

**BEFORE THE WYOMING PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE )  
TARIFF FILING OF KINDER )  
MORGAN, INC. FOR )  
AUTHORITY TO AMEND THE )  
TARIFFS RELATED TO THE )  
AUTOMATIC DEFAULT )  
PROVISIONS OF THE CHOICE )  
GAS PROGRAM )

Docket No. 30022-GT-04-48  
Record No. 9501

DIRECT TESTIMONY  
OF  
DENISE KAY PARRISH  
ON BEHALF OF  
THE OFFICE OF CONSUMER ADVOCATE

TESTIMONY FILED: February 7, 2005  
HEARING DATE: February 18, 2005

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Denise Kay Parrish. My business address is 2515 Warren Avenue,  
3 Suite 304, Cheyenne, Wyoming 82002.

4  
5 **Q. WHAT IS YOUR OCCUPATION?**

6 A. I am the Deputy Administrator of the Wyoming Office of Consumer Advocate  
7 (OCA). In this position, I review and provide input into the recommendations  
8 made by the OCA. I review utility applications filed with the Wyoming Public  
9 Service Commission (Commission) and provide advice to the Administrator  
10 regarding the involvement the OCA should have, if any, in various cases. I  
11 review applications, perform analyses and provide recommendations to the  
12 Commission relative to various utility matters, including revenue requirements,  
13 tariff language, competitive issues, rules and regulations, rate design, performance  
14 standards, and other items. I write and issue press releases, perform special  
15 studies, as well as provide information and research to customers, the legislature,  
16 the OCA Administrator, and others. I do other assignments and tasks, as needed  
17 and as assigned by the OCA Administrator.

18  
19 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL**  
20 **BACKGROUND?**

21 A. In 1976, I graduated from Michigan State University with a Bachelor of Arts in  
22 Accounting. I have spent more than twenty-seven years as a regulator of public  
23 utilities, having been on the staff of four state utility regulatory commissions and  
24 two consumer advocate entities. Thirteen of those years have been spent at the  
25 Wyoming Public Service Commission.

26  
27 I have taken classes related to various aspects of public utility regulation,  
28 including income taxes, regulatory accounting, capital recovery, cost-of-service,  
29 rate design, revenue requirements, separations and allocations, auditing, and other  
30 specialized topics. I have taught classes on issues of accounting standards,  
31 general ratemaking principles, affiliated transactions, regulatory accounting,

1 financial reporting, rate case auditing, income taxes, and other specialized topics  
2 to regulatory professionals.

3

4 Since 2002, I have been a member of the faculty of the Michigan State University  
5 Institute of Public Utilities (CAMP NARUC). In 2004, I twice worked with the  
6 staff of the Nigerian Communications Commission on regulatory accounting  
7 matters, including the development of a draft uniform system of accounts for  
8 telecommunications operators. In 2004, I served with the International  
9 Telecommunications Union as a seminar leader at a conference on regulatory  
10 accounting and auditing. I was also a presenter at the October 2004 and January  
11 2005 conferences of the Energy Regulators Regional Association (ERRA) –a  
12 group comprised of Eastern European and Eurasian regulators.

13

14 I am the past chair and a current member of the National Association of  
15 Regulatory Utility Commissioners' Staff Subcommittee on Accounting and  
16 Finance. I am listed in the current edition of Who's Who of American Women. I  
17 am currently also a member of the National Association of State Utility Consumer  
18 Advocates' (NASUCA) Tax and Accounting Committee.

19

20 **Q. DO YOU HAVE EXPERIENCE AS AN EXPERT WITNESS?**

21 A. Yes. I have testified more than one hundred twenty-five times as an expert  
22 witness. I have testified before the Michigan Public Service Commission, the  
23 Colorado Public Utilities Commission, the Colorado District Court, the Arizona  
24 Corporations Commission, the Wyoming Public Service Commission, and the  
25 Wyoming Legislature Joint Corporations Committee. I have testified in  
26 telecommunications, water, wastewater, electric, and natural gas cases. The  
27 subjects upon which I have testified include fuel and purchased power cost  
28 adjustment mechanisms, revenue requirements, rate design, cost-of-capital,  
29 nuclear decommissioning, accounting deferrals, income taxes, capital recovery,  
30 universal service funding, cost allocations, competitive issues, proposed  
31 rulemakings, and other specialized topics.

1 **Q. WHO DO YOU REPRESENT IN THIS PROCEEDING?**

2 A. As a member of the Office of Consumer Advocate, I represent the interests of  
3 Wyoming citizens and all classes of customers in this public utility matter, as  
4 required by W.S. § 37-2-401. I do not represent the position of any individual  
5 group, municipality, or corporation.  
6

7 **Q. ARE YOU SPONSORING THE ATTACHED EXHIBITS AS PART OF**  
8 **YOUR DIRECT, PREFILED TESTIMONY IN THIS PROCEEDING?**

9 A. Yes. The exhibits I am sponsoring are attached and incorporated as a part of this  
10 prefiled direct testimony. Each exhibit is discussed in context throughout my  
11 testimony below.  
12

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my testimony is to present the OCA's position on Kinder  
15 Morgan's request to change the default process related to the Choice Gas  
16 program. The OCA is adamantly opposed to Kinder Morgan's proposed change,  
17 wherein a customer would no longer automatically default to the Pass-on Rate  
18 [Regulated Rate] if the customer does not submit a valid selection form. My  
19 testimony presents the many reasons why the Commission should reject Kinder  
20 Morgan's proposal. I also provide some history of the Choice Gas program in  
21 order to put this request in context.  
22

23 **Q. PLEASE PROVIDE SOME HISTORY OF KINDER MORGAN'S CHOICE**  
24 **GAS PROGRAM, FOCUSING ON THE PORTIONS OF THE PROGRAM**  
25 **RELATED TO THE DEFAULT MECHANISM.**

26 A. In 1995 (Docket No. 30004-GT-95-37), Kinder Morgan (then KN Energy) filed  
27 an application to implement a Choice Gas Service Program. This was a program  
28 offered by Kinder Morgan on a voluntary basis. (There was no legal mandate for  
29 Choice Gas). The application, as amended, requested authority to offer a choice  
30 gas program to its residential, commercial, and irrigation customers in Kinder  
31 Morgan's Torrington service area. Pursuant to a Commission approved

1 *Supplemental Stipulation and Agreement*, those customers who did not  
2 affirmatively choose to a new supplier were to continue to receive their gas from  
3 Kinder Morgan.

4  
5 Describing Kinder Morgan's original application in its February 16, 1996 order,  
6 the Commission stated at page 7, "**The application would not alter the ability of**  
7 **customers to continue with existing retail utility service from KN if they**  
8 **chose to do so."** At page 9 of the same order, the Commission states when  
9 describing certain aspects of a *Supplemental Stipulation and Agreement* among  
10 some of the parties, "**Customers would not be compelled to purchase gas from**  
11 **a new supplier. Those customers who do not affirmatively choose a new**  
12 **supplier would continue to receive their gas supplies from KN."**

13  
14 Unfortunately, this was not true in the same sense as it is today. Back in 1996, if  
15 customers did not affirmatively choose a supplier or a supply option during the  
16 selection period, they were placed on a rate that was unregulated, and established  
17 by Kinder Morgan after the end of the selection period. Thus, it was true that  
18 customers' service continued to be served from Kinder Morgan's retail operating  
19 section of the corporation, but the default rate was not regulated, as is today's  
20 default Pass-on Rate [Regulated Rate]. So, while the supplier was the same  
21 (Kinder Morgan) as before the choice gas program, the default rate option was  
22 fundamentally different.

23  
24 The basic aspects of the initial program are described in a later order of the  
25 Commission, issued March 16, 1999 in Docket No. 30004-GT-98-56, at pages 3  
26 and 4:

27 On February 16, 1996, the Commission issued its original Order  
28 giving KN Energy the authority to implement its Choice Gas  
29 Service Program (sometimes, the Program) which opened its  
30 Wyoming retail markets to natural gas supply competition.  
31 Among its features, the Choice Gas Service Program allowed KN  
32 Energy's individual customers to make an annual selection of the  
33 natural gas supply and pricing options from among the various

1 proposals offered by competing qualified retail natural gas  
2 commodity suppliers. As part of the Choice Gas Service Program,  
3 KN Energy's natural gas balancing account would be phased out  
4 and customers would be subject instead to a transportation rate  
5 adjustment (TRA) and various other costs relative to KN Energy's  
6 management and operation of natural gas storage for the Choice  
7 Gas Service Program. To be able to participate in the Program,  
8 competitive commodity suppliers would execute a Supplier  
9 Participation Agreement with KN Energy which established the  
10 criteria for participation in the Program. KN Energy would  
11 maintain the distribution system and provide billing, metering and  
12 other ancillary utility services as it had in the past. It would  
13 continue to own the current storage capacity. In addition, KN  
14 Energy would maintain a comprehensive utility presence within  
15 the communities it served. The Choice Gas Service Program was  
16 designed and implemented as a pioneering effort to bring the  
17 benefits of competition to Wyoming retail natural gas customers.  
18 **The limitations on the Program were generally concerned with**  
19 **the safety and absolute reliability of gas supplies for the public.**  
20 [Emphasis added.]  
21

22 As we view it, the original program was more concerned with reliability and  
23 getting an experimental program off the ground, than with establishing level-  
24 playing field competition or addressing price impact limitations for customers.  
25

26 **Q. THE ORDER APPEARS TO CONTRADICT SEVERAL STATEMENTS**  
27 **MADE BY OTHERS IN THIS PROCEEDING. PLEASE EXPLAIN.**

28 A. There are a number of different versions offered by different parties as to what  
29 happened in the early years of the program regarding nonparticipating, or default,  
30 customers. Kinder Morgan's application in this proceeding states: "The tariff  
31 change proposed in this docket would implement procedures similar to those that  
32 were originally in effect during the first seven years of the Choice Gas Program in  
33 Torrington." This suggests that for all of the early Torrington years, the program  
34 allowed customers to roll-over to their previously selected supplier if no new  
35 supply selection was made during the Choice Gas selection period. This appears  
36 to be consistent with the language contained in the tariffs during this time period.  
37 But, the only language in the Commission's order from the early Torrington years

1 that I have been able to find is that cited above, which indicates that default  
2 customers would have remained with K N Energy.

3  
4 Ms. Stephanie Reeves of Wyoming Community Gas appeared to remember  
5 events differently, as she recounted at the prehearing conference in the immediate  
6 docket, held January 6, 2005. Ms. Reeves stated, “The rollover provision was  
7 established in the Torrington division I think about ’96,’97,’98, somewhere in  
8 there, where it would roll over to the previous year supplier. The first two years it  
9 had rolled over to the utility, or to Kinder Morgan at the time, and then that was  
10 changed so that it did go back to the previous year’s supplier.” (Transcript,  
11 beginning at page 35.)

