

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
of the investigation into the marketing practices of)	Case No. U-15509
UNIVERSAL GAS & ELECTRIC CORPORATION.)	
_____)	

In the matter of the Michigan Public Service)	
Commission Staff's request for commencement)	
of a formal complaint proceeding to administer)	
sanctions against UNIVERSAL GAS & ELECTRIC)	Case No. U-15577
CORPORATION for the alleged unauthorized)	
customer switching resulting from a failure to provide)	
timely confirmation letters to customers and other)	
alleged wrongdoings.)	
_____)	

At the May 20, 2008 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

**ORDER COMMENCING CONTESTED CASE PROCEEDINGS
AND ISSUING A NOTICE OF HEARING**

On February 22, 2008, the Commission issued an order in Case Nos. U-14732 and U-15509 commencing an investigation into the marketing practices of Universal Gas & Electric Corporation's (UGE or Universal), an alternative gas supplier (AGS), due to the receipt over the last year

of an unusual number of customer contacts¹ raising concerns about UGE's marketing practices under its AGS license, which was issued pursuant to MCL 460.9.² In so doing, the Commission observed "that the total number of customer contacts is disproportionate to UGE's customer base, as is evident from a comparison with the customer contact frequencies recorded by the Staff for the state's two largest gas utilities, and other AGSs during the same period." February 22 order, Case Nos. U-14732 and U-15509, p. 2.

The Commission directed UGE to file a series of reports. Each report was to include "[a] listing of each customer contact relating to its AGS service, including the issue or concern raised by the customer, open date, close date, how the issue was resolved, and if a refund was issued, the date and tracking number of the check sent" and "[a] description of common types or patterns of misconduct alleged in the customer contacts, actions taken by UGE management to identify root causes of concerns, and measures implemented by UGE to correct company policies, practices, or inactions underlying root causes." February 22 order, Case Nos. U-14732 and U-15509, pp. 3-4.

UGE was also given 30 days to submit a proposed action plan to the Commission's Service Quality Division Staff (Staff) addressing in detail the company's marketing procedures and methods used to avoid the alleged problems that have arisen under the company's current marketing efforts. Progress reports on implementation of UGE's action plan were also to be submitted every three months in conjunction with the investigation report.

¹Customer contacts refer to issues and concerns communicated by customers to the Commission Staff (Staff). A customer contact is coded in the Commission's customer service database as either an inquiry or a complaint. They are not the more formal type of complaint filed under the Commission's Rules of Practice and Procedure, R 460.17101 *et seq.*, which triggers a contested case proceeding under the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*

²The Commission granted UGE an AGS license in an order issued December 20, 2005 in Case No. U-14732.

After the filing of UGE's first report and proposed action plan, the Staff was to conduct a review of UGE's customer contact history. The Staff was also assigned the task of reviewing and evaluating UGE's proposed action plan and was to recommend to the Commission modifications or additions to the plan. The Staff was also required to review each subsequent report filed by UGE and to evaluate the company's progress on implementation of the action plan and determine whether, and to what extent, UGE has eliminated the root causes of customer contacts and otherwise complied with AGS regulatory requirements. Further, the Commission observed:

If at any point the Service Quality Division Staff determines that UGE is not making satisfactory progress in correcting alleged problems with its marketing and customer service, the Staff shall file a report in Case No. U-15509 recommending further action by the Commission. If necessary, the Staff may recommend that the Commission hold a hearing to determine the appropriateness of the imposition of fines and costs on UGE or whether the Commission should commence a proceeding to revoke UGE's license to operate as an AGS in Michigan.

February 22 order, Case Nos. U-14732 and U-15509, pp. 4-5.

