

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.)
_____)

In the matter, on the Commission's own motion, to)
to initiate a contested case proceeding involving)
CONSUMERS ENERGY COMPANY, MICHIGAN)
CONSOLIDATED GAS COMPANY, MICHIGAN) Case No. U-15929
GAS UTILITIES CORPORATION, and SEMCO)
ENERGY GAS COMPANY to investigate whether)
any clarifications, revisions, or additions should be)
made to certain approved gas customer choice tariffs.)
_____)

At the April 16, 2009 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 APPROVING SETTLEMENT AGREEMENT

On February 22, 2008, the Commission issued an order in Case No. U-15509 commencing an investigation into the marketing practices of Universal Gas & Electric Corporation (UGE), an alternative gas supplier (AGS), due to the receipt of an unusual number of customer contacts raising concerns about UGE's marketing practices. On May 6, 2008, the Commission Staff (Staff) filed a report in Case No. U-15509, along with a request for commencement of a formal complaint proceeding against UGE, which was docketed in Case No. U-15577.

On May 20, 2008, the Commission issued an order in Case Nos. U-15509 and U-15577 commencing a contested case proceeding to consider the Staff's allegations regarding the marketing and customer service practices of UGE. The Commission directed the Staff to file a single unified complaint, together with all necessary testimony and exhibits, by August 1, 2008.

On August 1, 2008, the Staff filed a complaint, with supporting testimony and exhibits, requesting that "[g]iven the pattern of violations of the applicable tariffs and statutes by UGE, Staff respectfully requests that the Commission revoke UGE's license, fine UGE, or take any other remedial action against UGE it deems appropriate." Complaint, p. 4. On August 14, 2008, the Staff amended its complaint adding a request that the Commission remedy customer economic losses resulting from the alleged violations by UGE.

After several months of contentious discovery, the parties negotiated and filed a settlement agreement that resolves almost all issues in this proceeding, and that provides for proceedings to address the few matters that remain unresolved.

According to the terms of the settlement agreement, attached as Exhibit A, the parties agree that UGE shall offer to terminate, without charge, contracts with certain customers or, alternatively, provide a \$50 credit to those customers who choose to remain with UGE. The

parties also agree that UGE shall reimburse certain customers for their time and costs associated with litigating this case and that UGE shall reimburse the State of Michigan \$300,000 for the costs of its investigation. UGE further agrees to submit its marketing materials to the Staff for review and to change certain products and marketing practices. Specifically, UGE agrees:

- To limit its gas supply contracts to one and two year terms and to limit its cancellation fees to \$50—for early cancellation of a one-year contract—and \$100 for early cancellation of a two-year contract.¹
- To revise its contract language to more specifically indicate that the terms and conditions of the contract are set forth in the New User Guide distributed with the contract.
- As part of its recorded telephone verification calls, UGE will separately ask customers whether they received a copy of the contract with the New User Guide, and whether the customer received these materials at the same time.
- UGE will include in its welcome letter an example of the utility bill showing where UGE's charges will appear. A mock bill format will be used if the utility does not grant permission to use a likeness of its bill.
- UGE will assure that the customer responds affirmatively on telephone verification calls.
- UGE will agree to allow customers to cancel their contracts over the phone without the need for making the request in a separate written document.

The settlement agreement also sets forth the following proposals for approval by the Commission with regard to how UGE should handle future complaints and matters that remain to be fully resolved:

- When a complaint is received from the Staff regarding the conduct of one of UGE's sales agents, UGE will confirm with the Staff that there has been follow-up with the agent or will advise the Staff if the agent is no longer employed by UGE.
- For contracts entered into on or after the effective date of the settlement, if UGE did not conduct a telephone verification call personally with the customer or other authorized representative as provided in the gas customer choice tariffs, and

¹These contractual provisions will not be applicable to the termination fee that UGE may charge commercial accounts using in excess of 2,000 hundred-cubic feet (Ccf) of natural gas per year.

the customer complains to the Commission about deceptive marketing, UGE will release the customer from the contract without payment of early termination charges.

