

APR 29 2005

**BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING** Public Service Commission  
Wyoming

IN THE MATTER OF THE COMPLAINT OF	)	
THE WYOMING OFFICE OF CONSUMER	)	
ADVOCATE CONCERNING UNLAWFUL,	)	DOCKET NO.30022-GC-05- _____
DECEPTIVE, AND MISLEADING	)	RECORD NO. _____
ADVERTISING BY KINDER MORGAN RETAIL	)	
ENERGY SERVICES DURING THE 2005	)	
CHOICE GAS PROGRAM SELECTION PERIOD	)	

**FORMAL COMPLAINT**

**and**

**REQUEST FOR HEARING**

COMES NOW, the Office of Consumer Advocate, and pursuant to the § 114 of the Commission's Rules of Practice and Procedure, for its Complaint against Kinder Morgan Retail Energy Services, Inc., a subsidiary of Kinder Morgan, Inc, states:

1. Kinder Morgan Retail Energy Services, (KMRES) a wholly owned subsidiary of Kinder Morgan, Inc., is a Choice Gas program supplier.
2. KMRES is the dominant unregulated supplier in terms of number of customers served.
3. The Choice Gas program selection period is currently in progress and will end at midnight on April 29, 2005.
4. On April 13, 2005, shortly after the current selection period began, the OCA discovered that KMRES was promoting its supply options by conducting a prize drawing for three television sets.
5. This drawing was being conducted in violation of the Wyoming Consumer Protection Act due to KMRES's failure to disclose in its direct mail and Internet advertisements information related to the odds of winning and the value of the prizes as required by the Act. In addition, the promotion failed to allow the participation of Choice Gas consumers who do not purchase their gas supply from KMRES.
6. Also on April 13, 2005, OCA informed KMRES that its drawing promotion was being conducted illegally.
7. After considering the matter, KMRES altered its prize promotion by including the statement of odds and prize value as well as by allowing the entry of non-KMRES customers.

8. On April 28<sup>1</sup>, 2005 a large (15"x 9.5") advertisement appeared in the Casper Star-Tribune and the Laramie Daily Boomerang, stating in pertinent part:

**Studies prove that Choice Gas  
Supplier Rates were equal to or  
better than Regulated Pass-On  
Rates in five of six years!**

and;

**The undisputed evidence on record with the  
Wyoming Public Service Commission is that  
supplier rates were equal to or better than Pass-  
On (Regulated) rates in five of six years studied.**

A copy of the advertisement, labeled OCA Exhibit 1, is attached hereto.

9. The advertisements are inaccurate, deceptive, and misleading. The Commission's records, as KMRES is certainly aware, include evidence that clearly and obviously contradicts the claims made in the advertisement and evidence that clearly indicates the existence of a dispute regarding the comparison of the Pass-On Rate [Regulated Rate] with unregulated supply options.

10. That evidence includes, but is not limited to:

The sworn testimony of Denise K. Parrish in Docket No. 30022-GT-04-48.

The sworn testimony of Denise K. Parrish in Docket No. 30022-GI-02-3.

The Prefiled Direct Testimony of Denise Parrish in Docket No. 30022-GI-02-3

The sworn rebuttal testimony of Daniel Watson in Docket No. 30022-GI-02-3

Excerpts of the transcripts from these proceedings are labeled OCA Exhibit 2, OCA Exhibit 3, OCA Exhibit 4, and OCA Exhibit 5, respectively, and attached hereto.

11. W.S. § 40-12-105(a)(vii) specifically prohibits knowingly making false representations of fact concerning the price of merchandise<sup>2</sup> and unfair and deceptive acts or practices generally.

12. In addition to the general prohibition of unfair and deceptive advertising by the Wyoming Consumer Protection Act, KMRES has violated the Choice Gas Service Supplier Code of Conduct Guidelines. The Code of Conduct, which specifically provides that a supplier "shall not market or advertise its commodity services in any manner that is misleading to the customer, or

---

<sup>1</sup> Similar or identical advertisements also appeared on April 27, 2005 and April 29, 2005, in the Casper Star Tribune and may also have appeared in other media sources.