Subsequent to the February 22 order, UGE and the Staff submitted numerous conflicting reports and exchanged a variety of letters, all of which are docketed in Case No. U-15509 of the Commission's electronic filing system. On March 24, 2008, UGE filed a 48 page report that was accompanied by 21 exhibits/appendices, which were docketed as separate filings.³ On March 25, 2008, UGE filed a list of customer contacts and two additional exhibits/appendices. The thrust of these filings is UGE's contention that UGE "has consistently strived to assure that its product is marketed in a professional and honest manner" and that the company is "committed to providing the most competitive, highest quality customer choice program in Michigan." March 24 report, p. 47.

³Additional exhibits/appendices were referenced, but not submitted to the Commission out of concern by UGE for their confidentiality.

In the March 24 report, UGE describes its product and its marketing program, which has resulted in contracts with 114,000 residential gas choice customers in Michigan in slightly more than 2 years. The product is described as a five-year, fixed price contract that carries no enrollment fee, but which does carry a \$250 cancellation fee if the customer decides to cancel before the end of the contract term.⁴

UGE explained that it uses independent contractors as sales agents to enroll customers exclusively via door-to-door solicitations. UGE estimated that its 200 sales agents would have the potential for making up to 20,000 such solicitations per day. UGE stated that its sales agents are rigorously screened, extensively trained, and tested before commencing any marketing activities. It also stated that all sales agents must wear the company's uniform and an identification badge.

According to UGE, the following scenario occurs during each sales solicitation:

UGE sales agents are issued sales materials consisting of brochures and contract forms. Each UGE sales agent is equipped with a Blackberry cellular phone that enables the sales agent to submit contract information at the time of sale.

When a UGE sales agent is greeted at the door, that agent is trained to deliver a scripted sales presentation which has been carefully reviewed and revised with MPSC Staff's input. As part of that presentation, the agent is required to inform the customer that UGE's product is a fixed priced contract, that it has a term of five years, that there is no penalty to cancel in the first 30 days, but that any cancellation after the thirty day cooling off period, and before the end of the contract would require payment of a \$250 fee. The agent also reviews the customer's current gas bill to determine that the customer is not in default and is therefore eligible, and circles the customer's current Gas Recovery Charge ("GCR") rate on the invoice. The customer is given a brochure which contains historical price graphs and comparisons, along with the terms and conditions for the contract.

If the customer chooses to enroll with UGE, after the sales agent leaves, the customer receives a telephone verification call from UGE. This call is recorded by UGE and verifies the contract number, the term the customer has selected, the contract price for natural gas, and the fact that this rate may be higher or lower than what the customer is currently paying. On the verification call, the customer is also informed of their 30-day cancellation right and the early cancellation fees that apply. Finally, the customer is asked to rate the service and presentation of the

⁴Customers have a 30 day "cooling off" period after signing the contract during which the customer may elect to cancel the contract without charge.

agent. UGE uses this information to identify sales agents who are not meeting UGE's standards or the Code of Conduct it requires sales agents to maintain.

Upon enrollment with UGE, UGE also sends the customer a welcome letter that confirms the key terms of the contract as outlined above.

March 24 report, pp. 4-5.

Next, UGE contended that the level of customer contacts reported by the Commission is not comparable to the levels of customer contacts recorded for incumbent gas distribution companies. According to UGE, its marketing activities, which involve an unfamiliar product and some customer choice education information, are significantly different from the types of contacts encountered by monopoly utilities who provide bundled services. Even despite the dissimilarities of services and products, UGE maintained that its level of customer contacts fell within the same range experienced by the state's two major monopoly suppliers of gas services. Further, UGE states that the success of its marketing efforts alone would be expected to contribute to the overall increase in customer contacts observed by the Staff. The remainder of the March 24 filing mainly consists of UGE's contention that its agents are adequately trained to avoid any of the alleged improper marketing activities set forth in the Commission's February 22 order.

On April 2, 2008, the Staff filed a response to UGE's March 24-25 filings. According to the Staff, UGE's March 24-25 filings fell far short of the Staff's expectations. The Staff characterized UGE's action plan as "largely unresponsive" given the gravity of the situation. Further, despite a February 26, 2008 face-to-face meeting between representatives of the Staff and the company, the Staff was concerned by the company's failure to present a well-thought out root-cause analysis and action plan. Rather, the Staff maintained that UGE had taken a "largely defensive posture" in its March 24-25 filings by attempting to downplay its problems, by challenging the Staff's data, and by blaming the media for the rise in customer contacts.