- In the event that complaints registered with the Commission reach 1.5% of UGE's total flowing customers in any 30-day period, the Staff may request an audit of a sample of complaints and a report on root causes. UGE will promptly address any issues raised in the audit report.
- On or before the effective date of the settlement, each party shall identify a primary liaison contact for resolving disputes. UGE will identify a person from its management.

The parties agreed that approval of the settlement agreement by the Commission “will promote the public interest, will aid the expeditious conclusion of this case and will minimize the time and expense which would otherwise have to be devoted to this matter by the Commission and the Parties.” Accordingly, they urge the Commission to approve the settlement agreement without modification.²

Discussion

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.*

The Commission is well aware of the efforts put forth by UGE, the Staff, and the ALJ. The Commission is also aware that this matter could have continued for many more months had the parties not resolved to craft an agreement that promises to bring this case to a final conclusion in a manner that benefits the public, the parties, and the Commission.

²The Commission has not described every provision listed in the settlement agreement. Some of these provisions involve boilerplate language that is routine and non-controversial. Some provisions are merely procedural. However, a few of the provisions are noteworthy and are discussed in detail.

The Commission finds that, given the totality of the circumstances, the proposed settlement is reasonable and in the public interest, and should be approved. The settlement agreement gives UGE guidance regarding the Commission's expectations for how an AGS is expected to deal with its customers and prospective customers in this state. The settlement agreement also provides certain aggrieved customers and former customers a measure of relief in the form of the various reimbursements and credits that UGE is obligated to provide. Issues concerning UGE's products and marketing materials have also been resolved.

However, a few matters still need to be addressed. To begin with, the Commission notes that in paragraph 19 of the settlement agreement, the parties refer to an AGS license application for "Commerce Energy, Inc." Paragraph 19 of the settlement agreement specifically provides:

If the Commission approves Commerce Energy, Inc. [sic] (Commerce) AGS license application without additional conditions beyond those currently attached to UGE's current AGS license, Commerce will be bound by the terms of the settlement.

On December 22, 2008, Commerce notified the Staff that all company stock was transferred to Commerce Gas and Electric Corp. (CG&E), a wholly-owned subsidiary of Universal Energy Group, Ltd. (Universal)³ through a consensual foreclosure. Although now controlled by CG&E, Commerce continues to operate as an alternative electric supplier (AES) and provides service to its customers under existing contractual terms and conditions.⁴ To date, Commerce has not updated its license application to indicate the change in its ownership. The Commission therefore directs

³According to a letter to the Staff from Commerce Energy, received on December 22, 2008, CG&E is a wholly-owned subsidiary of Universal Energy Group, Ltd.

⁴Commonwealth Energy Corporation, d/b/a electricAmerica (Commonwealth), was issued an AES license in Case No. U-13203 on November 20, 2001. Commonwealth received permission from the Commission to change its name to Commerce Energy, Inc. on June 21, 2005. Commerce was registered to do business in Michigan on March 22, 2005.

UGE to file with the Staff all of the information necessary to properly implement ¶¶ 15 and 19 of the settlement agreement within 10 days of the date of this order.

Commerce has not applied for an AGS license, nor is it clear from the record in Case No. U-13203 or Case No. U-14732 (UGE's AGS license case) what the business relationship is between UGE and Commerce. If Commerce does apply for an AGS license, the Commission will require clarification of this relationship. Moreover, paragraph 19 of the settlement agreement appears to create an obligation (to be bound by the terms of the settlement agreement) for a party (Commerce) who is not a party to the settlement. The Commission directs that if or when Commerce applies for an AGS license, Commerce shall affirm the obligations set forth in the settlement agreement.

The parties recommend that, in addition to closing Case No. U-15577, the Commission also close the docket in Case No. U-15509, the proceeding opened by the Commission on February 22, 2008 for the purpose of initiating the investigation into UGE's marketing practices.