<sup>2</sup> "Merchandise" is defined by the Wyoming Consumer Protection Act as "any service or any property, tangible or intangible, real, personal or mixed, or any other object, ware, good, commodity, or article of value wherever situated." (See W.S. § 40-12-102(a)(vi)).

misrepresents the cost of commodity to the customer, ” is included in the Commission approved tariffs governing the Choice Gas program. A copy of the Supplier Code of Conduct, labeled OCA Exhibit 6, is attached hereto.

13. KMRES has engaged in a pattern of unlawful, deceptive, and misleading advertising as described above, and has demonstrated, by its disregard for Wyoming laws and Kinder Morgan’s Commission approved tariffs that prohibit deceptive and misleading advertising, that it is unfit to participate in the Choice Gas program without strict Commission supervision of its advertising activities.

14. The unlawful, deceptive, and misleading advertising activity of KMRES, which is specifically prohibited by the Supplier Code of Conduct as well as Wyoming’s generally applicable Consumer Protection Act, has corrupted the selection process that is currently underway, thereby harming consumers and other program suppliers.

WHEREFORE, the OCA respectfully requests that the Commission:

1. Invalidate all selections of KMRES offerings by consumers made during the current selection period;
2. Allow all consumers who selected a KMRES supply option to reselect in an appropriate time period as determined by the Commission.
3. Require Kinder Morgan Inc. to take appropriate measures to notify consumers who selected a KMRES supply option that their previous selection has been invalidated due to KMRES’s use of unlawful, deceptive, and misleading advertisements prohibited by the Supplier Code of Conduct, and that they will be required to re-select a supplier and pricing option or receive service under the Pass-On Rate [Regulated Rate];
4. Require KMRES to submit all advertising material that it intends to use in connection with the Choice Gas program in future program years to the Commission for advance approval.

DATED this 29<sup>th</sup> day of April, 2005.

OFFICE OF CONSUMER ADVOCATE



Christopher Petrie  
Office of Consumer Advocate  
2515 Warren Avenue, Suite 304  
Cheyenne, WY 82002  
(307) 777-5763

## CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2005, I served the foregoing to each individual listed below by depositing a properly addressed copy thereof in the United States Mail with first-class postage affixed and by e-mail transmission.

Paul J. Hickey  
Roger C. Fransen  
Hickey & Mackey  
Post Office Box 467  
Cheyenne, WY 82003-0467

T.J. Carroll, III  
Kinder Morgan, Inc.  
370 Van Gordon Street  
Lakewood, CO 80228

Stephanie Reeves  
Wyoming Community Gas  
200 West 17<sup>th</sup> Street, Suite 40  
Cheyenne, WY 82001

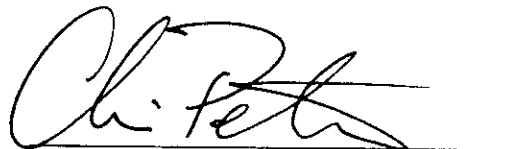
John Sundahl  
Sundahl, Powers, Kapp & Martin, L.L.C.  
1725 Carey Avenue  
Cheyenne, WY 82001

Elisabeth Pendley  
27453 Mildred Lane  
Evergreen, CO 80439

Jeffrey Thatcher  
Manager, WPCA  
535 West Yellowstone Ave.  
Casper, WY 82601

Joe Furay  
Kinder Morgan Retail Energy Services Co.  
370 Van Gordon St.  
Lakewood, CO 80228

Dale Cottam  
Hirst & Applegate, P.C.  
1720 Carey Avenue, Suite 200  
Cheyenne, WY 82001



Christopher

# **Studies prove that Choice Gas Supplier Rates were equal to or better than Regulated Pass-On Rates in five of six years!**

***Informed consumers recognize the value of guaranteed rate and guaranteed bill products like KMCGS's WinterGuard®.***

Consider these facts: Wyoming wholesale natural gas prices have increased eight out the last ten years. Prices at the end of 2004 were nearly triple what they were at the end of 2001. Wyoming has enjoyed back-to-back warm winters but had one its coldest winters just a few years ago.

