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Energy and Telecommunications Interim Committee
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DRAFT FINAL REPORT TO THE 66TH MONTANA LEGISLATURE

HJ 28 NATURAL GAS CUSTOMER CHOICE: MONTANA'S PATH FORWARD

ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE MEMBERS

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This report is a summary of the work of the Energy and Telecommunications Interim Committee, specific to the Energy and Telecommunications Interim Committee's 2017-2018 natural gas customer choice study as outlined in the Energy and Telecommunications Interim Committee's 2017-18 work plan and House/Senate Joint Resolution 28 (2017). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Energy and Telecommunications Interim Committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the Energy and Telecommunications Interim Committee website: www.leg.mt.gov/etic.

A full report including links to the documents referenced in this print report is available at the Energy and Telecommunications Interim Committee website: www.leg.mt.gov/etic

Table of Contents

HJ 28 NATURAL GAS CUSTOMER CHOICE: MONTANA'S PATH FORWARD

INTRODUCTION

The Energy and Telecommunications Interim Committee (ETIC), guided by House Joint Resolution 28 (2017), began its review of natural gas customer choice in Montana by focusing on Montana-Dakota Utilities (MDU) service territory. The utility currently does not offer choice, while NorthWestern Energy (NWE), a re-regulated, vertically integrated utility does offer choice. The committee surveyed stakeholders in the territory, sending questionnaires to MDU, Big Sky Gas and the Public Service Commission (PSC). Committee members quickly learned that predicting future natural gas cost impacts to customers is a difficult task.

Committee members compared Montana law to the four states, Georgia, Ohio, New York, and California, which account for the highest volume of independent natural gas supply in the United States. Considerations included a detailed examination of consumer standards in these states, which tend to be more prescriptive than those found in Montana.

The committee's work resulted in four bill drafts concerning the authority to require customer choice, improved consumer standards, and a PSC study of customer choice:

> **LCGAS1** – available here – would require all natural gas utilities in Montana to provide customer choice and set new baseline consumer protection standards.
>
> **LCGAS2** – available here – would allow the PSC to decide if customer choice is in the public interest on a natural gas utility's system.
>
> **LCGAS3** – available here – would require the PSC to conduct further study of customer choice, directing the commission to consider measurable impacts to customers of natural gas utilities that allow customer choice, financial impacts to Montana utilities, the prevalence of customer choice related consumer protection cases, and the effectiveness of current Montana consumer protection standards.
>
> **LCGAS4** – available here – would require MDU to conduct further study of customer choice, considering the measurable impacts to customers of natural gas utilities that allow customer choice, financial impacts to Montana utilities, the prevalence of customer choice related consumer protection cases, and the effectiveness of current Montana consumer protection standards. MDU would report to the PSC for a final analysis.

Throughout the process, the committee commended the PSC, MDU, and Big Sky Gas for their engagement in the HJ 28 study.

HJ 28 NATURAL GAS CUSTOMER CHOICE: MONTANA'S PATH FORWARD

ETIC Findings and Recommendations

The findings and recommendations included in this draft report are for committee consideration and are subject to change. These findings are meant as a starting point for discussion during the May 17-18 ETIC meeting.

- The specific cost to consumers resulting from the implementation of natural gas customer choice in the MDU service territory is made difficult by the fluid nature of the natural gas market. MDU, in its Nov. 2, response to the committee detailed a cost estimate for allowing choice, stating that any additional cost would be passed down to all MDU consumers.
- The cost of customer choice to monopoly utilities is difficult to predict without access to a utility's proprietary information.
- Allowing customer choice in the MDU service territory would require the utility to:
  - develop transportation agreements with suppliers;
  - aggregate energy consumed by choice customers daily;
  - allocate total commodity and pipeline penalty costs to suppliers;
  - implement a program to reconcile invoices; and
  - retain all upstream capacity, storage, and supply to ensure delivery to all customers in the event suppliers fail to deliver gas to the city gate, or a choice customer returns to MDU bundled service in the future.
- Big Sky Gas provides benefit by provided fixed-term contracts ranging from six to 36 months in length. The company serves customers by purchasing gas at wholesale rates and passing the cost on to its customers. The company only provides gas supply and its customers would receive two bills, one from Big Sky Gas for their natural gas supply and another from the utility for its transportation.
- Committee members found Montana consumer protection standards less prescriptive than those found in high-volume customer choice states. The committee, as part of bill drafts LCGAS1 and LCGAS2 provides a baseline for existing standards.
- Committee members found that further study at the PSC could be needed to attain the data to create accurate cost estimates for consumers and monopoly utilities. The committee, in bill drafts LCGAS3 and LCGAS4 provides a mechanism for such a study.