12  
13 The Kinder Morgan witnesses also raise some question about the matter. In the  
14 Commission’s February 16, 1996 Order, in Docket No. 30004-GT-95-37, the  
15 Commission clearly states, as cited above, that customers would default to KN  
16 (now Kinder Morgan). But, in the March 16, 1999 Order, in Docket No. 30004-  
17 GT-98-56, there are indications that two Kinder Morgan witnesses had different  
18 understandings. At paragraph 79, the Commission summarizes the testimony of  
19 Kinder Morgan witness Ms. McCoy: “She stated that customers at present  
20 understood that, if they did not return a ballot, they would simply remain with  
21 their current supplier...” But earlier in the same order, at paragraph 32, Kinder  
22 Morgan witness Mr. Van Dyke is reported to have testified: “...K N Energy was  
23 proposing procedures to be utilized by customers who wish to change their gas  
24 supplier. He stated that, if KN Energy received no notification during the annual  
25 selection period, it would assume that the customer did not wish to change gas  
26 suppliers and would retain the previously selected supplier.” Note that this is a  
27 *proposal* as reflected by the Commission’s order.

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29 The OCA’s point is that it is no wonder that customer confusion has been as  
30 abundant and widespread as it has been over the years. Even those closest to the  
31 program don’t agree about the history of the default.

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**Q. WHEN DID THE DEFAULT ISSUE NEXT COME BEFORE THE COMMISSION?**

A. In 1997, I filed testimony on behalf of the Consumer Advocate Staff in Docket No. 30004-GT-95-37, a proceeding to review how well certain aspects of the Choice Gas program were working. In that testimony, at page 22, I noted that the Commission “...did choose to allow all of the default ballots to be interpreted as having selected K N Energy, having rejected other options that would have been more consistent with the default practices in the telecommunications industry...” As a result of this decision by the Commission in earlier proceedings, I did not choose to recommend wholesale changes to the default process, but did recommend certain modifications to the selection process. My suggestions included sending a second ballot before the customer would default to Kinder Morgan and that the second ballot be clearly marked, “...in bold, large letters, that failure to return the ballot will result in the selection of K N Energy as their energy supplier.” These suggestions were not adopted in Docket No. 30004-GT-95-37.

**Q. WAS THE ISSUE RAISED AGAIN DURING 1998-1999?**

A. Yes. On October 21, 1998, Kinder Morgan filed an application (Docket No. 30004-GT-98-56) requesting certain changes to the Choice Gas program. One of the proposed changes was that suppliers be required, with regard to fixed price offerings, to make the price and terms of that offering to customers no later than ten business days prior to the May 1 date that marked the end of the annual selection period. Kinder Morgan’s witnesses stated, according to page 6 of the Commission’s March 16, 1999 order, that “the purpose of this provision was to ensure that customers have all the necessary information needed so that they may make an informed decision and to prevent suppliers from waiting until the last day to make such pricing information available.” Additionally, Kinder Morgan sought tariff clarifications that (i) customers could only change suppliers on an annual basis during the selection period, and (ii) in the event more than one

1 supplier change was received from a customer during the selection period, the  
2 earliest received change was the one to be given effect. Also, Kinder Morgan  
3 proposed a \$10 fee to be charged to customers for switching suppliers (a  
4 reduction from the earlier approved rate of \$37). These were the Kinder Morgan  
5 requested changes that had some relationship to balloting and the actual choices  
6 of customers. There were additional proposed changes to other aspects of the  
7 Program.

8

9 In response to these requested changes, the parties raised several other customer  
10 choice related issues. The Wyoming Association of Municipalities (WAM) raised  
11 issues related to: (i) Kinder Morgan's control of the customer data base, (ii) the \$1  
12 customer charge related specifically to implementation of the Choice Gas  
13 program, (iii) customer confusion about budget billing, (iv) Kinder Morgan's  
14 corporate structure, and (v) the treatment of 'unreadable' ballots. Intervener  
15 Kansas Gas Marketing raised similar concerns.

16

17 The Consumer Advocate Staff raised several additional issues related to the actual  
18 customer choice aspects of the program. (Several technical and supplier  
19 relationship issues were also raised, but are not relevant to this proceeding, and  
20 thus, are not recounted here.) These matters included concerns about (i) Kinder  
21 Morgan's corporate structure and affiliate transactions, (ii) unclear tariff  
22 language, (iii) the importance of customer education, (iv) the switching fee, and  
23 (v) competitive impediments. There was a suggestion that the existing default  
24 method may be an impediment to the program.

25

26 Paragraph 98 of the March 16, 1999 Order summarizes the Commission decision  
27 on *Balloting* in that proceeding:

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KN has generally proposed a fair and administratively workable  
balloting system. Annual balloting should be allowed for all  
customers, but we agree with KN that a failure to return a ballot  
should not assign a customer to a default pool. We believe that the  
Program would be too aggressive if it worked a change in suppliers  
without any current or specific action on the part of the customer.

1 The selection of a supplier will routinely happen once a year  
2 during the selection period, and the ballot form with the earliest  
3 date will control. We, however, specifically decline to adopt the  
4 Consumer Advocate Staff's suggestion that cycle billing be  
5 implemented for the Program because of the complexity and  
6 expense which it would introduce into the administration of the  
7 Program. We stress that balloting, its procedure and its  
8 consequences should be the focus of informational efforts by KN  
9 Energy and other participants in the process. . . *With regard to*  
10 *spoiled, unreadable, or otherwise invalid ballots and because*  
11 *experience has shown that there have been relatively few of*  
12 *them, the Commission concludes that KN Energy should*  
13 *affirmatively and directly contact customers submitting such*  
14 *ballots to determine their selection and intent.* [Emphasis added.]  
15  
16

17 **Q. IS THIS THE END OF THE CONTROVERSY REGARDING THE**  
18 **DEFAULT ISSUE?**

19 A. No. On April 21, 2001, Kinder Morgan filed an application (Docket 30022-GA-  
20 01-1, et al.) to expand the Choice Gas program to its Casper and Gillette service  
21 areas. As part of that proceeding, I filed testimony on behalf of the Consumer  
22 Advocate Staff. One of the many issues that CAS raised in that proceeding  
23 related to the concern that the gas supply prices were deregulated when there was  
24 not a clear showing of the competitiveness of the program. One of the  
25 suggestions to address that concern was offered on page 6 of my written  
26 testimony:

27 It would be important to find a way for the Commission to retain  
28 oversight of the prices while still allowing meaningful market  
29 choices. One way this might be done would be to allow the  
30 suppliers to put forth unregulated price options during the supplier  
31 selection period as they do now. However, the price offered by  
32 Kinder Morgan to the customers that default to it at the end of the  
33 selection period would be subject to Commission review, to make  
34 sure that Kinder Morgan (formerly K N Energy) did not earn  
35 excessive or monopoly profits on the rates charged to these  
36 customers. A basic tenant over the years was that a utility was  
37 required to procure the lowest cost product consistent with reliable  
38 service. This condition would not change.

39  
40 This would provide a balance to customers and suppliers during  
41 the transition to a fully competitive market, which we don't appear

1 to have in the Torrington market at this time, and may not  
2 immediately have in Gillette or Casper with the expansion of the  
3 program. This is similar to the method that has been used to  
4 transition the telecommunications market to competition,  
5 especially the long distance market, but also true for the local  
6 market. For many years, the price of the incumbent or majority  
7 provider was regulated even though customers had their choice of  
8 many different rates from many different suppliers. It was not  
9 until the market share of the incumbent had dropped significantly,  
10 showing that competitors had realistically entered the market, that  
11 the prices of the incumbent were deregulated. The CAS proposal is  
12 similar. Customers would have their choice of different rates from  
13 different suppliers, but until effective competition had taken hold  
14 and those alternative suppliers had a reasonable share of the market  
15 place, the rate paid by the majority of customers would be subject  
16 to some regulatory oversight. This oversight may involve a full  
17 cost-based rate, or it could involve an incentive based rate, but in  
18 either case, the Commission would have the opportunity to  
19 establish the level and nature of the rate, to protect the monopoly  
20 interest of the customers.

21  
22 The CAS also offered an alternative to the above suggestion to address its  
23 concerns about the competitiveness of the program through the default process.  
24 This alternative suggestion is found on page 8 of my testimony from the program  
25 expansion proceeding:

26 ...As noted in prior Choice Gas program hearings, the CAS  
27 believes that the portion of the program that allows customers who  
28 do not choose a supplier initially, to default to the current  
29 incumbent supplier with unregulated rates, is flawed. . .

30  
31 ...Kinder Morgan would like to be able to retain all of the default  
32 customers (those who do not actively choose an alternative  
33 supplier) and to have commodity price deregulation. CAS believes  
34 that it would be a mistake on the part of the Commission to allow  
35 both. We believe that if it is important to the program to have  
36 unregulated rates, then there should be steps taken as part of the  
37 program to make sure that the incumbent supplier does not retain  
38 the majority of customers unless those customers have actively  
39 chosen to remain with Kinder Morgan. Retention through  
40 customer inactivity is not a reasonable way to promote a  
41 competitive market. If it is important to the program that  
42 customers be allowed to default to the incumbent, then make sure  
43 that the program is not creating an unregulated monopoly by  
44 retaining some price and earnings oversight of the incumbent.

1 And, if it is important to follow the telecommunications model,  
2 then neither balloting default nor price deregulation would be  
3 automatic.  
4

5 **Q. WHAT DID THE COMMISSION DECIDE ABOUT BALLOTING IN THE**  
6 **CHOICE GAS EXPANSION CASE?**

7 A. In its March 4, 2002 order, the Commission adopted a stipulated agreement that  
8 was entered into by a number of the parties, not including the Consumer Advocate  
9 Staff. In that stipulation, the provision related to treatment of defaults reads:

10 A pro rata first year allocation will be made among participating  
11 suppliers of those customers who do not return initial selection  
12 ballots when the Choice Gas program is expanded into the Casper  
13 and Gillette divisions. The pro rata allocation to each supplier will  
14 be based upon the percentage of customers in each class within  
15 each Division who returned ballots selecting that supplier. After  
16 initial implementation of Choice Gas in the first year of the  
17 program, customers who do not return selection ballots would  
18 remain with their existing suppliers.  
19  
20

21 **Q. WHEN DID THE PASS-ON RATE [REGULATED RATE] ENTER INTO**  
22 **THE CHOICE GAS PROGRAM?**

23 A. The expansion of the Choice Gas program to the Casper and Gillette service areas  
24 caused a great public outcry. This outcry was not the sort Kinder Morgan claims  
25 prompted the current proceeding, where customers failed to observe or understand  
26 the rules of the program and then complained about the outcome. (I will discuss  
27 this issue more later in my testimony.) Rather, it was the sort of outcry where  
28 many unsatisfied customers were contacting the Commission with concerns about  
29 the overall implementation and expansion of the Choice Gas program in Gillette  
30 and Casper. Then PSC Chairman Ellenbecker stated at the April 23, 2002  
31 hearing:  
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1 We are attempting here to respond to customer complaints. Even  
2 though evidence in the October and January hearings in Casper and  
3 Cheyenne was strongly in support of the expanding Choice Gas  
4 Program, the post-hearing momentum is in strong opposition to it.  
5 The closeness or proximity of the commodity prices being offered  
6 among suppliers doesn't present much choice in the eye of  
7 consumers. They seem persuaded there is no real choice being  
8 offered to them after all the work they go through in the balloting  
9 and selection process. It also raises fair concern, shared by the  
10 PSC, as to whether there is any serious competition underway.  
11

12 ...

