said had been done to facilitate enrollment.

Customers have stated that without a copy of their bill, they cannot compare their current Gas Cost Recovery (GCR) rate with the fixed-priced rate shown in the UGE contract that the agent leaves with them.

Sales agents will instead copy the customer's utility account number into their company-issued

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PJM Backs Proposal to Fix Dichotomous Treatment of Duquesne Generation, Load

Generators in the Duquesne load zone have proposed a solution that would essentially allow them to satisfy the requirements for external resources on a contingency basis and permit their participation as internal resources in the May 2008 RPM auction, PJM reported to FERC (ER08-194).

The PJM Power Providers Group (P3) had asked FERC to consider the Duquesne zone generators as external resources since they are not to be in PJM in the 2011-12 delivery year, if Duquesne's exit from PJM proceeds as scheduled (Matters 3/24/08).

But PJM views the resources as internal since, with Duquesne still in PJM, those generators don't have the means to procure Midwest ISO transmission access to assure delivery as required for external resources, since PJM and not MISO currently grants such rights.

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Constellation-Md. Pact Near

Although nothing has been confirmed, Constellation Energy and Gov. Martin O'Malley are close to a pact that would see customers get a one-time \$170 credit on bills. Although set to be announced today, the pact isn't final, but the latest indication is that customers would also be protected from paying a PSC-estimated \$5.2 billion in potential Calvert Cliffs decommission costs. The pact would need an OK from lawmakers, and would also see Constellation continue to pursue additional units at Calvert Cliffs, after Constellation warned the uncertain regulatory climate was making it consider New York for its next nuclear expansion.

FERC Accepts MISO Resource Adequacy Proposal

FERC accepted the Midwest ISO's bilateral approach to resource adequacy, although financial settlement and enforcement provisions and Business Practices Manuals still need to be created (ER08-394). The lack of those materials does not make the filing deficient, as some parties had claimed, and FERC did not need them to deem the MISO framework just and reasonable.

Of greatest interest to competitive retailers will be the Commission's determination that LSEs be responsible for the load forecasts in most instances. But the Commission agreed with stakeholders who pointed to the "difficulty" retail marketers face in making forecasts due to churn (Matters, 2/13/2008).

FERC encouraged MISO to review the load forecasting processes in other RTOs with retail choice states, as well as the alternative proposals of commenters. The ISO is to report on these alternatives and propose potential changes in a compliance filing due in 60 days.

The Commission doesn't consider a forecast error to be a deficiency, contrary to MISO's characterization, and ordered MISO to remove the designation of such errors as deficiencies. Load forecast reviews contained in the filing are primarily meant to improve estimation techniques, and are not substitutes for financial settlement provisions or other resource management mechanisms that ensure resource adequacy, FERC explained.

The Commission did not find value in posting the identities of LSEs that under-forecast on a public website, since load and planning resource assessment provisions are not financial settlement or enforcement provisions. It directed MISO to remove that provision from the proposal as well.

The Commission accepted the overall construct under which states can set differing reserve margins within the Midwest ISO; a single, region-wide reserve margin will not be required.

However, FERC rejected section 68.3, which would have included language stating that the tariff did not pre-empt state reliability

authority. FERC struck the section on jurisdictional grounds since, "the role for state authorities cannot undercut this Commission's authority to review resource adequacy and reserve margins that affect matters within our jurisdiction," to produce just and reasonable rates.

Although allowing the establishment of unique Planning Reserve Margins for each LSE could cause free-rider problems, FERC doubted they would be likely.

"The reliability of electric service is critical to citizens of every state and state commissions therefore have strong incentives not to undermine reliability through policies that favor short-term economic gains (such as through free riding)," FERC found.

Free riding is less likely after the start of the ancillary services market because areas short of energy will face scarcity pricing, thereby deterring the incentive of any one area to be short on capacity, the Commission noted.

