

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE COMPLAINT OF)
THE WYOMING OFFICE OF CONSUMER)
ADVOCATE CONCERNING UNLAWFUL,) DOCKET NO.30022-GC-05-53
DECEPTIVE, AND MISLEADING) RECORD NO. 9867)
ADVERTISING BY KINDER MORGAN RETAIL)
ENERGY SERVICES DURING THE 2005)
CHOICE GAS PROGRAM SELECTION PERIOD)

AMENDED FORMAL COMPLAINT

and

REQUEST FOR HEARING

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

1. Kinder Morgan Retail Energy Services, (KMRES) a wholly owned subsidiary of Kinder Morgan, Inc., is a Choice Gas program supplier.
2. KMRES is the dominant unregulated Choice Gas program supplier in terms of number of customers served.
3. The 2005-2006 Choice Gas program selection period began April 11, 2005 and ended April 29, 2005.
4. On April 13, 2005, the OCA discovered that KMRES was promoting its supply options by conducting a prize drawing for three television sets.
5. This prize drawing was being conducted in violation of the Wyoming Consumer Protection Act due to KMRES's failure to disclose in its direct mail and Internet advertisements information related to the odds of winning and the value of the prizes as required by the Act. In addition, the promotion failed to allow the participation of Choice Gas consumers who do not purchase their gas supply from KMRES.
6. Also on April 13, 2005, OCA informed KMRES that its drawing promotion was being conducted illegally.
7. KMRES eventually altered its prize drawing promotion by including the statement of odds and prize value as well as by allowing the entry of non-KMRES customers.

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

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

and;

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

A copy of the advertisement, labeled OCA Exhibit 1, is attached hereto. Similar or identical advertisements also appeared on April 27, 2005 and April 29, 2005, in the Casper Star Tribune and may have appeared in other media sources.

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

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

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

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

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

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

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

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

12. In addition to the general prohibition of unfair and deceptive advertising by the Wyoming Consumer Protection Act, KMRES has violated the Choice Gas Service Supplier Code of Conduct Guidelines. The Code of Conduct, which specifically provides that a supplier "shall not market or advertise its commodity services in any manner that is misleading to the customer, or misrepresents the cost of commodity to the customer," is included in the Commission approved tariffs governing the Choice Gas program. A copy of the Supplier Code of Conduct, labeled OCA Exhibit 6, is attached hereto.

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

14. The unlawful, deceptive, and misleading advertising activity of KMRES, which is specifically prohibited by the Supplier Code of Conduct as well as Wyoming's generally applicable Consumer Protection Act, corrupted the 2005-2006 Choice Gas program year selection process, harming consumers.

15. The likely effect of KMRES's deceptive and misleading advertising was to cause customers to wrongly believe that the Pass-On Rate [Regulated Rate] has almost always produced higher costs to consumers than Choice Gas program supplier offerings.

WHEREFORE, the OCA respectfully requests that the Commission:

1. Find that during the 2005-2006 Choice Gas program selection period, KMRES engaged in deceptive and or misleading advertising by publishing the advertisement attached hereto as OCA Exhibit 1 and any other materially similar advertisements.
2. Allow all consumers who selected a Choice Gas program supplier offering after KMRES published deceptive and or misleading advertisements to cancel or avoid such selection by affirmatively selecting the Pass-On Rate [Regulated Rate].
3. Require Kinder Morgan Inc. to notify effected consumers that due to the publication of misleading and deceptive advertisements by KMRES they will be permitted to cancel or avoid their selection by affirmatively selecting the Pass-On [Regulated Rate];
4. As an alternative to the relief requested in paragraph 2-3, require KMRES to refund, to consumers who selected a Choice Gas Program supplier offering after KMRES's publication of a misleading and or deceptive advertisement, any amount that they are billed during the 2005-2006 Choice Gas program year that exceeds the amount each such consumer would have been billed under the Pass-On Rate [Regulated Rate];
5. Require KMRES to submit all advertising material that it intends to use in connection with the Choice Gas program in future program years to the Commission for advance approval; and
6. Order such other or additional corrective and preventative measures as the Commission finds just, reasonable, and consistent with the public interest.

DATED this 9th day of May, 2005.

OFFICE OF CONSUMER ADVOCATE

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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2005, I served the foregoing to each individual listed below by depositing a properly addressed copy thereof in the United States Mail with first-class postage affixed and by e-mail transmission.

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