With regard to the content of UGE's filings, the Staff maintained that UGE had resorted to critical omissions, distortions, perceived misrepresentations, and the adjustment of facts to comport with its desired results. The Staff highlighted three instances that it believed were particularly egregious. These were described by the Staff as (1) UGE's failure to address product issues and concerns;⁵ (2) the vast disparity between UGE's data regarding customer contacts alleging marketing misrepresentation and the Staff's own data;⁶ and (3) UGE's inclusion of a 3-month discount rate as a marketing tool.⁷ For these reasons, the Staff suggested to UGE that UGE's initial filings were inadequate and that the AGS should file another action plan within 30 days.

On April 7, 2008, UGE filed a letter it had sent to the Staff taking issue with the Staff's characterization of UGE's initial response as unresponsive to the Commission's order and declining to follow the Staff's suggestion that UGE immediately suspend marketing activities. Nevertheless, UGE indicated in that letter that UGE would give appropriate consideration to the issues raised in the Staff's April 2 filing.

On April 8, 2008, the Staff filed a responsive letter sent to UGE that indicated UGE's responsibility to promptly respond to a list of 18 questions set forth in an attachment to the Staff's April 2 filing.

On April 10, 2008, UGE filed its response to the Staff's April 8 letter. UGE maintained that it had agreed to abide by the Staff's request for the preparation of a supplemental action plan and the

⁵According to the Staff, customers do not understand UGE's product and frequently report in their complaints to the Staff that they do not receive sufficient explanation from UGE's marketing agents.

⁶The Staff maintained that UGE reported only 664 customer contacts regarding marketing issues whereas the Staff had records to support 2,575 customer contacts.

⁷According to the Staff, UGE had been informed of the Staff's opinion that UGE's use of a three month discounted gas commodity rate at the outset of the contract term was misleading and confusing to customers.

submission of additional information. UGE also contended that the Staff erroneously characterized UGE's prior response as only a partial reply.

On April 14, 2008, the Staff sent the following letter to UGE:

Universal's response to Staff's request that Universal answer in a timely manner the questions filed by Staff on April 2, 2008, with a clarification provided on April 8 as to the expected response date (by April 18, 2008) is unacceptable. Universal in its April 10, 2008 filing (letter to Michel Hiser dated April 9, 2008) has once again demonstrated its unwillingness to cooperate with Staff in addressing the serious problems Universal faces in carrying out its licensing obligations to responsibly participate in the Michigan Customer Choice Program. As stated in the Staff response and clarification (April 2, and April 8, 2008 filings), answering those questions is a vital component of Staff's evaluation of Universal's actions relating to this investigation. Staff found significant omissions and possible misrepresentations in Universal's initial filing (see Staff's April 2, 2008 filing). As stated in Staff's response clarifying its expected response date (April 8, 2008 filing), Universal's rejection of Staff's request's for the company to suspend its marketing activity to enroll new customers greatly impacted the urgency for Staff to receive this information.

Staff expects Universal to prepare a separate response to those questions provided in Staff's April 2, 2008 filing (see Attachment 2), apart from whatever it plans to file at a later date. Universal's compliance with this request is an expectation, not an option. Failure to comply in full by April 18, 2008 constitutes in Staff's view an obstruction of Staff's ability to fully investigate Universal's actions as directed by the Commission in its order commencing this investigation.

Staff's April 14, 2008 letter (emphasis in original).

On April 16, 2008, UGE responded to the Staff that UGE would use its best efforts to respond to the Staff's questions on April 18, 2008. UGE also indicated that, if additional time were necessary, additional answers could be expected to be filed in the report the company was to file by May 2, 2008.