13  
14 Since April 17<sup>th</sup>, the Commission has received 87 complaints, 39  
15 of which come from Casper. The others are spread out throughout  
16 the remaining communities to which the program would be  
17 expanded for the first time as well as a spattering of complaints  
18 from originating Choice Gas communities where the service has  
19 been historically provided. (Docket No. 30022-GA-01-1, et al.,  
20 TR 10-12)  
21

22 In response, at the April 23, 2002 regular open meeting of the Commission,  
23 Kinder Morgan proposed to add a regulated rate pricing option to the program.  
24 After an expedited hearing on the proposal, the Commission issued its decision on  
25 May 1, 2002 in Docket No. 30022-GA-01-1, et al. and found that the Pass-on  
26 Rate [Regulated Rate] option should be offered in the Casper and Gillette service  
27 areas. The Commission specifically found, in paragraph 31, that the Pass-on Rate  
28 [Regulated Rate] was to be "of the type already in place and which has been used  
29 for many years to determine the cost of gas allowed to be collected in retail rates."  
30 Since the timing of outcry and responsive decision to offer the Pass-on Rate  
31 [Regulated Rate] came in the midst of the annual selection period, the period was  
32 extended by two weeks, until May 15, 2002. The Commission also found:(i) the  
33 Pass-on Rate [Regulated Rate] was to be transitional in nature in order to address  
34 the needs of those entering the Choice Gas program for the first time, (ii) that the  
35 Pass-on Rate [Regulated Rate] need not be available in Torrington, since there  
36 was no transitional need in that area, and (iii) that the Pass-on Rate [Regulated  
37 Rate] should be treated as a Choice Gas option, rather than being treated as a  
38 separate tariff offering.

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**Q. DOES THE SAGA CONTINUE?**

A. Yes. In response to the Commission’s May 1, 2002 order adopting the Pass-on Rate [Regulated Rate] as a Choice Gas rate option, on May 24, 2002, Kinder Morgan filed its proposed price for the upcoming period. The Consumer Advocate Staff took issue with the filing. As a member of the Consumer Advocate Staff, I filed testimony that suggested that the Pass-on Rate [Regulated Rate] would remain a “useful benchmark into the future by which the reasonableness and competitiveness of other prices offered in the Choice Gas program could be judged.” (See paragraph 12 of the Commission’s July 22, 2002 order in Docket No. 30022-GA-01-1, et al.) As a result of this suggestion of the CAS, the Commission made this rate option permanent, as explained in paragraph 26:

On the evidence before us now, we find that the Regulated Rate option should be made permanent with respect to the Choice Gas program in the Casper and Gillette Divisions. There is no evidence before us beyond the expressed desire of Kinder Morgan that the Regulate Rate option be limited to a single year. We have before us a strong argument from the Consumer Advocate Staff as to the usefulness of the Regulated Rate going forward: and members of the public have expressed a strong interest in the Regulated Rate option. We find that it should not now be considered as a “transitional” single-year offering. . .

**Q. WHEN DID THE PASS-ON RATE [REGULATED RATE] BECOME THE DEFAULT RATE?**

A. On August 21, 2002, the Commission, on its own motion, initiated a general investigation into the Choice Gas program to determine how well it was serving the public and whether the program should continue. On March 11, 2003, the Commission issued its decision that again modified the treatment of the default. Paragraphs 105 and 106 state:

The record shows that the Regulated Rate option was the second most popular choice among persons participating in the Choice Gas program in the Casper and Gillette Divisions, even though it was offered only for a short time in an extension of the selection period in those Divisions. It appears that some persons do not

1 wish to engage in the research needed to participate in the Choice  
2 Gas program, and that others are positively hostile to it. We find  
3 that Regulated Rate data will continue to be a useful tool to help  
4 the Commission assess the program and its effectiveness in serving  
5 the public interest. Even though it may not be a perfect tool, it  
6 contributes pertinent information on “utility” rates which would  
7 not be available otherwise and which is important in our ongoing  
8 oversight role concerning the program. Kinder Morgan conceded  
9 that the Choice Gas program introduced additional complexity for  
10 customers and that some of the benefits of the program are purely  
11 psychological. ***In view of the facts that substantial numbers of***  
12 ***customers disliked the program, did not understand it and would***  
13 ***not like to see it continued, the Regulated Rate option allows***  
14 ***such persons, and the substantial number of nonparticipant***  
15 ***(“default”) customers a way to obtain natural gas utility service***  
16 ***without having to become engaged with the Choice Gas program.***  
17

18 Taking all this into account, it is clear that the Regulated Rate  
19 option, suitably renamed as discussed below, should be continued.  
20 We also find that the Regulated Rate option should be the default  
21 option for the program in the ensuing years. The substantial  
22 number of persons in the Torrington Division who expressed  
23 concern with the program or a lack of understanding of it, leads us  
24 to decide that the Regulated Rate option must be available in the  
25 Torrington Division and that it should be default option there also.  
26 ***This option allows the substantial number of persons not wishing***  
27 ***to deal with the program to avoid doing so altogether. They do***  
28 ***not have to become unwilling participants in the program by***  
29 ***being assigned by default to the various competing suppliers.***  
30 [Emphasis added.]  
31

32 The Commission reiterates the importance of the Pass-On Rate [Regulated Rate]  
33 in its Conclusions (Paragraph 125 of the Order):

34 ***The Pass-On Rate [Regulated Rate], as modified and extended***  
35 ***hereinabove, is central to the potential of the Choice Gas***  
36 ***program to produce just and reasonable rates*** and should, in the  
37 form approved hereinabove, be the program’s universal default  
38 rate and should continue permanently. The Pass-On Rate  
39 [Regulated Rate], with the directed changes, would comply with  
40 Sections 249 and 250 of the Commission’s Rules, as applicable in  
41 the Choice Gas Service Program context. [Emphasis added.]  
42

43  
44 **Q. DOES THE HISTORY END THERE?**

1 A. Not quite. On October 3, 2003, Kinder Morgan filed an application (Docket No.  
2 30022-GT-03-22) requesting authority to revise the default provisions of the  
3 Choice Gas program – essentially the same request that it is again asking for in  
4 this proceeding. The Commission denied its request last time, and should do so  
5 again in this proceeding. In its February 24, 2004 order, the Commission found,  
6 in its conclusions:

7 39. Based upon the evidence of record, in this proceeding, the  
8 Commission concludes that the survey conducted by Kinder  
9 Morgan is flawed. Consequently, the Commission neither  
10 denounces nor sanctions the survey, but is concerned that the  
11 methods used may have yielded invalid results.

12 40. Based upon the evidence of record, in this proceeding, the  
13 majority of the Commission concludes that *Kinder Morgan failed*  
14 *to adequately support its allegation that the existing default*  
15 *provisions are discriminatory. Discrimination implies that*  
16 *similarly situated individuals would receive arbitrarily different*  
17 *treatment. This is not the case.* Currently, all customers who fail,  
18 for whatever reason, to make a selection, under the program,  
19 default to the pass-on/regulated rate.

20 41. Based upon the evidence of record, in this proceeding, the  
21 majority of the Commission concludes that Kinder Morgan failed  
22 to justify the need for the proposed change at this point in time.  
23 *The majority of the Commission concurs with the observations of*  
24 *the OCA that implementing the proposed change now would*  
25 *have a negative impact on competition in the program and would*  
26 *cause additional customer confusion.* Having stated this, the  
27 majority of the Commission remains open to reconsideration of  
28 this conclusion in the future.

29 42. Based upon the evidence of record, in this proceeding, the  
30 majority of the Commission concludes that the existing default  
31 provisions remain consistent with the public interest.  
32 Consequently, the majority of the Commission concludes that they  
33 *should remain in effect until such time as it is adequately*  
34 *demonstrated that amending these provisions would better serve*  
35 *the public interest.* [Emphasis added.]

36 So, in spite of what Kinder Morgan claims in its application, the Commission has  
37 already found that the current default mechanism is not discriminatory and is in

1 the public interest. Furthermore, Kinder Morgan makes no showing, in its current  
2 application, that the public interest would be better served if the existing default  
3 procedure were to be modified.

4  
5 That brings us up to today, where we face a repeat of last year's request -- a  
6 request that should again be denied.

7  
8 OCA Parrish Exhibit One is a table that summarizes the above history of the  
9 Choice Gas default processes.

10  
11 **Q. WHY IS THE HISTORY YOU HAVE RECOUNTED IMPORTANT?**

12 A. It shows that Choice Gas has been a continually evolving program. As lessons  
13 have been learned and the Commission attempted to address customers' confusion  
14 and concerns, changes to the program have been appropriate. Going back to  
15 where the program began nearly ten years ago ignores the lessons that have been  
16 learned and the improvements that have been made.

17  
18 The impact on customers must also be considered. Since March 2003, the Casper  
19 and Gillette programs have remained unchanged, which is the only stability the  
20 program has had in the three years that it has been in place, with many changes  
21 having taken place in the early months of the expanded program. As to  
22 Torrington, some of the suppliers claim that the Torrington customers had the  
23 proposed default for several years and are thus 'used to it'. But, the default being  
24 proposed in by Kinder Morgan and the suppliers has not been in place for a few  
25 years. Customers would have to be retrained and reeducated. Very likely, as in  
26 the past, some customers would hear of the change, and others would not.  
27 Customer understanding should currently be at a high point, but it would certainly  
28 fall with any significant change made to the Choice Gas program. What Kinder  
29 Morgan has proposed is both significant, and unnecessary.