The Commission recognizes the relationship between these proceedings and, given the outcome anticipated by the parties, the Commission finds that the docket in Case No. U-15577 should be closed at this time. However, in light of the serious matters raised in the complaint and addressed in the settlement agreement, the Commission is not persuaded that its investigation in Case No. U-15509 should be closed at this time. Rather, the Commission finds that the docket in Case No. U-15509 should remain open until the Commission is satisfied that the terms of the settlement agreement have been fully implemented. In addition, Case No. U-15509 shall serve as a repository for the semi-annual reports to be submitted by UGE to the Staff pursuant to paragraph 20 of the settlement agreement.

Therefore, within 14 days of its completion or compliance with a term or condition in the settlement agreement, UGE shall file in Case No. U-15509 sufficient documentation to demonstrate that the company has fulfilled the specified term or obligation. At such time that UGE has fulfilled all of the terms and obligations, UGE may file a request to have Case No. U-15509 closed by the Commission.

The Commission recognizes that several years have passed since the gas customer choice tariffs were introduced and, with the passage of time, including lessons learned from the UGE investigation, a reopening of some of these tariffs is needed. Accordingly, with this order, the Commission will open a new docket designated as Case No. U-15929 to commence a contested case for the limited purpose of determining whether any clarifications, revisions, or additions should be made to Sections F2 (Residential Customer Protections), F3 (Solicitation Requirements), F4 (Supplier Registration and Code of Conduct), and the Minimum Term paragraph of Gas Customer Choice Rate CC of Section F (Customer Choice Program.) Consumers Energy Company, Michigan Consolidated Gas Company, Michigan Gas Utilities Corporation, SEMCO Energy Gas Company (MPSC and Battle Creek Divisions), and the Staff are directed to participate in this case. As agreed to in ¶ 7 of the settlement agreement, the Staff and UGE shall include as part of this proceeding briefing on the issue of whether an AGS may require a customer to pay a termination fee before returning the customer to system supply.

In addition to the regulated gas utilities with gas choice customers, all other interested persons are invited to recommend changes to the sections of the gas customer choice tariffs specifically identified above that they believe are in the public interest.

With regard to the review of the identified parts of Section F of the gas customer choice tariffs, a prehearing conference shall be held at 9:00 a.m. on June 9, 2009 before Administrative

Law Judge Daniel E. Nickerson, Jr. (ALJ). The ALJ shall set a schedule that will assure that the proceedings are completed by April 16, 2010.

All documents filed in Case No. U-15929 shall be submitted electronically through the Commission's E-Dockets Website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an e-mail sent to mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact the Staff at (517) 241-6170 or by e-mail at mpscedockets@michigan.gov. All information received by the Commission will become public information, posted on the Commission's website, and subject to disclosure.

Written comments regarding this issue/these issues will be accepted. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan. All comments should reference Case No. U-15929 and be received no later than 5:00 p.m., Tuesday, September 15, 2009. All comments received by the Commission will become public information, posted on the Commission's website, and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. The March 19, 2009 settlement agreement filed by Universal Gas & Electric Corporation and the Commission Staff is approved.

B. Universal Gas & Electric Corporation and the Commission Staff shall file briefs and reply briefs in Case No. U-15929 addressing the dispute described in paragraph 7 of the settlement agreement in accordance with the schedule set by the Administrative Law Judge.

C. Within 15 days of the date of this order, Universal Gas & Electric Corporation shall file with the Commission Staff all required documentation to update the alternative electric supplier license held by Commerce Energy, Inc.

D. The docket in Case No. U-15577 is closed.

E. The docket in Case No. U-15509 shall remain open for the reasons set forth in the order.

F. Not later than 10 business days after the effective date of the settlement agreement, Universal Gas & Electric Corporation shall reimburse the State of Michigan \$300,000 for the indeterminate costs of the investigation by delivering a certified check for that amount to the Commission's Executive Secretary.

G. Consumers Energy Company, Michigan Consolidated Gas Company, Michigan Gas Utilities Corporation, SEMCO Energy Gas Company (MPSC and Battle Creek Divisions), and the Commission Staff are directed to participate in Case No. U-15929. Each utility shall serve notice of this proceeding on all intervenors in their most recent general rate case.