What is Natural Gas Customer Choice?

Natural gas customer choice programs allow customers to purchase natural gas from a natural gas supplier or marketer other than the local natural gas utility. If a customer chooses to buy from a natural gas marketer, that marketer procures the natural gas from other sources and arranges its delivery to the local natural gas utility's system. The local natural gas utility commonly charges the customer to transport and distribute the gas on its system. State public service commissions do not allow local natural gas utilities to earn a profit on natural gas itself. Sales of natural gas by marketers are unregulated and marketers may earn profit on the company's sales.[1]

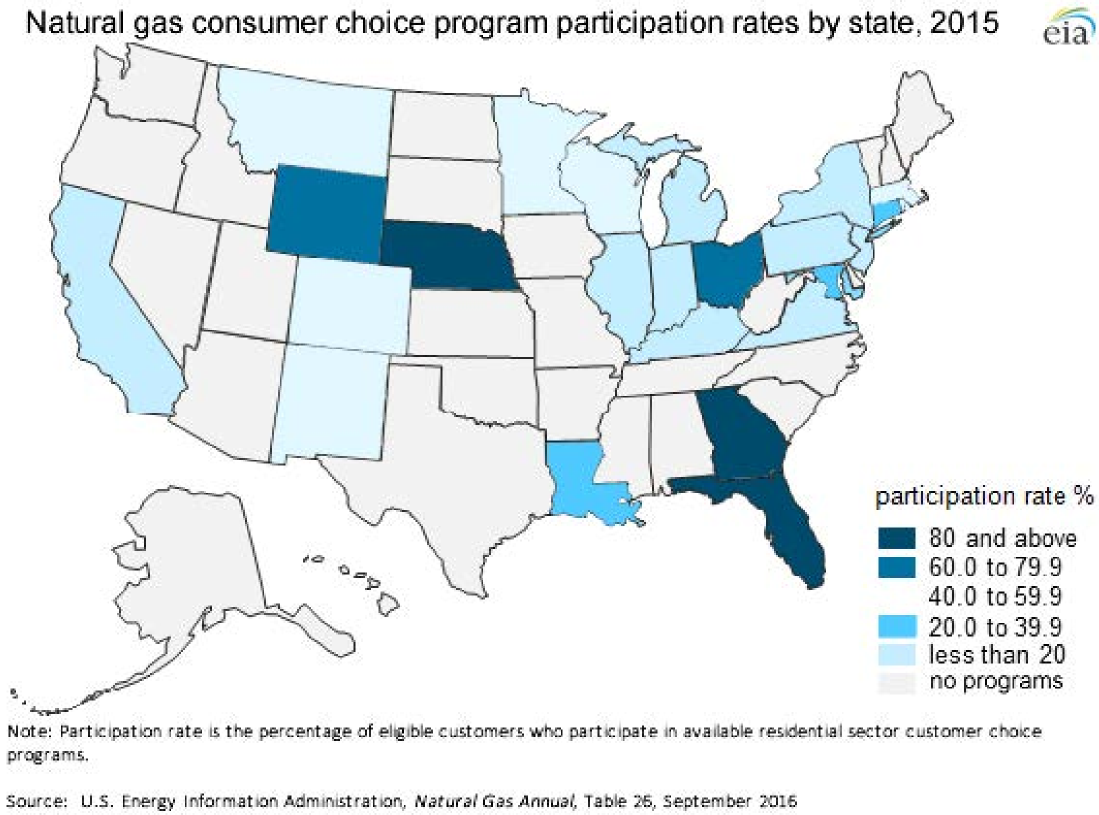
Most customer choice programs began in the 1990s to promote competition in local energy markets. Natural gas is often offered as a bundled service that includes both the price of natural gas and the price for distributing gas to consumers. Sales of natural gas by marketers are unregulated, and marketers may earn a profit on the sale of natural gas. In several customer choice programs, these costs are listed separately on a bill or charged on two separate bills.[2]