30

1 **Q. SPECIFICALLY, WHAT IS KINDER MORGAN REQUESTING IN THIS**  
2 **APPLICATION?**

3 A. Currently, if a customer fails to submit a timely, valid supplier selection form  
4 during the annual designated selection period, the customer will then be served  
5 under the Pass-on Rate [Regulated Rate] for the next Choice Gas year. Kinder  
6 Morgan seeks to change this, so that if a customer fails to submit a timely, valid  
7 supplier selection form during the designated selection period, the customer will  
8 be served by whatever supplier and supply option that customer had in the prior  
9 period. However, it should be made clear, that under the Kinder Morgan  
10 proposal, it would be very unlikely that the price for the supply option chosen by  
11 the customer would be the same from year to year, as shown by the price history  
12 of the program. The OCA is concerned that the fact that prices could vary  
13 considerably from year to year under the same supply option may not be clear to  
14 customers.

15  
16 **Q. KINDER MORAN AND OTHERS HAVE CHARACTERIZED THE**  
17 **CURRENT METHOD AS “SLAMMING”. DO YOU ARGREE?**

18 A. Absolutely not. "Slamming" is a term associated with the illegal practice of  
19 switching a customer without his/her permission. It can be equated to *stealing*  
20 customers from a competitor. It was coined during changes in the  
21 telecommunications industry when it became a common, but unethical, practice of  
22 many long distance providers to switch customers to their service without the  
23 customers' consent. As deregulation has appears in the local telephone, retail  
24 natural gas, and retail electric markets around the country, the term "slamming" as  
25 been applied to the similar illegal customer account switching in those industries  
26 as well.

27  
28 Customers have an annual opportunity to affirmatively choose a supply option  
29 other than the Pass-on Rate [Regulated Rate]. However, customers have also  
30 been told that they can make a choice through non-participation by simply  
31 discarding their supplier selection forms. So, many who are defaulted are simply

1 demonstrating that they understand how the default mechanism operates, and are  
2 deliberately choosing the Pass-on Rate [Regulated Rate]. It must not be assumed  
3 that all customers who default to the Pass-on Rate [Regulated Rate] are unhappy  
4 and unaware of the outcome.

5  
6 Furthermore, the default provisions of the Choice Gas program are clearly stated  
7 in tariffs that were filed in compliance with the Commission's orders. Thus, there  
8 is nothing illegal about customers receiving service under the Pass-on  
9 Rate [Regulated Rate] by the operation of the default mechanism. Furthermore,  
10 many customers welcome the opportunity to not participate in the program and  
11 receive the Pass-on Rate [Regulated Rate]. These customers receive the Pass-on  
12 Rate [Regulated Rate] with their full knowledge and permission.

13  
14 Suppliers, Kinder Morgan, and their representatives who refer to the proper  
15 operation of the current default mechanism as "slamming" are misinforming  
16 customers, promoting confusion, and resorting to scare tactics to malign the Pass-  
17 on Rate [Regulated Rate]. This practice should cease immediately.

18  
19 **Q. DID THE COMMISSION ITSELF CONDUCT AN EDUCATIONAL**  
20 **CAMPAIGN INDICATING THAT CUSTOMERS SHOULD FEEL FREE**  
21 **TO THROW AWAY THEIR BALLOTS AND STAY ON THE PASS-ON**  
22 **RATE IF THEY CHOSE NOT TO PARTICIPATE IN ALTERNATIVE**  
23 **SUPPLY OPTIONS?**

24 A. Yes. This was an educational campaign conducted by the Commission after its  
25 March 2003 order was issued to publicize the results of its investigation into the  
26 Choice Gas program and the changes necessary for the program to continue. In  
27 the press release that the Commission issued regarding the educational efforts,  
28 which is still found on the Commission's website under *Choice Gas Educational*  
29 *Effort*, it is stated on the second page:

1 Commissioner Steve Furtney added, *‘If customers do not wish to*  
2 *be troubled with selecting a natural gas supplier under this*  
3 *Program, they can do nothing and this year they will default to*  
4 *the pass-on rate.* But the pass-on rate will be subject to market  
5 fluctuations and the PSC has required Kinder Morgan to make  
6 quarterly or semi-annual filings to reflect the market.” Furtney  
7 indicated that more information on the pass-on rate would be  
8 provided at the presentations. [Emphasis added.]  
9

10  
11 **Q. BOTH KINDER MORGAN AND THE OCA HAVE MADE, AND**  
12 **CONTINUE TO MAKE, COMPARISONS OF THE CHOICE GAS**  
13 **PROGRAM TO TELECOMMUNICATIONS CHOICES CUSTOMERS**  
14 **MAKE. IS THERE ONE KEY DIFFERENCE YOU WOULD LIKE TO**  
15 **POINT OUT?**

16 A. Yes. On page 5 of his testimony, Mr. Van Dyke comments “Customers might  
17 assume, based on their experience with other consumer service providers such as  
18 telephone, long distance, cable, internet, etc. that their existing service choices  
19 continue without having to continually re-select their service providers.” But, this  
20 statement fails to point out one major difference between making a selection for  
21 Choice Gas and making a selection for telephone or internet service: customers  
22 can change carriers for telephone or internet service, or convert from cable to  
23 satellite any time they wish. This is not true pursuant to the terms of Kinder  
24 Morgan’s Choice Gas service. A customer may only make a change in service  
25 once per year, during the designated selection period.

26  
27 Under the Choice Gas program’s terms, once a customer selects a provider, the  
28 customer is stuck with that provider and that supply option for a twelve-month  
29 period. If a customer decides that they don’t like America on Line as their  
30 internet provider, with little or no change fee, another internet provider may be  
31 selected. This makes my gas supplier selection more onerous and consequential  
32 than selections for the other industries with which Mr. Van Dyke attempts to  
33 make analogies.  
34

1 **Q. DO ALL OTHER STATES WITH COMPETITIVE GAS SUPPLY**  
2 **PROGRAMS ALLOW CUSTOMERS TO CHANGE GAS SUPPLIERS**  
3 **ONLY ONCE PER TWELVE-MONTH PERIOD?**

4 A. No. Examples of states that do not require customers to be locked into changing  
5 suppliers only once per year include: Georgia, Indiana, and Ohio.

6  
7 In Georgia, one of the providers, Shell Energy, specifically has included in their  
8 terms of service a provision titled *Pricing Plans*. Included is the following  
9 description of the *Guaranteed Low Fixed Price Plan*:

10 A Customer's rate for Commodity Sales Service is fixed at a per  
11 therm amount that is guaranteed not to change for the term of  
12 agreement, which may be up to twenty-four (24) consecutive  
13 Billing Cycles, depending on the term of the plan chosen by the  
14 Customer. Customers choosing this plan may be subject to an exit  
15 fee of \$50.00 should they exit the plan for any reason, including  
16 switching to another fixed rate plan with Company, prior to the end  
17 of the term agreement. ***This exit fee will be waived for Customers***  
18 ***moving out of Company service area, moving within service area***  
19 ***and retaining Company service, or *switching to the Regulated****  
20 ***Provider.*** . . . [Emphasis added.]  
21

22 Thus, customers may change providers either with a defined exit fee, or with no  
23 exit fee, if moving back to the regulated rate. Either way, customers have the  
24 ability to make choices about their supplier more often than during an annual  
25 twenty day period in April. It is also interesting to note that Shell Energy offers  
26 Georgia fixed rate customers different pricing plans for 6 month, 12 month, or  
27 24 month periods. So, another way that customers are not locked into a full  
28 year is through the selection of the six-month plan.

29  
30 In Indiana, the general terms of the Northern Indiana Public Service Company  
31 (NIPSCO) customer choice program is set forth in OCA Parrish Exhibit Two.  
32 Page 5 of the exhibit describes the ability of customers to switch suppliers, and  
33 states:  
34  
35

1 You may switch gas suppliers or return to NIPSCO gas supply  
2 service, subject to the terms of your **contract** with your selected  
3 gas supplier. After your initial gas supplier selection, you will be  
4 charged a \$7.50 administrative fee to switch suppliers. If you later  
5 decide to return to NIPSCO gas supply service, this charge will be  
6 waived. However, you must agree to stay with NIPSCO gas  
7 supply service for a minimum of one year after switching back.

8  
9 Again, customers have the ability to switch suppliers for a nominal fee.  
10 Furthermore, as noted on the first page of OCA Parrish Exhibit Twelve, “Choice  
11 enrollment is voluntary and offered year round.” There is no limitation to signing  
12 up only during a short annual period.

13  
14 An example of a *Disclosure Statement for Natural Gas Suppliers* from Ohio  
15 (specifically an agreement from ACN Energy, Inc.) is contained in OCA Parrish  
16 Exhibit Three. As with the other examples, there is no one-year lock-in provision.  
17 Page three contains *Cancellation Provisions*:

18 You may cancel this agreement for any reason by giving ACN  
19 Energy 30 days written notice. . .

20  
21  
22 **Q. DO YOU ARGEE WITH KINDER MORGAN THAT THE CURRENT**  
23 **DEFAULT ASPECTS OF THE PROGRAM ARE DISCRIMINATORY?**

24 A. Emphatically NO. In this application, Kinder Morgan is attempting to  
25 oversimplify the concept of discrimination, under the guise of “consistent and  
26 equal treatment” and thereby eliminate an aspect of the program that protects  
27 consumers. Unlawful discrimination must not be confused with different  
28 outcomes resulting from the varied actions of Choice Gas customers. Requiring  
29 customers to affirmatively choose to leave the regulatory protection afforded them  
30 by the Pass-on Rate [Regulated Rate] does not constitute discrimination; rather, it  
31 is good policy. As discussed throughout my testimony, there are very good  
32 reasons that the Pass-on Rate [Regulated Rate] was established as the default  
33 price.

1 This issue was properly decided by the Commission in the prior request to change  
2 the default. In its February 27, 2004 Order, the Commission concluded that  
3 similarly situated individuals were not subjected to discrimination by the existing  
4 default provision. Again, the Commission specifically found at paragraph 40 of  
5 its Order:

6 Based upon the evidence of record, in this proceeding, the majority  
7 of the Commission concludes that Kinder Morgan failed to  
8 adequately support its allegation that the existing default  
9 provisions are discriminatory. Discrimination implies that  
10 similarly situated individuals would receive arbitrarily different  
11 treatment. This is not the case. Currently, all customers who fail,  
12 for whatever reason, to make a selection, under the program,  
13 default to the pass-on/regulated rate.  
14

15 There are no significant new facts or arguments to consider in this proceeding.  
16

17 **Q. WHAT HAS KINDER MORGAN SUBMITTED WITH THIS**  
18 **APPLICATION THAT WAS NOT INCLUDED IN ITS REQUEST FROM**  
19 **OCTOBER 2003?**

20 A. Kinder Morgan's only new support for this application is the listing of the 133  
21 customers that it claims received discriminatory treatment. However, upon close  
22 examination of those individual customers' concerns, we do not find that  
23 customers are clamoring for the change in the default mechanism proposed by  
24 Kinder Morgan. As I show below, in many ways these customers were provided  
25 more favorable treatment than the multitude of other customers who abided by the  
26 established rules and processes of this program.  
27

28 **Q. WHAT CONCLUSION DID YOU REACH AFTER EXAMINATION OF**  
29 **THE 133 CUSTOMER CONTACTS LISTED IN MR. VAN DYKE'S**  
30 **TESTIMONY?**

31 A. Overall, I found that many of these customers did not receive the supplier  
32 selection that they indicated they made because their supplier selection forms  
33 were invalid or untimely. Some sent ballots in late. Some say they sent their  
34 ballot in but it was never received. Some had a wrong code or a selection form

1 for the wrong service area. Some failed to sign their ballots. Several customers  
2 claim to have been told that they needed to do nothing to remain with their current  
3 supplier. But, for many, there is no explanation as to why they did not receive  
4 their indicated selection.

