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NATURAL GAS: CUSTOMER CHOICE

House Bills 5201 and 5202
Sponsor: Rep. Mary Ann Middaugh

House Bill 5203
Sponsor: Rep. Samuel Thomas III

House Bill 5204
Sponsor: Rep. Mike Kowall

House Bill 5205
Sponsor: Rep. Ken Bradstreet

House Bill 5206
Sponsor: Rep. Doug Spade

House Bill 5207
Sponsor: Rep. Valde Garcia

Committee: Energy and Technology

Complete to 1-18-00

A SUMMARY OF HOUSE BILLS 5201 - 5207 AS INTRODUCED 12-9-99

The bills would amend the Public Service Commission enabling act to allow competition in the "national gas supply market", allow customers to choose their natural gas suppliers, provide for licensure of natural gas suppliers, and provide rules and regulations for the competitive marketing of natural gas service. The bills are all tie-barred to one another, and would not take effect unless all were enacted.

House Bill 5201 would establish definitions for the package and provide for the phase-in of customer choice in the natural gas market. If a local distribution company did not have an existing plan in place when the bill took effect, the company would have to file a customer choice plan with the Public Service Commission (PSC or commission) by no later than October 1, 2003. If the company did have an approved plan in existence, it would not have to file a new plan under the bill until no later than 180 days before the existing plan terminated.

Any plan filed under the bill would have to allow customer choice according to the schedule provided. Companies that served 300,000 or more customers within the state would have to allow at least 40 percent of their customers to choose their supplier by no later than April 1, 2002. That number would have to be increased to 60 percent by April 1, 2003 and to 100 percent by April 1, 2004. If the company had between 200,000 and 300,000 customers, at least 40 percent would have to have the right to choose suppliers by April 1, 2003, increasing to 60 percent by April 1, 2004, and to 100 percent by April 1, 2005. Companies with less than 200,000 customers would have to allow choice for at least 10 percent of their customers by no later than April 1, 2004 and for all customers by April 1, 2005. If the commission found it reasonable and in the public interest after notice and a hearing on the issue, the commission could establish a more extended schedule for customer choice for companies with fewer than 200,000 customers.

When filing a customer choice plan, a company would have to provide its customers and all gas commodity suppliers who serve those customers with notice of the filing, including information on how to file comments with the commission.

Under the bill, a plan could not contain any provisions that were unduly burdensome, unreasonable, or unfair to retail customers. The PSC would be responsible for requiring that each plan allowed a customer to change suppliers no less often than quarterly and did not limit a customer's ability to change suppliers to certain time periods. A customer choice plan would also have to include a description of the manner in which customer enrollments with a market-based gas commodity service supplier would be accepted, processed, and implemented; a description of the billing process; and a description of any eligibility requirements, charges, fees, or deposits related to the customer choice plan. In addition, the choice of suppliers could not be limited to affiliates of the local distribution company and would have to allow for customer portability of the customer choice plan within the local distribution company's service territory.

The PSC would also be required to allow interested parties an opportunity to review and comment on a customer choice plan, and could require the local distribution company to provide any additional information that the commission might need to make its determination. Within 90 days of the date that the plan was filed, the commission would be required to approve the plan in whole or in part, depending upon how it complied with the requirements. If the plan were partially approved or rejected, the commission would have to indicate what modifications were needed to correct the problems. The company then would have to file an amended plan within 30 days. Contested case proceedings or other hearings on any plan filed under the bill would not be allowed to be held before the PSC.

House Bill 5202 would provide for market based pricing of natural gas. Market-based gas commodity service provided by an appropriately licensed entity would be sold at prices agreed upon by the retail customer and the supplier, and local distribution companies could not provide a market-based gas commodity service within their distribution service territory. However, each local distribution company would have to provide "safe haven" gas commodity service, either as of the date that the company's customer choice plan took effect, or at the conclusion of any rates that existed prior to the effective date of the bill, whichever was later. "Safe haven" gas commodity service would set a price for the sale of natural gas to retail customers who do not choose to elect a different gas commodity supplier. The local distribution company would have to sell natural gas to those customers at a unit price that would be redetermined on the same frequency as other customers were allowed to switch suppliers. The unit price could not exceed the sum of the following:

• The average of the settlement of the prices of the NYMEX 12-month forward strip (the NYMEX natural gas futures contract settlement prices for the succeeding 12-month period), as of the day before the local distribution company's monthly or quarterly filing of the unit price, provided that the local distribution company would have the option of using either the 12-month or a 3-month forward strip if the unit price is determined quarterly.

• A charge that would not exceed 12 percent of the average of settlement prices (see above) if the local distribution company had allowed customer choice for at least 40 percent of its retail customers. If at least 60 percent of the retail customers had been allowed to choose their supplier, the charge could go up to 14 percent of the average, and up to 16 percent if the company had allowed customer choice for all of its retail customers.

• The projected charges for transportation service, including charges for gathering and fuel.