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 April 16, 2009.

Mary Jo Kunkle, Executive Secretary

STATE OF MICHIGAN
IN THE MICHIGAN PUBLIC SERVICE COMMISSION

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 Corporation for the alleged unauthorized
customer switching resulting from a failure to provide timely
confirmation letters to customers and other alleged
wrongdoings. Case No. U-15577

DEFINITIVE SETTLEMENT AGREEMENT BETWEEN MPSC STAFF AND
UNIVERSAL GAS & ELECTRIC CORPORATION

Entered into between Michigan Public Service Commission Staff ("Staff") and Universal
Gas & Electric Corporation ("Universal") as a comprehensive settlement of all issues in Michigan
Public Service Case No. U-15577. Staff and Universal (individually, a "Party"; collectively, the
"Parties") are the only parties to this docket. It is the opinion of the Parties that this Settlement
Agreement will promote the public interest, will aid the expeditious conclusion of this case and will
minimize the time and expense which would otherwise have to be devoted to this matter by the
Commission and the Parties. This Settlement Agreement is for the purpose of final resolution of
this case and all provisions of same are dependent upon all other provisions contained herein. This
Settlement Agreement is submitted pursuant to Section 78 of the Administrative Procedures Act of
1969, as amended (1969 PA 306, § 78; MCLA 24.278; MSA 3.560 (178)). By this Settlement
Agreement, the Parties agree as follows

- 1. The Effective Date of this Agreement ("Effective Date") shall be the later of the date of entry of
an order by the Michigan Public Service Commission ("MPSC") approving this Agreement in its
entirety becomes final and non-appealable or May 1, 2009.

2. Not later than ten business days after the Effective Date, Universal will offer Universal customers identified in Staff's Exhibit S-17 in U-15577 who have not previously terminated their contracts as of the date of this Agreement the choice of either terminating without charge or accepting a \$50 credit if they remain with Universal. The offer to terminate will remain open for 90 days from the date of Universal's notification to the affected customers.
3. Not later than ten business days after the Effective Date, Universal will offer the 1047 customers identified in part in Staff's Exhibit BLB-4 in Case No. U-15577 who have not been previously terminated at the time of this Agreement and identified in part in BLB-4 the choice of either terminating without charge or accepting a \$50 credit if they remained with Universal. The offer to terminate will remain open for 90 days from the date of Universal's notification to the affected customers.
4. Not later than ten business days after the Effective Date, the eighteen customers for whom Staff pre-filed testimony will be paid \$1,000 as reimbursement for their indeterminate time and costs.
5. Not later than ten business days after the Effective Date, the customers identified in Staff's Exhibit S-32 in U-15577 will be paid \$500 as reimbursement for their indeterminate time and costs. If a customer identified in ¶ 4 of this Agreement appears in Exhibit S-32, that customer will be paid under ¶ 4 and not this paragraph.
6. For purposes of determining when confirmation letter must be sent under the applicable tariffs, Universal will consider seven days to run from the date that the contract was signed, as will be required by Staff of all Alternative Gas Suppliers ("AGS"). Staff's progress in this regard will be an appropriate topic for liaison meetings between Universal and Staff. Staff will consistently apply the same standard to all AGS providers.

7. Both parties will brief the issue regarding whether an AGS may require a customer to pay termination fees prior to returning the customer to system supply to the Michigan Public Service Commission (“MPSC”) in the context of a tariff revision proceeding to be brought by Staff.
8. Upon Staff’s review of appropriate marketing materials to be submitted by Universal, Universal will voluntarily offer only contracts for 1 year with a \$50 termination fee and 2 years with a \$100 termination fee for a period of twelve months. The twelve month period will start on a reasonably practical date for implementation of the new contract offerings not to exceed 30 days from the date that Staff reviews the new marketing materials. This provision does not limit the termination fee that Universal may charge commercial accounts using in excess of 2,000 Ccf of natural gas per year.
9. Universal will revise its contract language to more specifically indicate that the terms and conditions of the contract are set forth in the New User Guide distributed with the contract (“Brochure”). This change shall be incorporated in the marketing materials to be submitted pursuant to ¶ 8, above.
10. As part of its recorded telephone verification calls, Universal will separately ask customers whether they received a copy of the contract with the Brochure. Universal will ask whether the customer received these materials together.
11. Universal will include in its welcome letter an example of the utility bill showing where Universal’s charges will appear; a mock bill format will be used if the utility does not grant permission to use a likeness of its bill.
12. When a complaint is received from Staff regarding conduct of one of Universal’s sales agents, Universal will confirm with Staff that there has been follow-up with agent, or advise if the agent is not still employed with Universal.