Only supplier rates offer guaranteed protection from rising natural gas prices and even colder than normal weather for up to two years. The undisputed evidence on record with the Wyoming Public Service Commission is that supplier rates were equal to or better than Pass-On (Regulated) rates in five of six years studied.

The Commission saw the benefit to customers from selecting their own gas supplier when they created Choice Gas in 1996, and when they significantly expanded the program in 2002. Participation rates in the Wyoming Choice Gas program are among the highest in the nation for customer choice programs.

The news is laden with stories about rising energy costs. Smart consumers are controlling their natural gas costs by actively selecting their supplier. To learn more about your available options, call KMCGS at 1-866-231-3241 or visit us at [www.kmcgs.com](http://www.kmcgs.com)

**When you check it all out,  
there's only one choice:**



EXCERPT OF TRANSCRIPT OF HEARING PROCEEDINGS  
PAGES 286 - 288

February 18, 2005

-----  
BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION  
OF KINDER MORGAN, INC., FOR  
AUTHORITY TO AMEND ITS TARIFFS  
RELATED TO THE AUTOMATIC DEFAULT  
PROVISION OF THE CHOICE GAS  
SERVICE PROGRAM

DOCKET NO. 30022-GT-04-48

(RECORD NO. 9501)

-----  
Q. (By Chairman Hurlless)

Okay. Are there circumstances under which the pass-on rate may not be the safety net that we've kind of seen in the experience of the past couple years as generally prices have risen?

A. (By Denise K. Parrish)

We look at the -- the short answer is it depends on the time frame you're looking at. For instance, during the last quarter for some customers the pass-on rate was higher, the quarter being a quarter of a year, three months, the pass-on rate was higher than the fixed rate. But Kinder Morgan has just in the last week filed to reduce that. So you really need to look at annual numbers rather than just looking at any one particular month and annualize those numbers.

The other half of the response is that there was an experience in Torrington that we described greatly in one of the earlier hearings where -- and I believe it was the 2003 hearing, where -- the Commission's investigation where essentially in one particular year prices rose dramatically, and so the fixed rate looked wonderful in hindsight. But the following year what we found was the equivalent of the regulated rate went back down to a more normal level and even to some of the lowest levels in recent history where the fixed rate was set quite a bit higher and did not reflect that drop in the market. So when we netted those two years, we found customers were worse off. Now, you know, if you changed your selection every year, you had a chance of winning, but if you stuck with the regulated rate through that entire time frame, our analysis submitted in testimony showed that customers were worse off with anything other than the regulated rate. Well, not with anything, but on average with rates other than the regulated rate.

Q. I was just trying in my own mind to think about the reverse circumstances where gas prices alone - I don't know if I would go at it this way, but gas prices declined and because of the regulatory lag that a customer or set of customers may be actually worse off for some period than had they followed an index plan.

A. If I may, if I could ask you to look at the charts on page 41 and 42 again, you can see that, for instance, in 2001, the chart starting

on page 41 at line 14, you can see that in many cases the market dropped during and immediately following the selection period to the point where the default rate was the lowest point or lower than anything offered during the selection period. But we also have the reverse in the prior year, in 2000, the chart on page 41 starting on line 4 where if you made a selection during the selection period, anything you choose was going to be no worse off than the default later on. So customers describe this as a gamble deal and I think they're very accurate.

EXCERPT OF TRANSCRIPT OF HEARING PROCEEDINGS  
PAGES 123- 130

February 3, 2002

-----  
BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF WYOMING

IN THE MATTER OF THE GENERAL  
BY THE COMMISSION  
ON ITS OWN MOTION OF KINDER,  
INC.'S CHOICE GAS SERVICE  
PROGRAM

Docket No. 30022-GI-02-3  
(Record No. 7731)

-----  
Testimony of Denise K. Parrish

11                   Now, more specifically, on what do we base our  
12 recommendation to the Commission that the program be  
13 eliminated? Basically in one sentence, we believe that a  
14 nonprofit item has now become a profit center. We go  
15 through in our testimony an analysis of various sorts  
16 that we believe shows that.

