

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
MICHIGAN CONSOLIDATED GAS COMPANY) Case No. U-11222
for approval of depreciation accrual rates.)
_____)

At the March 10, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

On January 22, 1997, Michigan Consolidated Gas Company (Mich Con) filed an application for leave to appeal the January 8, 1997 ruling by Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) that granted intervenor status in this proceeding to CMS Nomeco Oil & Gas Co., HRF Exploration and Production, Inc., Fruehauf Production Company L.L.C., Harry R. Fruehauf, Jr., Chevron U.S.A., Inc., Peninsular Oil & Gas Company, Ward Lake Drilling, Inc., d/b/a Ward Lake Energy, and Wolverine Gas and Oil Company, Inc. (collectively, the producers). On February 5, 1997, the producers filed responses to the application for leave to appeal.

Mich Con argues that the producers do not have standing to intervene in this proceeding. Mich Con asserts that the producers will not be adversely affected by a decision regarding the rates by which Mich Con will depreciate assets in the future and that they have no interest in the subject matter that is sufficient to meet the Commission's standard for intervention. Specifically, Mich Con maintains that the producers' claims that

they (1) own mineral and leasehold interests in the area served by Mich Con's facilities, (2) transport gas on Mich Con's laterals, its Wet Header System, or the Antrim Dry Header, and (3) have receipt point agreements with Mich Con are not persuasive.

Mich Con argues that general allegations of interest in Mich Con's transportation rates and vague contentions about the producers' potential use of Mich Con's facilities due to the ownership of mineral and leasehold interests are simply insufficient to support intervention.

Mich Con contends that the producers' general assertions about the use of Mich Con's Wet Header System and laterals should not be used to confer standing in this proceeding. Despite the potential that producers may actually use such facilities, Mich Con maintains that they have not demonstrated a real or immediate harm because the change in the depreciation rates does not mean that there will be a corresponding change in transportation rates. Accordingly, Mich Con maintains that the producers have no readily ascertainable interest in the depreciation accrual rates at issue in this proceeding.

Mich Con also asserts that the transportation of gas on the Antrim Dry Header is simply not relevant to this proceeding because a subsidiary of Mich Con owns and operates the Antrim Dry Header. According to Mich Con, the Antrim Dry Header has separate depreciation accrual rates as required by the Commission's March 29, 1995 order in Case No. U-10547 to ensure that Mich Con's ratepayers are not affected by its operation.

Mich Con also maintains that the existence of receipt point agreements between the producers and Mich Con for particular meter installations is also not relevant. According to Mich Con, all receipt point plant, including meters, is specifically excluded from Mich Con's gas transportation rates. Accordingly, Mich Con asserts that the producers cannot claim to be interested in the depreciation rate attributable to meters included in any receipt point plant account.

In response, the producers insist that the ALJ acted reasonably in permitting them to intervene because the depreciation rates to be established in this proceeding will affect Mich Con's future transportation rates. Further, the producers argue that they will be directly affected by the outcome of this proceeding. The producers stress that they use facilities that will be affected by a change in Mich Con's depreciation rates. They point out that an attachment to Mich Con's application clearly indicates that this case includes a proposal to revise the depreciation rates for at least a portion of Mich Con's gas transportation facilities. Moreover, they insist that their transportation of gas involves these facilities. Indeed, they insist that they are vitally interested in the depreciation rates for Mich Con's gas transportation facilities because any change in depreciation rates applicable to those facilities will have a significant effect on their transportation costs and their profitability. Accordingly, they argue that Mich Con's application for leave to appeal should be denied.

Rule 337 of the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17337, establishes the standards for reviewing applications for leave to appeal. Not every application merits immediate review; an appellant must establish one of the following conditions before the Commission will grant review:

1. A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
2. A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.

If the Commission grants immediate review, it will reverse an administrative law judge's ruling if the Commission finds that a different result is more appropriate.

The Commission finds that the application for leave to appeal filed by Mich Con should be denied. In its November 10, 1988 order in Case No. U-9318, the Commission adopted the two-prong test for standing established by the U.S. Supreme Court in Association of Data Processing Service Organizations, Inc. v Camp, 397 US 150, 90 S Ct 827, 25 L Ed 2d 184 (1970), and applied to utility matters in Drake v The Detroit Edison

Company, 453 F Supp 1123 (WD Mich, 1978). This test requires the party in question to show (1) that it suffered an “injury in fact,” and (2) that the interests allegedly damaged are within the “zone of interests” to be protected or regulated by the statute or constitutional guarantee in question. Drake, supra, p. 1127.

Although this case involves a determination of the appropriate rates by which Mich Con will depreciate certain assets, the final order in this proceeding will ultimately have a direct effect on the business of the producers. Mich Con’s current rates for transportation of the proposed intervenors’ gas, which were set in Case No. U-10150, were derived through application of the depreciation accrual rates established by the Commission’s October 2, 1992 order in Case No. U-10044. The depreciation accrual rates established in this proceeding will have a similar effect on Mich Con’s future rates for transportation. If the producers are not permitted to intervene in this proceeding, they will be foreclosed from having an opportunity to litigate their concerns regarding the approval of depreciation accrual rates that will be used in the establishment of Mich Con’s future transportation rates.

At the hearing and in their responses to Mich Con’s application for leave to appeal, the producers affirmatively asserted that their gas is being transported on Mich Con’s laterals. The ALJ found that the producers’ use of Mich Con’s laterals was at the crux of his ruling. Accordingly, it was incumbent upon Mich Con, as a predicate to its application for leave to appeal, to demonstrate that the producers do not use its laterals or that the producers could not be adversely affected by the Commission’s final decision in this proceeding. Mich Con failed to do so.

In responding to the producers’ claims, Mich Con did not specifically deny the producers’ allegations that they actually used facilities that are covered by Mich Con’s application. Rather, Mich Con simply stated that it was “open to question”¹ whether the producers actually used such facilities. Mich Con then argued that

¹Mich Con’s brief, p. 6.

the producers had not demonstrated that they would be immediately harmed by a change in the depreciation rates for laterals because Mich Con is not proposing to change any gas transportation rate in this proceeding.

The Commission finds that Mich Con's reasoning is flawed. Changes in Mich Con's depreciation accrual rates established in this proceeding will have a direct effect on rates established in the utility's next rate case. Accordingly, the Commission finds that Mich Con's application for leave to appeal should be denied.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. The January 22, 1997 application for leave to appeal filed by Mich Con should be denied.

THEREFORE, IT IS ORDERED that the January 22, 1997 application for leave to appeal filed by Michigan Consolidated Gas Company is denied.

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

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

John G. Strand
Chairman

By its action of March 10, 1997.

John C. Shea
Commissioner

Dorothy Wideman
Executive Secretary

David A. Svanda
Commissioner

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Suggested Minute:

“Adopt and issue order dated March 10, 1997 denying the application for leave to appeal filed by Michigan Consolidated Gas Company, as set forth in the order.”