13. Universal will assure that the customer responds affirmatively on telephone verification calls. For contracts entered into on or after the Effective Date, if Universal did not conduct a telephone verification call personally with the customer or the customer's spouse or other authorized representative as provided in the Gas Customer Choice tariffs, and the customer complains to the Commission about deceptive marketing, Universal will release the customer from the contract without payment of early termination charges.
14. In the event that complaints registered with the Commission reach 1.5% of Universal's total flowing customers in any 30-day period, Staff may request that Grant Thornton (or another mutually agreeable auditor) audit a sample of complaints and report on root causes, which report will be provided to Staff. Universal will promptly address any issues raised in the audit report.
15. Commencing on the Effective Date, Universal will not market during a 15-day transition period, during which agents will be trained on Universal's new Commerce Energy offerings.
16. On or before the Effective Date, each party shall identify a primary liaison contact for resolving disputes. Universal will identify a person from its management.
17. Universal acknowledges that Staff concerns relating to violations regarding marketing activities and other AGS tariff provisions that have been brought to Universal's attention have been remedied or are in the process of being remedied, and Universal continues to promptly address these issues.
18. Not later than ten business days after the Effective Date, Universal shall reimburse the State of Michigan \$300,000 for the indeterminate costs of investigation.

19. If the Commission approves Commerce Energy, Inc. (“Commerce”) AGS license application without additional conditions beyond those currently attached to Universal’s current AGS license, Commerce will be bound by the terms of the settlement.
20. By this Agreement, the Parties recommend that Case U-15509 will be closed. Universal will continue to make reports as required in that case directly to Staff for two years from the Effective Date on a semi-annual basis. Universal agrees to pay for one additional audit from Grant Thornton at any time in the next two years at Staff’s request.
21. Universal will agree to allow customers to cancel their contract over the phone without the need for making the request in a separate written document.
22. This docket will be closed upon approval of this settlement.
23. All terms of this Agreement are subject to approval by the MPSC. In the event that the MPSC does not approve this Agreement in its entirety, this Agreement shall become void and a scheduling conference will promptly be held in Case No. U-15577.
24. The parties will adjourn current proceedings as may be necessary to accommodate this process.
25. The individuals signing this Agreement represent that they have full authority to sign this Agreement on behalf of the respective parties.
26. Both Parties agree not to appeal, challenge or contest the Commission’s order in this case if it is the result of a Commission order accepting and approving this Settlement Agreement without modification. If the Commission does not accept this Settlement Agreement without modification, this Settlement Agreement shall be withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.
27. The Parties jointly recommend that the Commission issue its Order Adopting Settlement Agreement.

28. This Settlement Agreement has been made for the sole and express purpose of reaching compromise among the positions of the Parties without prejudice to their rights to take new and/or different positions in other proceedings. If the Commission approves this Settlement Agreement without modification, neither the Parties to this Settlement Agreement nor the Commission shall make any reference to or use of the Settlement Agreement or the order approving it as a reason, authority, rationale or example for taking any action or position or making any subsequent decision in this case or any other cases or proceedings; provided, however, such reference or use may be made to enforce the Settlement Agreement and order.

29. Section 81 of the Administrative Procedures Act of 1969 is waived by the signatories.

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

Dated: March 17, 2009

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**UNIVERSAL GAS & ELECTRIC
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Dated: March 17, 2009

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