5  
6 This shows that for some customers, the program continues to be confusing or too  
7 complicated, or that customers are not adequately informed about the rules by  
8 which the program operates.

9  
10 However, based on the notes of the customer contacts provided by Kinder  
11 Morgan during the discovery process, very few of these customers specifically  
12 commented on a desire to change the default process itself, or the desire to stay  
13 with their current supplier indefinitely.

14  
15 **Q. PLEASE PROVIDE SOME SPECIFIC EXAMPLES FROM YOUR**  
16 **REVIEW.**

17 A. The first example I'd like to give relates to one of the customers identified on  
18 page 19 of Mr. Van Dyke's Exhibit DJV-2, where it is stated, "The Customer did  
19 not want to default to the pass-on rate and wanted to be with ACE." That is the  
20 entire information that Kinder Morgan gives the Commission – leaving open for  
21 interpretation the customer's feelings about the default or whether he just wanted  
22 to choose ACE as his supplier this year. In looking at the more detailed,  
23 confidential information provided through discovery, a narrower picture emerges.  
24 This detail is found on Confidential OCA Parrish Exhibit Four.

25  
26 **Confidential Information Begins**

27  
28  
29  
30  
31

1 **Confidential Information Ends**

2

3 But the real point is, that no where do we have any information from this  
4 customer stating that he would like a change in one of the major provisions of the  
5 Choice Gas program – the treatment of default customers. In fact, no information  
6 was provided as to the initial customer contact other than the customer realizing  
7 that a mistake was made.

8

9 **Q. CAN YOU GIVE AN EXAMPLE OF A CUSTOMER WHO SIMPLY**  
10 **SUBMITTED THEIR SELECTION FORMS LATE, AND THAT IS WHY**  
11 **THEY DID NOT RECEIVE THE SELECTION THEY REQUESTED?**

12 A. Yes.

13

14 **Begin Confidential Information**

15

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21

22 **End Confidential Information**

23

24 Once again, there is no information in the information obtained in discovery that  
25 shows that this customer is asking to keep his supplier for the long run, or that he  
26 is asking that the default provisions of the Program be modified.

27

28 **Q. WHAT IS THE NEXT EXAMPLE YOU WOULD LIKE TO DISCUSS?**

29 A. The next example taken from Mr. Van Dyke’s list involves a customer listed on  
30 page 14 of Mr. Van Dyke’s Exhibit BJV-2, there is nothing indicated other than  
31 “Customer did not want to default to the pass-on rate and wanted to be on the

1 fixed rate with KMCGS.” However, the information supplied by Kinder Morgan  
2 in discovery provides less clarity. More detail is provided on Confidential OCA  
3 Parrish Exhibit Six.

4

5 **Begin Confidential Information**

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19 **End Confidential Information**

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21 But, once again, nowhere in this information –not even in the editorial comments–  
22 is there any thing that indicates that the customer would like the default  
23 mechanism modified. It is apparent that the customer was either confused or  
24 made an error that she wanted corrected. Unless there is additional information  
25 that has not yet been provided, it is a stretch for Kinder Morgan to suggest that  
26 this customer, and those like her in similar situations, are demanding a change to a  
27 major provision of the Choice Gas program.

28

29 **Q. DID YOU FIND ANY OTHER EXAMPLES OF MIXED MESSAGES OR**  
30 **CONFUSED MESSAGES?**

31

1 A. Yes. Confidential OCA Parrish Exhibit Seven addresses one of these situations.

2

3 **Begin Confidential Information**

4

5

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10 **End Confidential Information**

11

12 **Q. ARE THERE OTHER QUESTIONS THAT ARISE FROM YOUR**  
13 **REVIEW OF KINDER MORGAN'S DISCOVERY RESPONSES?**

14 A. Yes.

15

16 **Begin Confidential Information**

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**Confidential Information Ends**

**Q. PLEASE SUMMARIZE THE VARIOUS REASONS THAT YOU FOUND THAT OTHER CUSTOMERS DID NOT ORIGINALLY RECEIVE THEIR SELECTED SUPPLY OPTION.**

**Confidential Information Begins**

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**Confidential Information Ends**

For many of the listed 133 customers, there was no indication given as to why their initial supply option was not put into place.

**Q. MR. VAN DYKE CLAIMS AT PAGE 6 OF HIS TESTIMONY THAT HE “MADE THE DECISION TO ALLOW ALL OF THE CUSTOMERS WHO TIMELY COMPLAINED TO SWITCH BACK TO THEIR PREFERRED SUPPLIER THIS ONE TIME IF THE SUPPLIER WAS AGREEABLE.” DO YOU DISPUTE THIS CLAIM?**

A. Yes.

**Confidential Information Begins**

**Confidential Information Ends**

1 Q. IN YOUR EXAMINATION OF THE DETAILS, DID YOU FIND ANY OF  
2 THE 133 CUSTOMERS LISTED IN MR. VAN DYKE'S EXHIBIT THAT  
3 CLEARLY TOOK ISSUE WITH THE CURRENT DEFAULT  
4 MECHANISM?

5 A. Yes, there was one customer where the notes clearly indicated that he did not like  
6 defaulting to the Pass-on Rate [Regulated Rate]. This information is shown on  
7 Confidential OCA Parrish Exhibit Eleven.

8

9 Q. DID YOU SPEAK WITH ANY OF THE CUSTOMERS YOURSELF TO  
10 ASCERTAIN THEIR FEELINGS ABOUT THE DEFAULT PROVISION?

11 A. Yes.

12

13 **Begin Confidential Information**

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23 **End Confidential Information**

24

25 I have, however, received unsolicited opinions about the Choice Gas program  
26 from two other customers through e-mails. OCA Parrish Exhibit Twelve is an e-  
27 mail discussion between Ms. Melody Anne Duncan and myself. In it she states,

28

29

30

31

32

33

However, I do believe that the Choice gas program is like going to  
Las Vegas. A gamble every year and hopefully you make the right  
bet. It is my considered opinion that this program should be  
eliminated as most people cannot even make an educated guess as  
to which is the correct choice.

1 OCA Parrish Exhibit Thirteen is a similar e-mail discussion between Ms. Jeanette  
2 Marie Reisenburg and myself. In it she states,

3 I am writing to express my deep dissatisfaction with the Choice  
4 Gas Program. The recent round of rate increases confirms to me  
5 that the program is essentially a crap shoot, and as far as I know  
6 gambling is illegal in the state of Wyoming. The average citizen  
7 does not have the knowledge, ability or time to track the gas  
8 industry to determine what gas prices might do. That should be the  
9 job of the Public Service commission as it is the Commission's job  
10 to protect citizens from excessive rate increases. . .

11  
12 The financial impact aside, the Choice Program is just downright  
13 confusing and stressful. Each May households receive more  
14 information than they can digest and consequently make decisions  
15 based on limited and imperfect information. It is time consuming  
16 and stressful.  
17

18 These comments should be considered by the Commission when determining  
19 whether to weaken the default process and the easy access that customers  
20 currently have to the Pass-on Rate [Regulated Rate] by granting Kinder Morgan's  
21 request.  
22

23 **Q. SHOULD THE COMMISSION ALSO TAKE INTO CONSIDERATION**  
24 **THE LETTERS THAT HAVE BEEN RECEIVED FROM CUSTOMERS**  
25 **AT THE COMMISSION DURING THE PAST MONTH SPECIFICALLY**  
26 **ADDRESSING THE DEFAULT?**

27 A. Of course. But, the Commission should note that there are letters both supporting  
28 and opposing Kinder Morgan's request. The Commission should also note that  
29 many of the letters are explicitly driven by the fact that today the Pass-on Rate  
30 [Regulated Rate] is higher than many of the other rates. But, will customers feel  
31 the same when Kinder Morgan files within a few weeks for a decrease in the  
32 Pass-on Rate as they have indicated they intended to do? Additionally, the  
33 Commission should note those customers who indicate how confusing the whole  
34 selection process can be.  
35

1 Most importantly, the customer input should be only one factor considered by the  
2 Commission when making its decision. This is not a matter where whoever can  
3 garner the most customers standing behind them in a long line wins. This is a  
4 matter where the Commission must consider what is in the long run public  
5 interest. That is a decision left to the Commission once all of the evidence is  
6 weighed.

7

8 **Q. BY YOUR TESTIMONY, ARE YOU SUGGESTING THAT CUSTOMERS**  
9 **SHOULD KEEP QUIET AND LEARN TO LIVE WITH MISTAKES?**

10 A. Not at all. However, Kinder Morgan's proposal is a bit of throwing the baby out  
11 with the bath water. I do not take issue with customers contacting the program  
12 administrator to find out what happened such that the selection that they thought  
13 they made was not effectuated. Nor do I take issue with the program  
14 administrator correcting obvious errors. But, customers pointing out errors or  
15 raising questions about their supplier selection, does not equate to a angry mob  
16 demanding a process change.

17

18

19 **Q. WERE THE 133 CUSTOMERS IDENTIFIED BY MR. VAN DYKE THE**  
20 **ONLY CUSTOMERS IMPACTED BY THE DEFAULT PROVISIONS**  
21 **BEING DEBATED IN THIS PROCEEDING?**

22 A. No. The 133 customers represent a very small portion of the total of  
23 approximately 69,000 Wyoming Kinder Morgan customers (less than .002% of  
24 the total) and a small portion of the more than 38,000 customers who were  
25 supplied under the Pass-on Rate [Regulated Rate] in the 2004-5 Choice Gas year.  
26 This total would include several different types of customers:

27

28

29

30

31

- 1           ○     Those who deliberately did not submit a supply selection form,  
2                     thereby making the conscious choice to select the Pass-on Rate  
3                     [Regulated Rate] through inaction, having been educated to the  
4                     rules of the program.
- 5           ○     Those who are completely disengaged from the Program, want no  
6                     part of it and want to be left alone, or otherwise choose not to  
7                     make a deliberate supplier selection.
- 8           ○     Those who were misinformed and believed they could retain their  
9                     current supplier by doing nothing.
- 10          ○     Those who attempted to submit a supplier selection form but failed  
11                    to do so properly, or who submitted a supplier selection form that  
12                    was not properly recognized, and thus their choice for a supply  
13                    option was not effective.
- 14          ○     Those who were confused, distracted, or unavailable and thus, did  
15                    not submit a timely supplier selection form.