Conn. Utilities Argue Against "Unattractive" Standard Service

Connecticut, "should not perpetuate a volatile competitive market where EDC prices are made artificially unattractive so that retail marketers can entice customers to switch," United Illuminating asserted in exceptions to the DPUC's draft to allow utilities to use bilateral contracts for standard service under certain conditions (06-01-08RE01, 07-06-58).

The DPUC would limit the bilaterals to a maximum length of four years, and they could not account for more than 20% of load (Matters, 3/18/08).

But the Department should have simply allowed utilities to procure long-term bilaterals beneficial to customers, UI said.

"The best interest of Connecticut's energy customers should be the most important consideration, even when the action may not be in the interest of retail marketers," UI explained.

The draft recognizes potential benefits from long-term contracts but "explicitly abandons this potential benefit" without even considering cost-benefit analysis of specific price offers, UI protested.

The prohibition on long-term contracts means all customers are facing a “spot market” for power, UI charged.

UI claimed there are “no meaningful options” for small customers who desire stable and reasonable long-term prices.

The draft noted competitive retailers’ prices closely reflect natural gas prices, UI reminded. Thus if EDCs are prevented from buying long-term contracts, customers have no alternative to a “climate of volatile prices.”

“This is not the value-add that was originally intended during retail restructuring,” UI argued.

“Retail competition can and should operate unaffected by the existence of long-term contracts,” the EDC said.

“If retail competition is to provide real benefits to consumers, it must be able to thrive in a climate where the price for Standard Service is not made artificially unattractive,” UI asserted.

Connecticut Light & Power echoed those thoughts.

“If retail suppliers add no value beyond the utility offering, perhaps they should examine their own business models and operations instead of trying to limit EDCs’ ability to explore whether customer savings can be achieved through Long-Term Contracts.”

Only 6% of standard service customers shop for power, CL&P noted.

“The Department should not eliminate the opportunity to enter into potentially cost saving contracts on the basis that ‘competitive’ suppliers may no longer find it sufficiently profitable to serve competitively in Connecticut,” AG Richard Blumenthal added.

“The entire point of electric restructuring and introducing competition in Connecticut was to lower prices, not to promote competition for competition’s sake,” Blumenthal argued.

But Constellation Energy affiliates reiterated that “[t]here is simply no basis upon which to believe that EDCs can obtain results that exceed those currently derived.” Proposed benefits from long-term contracts are speculative, at best, Constellation added.

Constellation pointed to proponents of long-term contracts admitting they could not

ensure lower prices and simply wanting to see if they could find a better deal out there

Quoting from hearings, Constellation stressed that assurances of “Who knows,” “let’s see,” “let’s give it a try” and “let’s give it a shot” from long-term contract proponents, “may be appropriate approaches for sampling new ice cream flavors, but they are hardly the stuff of sound electric market policy choices.”

“Rolling the dice in an effort to obtain savings subjects Connecticut ratepayers to substantial and unnecessary risk,” Constellation added.

UI dismissed stranded cost risks as simply “insurance” against high future commodity prices.

The Office of Consumer Counsel, while not favoring any limit on the length of bilaterals, urged the DPUC to adopt five years rather than four if it is going to impose such a mandate.

PUCT Staff Weighing New Prepaid Rulemaking

The PUCT staff is considering a new rulemaking to create customer protection policies consistent with prepaid plans, staff reported at the Commission’s open meeting.

Director of Customer Protection Mike Renfro reported problems with prepaid REPs that are using the traditional method of estimated payments and true-ups, and not in-home meters which allow for pre-pay. He doesn’t think prepaid REPs are explaining their programs sufficiently.

What Renfro has found is that many firms are estimating bills, in a manner favoring the REP, and not performing true-ups for six months. That’s resulting in customers not being able to afford the programs, switching, and leaving their prepaid balance with the REP.

There are about 11 prepaid REPs in ERCOT but many are selling their books, Renfro said. REPower, which had tried to bring an in-home prepaid meter to ERCOT, stopped serving prepaid customers as of March.