17                   We believe that in looking at various periods  
18 of time -- and those periods of time were selected so  
19 that they included very high gas prices from wholesalers  
20 and very low gas prices from wholesalers so that we could  
21 look at what might typically be happening over more than  
22 one year, we believe that the data shows that customers  
23 have been worse off under the Choice Program than they  
24 would have been under regulated rates.

25                   And one of our analyses -- and this is just  
124

1 meant to be illustrative. This is not meant to be  
2 definitive in terms of the dollar amount, but one of our  
3 analyses wherein we compare some of the regulated rates  
4 from the Gillette area over a three-year period compared  
5 to the Torrington fixed prices over that same period  
6 shows that on average, there was a \$12 differential per  
7 month for those rates.

8                   So that on average, we believe that the  
9 Torrington customers who had selected the fixed price may  
10 have been paying as much as ten or twelve dollars more  
11 than what the Gillette customers were paying on a monthly  
12 average and that analysis is described in more depth in  
13 my written testimony.

14                   We have further provided some analysis of the  
15 cost that was paid by the Torrington customers over a  
16 period of time to that rate paid by other gas company  
17 customers in the state.

18                   And there is also some allegation that  
19 customers were better off in Torrington because of the  
20 fixed price that was implemented early before the winter

21 of 2000-2001 when prices spiked. However, there were  
22 other regulated utilities who were also able to enter  
23 into fixed price contracts early on during that same  
24 period who had in a couple cases rates even lower than  
25 the Torrington customer rates during that period. So we

125  
1 don't believe that Choice necessarily drove whether  
2 customers paid more or less during that price spike.

3 The purpose of the analysis of comparing other  
4 gas companies' prices is not necessarily to quantify a  
5 specific dollar amount of savings or overpayment. It is  
6 to show directionally that every other price in the state  
7 was below the price paid by these Torrington customers on  
8 average over time. And you can play with the dollar  
9 amounts and you can take issue with the assumptions, but  
10 you can't take issue with the direction that went into  
11 effect.

12 So in response to Mr. Watson's summary wherein  
13 he indicated that the purpose -- I'm sorry, wherein he  
14 indicated that the good that has come from the Choice  
15 Program is price stability, I would simply respond at  
16 what price? At what cost to customers? There has been  
17 stability, but it has cost customers for that stability,  
18 and I believe that if the program is to continue,  
19 customers need to be aware that they are paying a price  
20 for being able to select those stable rates.

21 I also have an analysis in my testimony  
22 relative to looking at the price for this particular  
23 year. And much of the company's arguments and I would  
24 include the other suppliers' testimony wherein they talk  
25 about the cost of hedging and that much of the price

126  
1 differential that has gone into effect has to be because  
2 of the company's hedging that has to take place both for  
3 hedging the uncertainty of the weather in winter and the  
4 uncertainty of the prices that they will pay over time.

5 The one example that I show looked at what a  
6 company could have entered into a fixed price contract  
7 for last April for delivery of gas in January, and it  
8 showed that on average at the Henry hub in Louisiana,  
9 which is one of the major pricing points in the country,  
10 that companies could have paid \$4 for gas -- \$4 per  
11 decatherm for gas at that time.

12 There is obviously a pricing differential  
13 between Henry hub gas and Wyoming delivered gas as we  
14 talked about. That differential is somewhere running  
15 between 50 cents and a dollar currently. I used the  
16 conservative number of 50 cents in my testimony. That  
17 means that suppliers could have entered into fixed price  
18 costs of gas for \$3.50 for January delivery at the time  
19 that they were offering prices to customers last spring.

20 The differential, then, would be to pay for  
21 between that \$3.50 or \$3, or whatever the number may be  
22 on a conservative or liberal basis, would be used to pay  
23 for profit, administrative and general costs and as was  
24 pointed out to me in discussions with the company last  
25 week other delivery costs. However, January is usually

127

1 the highest priced gas. January and February is the  
2 highest priced gas.

3 So if you say, well, gee, the difference  
4 between \$3.50 and plus all the costs we have to pay and  
5 what we're charging customers really isn't that much, I  
6 would simply point out that the price that customers --  
7 most customers are paying is a fixed price for a 12-month  
8 period, and it's running in the five to six-dollar range.  
9 I believe one of the gentlemen earlier indicated about  
10 over \$6.