16  
17     Kinder Morgan’s application appears to focus only the last three groups of  
18     customers, and not those deliberately choosing the Pass-on Rate [Regulated Rate]  
19     or those who are completely disengaged. However, those groups were important  
20     when the Commission made its decision to make the Pass-on Rate [Regulated  
21     Rate] the default. It was clear from the reaction of many customers, especially at  
22     the time the program was expanded to Casper and Gillette, that many wanted no  
23     part of it and had no interest in participating. By making the Pass-on Rate  
24     [Regulated Rate] the default rate, those customers who were too confused or too  
25     disinterested become engaged in the supply pricing/costing process, could  
26     continue on without mandatory participation in the Choice Gas program.

27  
28     Kinder Morgan argues that those who are currently disengaged would not be  
29     impacted, since if they are on the Pass-on Rate [Regulated Rate], they could  
30     readily remain on that rate with the *do-nothing* option. However, this fails to  
31     realize that more and more customers have been moving to the Pass-on Rate

1 [Regulated Rate] since the expansion of the program – and much of that  
 2 movement has been through the default process. The following chart summarizes  
 3 customers’ movement to the Pass-on Rate [Regulated Rate]:  
 4

5 **NUMBER OF CUSTOMERS ON**  
 6 **THE PASS-ON RATE [REGULATED RATE]**  
 7

	2002 Selection Period	2003 Selection Period	2004 Selection Period
<b><i>Casper</i></b>			
Defaulted	Default not to Pass-on	17,979	25,272
Total	9,417	22,417	28,647
<b><i>Gillette</i></b>			
Defaulted	Default not to Pass-on	3,438	4,946
Total	1,386	4,007	5,246
<b><i>Torrington</i></b>			
Defaulted	Rate Not Available	3,812	4,294
Total	Rate Not Available	3,665	4,464
<b><i>Total</i></b>			
Defaulted	Not Available	25,229	34,512
Total	10,803	30,089	38,357

8  
 9 In 2003, 84% of the Pass-on Rate [Regulated Rate] customers went on that rate as  
 10 a result of the default mechanism. In 2004, that percentage increased to 90%.  
 11 Clearly, these are customers who knew how to pick a supplier if they choose to,  
 12 since they had done so in the past. But, instead, they choose to go with the Pass-  
 13 on Rate [Regulated Rate] instead – either through an affirmative choice or by  
 14 throwing away their ballot. And, of the complaining customers that Kinder  
 15 Morgan discusses in their testimony, very few of these customers indicated that  
 16 their complaint was due to misinformation or confusion about how to remain with  
 17 a current unregulated Choice Gas supplier.

18  
 19 Additionally, there were 9,283 more defaults in 2004 compared to 2003 but only  
 20 8,268 more total customers on the Pass-on Rate [Regulated Rate]. More than  
 21 7,600 customers who had previously been with an unregulated supplier changed  
 22 to the Pass-on Rate [Regulated Rate] in 2004. Customers are clearly making

1 conscious, deliberate decisions to move between supply options, including the  
2 Pass-on Rate [Regulated Rate].  
3

4 **Q. IS THERE A NATURAL MOTIVE FOR THE SUPPLIERS TO ATTEMPT**  
5 **TO CAPTURE MORE AND MORE PASS-ON RATE [REGULATED**  
6 **RATE] CUSTOMERS?**

7 A. Of course, and that motive is profit. The Pass-on Rate [Regulated Rate] includes  
8 no profit since the regulated utility's profit is earned on its investment, not its  
9 commodity. This is not the case with commodity prices offered by the  
10 unregulated suppliers. In spite of the fact that the suppliers' refuse regulators any  
11 information on how their prices are set, there is no doubt that prices are not  
12 offered at a level equal to the direct cost of the product. The suppliers' would not  
13 be good stewards of their shareholders' investment if they did not seek a profit on  
14 the product they sold, and there is publicly available data (some of which is  
15 described below) showing that profit is associated with Choice Gas offerings.

16  
17 Since the suppliers stand to make money only on customers they can move off of  
18 the Pass-on Rate [Regulated Rate] and onto an unregulated Choice Gas supply  
19 option, the suppliers' intentions in this proceeding should not be viewed as  
20 altruistic. It is easy to envision profits slipping away as more and more customers  
21 prefer the simplicity of choosing the Pass-on Rate [Regulated Rate] that includes  
22 no profit for the supplier.  
23

24 **Q. WHAT INFORMATION CAN YOU PROVIDE THAT CLEARLY SHOWS**  
25 **THERE IS A PROFIT MARGIN INCLUDED IN THE SUPPLIERS'**  
26 **UNREGULATED PRICES?**

27 A. Starting with Wyoming Community Gas, the *Joint Powers Agreement for the*  
28 *Acquisition of, or Contracting for, Natural Gas*, supplied to the OCA during the  
29 discovery process, contains the following provision:  
30  
31

1            Surplus Funds: Any surplus funds resulting from operations  
2            experience as determined by the board shall be available for  
3            dividend credit to future contributions, for increasing the reserve  
4            fund, or for use as otherwise determined and declared by WAM-  
5            ACNG for the benefit of participants.  
6

7            Clearly, Wyoming Community Gas, as well as their partner/affiliate ONEOK did  
8            more than cover their costs. Profits, provided by natural gas customers, were  
9            available to make charitable contributions and supplement funds used to provide  
10           municipal services. The June 9, 2004 Wyoming Community Gas Board minutes,  
11           attached as OCA Parrish Exhibit Fourteen, reflect:

12           The 2004-2005 Budget was presented by Stephanie Reeves.  
13           Wyoming Community Gas had an increase of customers over last  
14           year. There is \$21,000 in the budget for distribution to member  
15           communities in this fiscal year. There was a discussion about  
16           whether we should contribute \$10,000 to L.I.E.A.P. (Low Income  
17           Energy Assistance Program). This was not in the budget.  
18           Stephanie reviewed the distribution to communities: \$21,000 from  
19           ONEOK and \$21,000 from Wyoming Community Gas for a total  
20           of \$42,000. Last year WCG distributed \$10,000 from WCG plus  
21           \$21,000 from ONEOK. Last year WCG also gave LIEAP \$10,000  
22           to be distributed among the Choice Program communities. . .  
23

24           Again, this is just good business on the part of ONEOK and Wyoming  
25           Community Gas. However, it shows their motivation to move customers to a rate  
26           where this profit may be increased – rather than being motivated to make it easy  
27           for customers to receive a rate with no profit included.  
28

29           Moving on to Kinder Morgan, it too has publicly discussed the profit associated  
30           with the Choice Gas program. In OCA Parrish Exhibit Fifteen, an August 5, 2004  
31           Quarterly Report of Kinder Morgan, it is stated toward the bottom of page 6:

32           Kinder Morgan Retail's segment earnings decreased by \$1.4  
33           million (21%) from the second quarter of 2003 in comparison to  
34           the second quarter of 2004...The decrease in operating revenues in  
35           the second quarter of 2004, relative to 2003, primarily resulted  
36           from (i) reduced irrigation demand in 2004 and (ii) **an increase in**  
37           **the percentage of our Wyoming customers on our regulated**  
38           **rate structures, which pass-through the cost of gas to the**  
39           **customer.** [Emphasis added.]

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The fact that these decreased revenues translate into decreased earnings is supported with OCA Parrish Exhibit Sixteen, a Kinder Morgan press release issued July 21, 2004, with the following found toward the bottom of the first page:

Second quarter segment earnings for Retail were nearly \$5 million, down from \$6.3 million, compared to the same period last year. The decline is primarily *attributable to lower Choice Gas results*, consistent with budget expectations... [Emphasis added.]

Again, there is a reason for the suppliers to want to move customers to a profit-inclusive rate, by making it more difficult to become a Pass-on Rate [Regulated Rate] customer. This should be a strong consideration of the Commission when determining whether the Company’s request is in the public interest.

**Q. IN YOUR PREPARATION FOR THIS CASE, WHAT DID YOU FIND OTHER STATES’ CUSTOMER CHOICE PROGRAMS INCLUDED RELATIVE TO DEFAULT PROVISIONS?**

A. While it is true that several of the states allow customers to continue with their existing supply option, as indicated by Mr. Van Dyke, there are many customer protection provisions that surround those roll-over/default provisions that are not present in the Wyoming Choice Gas Program. While there are a number of differences that I will describe below, the primary difference is that in the other states, customers can *do nothing* and stay with their regulated utility supply option. And, the *do nothing* provision is not just for the first year. Essentially, in the other states I examined, a customer may actively make a choice to go to a provider other than the regulated utility (and not just during a three week window). But, that customer never has to become involved or make any decision, in any year, in order to remain with the regulated utility.

