

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
MICHIGAN CONSOLIDATED GAS COMPANY)	
for approval of a gas cost recovery plan, five-year)	Case No. U-13060
forecast, and monthly gas cost recovery factor)	
for calendar year 2002.)	
_____)	

At the December 20, 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

TEMPORARY ORDER

History of Proceedings

On August 31, 2001, Michigan Consolidated Gas Company (Mich Con) filed an application for approval of its gas cost recovery (GCR) plan and factors for 2002, with prefiled testimony and exhibits supporting a factor of up \$4.54 per thousand cubic feet (Mcf). The application noted that Mich Con's GCR clause has been suspended from January 1, 1999 through December 31, 2001, as authorized in the April 28, 1998 order in Case No. U-11682, and that the company has been providing gas at a fixed commodity rate of \$2.95 per Mcf during the three-year period. At a prehearing conference on October 8, 2001, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) granted leave to intervene to the Residential Ratepayer Consortium (RRC), the Michigan Community Action Agency Association (MCAAA), and Attorney General Jennifer M. Granholm

(Attorney General) and approved a procedural schedule that set the plan case for hearing in early February 2002. The Commission Staff (Staff) also participated.

On November 20, 2001, the Commission issued an order requiring a hearing on the issue of whether it should approve a temporary GCR factor pursuant to MCL 460.6h(8), which provides:

The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a gas cost recovery plan in a gas supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

The order notes that if Mich Con were to self-implement a GCR factor of \$4.54 per Mcf in January 2001, the abrupt transition from the fixed rate of \$2.95 per Mcf to the GCR factor could pose a hardship for customers.

On November 28, 2001, the ALJ held a second prehearing conference, in which he established a procedural schedule for an expedited hearing on a temporary factor. He made no provision for issuing a proposal for decision on the temporary factor, because the Commission would read the record of the hearing. On December 10 and 11, 2001, the ALJ conducted the hearing, at which Mich Con, the Attorney General, MCAAAA, and the Staff presented witnesses for cross-examination. All parties filed briefs on December 13, 2001 and reply briefs on December 17, 2001.

Overview of the Parties' Positions

a. Mich Con

In its testimony addressing a temporary factor, Mich Con updated the prefiled testimony that it used to support its application and reduced the GCR factor to \$4.38 per Mcf, which it proposes to charge on a levelized basis throughout 2002. Of the 197 billion cubic feet (Bcf) of gas supply that

Mich Con projects it will need in 2002, the plan calls for purchasing 168 Bcf at fixed contractual prices and the remainder at prices tied to the market or market-based indices. In fact, Mich Con had entered into contractual commitments for the fixed-price portion of its supply as of the date of the temporary factor hearing. The strategy it used to make the fixed-price purchases was to monitor the New York Mercantile Exchange (NYMEX) futures market and to lock in the purchases when the NYMEX prices cross certain predetermined hurdles or price benchmarks based on historical trends.

Mich Con contends that its GCR plan is reasonable and supports implementation of a factor of \$4.38 per Mcf. It argues that its GCR cost projection is in accord with the “mechanistic”¹ cost standard of a plan case under 1982 PA 304, as amended, MCL 460.6h et seq. (Act 304), that its factor is the only one on the record based on cost, and that both the Staff and the Attorney General acknowledge the propriety of \$4.38 per Mcf from a cost standpoint. Mich Con says that Act 304 makes no provision for a gradual transition from one year to the next and the plan case provisions of Act 304 do not allow the Commission to address the accounting issues raised by other parties. Because 50% of its gas deliveries occur in the first quarter of a plan year, Mich Con says, artificially lowering the factor it can charge during January 2002 will result in a significant year-end undercollection. It further claims that the permanent customer choice program, which begins April 1, 2002, will make it more difficult to recover a substantial undercollection by reducing the GCR customer base that will pay the increase in charges for gas after 2002 and that increasing those charges will further erode Mich Con’s competitive posture.