“Unfortunately I think that’s partially due to the prepaid rule that we wrote which doesn’t

incent pre-pay,” Chairman Barry Smitherman noted.

Jess Totten, Director of the Electric Division, noted there are statutory issues with pre-pay. Prepaid REPs are trying to make customer protection rules on deposits and payments work for a business model that rules weren’t intended to support.

“We don’t have a rule that really works for pre-pay,” Totten added.

Staff has been discussing opening a rulemaking to come up with a pre-pay model that works for customers and REPs.

Smitherman urged that the Commission has to help REPs with a legitimate prepaid model find a workable approach to marketing in Texas.

Commissioner Paul Hudson worried that the prepaid REPs abusing estimations could give prepaid service a black eye.

Totten suggested that a good pre-pay rule would attract reputable, credible REPs into the pre-pay space.

PUCT Open Meeting Notes

Docket 23100: ERCOT/Staff Reports on Reliability Events

Commenting on ERCOT’s request for emergency power from a link with SPP during the Feb. 26 emergency curtailment plan event that ultimately was not met, Chairman Barry Smitherman said policymakers should not count on a tool that may not be reliable.

Independent Market Monitor Dan Jones suggested exploring whether, in the nodal market, LaaRs should be allowed to set prices when deployed. Jones pointed to scarcity conditions on Feb. 26 that did not produce scarcity pricing (Matters, 3/25/08).

Docket 34363: Consulting Groups Network Denied REP Certificate

The PUCT rejected a REP application from Consulting Groups Network, which is led Darwin Lau, a veteran of Texas Commercial Energy (TCE) and Bridgepoint Power & Light, two failed REPs (Matters, 2/12/08). While Commissioner Paul Hudson said he hates for government to take away a person’s livelihood, he agreed with staff’s concerns

about granting a certificate. Hudson suggested that should Lau build an experienced team that could meet PURA’s managerial and technical ability standards, the firm could re-apply for a license.

Docket 35280: Broad Notice Needed for Replacing Inaccessible Oncor Meters

The Commission, with Chairman Smitherman and Commissioner Hudson providing the needed votes, ordered Oncor to publish notice of its proposal to socialize the cost of new meters, needed for customers with inaccessible meters facing disconnects, in newspapers across its territory (Matters, 2/25/08). Hudson called Oncor’s appeal of the ALJ’s ruling for broad notice, “minor league,” and noted the cost for the notice is minimal compared with legal fees. Broad notice is appropriate, Hudson argued, because Oncor’s cost socialization could modestly raise costs to other customers. Smitherman supported broad notice because he was worried about a future challenge based on lack of notice. Commissioner Julie Parsley argued that the specific docket would not affect rates, and that notice had been given to REPs so broader notice was not needed. She did not cast a vote in the proceeding.

Docket 34996: Only Commission Can Open Formal Investigation

The PUCT put off until its next open meeting opening a formal investigation into an inaccurate Resource Plan submitted by Luminant (Matters, 2/22/08). Staff had argued they could open a formal investigation themselves, but Luminant had replied that PUCT rules require a specific Commission order to open a formal investigation. Commissioners Parsley and Hudson noted it was peculiar that a Notice of Violation, which becomes a contested case, can be started by the staff without a Commission order, but a formal investigation cannot. But all three Commissioners concluded the rule’s language could not be read any other way.

Hudson suggested issuing an order for a formal investigation at the meeting, but Smitherman was concerned opening a formal review has a certain connotation. The

Commission wants to encourage self-reporting (as Luminant did in this case), Smitherman noted, and he did not want to send the wrong message. Smitherman noted holding a decision until the next open meeting could prompt cooperative dialogue between Luminant and staff, and the Commission adopted that approach.