The availability of customer choice programs varies with some states allowing all natural gas customers to choose an independent supplier and others allowing optional customer choice in only specific service areas. A variety of factors affect participation rates in customer choice programs, ranging from the potential for savings on natural gas costs to the rate structures offered by independent suppliers.

Customer Choice States

Currently, 24 states offer natural gas customer choice programs to residential customers in at least one service area in the state. In the West, California, Colorado, Montana, Nevada, New Mexico and Wyoming allow a form of natural gas customer choice programs in the state.[3]

[1] How customer choice programs work, U.S. Energy Information Administration
[2] How customer choice programs work, U.S. Energy Information Administration
[3] State-by-state Information, American Coalition of Competitive Energy Suppliers



Customer participation rates in natural gas customer choice programs vary widely based on the characteristics of rate structures from independent suppliers in a given state. The following table details the residential participation in customer choice programs across the U.S.

Participation Rates

The top three states by total volume of natural gas delivered by local utilities for independent distributors in 2016 were Georgia (86 percent), Ohio (80 percent), and New York (29 percent).[4] The following chart details customer participation rates in states that allow natural gas customer choice. More information can be found in the committee's *Natural Gas Customer Choice: Western States' Policy Analysis* report.

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[4] Energy Information Administration (EIA), Form EIA-176, "Annual Report of Natural and Supplemental Gas Supply and Distribution."

Montana Customer Choice Consumer Protections

ETIC members examined Montana consumer protection standards for customers of natural gas suppliers with a white paper titled *Natural Gas Customer Choice: Independent Supplier Standards*.

The Montana Legislature passed the Natural Gas Utility Restructuring and Customer Choice Act (Title 69, chapter 3, part 14, MCA) in 1997. The law states natural gas companies may voluntarily offer customers a choice of natural gas suppliers and provide open access to its transmission facilities. It also provides licensing authority for independent gas suppliers to the PSC.

Licensing Standards

Under 69-3-1405, MCA, the PSC is required to license suppliers and enforce the following licensing provisions:

Natural gas suppliers shall file an application and obtain a license from the PSC.

1.) Licensees shall:
   a. provide copies of all license applications to the PSC and to all distribution service providers;
   b. and provide annual updates to licensing information.
2.) License applications become effective 30 days after filing with the PSC. If the PSC rejects an application, the PSC shall specify the reason in writing and provide alternatives to overcome deficiencies.
3.) The PSC shall promulgate rules requiring licensing information to identify the licensee and ensure that natural gas supply is provided as offered and is adequate in terms of quality, safety and reliability;
4.) The PSC may require proof of a licensees financial integrity and a demonstration of adequate frim deliverability to meet load requirements; and
5.) The PSC may, pursuant to its own investigation or upon the complaint of an affected party, institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

Administrative Rules

The PSC implements Montana's Natural Gas Utility Restructuring and Customer Choice Act by administrative rule (38.5.7001 – 7014, ARM). The rules set minimum licensing standards for independent suppliers in the state, including registration and reporting requirements and minimum standards for license revocation.

Licensing Standards

Independent natural gas suppliers must apply for a supplier license with the PSC. Applicants must supply the information found in the following table in order to satisfy licensing requirements. In addition to basic contact information, independent must also provide financial documentation and technical information to the PSC.