Each local distribution company would have to file its unit price (as calculated), either monthly or quarterly, with the commission for the next month or quarter. Any increase in the unit price would have to be preceded by 30 days notice to the customers.

Those customers who switch suppliers and subsequently switch to the local distribution company with less than 12 months' notice would have to pay a different unit price. The unit price for these customers would be redetermined monthly and would not exceed the sum of the following:

• The settlement price for the current month NYMEX natural gas futures contract price as of the day before the local distribution company's monthly or quarterly filing of the unit price.

• If the company had allowed choice for at least 40 percent of its retail customers, a charge of no more than 12 percent of the settlement price. Companies allowing at least 60 percent customer choice could add a charge of up to 14 percent, and a company allowing 100 percent customer choice could add a charge of up to 16 percent of the settlement price.

• The projected charges for transportation service, including charges for gathering and fuel.

Local distribution companies would have to make a monthly filing specifying the unit price for customers who switch suppliers and subsequently switch back to the local distribution company with less than 12 months' notice. Once someone who had switched back received service for the previous 12 months, they would be provided safe haven service at the regular unit price rate.

As an alternative to unit pricing, a local distribution company could choose to provide a regulated gas commodity service under the Public Service Commission enabling act's provisions for a gas cost recovery clause. As part of each gas customer choice plan filed, each local distribution company would have to make an election to provide safe haven pricing (as described above) or to provide service under a gas cost recovery clause. A company could not modify this decision more often than once during a three-year period.

Retail customers whose annual natural gas requirements were in excess of 20 million cubic feet and were, when the bill took effect, receiving service from a supplier other than the local distribution company would not be eligible for safe haven service, unless they gave the local distribution company twelve months' notice and agreed to remain on the safe haven service for at least one year. All other customers who use more than 20 million cubic feet of natural gas in a year would be eligible for safe haven service until they chose to obtain service from a supplier other than the distribution company, after which time they would have to meet the notice requirements and agree to remain for at least one year as outlined above.

Finally, the bill would specify that its provisions would not affect or void Public Act 419 of 1919 with regard to rates or charges fixed or regulated by any city, village, or township franchise agreement.

House Bill 5203 would provide for licensing of those who want to sell natural gas to retail customers at unregulated market based prices. In order to get a license, a person would have to file an application and a $100 fee with the PSC. The application would have to contain all of the following information:

• The business name, address, telephone number, agent or other person authorized to receive the service of legal documents, and any other information that the commission determined was relevant.

• Evidence that the applicant had a net worth or established line of credit of at least $100,000.

• Evidence that the applicant has the business capability to provide the proposed service, and, if the business is a gas commodity supplier, the ability to acquire sufficient natural gas to meet customer requirements.

• A verification that the applicant will comply with the local distribution company's procedures for enrolling customers as set forth in that company's customer choice plan.

• A verification that the applicant has established a means to resolve disputes with customers in a manner similar to those set by the local distribution companies.

• A verification that the applicant will collect and remit all applicable state and local fees, charges, and taxes, except when the local fees, charges, and taxes are voluntarily collected and remitted by the local distribution company.

• A verification that the applicant will comply with all other rules and procedures set by the commission, including, but not limited to, consumer standards and billing practices for electric and gas residential service.

• Disclosure of any instance where the applicant or anyone acting in concert with the applicant has violated any law, rule, or regulation intended to protect the public.

The PSC would issue the license to the applicant if it determined that granting the license would be reasonable and in the public interest, provided that the applicant had complied with the application requirements and the provisions of the other bills in this package. Failure to supply the information required or failure to inform the commission of material changes in information that had been previously provided would be considered grounds for denial or revocation of a license.

House Bill 5204 would prohibit switching a customer from one supplier to another without the customer's authorization. The PSC would be required to ensure that customers are not switched without oral authorization, written confirmation, confirmation through an independent third party, or other verification approved by the commission that confirms the customer's intent to make a switch and that the customer has approved the specific terms of the switch. The bill would also require suppliers and distributors to use reasonable efforts to switch a customer who properly authorized such a switch. In addition, if necessary, the commission could adopt rules to implement this section and to protect customers from fraud and other unfair and deceptive business practices.

The commission would also be required to establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of natural gas and disseminated by a supplier or distributor. The disclosures and information would have to be accurate and understandable and enable customers to make an informed decisions. The standards would have to establish separate requirements for such information provided to residential, commercial, industrial, or other large volume customers, if appropriate. In addition, the standards could not be unduly burdensome, nor unnecessarily delay or inhibit the initiation and development of competition among natural gas suppliers or distributors in any market.

A supplier or distributor could not release billing history or energy usage information to a third party without the customer's consent. However, each customer would be entitled to obtain his or her billing history and energy usage for the last 12 months from his or her supplier or distributor. The supplier or distributor would have to provide this information to the customer within ten business days of receiving a written request for the information. The supplier or distributor could charge a fee for providing the information, provided that the fee was no greater than the actual cost and was approved by the commission. Furthermore, no less than once a year, a supplier or distributor of natural gas would have to provide its customers with a means to consent to the release of such information.