Docket 34890: Net Metering Vote Delayed but Commissioners Rebuke Solar Advocates

Commissioners scolded solar industry advocates for a last-minute email campaign designed to convince the Commission to change its proposed net metering rule from one that measures in-flows and out-flows separately to one that lets customers “bank” electricity (Matters, 3/24/08).

Commissioner Hudson was “disappointed” with the solar industry, suggesting advocates were giving disinformation to legislators, lacked professional courtesy, and failed to work through long-established processes (such as requesting a hearing). No solar representatives stopped by his office to discuss their issues. Nevertheless, he asked that the Commission withhold a decision on the proposed rule until the next open meeting to preserve the Commission’s reputation for fairness.

Although Hudson noted the Commission met procedural requirements and could vote from a legal basis, he was still concerned since the final proposal was published on Good Friday and the open meeting had previously been moved forward one day, thus giving stakeholders only two business days to review the final draft.

Chairman Smitherman reported that his Blackberry shut down because of the volume of identical emails he received from solar proponents, calling it unproductive advocacy. He and Commissioner Parsley did not see a need to put off the vote since there had been adequate notice since ERCOT workshops in January. Parsley was also concerned a delay would encourage the type of behavior Hudson criticized. But as a courtesy to Hudson, they agreed to move the vote to the next open meeting.

Docket 33487: Hudson Urges REP Involvement in Efficiency

The PUCT adopted new energy efficiency rules which contemplate much greater participation for REPs in TDU administered programs. Commissioner Hudson urged REPs to “show up” and be a part of the programs.

Docket 23578: Customer Education Campaign, Complaints Update

Best Retail Market Produces Best Government Pamphlet

The PUCT’s Official Guide to Electric Choice has won an award from National Association of Government Communicators. It will either be first, second or third in a competition among thousands of local, state and federal government publications. The final judging will be announced April 28. The guide (http://www.powertochoose.org/_files/_pdf/ConsumerGuide_eng.pdf) includes an overview of choice and switching, specific questions to ask REPs, advice on deposits and payment plans, discussion of fixed and variable rates and other contract terms, and tips for comparing choices.

First Choice Complaints Growing

Director of Customer Protection Mike Renfro gave kudos to Reliant Energy and Direct Energy for dropping their complaint numbers in the last six months. However, First Choice Power has seen rising complaints from billing errors and miscalculated fuel charges. Staff talked with First Choice in January but hasn’t seen significant progress since then. According to Renfro, it seems First Choice’s call center representatives can’t explain their bills so customers end up calling the PUCT. Renfro has told First Choice their bill format is not customer friendly and difficult to read. “Not having a trained call center staff is a real problem,” Commissioner Parsley said.

Docket 33891: PUCT Re-Opening SWEPCO Turk Record

The PUCT is re-opening the record in its review of SWEPCO’s proposed ratebased Turk plant. Parties are to hold a pre-hearing type conference with an ALJ to determine the

length of additional discovery and to set a date for a hearing (targeted for May) in which Commissioners will ask parties about specific issues. Commissioners are to file their questions and lists of issues in the docket so parties can develop supplemental pre-filed testimony.

Briefly:

Pepco Energy Services Gets Conn. License

The Connecticut DPUC awarded Pepco Energy Services an electricity supplier license to serve residential, commercial, and industrial customers throughout the state (Matters, 2/6/08).

ECS Entering New England DR Market

Energy Curtailment Specialists has entered the New England market with its PowerPay New England program. ECS called PowerPay unique because it does not include out-of-pocket financial penalties if reduction goals are not met. Participation payments are higher than ever before, ECS claimed, noting ECS customers receive a check, not merely a credit on their electric bill. Virtually any type of business with a minimum demand of 200 kW can participate, ECS said. Paul Afonso, former Massachusetts DTE/DPU Chair, is a strategic advisor to ECS will be particularly involved in its NEPOOL efforts given his experience and connections.