Independent suppliers must also file examples of each type of contract offered to residential and small commercial customers and notify distributors by providing all license applications.[5] Suppliers must also file an electronic registration with the PSC, including contact information and a list of the geographic areas and a list of Montana cities where residential and small customer are served.[6]

Suppliers also file annual reports including a list of services, quality and reliability reports and organization charts.[7] There are currently 13 natural gas suppliers licensed in Montana by the PSC to serve residential, small business, commercial and industrial customers. Of those 13 currently licensed operations only five – Commercial Energy of Montana, Energy West Resources, Big Sky Gas, Croft Petroleum, and DNE Sales – are licensed to serve residential customers.[8]

License Revocation

The Montana PSC may revoke or suspend a natural gas supplier license pursuant to a PSC investigation if the supplier violates or fails to meet the following standards.

Table 2. Gas Supplier License Revocation Standards	
1.	Violation of any federal or state law which has as its purpose, directly or indirectly, fair competition among suppliers
2.	Violation of any federal or state law which has as its purpose, directly or indirectly, protection of consumers
3.	Violation of any PSC rule
4.	Providing false information or materially incomplete information to the PSC in regard to licensing or reporting

[5] ARM 38.5.7010
[6] ARM 38.5.7011
[7] ARM 38.5.7014
[8] Jennifer Hill-Hart Joel Tierney, PSC Natural Gas Supplier Memo, February 20, 2018

5.	Failing to file annual reports
6.	Failing to abide by federal and state laws which pertain to business, business structure, antitrust, trade, contracts, truth in labeling, consumer protection, privacy and like laws applicable generally or specifically to the provision of gas supply
7.	Failing to supply gas in accordance with agreements with customers and representations to the PSC
8.	Engaging in abusive or anticompetitive practices

Source: ARM 38.5.7016

The PSC revoked one natural gas supplier license in 2015 when People's Power and Gas filed to file an annual report. PSC staff could not contact the company by phone or registered letter. Staff found the company had filed bankruptcy and revoked its license accordingly.[9]

Other States' Consumer Protection Standards

Georgia

Customer choice is available to customers on the Southern Company Gas system.[10]

In 1997, the Georgia General Assembly adopted Senate Bill 215, a new regulatory model that allowed competitive marketers to operate customer choice programs. The law required marketers to obtain a certificate of authority demonstrating adequate financial and technical ability to sell or offer to sell natural gas in the state. In 2002, the General Assembly passed the Consumers' Relief Act to set forth a Consumer Bill of Rights and to establish a regulated provider for low-income and high-risk customers.[11]

Georgia law enacts a similar licensing process to the Administrative Rules of Montana, requiring application for license and setting standards for license revocation. In Georgia, suppliers must file application to the Georgia Public Service Commission (GPSC) including the following:

[9] Jennifer Hill-Hart Joel Tierney, PSC Natural Gas Supplier Memo, February 20, 2018
[10] American Coalition of Competitive Energy Suppliers, State-by-State Information
[11] Georgia Public Service Commission, "Natural Gas Competition in Georgia"

- The legal name of the applicant;
- The name and current business address of the applicants principal corporate officers and those officers in Georgia;
- A description of the applicants business and organization;
- Recent annual stockholder reports;
- Proposed terms of service and expected revenues;
- Statement acknowledging compliance with federal telemarketing laws and Georgia consumer protection laws;
- Financial information including demonstration of capital base, financial plans, audited financial statements, a credit or bond rating, details of purchase obligations, operating lease commitments, details concerning long-term debt, and available credit and details concerning joint ventures;
- Technical information including potential service territories; supply disruption contingency plans, gas-related emergency procedures; list of pending or past rulings, judgments or litigation, and information concerning the company's existing operation.[12]

The GPSC currently recognizes 15 functioning independent gas suppliers in the state. The state's administrative rules are similar to those found in Montana but provide additional filing requirements that mandate monthly report filings.