11 In that case, there would be a much wider  
12 margin in the summer months and in the spring and fall  
13 months because we were seeing gas bought at market prices  
14 of less than \$1 this summer by some companies.

15 And so my example was meant to show the most  
16 conservative basis of what a company would be able to  
17 cover their costs and their profits for in the winter  
18 months knowing that there would be a much wider  
19 differential during the shoulder and the spring months.

20 So for all of those reasons, we are  
21 recommending elimination of the program.

22 However, as I indicated, we also have some  
23 suggestions if the Commission should choose not to  
24 eliminate the program. The first of our suggestions is  
25 that the regulated rate option be extended to the

128

1 Torrington area and be continued in the Casper and  
2 Gillette areas. We believe that 19 percent of the  
3 customers have chosen that option in Casper and Gillette.  
4 That's a substantial number of customers who find that  
5 option to be of benefit or who selected that option.

6 We also believe that it provides a benchmark,  
7 and I cite a study done by the National Regulatory  
8 Research Institute on page 24 of my testimony where they  
9 find that it is reasonable to have a regulated rate or a  
10 profit-free benchmark to compare the other rates against.

11 For those reasons, we believe that the  
12 regulated rate should be continued.

13 We also believe that there is a difference, as  
14 shown in our comparisons, between the regulated rate  
15 price and the fixed rate price, or the market price, in  
16 that if you look at what the market price is that is  
17 offered to customers, it is basically an index price plus  
18 a certain charge per unit and that charge per unit is  
19 over and above the market price that we would otherwise  
20 see incorporated into the calculation of the regulated  
21 rate.

22 So we believe that those are not comparable and  
23 that customers should have the choice of the regulated  
24 rate.

25 Customers have also expressed a strong desire

129

1 in the customer survey that we talked about for the  
2 ability to do one-call price comparison. Is that right  
3 now, the way the program works is to get prices, you have  
4 to look up on the websites or you have to call the

5 various numbers of the various suppliers and then compare  
6 them. And those prices are only good for about a 24-hour  
7 period. Customers would like to have it easier to do the  
8 price comparisons and I believe that Mr. Watson already  
9 talked about one option that would allow for an 800  
10 number where you could call and get the prices of all the  
11 suppliers comparable at that time. We would support that  
12 kind of change.

13 We also point out that more of a minor point,  
14 but it is mentioned in my testimony, so I'll mention it,  
15 that the change allowing customers to make a selection by  
16 telephone last year was very successful. About 33  
17 percent of the customers used the telephone selection  
18 option versus about two-thirds using the paper mail  
19 option.

20 The company is considering going to an e-mail-  
21 type option or an Internet-type option, and we have no  
22 opposition to that. However, when we went back and tried  
23 to verify that the company, or that Orcom, the third  
24 party, had properly reflected the customer's selection on  
25 their bills and that customers were being billed at the

130 rate and supplier choice that they had selected, we found  
1 it very difficult to verify the telephone option.

2 So we would just point out that that should be  
3 considered in terms of regulatory oversight as further  
4 changes are made to the options.  
5

EXCERPT OF TRANSCRIPT OF HEARING PROCEEDINGS

PAGE 621

OCA  
Exhibit 4

February 5, 2003

-----  
BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF WYOMING

IN THE MATTER OF THE GENERAL  
INVESTIGATION BY THE COMMISSION  
ON ITS OWN MOTION OF KINDER  
MORGAN, INC.'S CHOICE GAS SERVICE  
PROGRAM

Docket No. 30022-GI-02-3

(Record No. 7731)

-----  
Q. (By Mr. Carroll) Mr. Watson, turning now to page 13 of Miss

Parrish's prefiled testimony, she presents a chart which she offers in support of her conclusion that the Torrington fixed price Choice Gas options were higher in cost than each of the other companies that she shows on the chart, and she also concludes that the only higher price is the market index rate under the Choice Gas Program for the period July '99 to May 2002. Are her conclusions and analyses correct?