Finally, the bill would require that each customer's bill identify the customer's natural gas supplier or distributor and provide the supplier or distributor's addresses and telephone numbers.

House Bill 5205 would provide for the regulation of companies that engaged in market-based natural gas commodity service. A local distribution company that had a non-regulated marketing affiliate that provided market-based commodity services in the distribution company's service area would be required to comply with the following code of conduct:

• Any transportation service tariff provision would have to be applied without discrimination to all similarly situated persons.

• Marketing affiliates or their customers could not be given preference over other marketers or their customers in service related matters.

• A distribution company could not give the appearance that it speaks on behalf of its affiliate, nor could the company communicate that a customer, supplier, or third party could benefit or gain an advantage in the use of the company's services by dealing with the company's marketing affiliate.

• All similar requests for service would have to be processed in the same manner and within the same time period.

• Affiliates could not be provided with leads or market sensitive information regarding current or potential customers. If a customer asked for information regarding marketers, the distribution company would be required to provide a list of all the marketers who operated on its system, including any affiliate, but the company would be prohibited from promoting its affiliate.

• If a customer made a written request to have its historical sales and transportation data provided to a particular marketer or marketers in general, the company would have to honor that request until otherwise instructed by the customer.

• To the extent a company provides its affiliate discounts or information regarding transportation, sales, or marketing of natural gas that were not readily available or generally known to any other marketers or suppliers, the company would have to provide the details to all marketers on its system that requested the information at the same time. The same would hold true for any information that was not released by a customer.

• Agreements to release interstate pipeline capacity could not be conditioned upon any agreement relating to any service in which a marketing affiliate was involved.

• The employees of a distribution company and the employees of its affiliate would be required to function independently of one another, be employed by separate entities, and reside in separate offices. The company and its affiliate would also have to keep separate books of accounts and records.

Each local distribution company would have to provide informal dispute resolution procedures for anyone who sought to resolve a complaint concerning any alleged violations of these restrictions.

The PSC would not have authority over the provision of unregulated services and would be prohibited from doing any of the following:

• Imposing restrictions a local distribution company's ability to use its name or logo in providing unregulated services.

• Requiring a local distribution company to divest itself of any functions, assets, personnel, product lines, businesses, or other resources.

• Directly or indirectly requiring a local distribution company to pass on benefits that it had derived from providing unregulated services to its regulated service customers.

• Regulate any aspect of the business or commercial relationship between the distribution company and any supplier, except as otherwise provided in the act.

Trade secrets and commercial or financial information that was submitted by a local distribution company or a licensed supplier in accordance with the provisions of the act would be exempt from disclosure under the Freedom of Information Act, except under the terms of a mandatory protective order. If a mandatory protective order existed and such information was disclosed, it could be included in the PSC's evidentiary record, if it were admissible, but it would remain confidential. There would be a rebuttable presumption that cost studies, customer usage data, marketing studies, and contracts between gas commodity suppliers were trade secrets or commercial or financial information and were thereby protected. The party seeking to have such information disclosed would have the burden of removing this presumption. However, this would not apply to gas cost recovery clause proceedings under section 6h of the act.

The bill would specify that the rates and accounting practices that were in effect for regulated service on July 1, 1999 were established to recover costs previously approved for recovery by the commission and would remain in effect through December 31, 2005. Rate adjustments or rate adjustment mechanisms or refunds would not be effective during this period, provided that an experimental customer choice plan that was in effect as of July 1, 1999 continued in effect for the term of that plan. As of January 1, 2006, rates for regulated service would have to remain in effect, subject to the jurisdiction of the commission and the applicable laws in effect on July 1, 1999. The fixing of rates through December 31, 2005 would not apply to any local distribution company serving less that 200,000 retail customers that filed a notice with the commission within 90 days of the bill's effective date electing not to be subject to those provisions.

<u>House Bill 5206</u> would prohibit cramming. A natural gas supplier or distributor would be prohibited from including or adding optional products or services to customer's account or bill without the customer's authorization. The commission would be required to issue orders to ensure that suppliers or distributors do not engage in assigning, including, or adding optional products or services without some form of verification approved by the commission for confirming the customer's desire to receive the products or services in question.

<u>House Bill 5207</u> would provide penalties for violations of the package. If, after notice and hearing, the commission determined that a person had violated any of the provisions of the package, an order issued under those provisions, or a rule promulgated under those provisions, the commission would order such remedies and penalties as needed to make a person who had suffered an economic loss whole. The remedies and penalties could include any of the following:

• For a first offense, a fine of no less than $10,000 nor more than $20,000 per day of violation; and for each subsequent offense, a fine of no less that $20,000 nor more than $40,000 per day.

• A refund to the customer of the amount paid in excess fees or rates.

• Revocation of the supplier's license.

• Reasonable attorney fees.

• Cease and desist orders.

These penalties would be in addition to any other penalties provided by law.

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.