N.Y. PSC Sets Long-Range Planning Meeting

A plenary meeting regarding the New York PSC's long-range electric planning docket (07-E-1507) will be held July 10 in Albany. The meeting will permit oral arguments from parties regarding the staff report on Initiative 2 issues due July 8.

UBP Technical Conference Set

The New York PSC staff will hold a technical conference on the Commission's review of Uniform Business Practices (07-M-1514 et. al.) April 3 in New York City (Matters, 3/20/08). Topics include: (1) the oversight provisions of the UBP and their applicability to ESCO marketing activity; (2) the remedies for ESCO

failure to comply with the UBP available under the UBP to Staff and the Commission; (3) the sufficiency of the residential consumer protections provided by the UBP; and (4) other areas of interest related to the UBP that may be raised by the parties in attendance.

Exelon Wants Action on SECA Pacts

Exelon urged FERC to finally approve two SECA (Seams Elimination Charge/Cost Adjustment/Assignment) settlements sitting at the Commission for nearly two years (ER05-6-048, et. al). One pact is among AEP, Exelon, and Wisconsin Public Service and Upper Peninsula Power while a second is between Exelon and the City of Dowagiac. Both pacts are uncontested though non-settling parties American Municipal Power-Ohio and FirstEnergy submitted comments raising objections. AMP-Ohio and FirstEnergy are concerned the pacts may cause them to pay higher SECA fees, but Exelon called those charges speculative and unfounded. The pacts explicitly provide that AEP and Exelon waive any lost revenues that they could have claimed in excess those set in the pact under FERC's final rate design, Exelon noted. The obligations of non-settling LSEs will be set by the Commission based on the evidence, Exelon explained; the settlement does not and cannot change that outcome.

Duquesne RPM Fix ... From 1

To overcome this problem, generators have requested that PJM grant firm point-to-point service duplicative of the service that they now rely upon as the beneficiaries of the network service reserved by Load Serving Entities in the Duquesne zone.

In other words, such service is not currently needed by generation owners to provide energy or capacity to load, but it is needed in order to ensure a continuing ability to serve load in the event that load moves outside of the PJM Region.

Only PJM can grant such service, generators explained, because until Duquesne exits PJM, PJM is the only entity authorized to provide service on the Duquesne system.

This additional firm point-to-point service

would have no adverse impact to PJM's operation of the system or the markets, but presumably would convert, at the time of any transition of the Duquesne zone to Midwest ISO, into firm point-to-point transmission service to the PJM border, PJM stated.

It would be helpful to PJM if the Midwest ISO would confirm its willingness to convert service granted in this manner prior to the May 2008 RPM Auction, PJM added.

PJM believes that the proposal would avoid consideration of any controversy over the apportionment of ATC by the Midwest ISO in the future, and instead allow generators to specifically reserve firm point-to-point service parallel to the network service that they have been using to date.

"Alternatively, the Commission could determine in this proceeding that network service held by Transmission Customers would automatically include conversion to firm point-to-point service for generation resources that have been the historic beneficiaries of this pre-transition network service," PJM suggested.

"This approach would yield the same result described above with less administrative burden to PJM or the Midwest ISO and considerably less administrative and potential financial burden to the affected generation resources," the RTO noted.

P3's request to consider Duquesne zone resources external to PJM shows that, "excluding the Duquesne Zone Load from the May 2008 Auction, before having considered all of the interrelated issues and consequences, has opened Pandora's Box and further demonstrates why the Commission should not have directed PJM to exclude Duquesne Zone Load from the May 2008 Auction in the first instance," Reliant Energy added.

Reliant thinks the solution is simple – just include the Duquesne zone load in the May 2008 auction.

That would render P3's request moot and would let FERC evaluate Duquesne's Midwest ISO integration plan and the overall justness and reasonableness of Duquesne's withdrawal, "in an orderly manner, rather than in hurried and piecemeal fashion driven by

[the] approaching May 2008 Auction deadline," Reliant added.