On April 18, 2008, UGE filed a cover letter and eight exhibits as its supplemental response to the 18 questions posed by the Staff.⁸ UGE's cover letter stated:

⁸UGE submitted an errata filing to its April 18 filing on April 21, 2008.

As you requested, enclosed with this letter is Universal's responses to the eighteen questions attached to Staff's response to Universal's initial report. We trust that you will appreciate the considerable effort that has been made by Universal to be able to produce this response in the short timeframe available. Universal reserves the right to supplement its our answers in the supplemental action plan which is due on May 2.

We understand that you would have agreed to a longer period to respond had Universal ceased marketing in Michigan. Universal determined that it we could not agree to this request because to have done so would have resulted in a loss of livelihood for 46 Michigan agents. Universal strongly believed that this was unnecessary in view of its performance since February 28, 2008, when Universal began implementation of its action plan. You will recall that Mr. Silvestri's April 4, 2008 letter to you, filed in the U-15509 docket, provided a brief summary of the measures taken pursuant to Universal's action plan. Based upon customer contacts generated from current marketing efforts, it appears that those measures have been successful in reducing the level of customer contacts. Since February 28, 2008, Universal has received only seven customer contacts resulting from current marketing efforts, five of which came from the Michigan Public Service Commission.

Please also note that in addition to e-filing this letter and the accompanying response with the MPSC, as a courtesy, on Monday we will deliver to you two bound copies of our responses and attachments, and will do the same for Dr. Nwabueze.

Please feel free to call me with any questions regarding this filing. We look forward to meeting with you next Thursday.

UGE'S April 18, 2008 letter.

On April 21, 2008, the Staff responded to UGE's April 18 filings through submission of a document indicating the Staff's opinion that UGE's April 18 filings were again deficient. According to the Staff, UGE's continued refusal to fully cooperate in providing necessary information has impeded Staff's investigation. The Staff noted that UGE's failure to fully respond to an inquiry regarding how many of UGE's AGS customers had not been mailed a confirmation letter within seven days of signing the contract, as required by the tariff (Question 14) was a major concern. Stating that UGE had conceded in its March 24, 2008 filing that some confirmation letters were not sent to customers within the 7 day time period specifically required in the gas

customer choice tariffs and contending that the Staff's customer data base would support a finding that over 1,000 such tariff violations of this tariff had occurred, the Staff insisted that UGE's failure to fully respond to Question 14 was impeding the Staff's investigation. The Staff gave UGE 5 days to respond to Question 14.

On April 28, 2008, UGE responded. In so doing, UGE reiterated that in its April 18, 2008 filing UGE had responded to Question 14 by stating that it was then unable to respond to the question for the August 1, 2007 to February 29, 2008 period because pertinent data was with the company hired to generate the customer information that was transmitted to a third-party mail house that was responsible for sending out the seven day welcome letters. However, UGE stressed that its initial method of processing orders had changed and that its current method does provide for the timely sending of the seven day welcome letters.

In its April 28, 2008 filing, UGE provided a supplemental response regarding Question 14 that consisted of claims that (1) no customer has complained about the failure to receive a seven day welcome letter; (2) any delay in responding was attributable to third party vendors; (3) the tariff language regarding seven day letters must factor in UGE's position that the seven day period does not begin until after an agreement is formed, which does not occur until after the 30 day cancellation period has expired; (4) nothing in the gas customer choice tariff specifies that the sending of a seven day welcome letter constitutes a condition precedent to the formation of a contract; and (5) the primary beneficiary of the tariff language at issue is the monopoly gas distribution company that is relieved of the responsibility of notifying the customer. Further, UGE concluded by stating that because the choice tariff provides that the remedy for non-compliance is suspension of participation in the AGS program and because UGE is now in compliance with the seven day welcome letter requirement, therefore, under any interpretation, the matter has been

fully addressed and nothing further remains to be done regarding confirmation letters. Finally, UGE did acknowledge that it had been able to discover that 45,131 of its customers had not been sent seven day welcome letters within seven days of the date the customers actually signed the enrollment forms.