Montana, for instance, has administrative rules related to *Electric and Natural Gas Utility Restructuring Consumer Information and Protection*. Section 38.5.6007 relates to the *Default Supplier*:

1 ...The regulated natural gas distribution utility shall serve as the  
2 default supplier in its distribution service territory when a small  
3 customer is without supply service because the customer has not  
4 selected a competitive supplier or due to contract termination by a  
5 natural gas supplier, including termination for nonpayment.  
6

7 The program is also voluntary in Washington, D.C. The frequently asked  
8 questions found on the website of Washington Gas includes the following:

9 Q. Do I have to make a Choice?

10  
11 A. No. Participation is voluntary. If you don't choose an  
12 energy supplier, Washington Gas will continue to provide  
13 your gas at the current regulated rate.  
14

15 Columbia Gas of Kentucky has a similar statement on its website:

16 Taking part in the Customer CHOICE Program is completely  
17 voluntary and costs you nothing.  
18

19 The Michigan Public Service Commission website has similar language:

20  
21 You can select the gas supplier of your choice or do nothing and  
22 continue to get your gas supplied by your local gas utility under  
23 regulated rates.  
24

25 **Q. WHAT ARE SOME OF THE OTHER PROTECTIONS THAT**  
26 **SURROUND THE ROLLOVER/DEFAULT IN THE OTHER STATES?**

27 A. Georgia has in place *Terms of Service: Minimum Standards*, including:

28 In cases where a consumer does not make a preference known, the  
29 market shall not place the consumer on a new fixed-term  
30 agreement unless the terms and conditions of the consumer current  
31 fixed-term agreement so provides. If the consumer is placed on a  
32 new fixed-term agreement, the marketer shall be prohibited from  
33 charging the consumer an exit fee or early termination fee for a  
34 period of ninety (90) days from the beginning of the new fixed-  
35 term agreement. In addition, the duration of the new fixed-term  
36 agreement shall not exceed the duration of the current fixed-term  
37 agreement.  
38

39 Additionally,

40 Whenever a marketer offers a fixed term agreement and the  
41 expiration date of such agreement is approaching, or whenever a  
42 marketer proposes to change its terms of service under any type of

1 agreement, the marketer shall provide advance written notification  
2 to the natural gas consumer at least two (2) billing cycles, or sixty  
3 (60) days, prior to the date of the agreement's expiration. The  
4 notification shall set forth all of the consumer's options at that  
5 point including, but not limited to, the option to seek another  
6 marketer. Additionally a marketer shall provide a second written  
7 notification, mailed separately from the bill, no less than twenty-  
8 five (25) days prior to the expiration date of a fixed-term  
9 agreement. This second notification shall include, but not be  
10 limited to, the expiration date of the current fixed-term agreement,  
11 the rate and terms of a fixed-term agreement being offered, and the  
12 type of rate plan, including the terms and conditions, that the  
13 consumer will be placed on if the consumer does not make a  
14 known preference.  
15

16 There is also additional protection in Montana. Section 38.5.6004(10) of its  
17 Administrative Rules, states:

18 If the service contract contains an automatic renewal provision, the  
19 supplier may not change the terms and conditions of the contract  
20 upon the renewal date unless the customer has been provided with  
21 written notice of the changes at least 60 days in advance of their  
22 effective data and of his or her right to change suppliers rather than  
23 renew the contract. With the written notice of contract changes, the  
24 supplier must provide the customer a letter of authorization  
25 approving the contract changes to return to the supplier. **Without**  
26 **a signed letter of authorization, the supplier may not renew the**  
27 **contract.** [Emphasis added.]  
28

29 Ohio also has extensive rules regarding contract renewals, only part of which  
30 states:

31 For contracts of six months or longer that: (a) contain any material  
32 change to the contract, which includes but is not limited to, new  
33 fees or penalties, changes from a fixed rate to a variable rate, or  
34 vice versa, or an increase in a fixed rate, or changes to the factors  
35 used to determine a variable rate: and (b) contain an early  
36 termination or cancellation option with a fee greater than \$25.00  
37 for early termination or cancellation or contain no option for early  
38 termination or cancellation, the retail natural gas supplier or opt-in  
39 governmental aggregator shall notify the customer of such  
40 changes, describe or highlight each change, **and also obtain the**  
41 **customers' affirmative consent** to such changes pursuant to any  
42 of the enrollment procedures established in rule 4901:1-29-06 of  
43 this chapter. In addition the retail natural gas supplier or opt-in

1 governmental aggregator shall notify the customer **that no**  
2 **response will result in the customer automatically reverting to**  
3 **the natural gas company unless the customer chooses another**  
4 **retail natural gas supplier or opt-in governmental aggregator.**

5 The notice shall be provided at least forty-five days, but not more  
6 than ninety days in advance of the contract expiration date, and  
7 comply with paragraph (F)(1)(a) to (F)(1)(c) of this rule.  
8 [Emphasis added.]  
9

10 It is certainly incomplete for Mr. Van Dyke simply to say that a number of other  
11 states provide for a supplier rollover option. As the above information shows,  
12 there is much, much more to the story.  
13

14 **Q. DOES THE PORTION OF KINDER MORGAN'S PROPOSAL WHEREIN**  
15 **SUPPLIERS WOULD BE REQUIRED TO STATE THEIR ROLLOVER**  
16 **PRICES WITHIN FIFTEEN DAYS OF THE END OF THE SUPPLIER**  
17 **SELECTION PERIOD ALLEVIATE YOUR CONCERNS ABOUT THE**  
18 **PROPOSAL?**

19 A. No, although truly the state of affairs would be much worse without that  
20 provision. With that requirement, at least customers will be able to ascertain what  
21 they would be charged for the upcoming Program year, and would be able to  
22 verify that they were being billed correctly. However, by the time the prices are  
23 announced, it will be too late for customers to use that information in their  
24 supplier selection process. By the time the information is to be available, the  
25 customers are already locked into a supply option. Frankly, the information  
26 would be much more useful if it were available fifteen days **before** the end of the  
27 annual supplier selection period.  
28

29 **Q. WHAT HAS BEEN YOUR OBSERVATION OF DEFAULT PRICES THAT**  
30 **COME OUT AFTER THE END OF THE SELECTION PERIOD?**

31 A. Looking at three years of experience may be useful when discussing the public  
32 interest of allowing customers to default to an unregulated rate set by suppliers  
33 and only announced to customers after the end of the selection period. I offer

1 below the information for the Commission to make its own observations for the  
2 periods of 2000, 2001, and 2002.

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5  
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**RANGE OF FIXED ATEs DURING THE SELECTION PERIOD  
VERSUS DEFAULT RATES<sup>1</sup>  
2000 Selection Period – Torrington Only**

	Kinder Morgan	Wyoming Community Gas	Midwest United
Fixed Rates Offered (per therm)	\$0.475 TO \$0.486	\$0.475 to \$0.483	\$0.476
Fixed Default Rate (per therm)	\$0.486	\$0.485	\$0.476

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These prices show that the default rate was at the high end of the fixed prices, and that based on the price activity in the market at the time, customers were much better off making selections early in the selection period, rather than waiting till the end. Our next experience was in 2001, where just the opposite was true, as prices dropped throughout the selection period:

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**RANGE OF FIXED RATES DURING THE SELECTION PERIOD  
VERSUS DEFAULT RATES  
2001 Selection Period – Torrington Only**

	Kinder Morgan	Wyoming Community Gas	Midwest United
Fixed Rates Offered (per therm)	\$0.775 TO \$0.796	\$0.774 to \$0.794	\$0.778 to \$0.784
Fixed Default Rate (per therm)	\$0.767	\$0.774	\$0.765

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During this selection period, most of the fixed price customers would have been better off (and were certainly no worse off) with the default rate than with any of the other fixed price offerings made during the selection period. But that did not become obvious until after the end of the selection period when the default price was available. The experience of 2002 was much more mixed:

<sup>1</sup> For purposes of illustration, the focus is on fixed rates only. However, suppliers did offer rate options other than only fixed rates.

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**RANGE OF FIXED RATES DURING THE SELECTION PERIOD  
VERSUS DEFAULT RATES  
2002 Selection Period**

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	Kinder Morgan	Wyoming Community Gas	Midwest United	ACE
<b><i>Casper</i></b>				
Fixed Rates Offered (per therm)	\$0.499 to \$0.562	\$0.447 to \$0.547	\$0.389 to \$0.535	\$0.430 to \$0.532
Fixed Default Rate (per therm)	\$0.534	\$0.544	\$0.519	\$0.541
<b><i>Gillette</i></b>				
Fixed Rates Offered (per therm)	\$0.599 to \$0.654	\$0.525 to \$0.631	\$0.510 to \$0.638	\$0.594 to \$0.630
Fixed Default Rate (per therm)	\$0.629	\$0.632	\$0.611	\$0.610
<b><i>Torrington</i></b>				
Fixed Rates Offered (per therm)	\$0.420 to \$0.645	\$0.433 to \$0.655	\$0.550 to \$0.655	\$0.605 to \$0.626.
Fixed Default Rate (per therm)	\$0.639	\$0.645	\$0.629	\$0.645

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The experience of 2002 shows that it truly is a crap shoot as to when to select a price – early in the selection period, late in the selection period, or after the selection period.

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**Q. WHEN THIS DEFAULT ISSUE LAST CAME BEFORE THE COMMISSION, COMMISSISONER FURTNEY, AMONG OTHERS, THOUGHT THAT ANY OF THE ILLS OF THE PROPOSAL COULD BE CURED WITH A BETTER EDUCATION PLAN. WHAT ARE YOUR THOUGHTS ON THAT?**

A. It is risky to rely on an educational campaign, so close to the upcoming selection period, to reach all customers in an effective manner for the 2005 selection season. It is likely that once again, confusion will abound. Nearly one-half of the

1 customers subjected to this program defaulted to the Pass-on Rate [Regulated  
2 Rate] this past year. One-half! If the education is not exceptionally widespread  
3 and understandable, the Commission could find itself in a position of explaining  
4 to customers why they were not informed about this significant change in the  
5 program. And, according to Mr. Van Dyke's list of 133, more of those customers  
6 claimed to have been out of town, hospitalized, or otherwise unavailable than  
7 claimed to have misunderstood the processes of the Program.

8

9 Additionally, there is a little bit of the fox guarding the henhouse in the proposed  
10 educational campaign. As discussed above, the suppliers are, and should be,  
11 motivated to make money out of this Program. Kinder Morgan violated its tariff  
12 provisions in releasing so many customers from the Pass-on Rate [Regulated  
13 Rate] to the other suppliers. Kinder Morgan Retail has decreasing revenues and  
14 earnings as a result of the Wyoming Choice Gas Program changes. In all of the  
15 recent hearings, Kinder Morgan has strongly advocated against customers'  
16 selection of the Pass-on Rate [Regulated Rate] and advocated the alleged benefits  
17 of fixed rates. So, you will understand my reluctance to support the proposed  
18 educational campaign when Kinder Morgan (and/or any of the other suppliers)  
19 will host and run the educational meetings.

20

21 Consider another scenario. A customer decides to be a non-participant and,  
22 relying on the Commission's statements, throws his/her supply selection form in  
23 the trash upon receipt because he/she has realized that the Pass-on Rate  
24 [Regulated Rate] is likely to produce the best results in the long run. Then the  
25 media blitz starts the last three days of the selection period (as per Mr. Van  
26 Dyke's testimony, page 9). The customer discovers that he/she now needs to  
27 make a selection to be on the Pass-on Rate [Regulated Rate] and has to find a new  
28 selection form, get a control number, perhaps study the prices, and more. It might  
29 be easier for that customer to just say, "the heck with it all – anything is fine!" In  
30 a practical sense, the program has become harder and more limiting.  
31 Alternatively, the customer decides to actually participate, but the easiest and

1 fastest way to get a selection form is to go to city hall, where a local Wyoming  
2 Community Gas enthusiast will be waiting.