In excluding the Duquesne zone load from the May auction, FERC put the, "cart before the horse," by treating Duquesne as though it had satisfied transmission comparability requirements when it clearly had not done so, said Reliant.

The exclusion of Duquesne zone load from the auction has unquestionably created "tremendous" uncertainty, Reliant cautioned.

UGE Changes... From 1

Blackberry and send that information to UGE's back office for processing.

Although sales agents have always been trained to follow a scripted presentation "carefully reviewed" by PSC staff, which includes informing customers of the product's five-year term and termination fee, UGE in January started requiring agents to circle the customer's GCR rate on their utility bill, for easier price comparisons.

UGE, starting March 3, has required all enrollments to be verified via a phone recording.

Gas choice tariffs only require a signed contract for enrollment but previously UGE had still been verifying customers, with 60% of enrollments verified via its Toronto call center. When customers could not be reached in the follow-up call, UGE would verify customers via voice mail or a second, registered letter. Those alternate methods of verification have been discontinued.

Customers not verified via a phone recording within 15 days of signing their contract will be sent a letter requesting that they contact UGE to complete verification. Customers not responding within 30 days of that letter won't be enrolled.

"Two of the most common subjects of customer contacts have been contentions that the customer did not know they were signing up for a five year contract and did not know that a \$250 termination charged [sic] applied if they cancelled after the first 30 days," UGE reported.

In response, UGE has changed its verification script to make it "absolutely clear" that the customer knows that he or she is

entering into a five-year contract and that if cancellation occurs after the initial 30-day grace period, a \$250 termination penalty will be assessed.

“With these changes to its mandatory verification script, no customer will be able to claim that they did not know they were entering into a five-year contract or did not know there was a \$250 cancellation fee after the first 30 days,” UGE said.

TV Reports Increase Contacts Six-Fold

The largest category of customer contacts, by far, has related to basic requests from customers to cancel their contracts, UGE reported.

In February, UGE saw a “flood” of complaints regarding alleged misrepresentations, but argued that, “the vast majority of these contacts have been media-driven and fueled by factually inaccurate, disparaging news reports.”

Complaints spiked after a “false and inaccurate” television news report on WJRT 12 in Flint, UGE explained. On Feb. 20, WJBK Fox 2 in Detroit ran a lengthy story on UGE with similar “inaccuracies and misstatements.” UGE intends to file suit against Fox 2.

UGE, “experienced an immediate and massive increase in customer contacts as a result of this report,” it told the PSC. Indeed, customer contacts went from 411 in January to 2611 in February.

In response to these contacts, UGE has waived early termination fees and permitted customers to terminate their contracts -- even in those numerous situations where the customer simply stated they had seen a TV report and wanted to cancel.

“While UGE has permitted most all of the customers who have contacted UGE to cancel their contracts, UGE is deeply troubled and concerned that many customers made that decision based on TV reports that were false, inaccurate, and grossly misleading. Given the recent spike in gas prices, UGE firmly believe [sic] that many customers who cancelled their contracts will be worse off as a result.”

UGE earlier this month consolidated its sales force in Michigan to exert more control over its agents, pruning its relationships from

using two contracting firms to just one.

UGE is also studying making agents employees rather than independent contractors, and changing the compensation structure of its agents from pure commission to a system where the agents would receive a base pay with incentives for good performance. The feasibility of both changes is still being worked out, UGE stressed.

New Two-Year Product Coming

Additionally, UGE is developing a two-year product that includes only a \$100 termination fee as well. Presenting customers with a choice of either a two-year or five-year plan will make their choice and understanding of their contract length more explicit, UGE noted. Based on current market conditions, the two-year fixed price would be slightly higher than UGE’s five-year contract.

Regarding the Commission’s directive to report on switches based on “misleading or false representations,” UGE noted that, “determination of the true nature of the discussions between the customer and the sales agent at the time of sale is virtually impossible.”