Ohio

Customer choice is available to residential and nonresidential customers in the AEP Ohio, Dayton Power & Light, Duke Energy Ohio, and First Energy service systems.[13]

The Public Utilities Commission of Ohio (PUCO) introduced customer choice in 1997. Retail natural gas suppliers must be certified by the commission pursuant to section 4929.20(A) of the Ohio Administrative Code. The PUCO has the authority to license all natural gas suppliers in the state to ensure compliance with capability standards. Natural gas suppliers must file annual reports with contact information, business information, and technical details similar to those found in other states.[14]

The PUCO's authority under Ohio Administrative Code, 4929.24 includes jurisdiction to, upon complaint of any person, determine if a natural gas supplier has violated code, order restitution to customers, and revoke a natural gas supplier's license.[15]

[12] Rules of Georgia Public Service Commission, 515-7-3-.03
[13] American Coalition of Competitive Energy Suppliers, State-by-State Information
[14] Ohio Administrative Code, 4929.20-21
[15] Ohio Administrative Code, 4229.24

Ohio's independent supplier rules set a strict standard for customer termination and implicitly require a standard set of information in customer bills. The state currently recognizes 90 independent supply companies.

New York

Customer Choice is available for residential and nonresidential consumers in the Central Hudson, ConEd, Corning Natural Gas, National Grid, National Fuel Gas Distribution, NYSEG, Orange & Rockland, RG&E, and St. Lawrence Natural Gas Utility Territories.[16]

In 1996, the New York State Public Service Commission (NYPSC) approved plans to allow customers the option to buy their natural gas and electric supply from companies other than their local utility company. The state licenses independent suppliers in a method similar to those listed above and requires stringent consumer protections including requirements for termination practices.

Under current law, the NYPSC requires the following consumer protections:

- A statement disclosing complaint resolution processes;
- A 15-day notice before discontinuing service;
- Customer choice of service from another independent supplier or the utility when a current supplier discontinues service;
- Clear procedures for switching suppliers;
- Convenient complaint handling procedures.

In addition, independent suppliers must comply with the Home Energy Fair Practices Act and PSC orders regarding payment allocation.[17]

New York's Home Energy Fair Practices Act serves as the basis for consumer protection in the state's utility industry. The law was amended in 2002 to require independent energy suppliers to adhere to the same consumer protection standards as the state's gas and electric utilities.[18]

New York's independent supplier rules are much more prescriptive than the Montana standards. Consumer protections are much lengthier including strict termination procedures.

[16] American Coalition of Competitive Energy Suppliers, State-by-State Information
[17] New York Public Service Commission, "Energy Choices – The Facts from the PSC"
[18] New York State Public Service Commission, "Home Energy Fair Practices Act – Rules Governing the provision of Gas, Electric and Steam Service to Residential Customers"

California

In California, natural gas customer choice programs are known as "Core Aggregation" or "Core Transportation" programs. The programs are available to residential and small commercial customers on the Pacific Gas & Electricity, San Diego Gas & Electric, and Southern California Gas systems. [19]

California has offered customer choice since the early 1990s. The California Public Utilities Commission (CPUC) requires independent suppliers to register with the commission. Senate Bill 656 gave the CPUC the authority to prosecute suppliers that do not comply with minimum standards set forth by the CPUC. [20]

The state, similarly, requires independent suppliers to register with the CPUC within 90 days after the commission adopts standards for the company's financial viability, and technical and operational capacity. The registration must include contact information, details regarding the nature of the service provided, and disclosure of pending civil, criminal, or regulatory cases against the company.[21]

The Public Utilities Code requires independent suppliers to adhere to the same minimum standards as any public utility in the state. California law grants the CPUC the authority to revoke or suspend independent supplier licenses.

California Public Utilities code also requires annual reporting to include contact information, business planning details, and proof of financial and technical ability. The commission is required to issue public alerts regarding independent suppliers that attempt to provide unauthorized or fraudulent service in the state.[22]

The state sets the following minimum standards for consumer protection.

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[19] American Coalition of Competitive Energy Suppliers, State-by-State Information
[20] California Public Utilities Commission, "Natural Gas Customer Choice in California."
[21] California Public Utilities Code, Chapter 4.7, 981
[22] California Public Utilities Code, Chapter 4.7, 984.5