A. (By Mr. Watson) No, they are not.

**Excerpts of Denise Parrish Prefiled Direct Testimony  
in Docket No. 30022-GI-02-3**

**Page 12**

For the first ten months of this period, the default rate in Torrington (which is the only Wyoming area where Choice Gas was offered during most of this period) was less than the regulated rate in Gillette. However, that situation reversed itself in May of 2001, and has not yet returned. That is, for the remainder of the examined period, the rate still subject to Commission jurisdiction was less than the Choice Gas default rate. The column to its right is the difference between the Gillette and Torrington rate on a per unit basis.

**Page 13**

The conclusion I offer is that while fixed rate customers may have been better off than many Wyoming customers for the 2000-1 heating season, in the long run, regulated prices would have been less expensive.

**Page 15**

**Q. IS THIS RESULT SURPRISING RELATIVE TO THE PRICING DISCUSSIONS PROVIDED BY THE SUPPLIERS IN THIS PROCEEDING?**

A. No. While several of the suppliers hint at this issue in their testimony, Mr. Krebs describes it best. At page 8 of his testimony, Mr. Krebs states:

The Regulated Rate discourages Choice Gas Program suppliers from entering or continuing to participate in the Program. Since the Choice Gas suppliers must build risk costs and profit into their rates, the Regulated Rate may appear to be a better alternative if price is a selection criteria at one point in time. . .

Continuing with Mr. Krebs testimony, at page 10, he states:

. . .The Regulated Rate is a fully functional purchased gas pass on and balancing account mechanism. . . No profit or risk components are included in the Regulated Rate. . .

This is precisely the point. The Choice Gas program has taken a rate that was computed by passing costs on to customers on a dollar for dollar basis, and has replaced that rate with a "competitive" rate that includes, at a minimum, profit and

administrative costs. Over the long run, it is not surprising that the Choice Gas prices are higher than those of the Regulated Rate or old purchased gas adjustment based rates.

**Page 20**

Thus, the chart shows that if a Torrington customer had been a market rate customer for each of the years that Choice Gas has been in effect, in total, that customer would have been better off than if he/she had been a fixed rate customer for each of the years. However, even that market based rate Choice Gas customer would not have been as well off as if he/she had been a customer of any of the other regulated gas companies shown above, or had been able to receive the same price charged by the other utilities. Thus, a market rate customer would have been better off by an average of \$0.41 per unit, Cheyenne Light's customers were better off by \$1.74 per unit.

**CHOICE GAS SERVICE  
SUPPLIER CODE OF CONDUCT  
GUIDELINES**

Applicable to All Choice Gas Program Rate Schedules and Areas

1. A Supplier shall not represent through words or actions that the quality, or reliability of the gas provided by any other Supplier, or the regulated utility services provided by the Company to its utility customers shall vary, or be adversely affected in any way under the Choice Gas Program. If a customer requests information about gas suppliers, other Suppliers shall instruct the customer to contact that Supplier, but shall not express any deference for any other Supplier.
2. A Supplier shall not misquote or misrepresent the commodity prices of any other Supplier, including the regulated utility, to a customer.
3. A Supplier shall not market or advertise its commodity services in any manner that is misleading to the customer, or misrepresents the cost of commodity to the customer.
4. A Supplier will not unduly discriminate against similarly situated customers.
5. A Supplier shall use the list of names and addresses of Company's customers for the sole purpose of communicating with those customers for the purposes of the Choice Gas Program and will not give, rent, sell or otherwise disclose the list or any part of it to any other person or entity for any purpose whatsoever.
6. If a Supplier or the Company has reason to believe that a Supplier may have failed to have complied with the guidelines set forth in this Code of Conduct, such Party shall contact the Company and the non-complying Supplier, and identify with specificity the perceived failure. The non-complying Supplier shall respond to, or meet with, the Company within fifteen (15) working days of the contact to address the matter. If the matter is not satisfactorily resolved, a formal investigation or complaint proceeding may be requested in accordance with the Commission Rules.

FILED  
PUBLIC SERVICE COMMISSION  
OF WYOMING

MARCH 8 2002

30 022 - GA 01 - 001



Date Issued: March 8, 2002  
By: Bentley W. Breland

Date Effective: June 1, 2002  
Title: Vice President