“It is highly unlikely that a sales agent will remember a particular sales call weeks or months after the event. If the agent does remember what was said, the issue then becomes one of ‘he said, she said,’” UGE explained.

“Frequently customers raise these issues long after the sales meeting took place, and the customer’s recollection may be less than perfect, or in some cases conveniently one-sided (as may likewise be the case with the agent’s recollection),” UGE added.

General Opinions on Gas Price Trends OK

UGE defended agents’ practice of discussing with customers the possibility that gas prices may be higher in the future than they are today, and its opinion that such possibility is likely. Such discussions are entirely appropriate under Michigan law, UGE claimed, since “generally speaking statements and opinions about future events are not actionable.”

UGE quoted the Michigan Supreme Court as finding:

“[W]e are here in the realm of what the common law has for years termed ‘puffing.’ a [sic] salesman’s praise of his own property, involving matters of estimate or judgment upon which reasonable men may differ. Ordinarily these are not regarded as actionable, even though the vendee’s joys or realization fall short of those of his anticipation. The reason for this lies in the realities of commercial intercourse. As Judge Learned Hand put it in *Vulcan Metals Co v Simmons Manufacturing Co* (CCA), 248 F 853, 856:

There are some kinds of talk which no sensible man takes seriously, and if he does he suffers from his credulity. If we were all scrupulously honest, it would not be so; but, as it is, neither party usually believes what the seller says about his own opinions, and each knows it. Such statements, like the claims of campaign managers before election, are rather designed to allay the suspicion which would attend their absence than to be understood as having any relation to objective truth.”

The case is *Hayes Constr Co v Silverthorn*, 343 Mich 421, 426; 72 NW2d 190 (1955).

“Certainly, opinions that future natural gas prices are likely to be higher than they are today fall into this category, unless those predictions are quite specific, e.g., ‘Next month, DTE is raising its price for natural gas to \$2.00/Ccf,’” UGE claimed.

UGE argues there, “is substantial historical evidence that supports a general increase in gas prices over time, and predictions along those lines, while in the nature of opinion, have a firm basis in fact.”

Natural gas prices have risen sharply in recent years, and in the past two months have begun another significant upswing, UGE said.

“Based on historical trends, recent price pressures, and its extensive experience, UGE firmly believes that customers who sign up for its five-year fixed-priced product are highly likely to experience significant savings compared to the Utilities’ fluctuating Gas Cost Recovery (‘GCR’) prices.”

Nevertheless, UGE has developed graphs

to illustrate in its revised customer brochure that in the past, customers have typically paid more than the GCR during the early term of the contract.

Timing, DTE Case Prompted Contacts

UGE experienced greater customer contacts in the winter of 2007-2008 due to simple timing issues, it told the Commission.

“Sales continued briskly through the fall of 2007. Prior to the heating season, in discussions with Staff, UGE predicted that an increase in customer contacts would occur because, as the heating season starts, customers’ gas bills rise, and this tends to cause customer calls.”

A considerably colder winter than the 2006-2007 season exacerbated matters, UGE added.

“The impact of the seasonal upturn in usage was further impacted by a superficially unrelated event. On August 21, 2007, the Commission issued an order in Case Nos. U-14800 and U-15082 that permitted DTE to sell native ‘Base Gas’ that DTE had been in holding in storage and had been necessary to enable DTE to extract its ‘Working Gas’ from storage. As a result of the order issued in that case, DTE was able to charge significantly less for gas via its GCR this winter, as it used up supply attributable to Base Gas. It should be pointed out that although this ‘Base Gas’ was purchased by DTE approximately thirty years ago, only remaining system customers received the benefit of the lower price. Choice Customers did not see any benefit to the Commission’s order in this matter.”

“Thus, the situation was ripe for a ‘perfect storm’ in which, during a season in which the GCR would typically increase, rates instead declined, making the gap between UGE’s price and the utility’s price even greater. More recently, prices have trended upward sharply. UGE predicts that as prices return to their historical upward trend, customers will see the benefit of their contracts, and complaints will rapidly subside.”