On May 2, 2008, UGE filed a supplement to its first tri-monthly report and proposed action plan, which was accompanied by the filing of 17 exhibits. UGE provided details that it claimed showed dramatic improvement to its marketing efforts. It also maintained that the results of its action plan have been highly successful. According to UGE, improvements such as the use of verification telephone calls, are working to cut down customer contacts. UGE also charged that certain of the Staff's objections to its marketing efforts are focused on the company's product, which is beyond the Commission's jurisdiction to review. UGE asserted that the Staff cannot insist that UGE lower its cancellation fee or adjust the length of its contracts because the Commission lacks jurisdiction to regulate the price, terms or conditions of AGS service offerings. UGE also contended that the disparity between the Staff's data and the company's data does not mean that the company is being disingenuous. Citing statistical data contained in its various exhibits, UGE insisted that the Staff's data is misleading and fails to support a finding of excess customer contacts. UGE also relied on a legal opinion to support its contentions that the tariff violations alleged due to its failure to send timely seven day letters never occurred and that, in any event, are inconsequential. Finally, UGE's May 2 supplemental report addresses eight suggestions made by the Staff in an April 24 meeting with the company. With regard to these matters, UGE agreed to abide by all applicable laws, tariffs, customer billing rules, and orders of the Commission; and to cooperate with the Staff. UGE maintained that it has demonstrated that its action plan has improved customer service, enhanced supervision over its sales agents, and brought UGE into

compliance with requested reply times for responding to customer contacts. UGE believes that, with the exception of product content matters, it has fulfilled all of the Staff's requests with regard to marketing materials. However, UGE indicated that it had no intention to cease marketing its product or revise the terms or conditions of its contracts.

At the same time that UGE filed its report, UGE also filed a motion to clarify the scope of this investigation. Among the requests made by UGE in its motion are that the Commission (1) direct the Staff to provide a detailed report to the Commission listing the specific modifications or additions that the Staff believes UGE should make to its action plan; (2) affirm that the Commission does not have authority and jurisdiction to regulate the level of an AGS's early termination fee and instruct the Staff to not attempt to force UGE to decrease its termination fee from \$250 to \$100; (3) affirm that the Commission does not have authority and jurisdiction to regulate the length of an AGS's product offerings and instruct the Staff to not attempt to force UGE to discontinue its five-year, fixed-priced contracts; (4) affirm that the Commission does not have authority and jurisdiction to require AGSs to return customers to system supply in a manner contrary to the choice tariffs and the AGSs' contracts and instruct the Staff to not attempt to force UGE to permit customers to return to system supply without complying with the choice tariffs and their contract; (5) affirm that UGE is not required to suspend marketing without a hearing and opportunity to present a defense; (6) clarify that the Commission did not intend for the investigation to address the terms and conditions of UGE's product offering, specifically the level of its termination charge, the length of the contract, and the requirements of returning customers to system supply; (7) direct the Staff to notify UGE customers of the applicable per Ccf GCR price when such customers contact the Commission; (8) direct the Staff to *not* forward customer contacts that have no merit to UGE; (9) direct the Staff to *not* open an administrative file simply because the

customer advises the Staff that the customer is elderly, a student, disabled, or on social assistance; (10) set a schedule for the Staff and other interested parties to respond to this motion and for UGE to reply to any filed responses; and (11) grant such relief and enter such orders as the Commission deems appropriate.

On May 6, 2008, the Staff filed both a report in Case No. U-15509 and a request for commencement of a formal complaint proceeding, which was docketed in both Case Nos. U-15509 and U-15577. The Staff report stated that, as the investigation has progressed, the Staff has become convinced that the state of affairs is more serious than first believed. According to the Staff, UGE's continued failure to acknowledge and appropriately respond to the Commission's February 22 order and the Staff's requests for information has become a matter of increasing concern that requires more drastic action. Specifically, the Staff indicated that the time has come for the filing of misconduct charges against UGE that could lead to revocation of UGE's AGS license.