3  
4 **Q. PLEASE COMMENT ON THE DRAFT WRITTEN EDUCATIONAL**  
5 **MATERIALS SUBMITTED BY KINDER MORGAN.**

6 A. When compared to the information provided at customer meetings, it is easier for  
7 the Commission to assure that the written materials remain neutral and educate --  
8 rather than advocate. But, what Kinder Morgan has submitted in this case does  
9 not fit that category. I disagree with the characterization that “Choice Gas just  
10 got easier.” If the Commission grants the application in this proceeding, the  
11 program will be *different*. Whether it is harder or easier will be for each customer  
12 to judge, depending their preferred supply option, and whether they chose an  
13 unregulated supplier last year, who they wish to reelect, without regard for the  
14 prices offered for the upcoming year.

15  
16 Other aspects of the one page direct mailer could also be simplified. For instance,  
17 it discussed a June date relative to the customer’s first billing cycle. But, the start  
18 of the billing cycle is far less important than the date of the end of the supplier  
19 selection period. The end of the selection period is important because that is the  
20 end of the customers’ ability to make an affirmative selection before they are  
21 defaulted (rolled over) to their prior selection.

22  
23 On the proposed letter to customers to be included with their information packets,  
24 it is troubling that there is a phone number and website address of each of the  
25 supply options except the Pass-on Rate [Regulate Rate]. This appears to be an  
26 attempt to make the information on the Pass-on Rate [Regulated Rate] less easily  
27 accessible. This comment also applies to the proposed supplier selection form.

28  
29 Similarly, in the booklet describing the participating suppliers, Kinder Morgan  
30 Choice Gas Supply is listed and described, but Kinder Morgan the utility is not.

31 The Commission has clearly indicated in the past that the Pass-on Rate [Regulated

1 Rate] is a supply option to be offered to all. Since Kinder Morgan utility is  
2 provider of that supply option, they should receive equal treatment. Again, this  
3 all appears to be an attempt to slight the Pass-on Rate [Regulated Rate] to  
4 discourage its selection or to blur the difference between it and the unregulated  
5 options.

6  
7 **Q. DID THE OCA HAVE AN EARLIER OPPORTUNITY TO PROVIDE**  
8 **MEANINGFUL INPUT INTO EITHER THIS APPLICATION OR THE**  
9 **EDUCATIONAL MATERIALS ASSOCIATED WITH IT?**

10 A. No. Kinder Morgan asked to meet with the OCA to discuss the idea they were  
11 considering of again filing a requested change to the default process. During the  
12 meeting, Kinder Morgan put several ideas on the table to see if we might be more  
13 receptive to some than others – including the idea of a check box which I discuss  
14 below. We also had a very generic discussion about educational campaigns and  
15 processes. The OCA agreed to mull over some of the suggestions and get back to  
16 Kinder Morgan. We also asked Kinder Morgan for some very basic data to help  
17 us consider some of their ideas. The day that Kinder Morgan provided us the data  
18 (a few weeks after the meeting) was also the day that they announced that they  
19 had decided to make this particular filing – without even bothering to see what  
20 our response to the earlier discussion would be. It was on that day, that we were  
21 provided some draft educational material and were asked to provide any input we  
22 would have within two days, so that it could be incorporated into the filing.  
23 Given other commitments and full schedules, no input was provided at that time.  
24 Thus, when Kinder Morgan indicates in their testimony that the OCA provided  
25 some suggestions, it was only in a very generic manner and not specific to the  
26 matter as it is presented in this proceeding

27  
28 **Q. DO YOU WISH TO RESPOND TO PAGE 12 OF THE APPLICATION,**  
29 **WHERE IT DISCUSSES THE POTENTIAL OF KINDER MORGAN**  
30 **LOSING ITS ABILITY TO HEDGE AS PART OF THE PASS-ON RATE**  
31 **[REGULATED RATE]?**

1 A. Yes. While this may have been a legitimate concern at the time of the filing, it is  
2 now a moot point. On December 21, 2004, the Federal Energy Regulatory  
3 Commission (FERC) issued an *Order on Rehearing and Clarification* in regards  
4 to *Standards of Conduct for Transmission Providers*. This Order clarifies, that

5 ... “normal purchases and sales” as those terms are generally used for  
6 accounting purposes, are not considered to be financial futures, or  
7 hedging transactions under the Standards of Conduct.  
8 Furthermore, the Commission grants rehearing and will allow  
9 exempt LDs to participate in financial transactions necessary for  
10 price risk management solely for the benefit of on-system retail  
11 customers...

12  
13 This should resolve the issue raised by Kinder Morgan.  
14

15 **Q. IN BOTH THE KINDER MORGAN APPLICATION AND KINDER**  
16 **MORGAN WITNESS MR. WATSON’S TESTIMONY, THERE IS**  
17 **REFERENCE TO A CUSTOMER SURVEY SUBMITTED WITH THE**  
18 **2003 REQUEST FOR CHANGES TO THE DEFAULT PROVISION.**  
19 **SHOULD THE COMMISSION EVEN CONSIDER THE RESULTS OF**  
20 **THIS SURVEY WHEN MAKING ITS DECISION?**

21 A. No. That survey should not enter into the Commission’s decision. In its February  
22 2004 decision in that matter, the Commission found that the survey was flawed  
23 and in its order expressed concern that the survey may have “yielded invalid  
24 results”. There was testimony submitted by the OCA responding to the  
25 questionable nature of that survey in that case, which formed the basis for the  
26 Commission’ decision to ignore those results. There is no reason for the  
27 Commission to consider those same invalid, unproven, and unsupported results in  
28 this proceeding.  
29

30 **Q. IN ITS APPLICATION, KINDER MORGAN MAKES A POINT OF**  
31 **COMMENTING THAT THE OCA HAS NOT PREVIOUSLY**  
32 **SUPPORTED THE CHOICE GAS PROGRAM. PLEASE RESPOND.**

33 A. Since the OCA itself has been in existence for less than two years, we have not  
34 formally taken a position before the Commission on the merits of the program.

1 But quite frankly, the OCA is comprised of many of the former representatives of  
2 the Consumer Advocate Staff in proceedings before the Commission where we  
3 did argue that the continuation of the Choice Gas Program is not in the public  
4 interest. This position was taken after the program had been in effect for several  
5 years and we were able to analyze the results of the program and its impact on  
6 customers.

7  
8 However, the Commission has made it clear that this proceeding is to address  
9 only the default process. Hence, my testimony is directed to only that issue and  
10 not the general merits, if any, of the program. Our recommendations about the  
11 default assume the continuation of the Choice Gas program into the future.

12  
13 **Q. IN THAT LIGHT, IS THERE AN ALTERNATIVE MEANS OF**  
14 **ALLOWING CUSTOMERS TO CONTINUE WITH A SUPPLY OPTION**  
15 **FROM YEAR TO YEAR THAT THE OCA WOULD FIND**  
16 **ACCEPTABLE?**

17 A. There are actually several alternatives. The first alternative that was discussed  
18 with both Kinder Morgan and AARP was the *check box* concept. As Kinder  
19 Morgan presented the idea to the OCA, the annual supplier selection form would  
20 contain a line item with a check box whereby customers could indicate their  
21 desire to remain with their previous supplier and supply option until and unless a  
22 different affirmative selection was made. This option has a definite advantage  
23 over the default concept proposed by Kinder Morgan in its application, since  
24 customers would have to be involved in a direct and affirmative way – rather than  
25 simply assuming that silence assumes that customers have an opportunity to  
26 remain with an earlier choice.

27  
28 Let me reiterate my point with an example. Many of the complaints garnered by  
29 Kinder Morgan and submitted in this case came because customers submitted late  
30 ballots, submitted incomplete or invalid ballots, or ballots were ‘lost’ in the mail  
31 or otherwise. Similar ballot issues have arisen in prior years and could be

1 expected into the future. But, what if in future years, customers called and said,  
2 “I sent my ballot in and it wasn’t received, but trust me, I choose the Pass-on Rate  
3 [Regulated Rate] this year because I realize I no longer want to be on  
4 WeatherGuard.” If that situation, the reverse of many we see in Kinder Morgan’s  
5 examples, occurred, would Kinder Morgan be so quick to release these customers  
6 to the Pass-on Rate [Regulated Rate]? Wouldn’t Kinder Morgan have the right to  
7 say, “Sorry, too bad, you must remain on the unregulated rate that you didn’t want  
8 because that is what you had in prior years and we have this new rule in effect”?  
9 But, if the customer had to affirmatively choose to stay with a supplier, there  
10 would be less argument about what the customer was thinking, what the customer  
11 really desired, and the psychological choice that Kinder Morgan believes it is  
12 important to give customers would continue.

13  
14 **Q. ARE THERE OTHER ALTERNATIVES THAT MIGHT BE MORE**  
15 **ACCEPTABLE TO THE OCA THAN THE CURRENT KINDER**  
16 **MORGAN PROPOSAL?**

17 A. Noting that the devil is generally in the details, the OCA is aware that several  
18 other states have natural gas customer choice programs with substantially  
19 different terms than those in Wyoming. If the default proposal was offered in a  
20 context with different terms and conditions than those that presently exist in  
21 Wyoming, the impact on customers might be lessened, and thus, the public  
22 interest standard may be met. For example, if the customers had the opportunity  
23 to change suppliers during the defined term of the agreement for a small exit fee,  
24 similar to some of the other state examples cited above, then being defaulted to  
25 any particular option would be less dramatic for the customer, as the customer  
26 would have more and freer choices. Or, if the customer had to sign a specific  
27 agreement with a supplier that spelled out the terms of the agreement in writing,  
28 including provisions of what happens at the end of the initial term, then the  
29 customer would be more engaged in the choice and would be clearly informed of  
30 the impact of that choice. There are many variations on this same theme that one  
31 could find through an examination of customer choice programs in other states.

1

2 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATION.**

3 A. The OCA strongly advocates that the Commission deny Kinder Morgan's request  
4 to change the default process. Granting the request would result in more customer  
5 confusion, adding to the confusion that some customers will always have. There  
6 is too little time to educate customers this year, to countermand the massive  
7 educational efforts that were taken in prior years. The suppliers have a vested  
8 interest in moving and retaining more customers on the unregulated, profit-  
9 producing rates and, as good corporate stewards, must be as, or more, concerned  
10 for shareholders than customers. Finally, we echo the words of the Commission  
11 when it determined, after an extensive investigation, that the only way the public  
12 interest could reasonably be served and for the Choice Gas program to remain in  
13 place was to make modifications to the program – with the primary modification  
14 being that the Pass-on Rate [Regulated Rate] must be the default rate:

15           The Pass-On Rate [Regulated Rate], as modified and extended  
16           hereinabove, is central to the potential of the Choice Gas program  
17           to produce just and reasonable rates and should, in the form  
18           approved hereinabove, be the program's universal default rate and  
19           should continue permanently.  
20

21 **Q. DOES THAT CONCLUDE YOUR PREFILED, DIRECT TESTIMONY?**

22 A. Yes, it does.