

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)
DOMINION MIDWEST ENERGY, INC.,)
DOMINION RESERVES, INC., MILLER ENERGY,)
INC., MUSKEGON DEVELOPMENT COMPANY,)
and **QUICKSILVER RESOURCES, INC.,** against)
MICHIGAN CONSOLIDATED GAS COMPANY,)
MICHCON GATHERING COMPANY, and)
MICHCON PIPELINE COMPANY.)

)

Case No. U-12342

At the October 11, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On July 11, 2001, the Commission issued an order granting relief on a complaint filed by Dominion Midwest Energy, Inc., Dominion Reserves, Inc., Miller Energy, Inc., Muskegon Development Company, and Quicksilver Resources, Inc., against Michigan Consolidated Gas Company (Mich Con), MichCon Gathering Company, and MichCon Pipeline Company concerning the Antrim Expansion Project (AEP) gas pipeline transportation rate. The order reduced the rate from \$0.09 per thousand cubic feet (Mcf) to \$0.05104 per Mcf and reduced the gas-in-kind retainage percentage from 0.5% to 0.12%. On August 10, 2001, Mich Con filed a petition for rehearing. Thereafter, the complainants and the Commission Staff filed answers.

Rule 403 of the Commission's Rules of Practice and Procedure, 1992 AACRS, R460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

In its petition for rehearing, Mich Con takes issue with the provisions of the Commission's order that restate plant accumulated depreciation balances in order to determine the AEP rate base and depreciation expense. According to Mich Con, any restatement of historical accounting costs is retroactive ratemaking because it effects a refund or credit for past overrecoveries.

The petition largely reiterates arguments that Mich Con made earlier, and the Commission finds no reason to grant rehearing under the standards set forth in Rule 403. The Commission is not persuaded that its order was in error. However, for clarity, the Commission adds the following observations.

First, even if the Commission were to accept at face value Mich Con's assertion that the March 29, 1995 order in Case No. U-10547 implicitly permitted periodic adjustments of the unit rate of depreciation, that order cannot be read to give Mich Con unlimited discretion to depreciate the plant in an arbitrary or capricious manner. In this case, there is no explanation why the original forecast of 20 years of recoverable reserves (adopted in Case No. U-10547) was soon thereafter inflated to 40 years and then reduced to 25 years, all in a space of 6 years' time. In the absence of a legitimate explanation, it is difficult to view these practices as promoting accurate financial reporting. It would not be reasonable under the circumstances for the Commission to set

prospective rates with a computation that accepts the company's book balances as a given. The dollar amounts recorded in a company's books are not conclusive or binding on the Commission and cannot circumscribe its statutory authority to set reasonable rates.

Second, restating existing plant asset and accumulated depreciation balances and using the restated balances to set rates prospectively is not retroactive ratemaking. It does not affect the rates or revenues that Mich Con or its affiliates have already collected. It does not recapture past profits, but rather it prevents the company from recovering excessive depreciation expense and capital costs in future rates. Unlike Michigan Bell Telephone Co v Public Service Comm, 315 Mich 533; 24 NW2d 200 (1946), the Commission's order did not refund excessive earnings from the preceding year on the basis of a finding that the company had booked excessive depreciation expense in that year.

Mich Con argues that the order understated the liability for the Keep Whole charge. It argues that the Commission erred in rejecting its estimate of the charge at 36¢ per Mcf and in computing the charge at 18¢ per Mcf, which is based on one year's worth of data from a recently received, but unreviewed, invoice. It claims that the data is not representative of the entire period covered by previous Keep Whole billings.

Mich Con's discussion of the Keep Whole charges reiterates facts, circumstances, and arguments that were on the record when the Commission adjudicated this case. As such, Mich Con has not met the standard for rehearing in Rule 403. Moreover, the Commission is not persuaded that its earlier decision was in error. The record, as a whole, does not support Mich Con's claim that it should recover prospective billings at a projected rate of 36¢ per Mcf.

Mich Con argues that the complainants failed to meet their burden of proving that the AEP corporate overheads should be disallowed. In the absence of contrary evidence, it says, the

Commission should have accepted its testimony that the overheads were appropriately allocated among the affiliates in accordance with the Massachusetts formula.

The reasons advanced by Mich Con in support of rehearing are not different than those it previously used and do not meet the standard for rehearing in Rule 403. Mich Con cited the testimony of its employee, Peter Rynearson, who stated his conclusion that the Massachusetts formula produced the dollar amounts of the proposed cost allocations. The Commission need not accept the costs simply because Mich Con endorses them as being computed in accordance with a formula that has not been explicitly approved by the Commission. The weight of the evidence supports the Commission's determination to exclude the cost allocations.

Mich Con argues that the complainants also failed to meet their burden of proof in proposing to apply miscellaneous revenues to reduce the cost of AEP service. It contends that the Commission's acceptance of this position had the effect of double-counting certain revenues.

Mich Con does not provide citations to the record to support its claims that some of the revenues were double-counted. To the extent that Mich Con is attempting to raise new factual matters, its petition fails to meet the standard of Rule 403. If, on the other hand, Mich Con is claiming that the complainants had the burden of dispelling the respondents' explanation of the

revenues as a factual matter¹ and failed to meet that burden, the Commission finds no error. As explained in the order, the complainants met their burden of proof, and the weight of the evidence supports the Commission's findings.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1929 PA 9, as amended, MCL 483.101 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 165, as amended, MCL 483.151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. The petition for rehearing should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing is denied.

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

¹ Moreover, at least part of Mich Con's factual explanation of the revenues is dubious in light of the record. Mich Con claims that part of the miscellaneous fee revenues in line 12 of Appendix A of the July 11, 2001 order duplicates a liquids credit used to compute the processing and Kalkaska Inlet Facility fees in line 6 of the same Appendix A. However, the dollar amounts represented by the revenues are much more than the credits. The liquids revenues earned in 1996-99, as shown in line 14 of Exhibit C-89, are \$0.0004871 per Mcf of total Antrim production, which translates to average revenues of \$49,900 per year for 2001-05. The liquids credit included in line 6 of Appendix A is \$0.008 per Mcf of Antrim volumes flowing on the Wet Header, as indicated in Exhibit R-96. If that credit is applied to projected Antrim Wet Header volumes during 2001-05, the average dollar amount of the credit becomes \$6,900 per year. On an annual basis, the dollar amounts associated with the liquids revenues in Exhibit C-89 are more than seven times those implied by the credits in Exhibit R-96.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of October 11, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated October 11, 2001 denying the petition for rehearing filed by Michigan Consolidated Gas Company, as set forth in the order.”