Utility Comparisons Not Meaningful

UGE found fault with comparing its complaint percentages to those of the LDCs.

LDCs have had captive customers since winning their public franchises and customers did not have to affirmatively choose their LDC, UGE noted. Thus, complaints regarding LDCs' marketing should be zero since they are not soliciting customers.

Rather, most LDC complaints involve functions unique to their franchised authority, such as disconnections, meter reads, and service quality, UGE explained. Those are all functions UGE by law cannot perform and remain exclusive to LDCs, even for UGE commodity customers, UGE observed.

"These categories are not merely dissimilar; they are mutually exclusive," UGE pointed out.

UGE also argued that since monopoly LDCs have been around for a century, "their level of service [is] generally accepted by the public as being 'givens' in day-to-day life by their customers."

"It is reasonable to think that customers do not waste time complaining about things they cannot change. This gives the monopolies a certain amount of market acceptance that UGE, as a competitor and a newcomer to the market, does not have."

Many LDC complaints received by the PSC are routinely first referred to the utility without the complaint being officially recorded, UGE added. Although this may have occurred with some UGE complaints (to a much lesser extent, UGE said), the Commission should be aware that the contact level for the established utilities may be understated.

UGE faces the challenge of first having to educate customers about gas choice before even attempting to pitch a product.

"Most residential customers are not aware that they have the ability and right to purchase their natural gas supply from a company other than their utility," UGE asserted.

"Because customers are unfamiliar with Gas Customer Choice and UGE's product, there is more opportunity for confusion to arise when a customer interacts with an AGS than when a customer interacts with their utility concerning a utility product with which they are well familiar," it explained.

"Accordingly, in this situation, there is not only a risk that the agent may not adequately

explain the product; there is also a risk that the customer may not understand an explanation that was perfectly adequate," UGE noted.

UGE believes much of the confusion stems from the fact that UGE is selling customers their supply, but the LDC still delivers the product.

The retailer also expects complaints to dwindle as its customer base matures and enters the later of years of their contracts where the locked-in price may compare more favorably with the LDC commodity rate. UGE has seen such results in the Ontario market.

Although the Commission noted UGE has many more complaints than other gas retailers, UGE offered a simple explanation – it's the only marketer actively soliciting and winning customers.

In the last year, "virtually all customer growth in the Gas Customer Choice Program has resulted from marketing activities by UGE," the retailer noted.

In April 2007, when UGE began offering residential customer service, there were roughly 250,000 gas choice customers in Michigan. In January 2008, there were approximately 350,000 choice customers in Michigan. During that same time period, UGE enrolled approximately 93,000 customers.

"Thus, virtually all of the growth in the last year must be attributable to UGE."

While we don't doubt UGE is one of few, if not the sole, active mass marketer in the Michigan gas market, using such net shopping statistics can give an incomplete picture.

While UGE correctly noted a 100,000 increase in net gas shoppers, that doesn't capture churn among suppliers, or the gross amount of new choice customers that hasn't been offset by returns to LDC service.

In other words, while only 100,000 net customers were added, another 100,000 may have changed hands among competitive retailers (although the number is likely quite smaller), and other retailers may have also had large acquisitions over the timeframe listed -- they just won customers from other suppliers and not the LDC. While we're not aware of another marketer pursuing the Michigan market as actively as UGE over that time, and while we don't think our analysis

materially changes UGE's point, it is worth noting.

UGE admitted that from Aug. 1, 2007 through Feb. 29, 2008, the average date that residential customers received a tariff-required confirmation letter of their switch was more than the mandated seven days from the date of signing. The late letters were caused by delays in receiving executed paper contracts from its Michigan offices.

UGE has corrected the problem starting Jan. 9, when it began issuing confirmation letters based on data entry rather than the receipt of the paper contracts. Since then, the average date of issuance for the confirmation letter is less than seven days.