On May 9, 2008, UGE filed responses to both the Staff's May 6 report in Case No. U-15509 and the Staff's request for commencement of a formal complaint proceeding in Case Nos. U-15509 and U-15577. The response to the Staff's May 6 report emphasizes the company's cooperation in the investigation and the progress that has been achieved. The response to the request by the Staff to commence a contested case proceeding against UGE maintains the absence of any wrongdoing and the likelihood that UGE will ultimately prevail in such a proceeding.

The Commission finds that the Staff's request to commence a contested case proceeding should be granted and that all issues in dispute should be litigated exclusively in Case No. U-15577. The Commission notes that the Staff's May 6, 2008 filing primarily focuses on the issue of tariff violations associated with the alleged late mailing of seven day welcome letters.

However, the various pleadings filed by the parties since issuance of the February 22 order touch on many more allegations that are of keen interest to the Commission. Accordingly, because the scope of the dispute between the Staff and UGE is likely to extend beyond the seven day letter issue, the Commission is persuaded that a comprehensive proceeding, as opposed to several independent proceedings, will be more efficient. Toward that end, the Commission directs the Staff to file a single unified complaint against UGE in Case No. U-15577 that covers all matters that the Staff believes to be pertinent to the issue of whether UGE's AGS license should be revoked, as well as other appropriate penalties and remedies permitted by MCL 460.9.

The Commission directs that the Staff shall have until August 1, 2008 to file and serve upon UGE a single unified complaint, together with all necessary testimony and exhibits. A prehearing conference has been scheduled to be held on August 14, 2008 at 9:00 a.m. before Administrative Law Judge Mark E. Cummins (ALJ) in this matter. The ALJ shall be responsible for all further scheduling in this proceeding.

The Commission has slightly revised the caption of Case No. U-15577 to indicate that more allegations of wrongdoing might be forthcoming before commencement of the contested case proceedings. Case No. U-15509 will remain open and will constitute the docket in which the Staff and UGE should seek to resolve their differences between the issuance of this order and August 1, 2008, the date by which the Staff has been directed to file its prepared testimony and exhibits in Case No. U-15577.

All documents filed in these cases shall be submitted electronically through the Commission's Electronic Case Filings Web site at: <https://efile.mpsc.cis.state.mi.us/cgi-bin/efile/login.pl>. Requirements and instructions for filing electronic documents can be found in the Electronic Case Filings Users Manual at: <http://efile.mpsc.cis.state.mi.us/efile/pdfs/usersmanual.pdf>. An

Application for account and letter of assurance, required of all first-time users, are located at: <http://efile.mpsc.cis.state.mi.us/efile/pdfs/assurance.pdf>. The Staff can be contacted prior to e-filing at 517-241-6170 or by e-mail at: mpscefilecases@michigan.gov.

The Commission has jurisdiction over this matter pursuant to 2002 PA 634, MCL 460.9 *et seq.*; 1909 PA 300, MCL 462.2 *et seq.*; 1919 PA 419, MCL 460.51 *et seq.*; 1939 PA 3, MCL 460.1 *et seq.*; 1969 PA 306, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17101 *et seq.*

THEREFORE, IT IS ORDERED that:

A. The Commission Staff's request for commencement of a formal complaint proceeding to administer sanctions against Universal Gas & Electric Corporation is granted as modified by this order. The Commission Staff shall have until August 1, 2008 to file and serve upon Universal Gas & Electric Corporation a single unified complaint, together with all necessary testimony and exhibits.

B. The issues raised in Universal Gas & Electric Corporation's May 2, 2008 motion to clarify the scope of this proceeding shall be litigated in the context of the contested case to be conducted in Case No. U-15577.

C. A prehearing conference shall be conducted on August 14, 2008 at 9:00 a.m. by Administrative Law Judge Mark E. Cummins in Case No. U-15577.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of May 20, 2008.

Mary Jo Kunkle, Executive Secretary