¹Mich Con’s reply brief at 8, 10.

b. MCAAA

MCAAA says that self-implementing Mich Con's proposed GCR factor will create a hardship for customers. MCAAA therefore proposes that the Commission adopt the fixed commodity rate of \$2.95 per Mcf as a temporary factor for January, February, and March of 2002. MCAAA says that allowing the fixed rate to expire at the same time as the date for customers to enroll as new participants in Mich Con's permanent choice program (on April 1, 2002) would recognize the close linkage between the GCR clause and customer choice. In the alternative, MCAAA proposes a temporary factor of \$3.40 per Mcf to approximate current market prices, or some factor falling within a range from \$2.95 to \$3.40 per Mcf. MCAAA says that if the Commission adopts this alternative, it should also accelerate the start of the permanent choice program to the beginning of 2002.

MCAAA argues that Mich Con's gas purchasing practices are unreasonable and that it should not have locked in the high fixed prices. MCAAA says that Mich Con should reduce its GCR costs by taking advantage of current low market and NYMEX futures prices, relying more on its low-cost gas in storage, and renegotiating the fixed-price contracts or rescheduling their delivery dates.

c. Attorney General

The Attorney General recommends a temporary factor, effective only in January of 2002, of \$3.62 per Mcf and a temporary factor of \$4.38 per Mcf for the remainder of the plan year (or until the Commission issues an order on Mich Con's GCR plan). In addition to providing a more graduated transition from Mich Con's fixed commodity rate of \$2.95, the Attorney General says that the first month's reduced factor reflects that a portion of Mich Con's billings in January 2002 will represent volumes of gas that Mich Con will deliver to its customers in December of 2001.

That is because the January billings impose the charges for billing cycles that straddle December of 2001 and January of 2002.² The Attorney General computes her proposed factor as a weighted average based on \$2.95 per Mcf for volumes delivered in December and \$4.38 per Mcf for volumes delivered in January. Ex. I-16T.

The Attorney General says that, contrary to Mich Con's reading of Act 304, nothing requires equal factors for each month or precludes the Commission from making allowances for rate shock. The Attorney General contends that approving a January-only temporary factor would not require the Commission to address accounting issues. The Attorney General advises that if Mich Con does implement its purported accounting practices for unbilled December 2001 sales, any January factor it bills in excess of \$2.95 per Mcf would produce an unjustified windfall. Thus, the Attorney General says, lowering the factor from \$4.38 to \$3.62, a difference of 76¢ per Mcf, will not harm Mich Con, but rather it will reduce the windfall from \$1.43 (\$4.38 less \$2.95) to \$0.67 per Mcf (\$3.62 less \$2.95) for unbilled December sales.

d. Staff

The Staff's position is similar to the Attorney General's. The Staff's computation of a January-only temporary factor of \$3.614 per Mcf reflects the unbilled volumes at the end of December 2001 at the fixed commodity rate of \$2.95 per Mcf. Ex. S-24T.

The Staff attributes its treatment of the unbilled December sales volumes to the April 28, 1998 order in Case No. U-11682, which authorized Mich Con to undertake the experimental choice program, suspend its GCR clause, and charge the fixed commodity rate for three years, among

²A utility issues a monthly bill for usage measured on the basis of a meter read at the end of a billing cycle. By Commission rule, a billing month covers 26 to 35 days of usage. R 460.2102(b). Because Mich Con assigns different customers to different billing cycles, it does not issue all of the bills at the same time, and most, if not all, customers will receive a bill in January 2002 that covers at least part of December 2001.

other things. The Staff says that the three-year rate freeze should apply to an entire 36 months of customer usage. To ensure 36 billing months of usage at an effective customer cost of \$2.95 per Mcf, it is necessary to adjust the January factor for the unbilled December 2001 usage and to account for the December sales by booking the revenues earned for them in 2001 at \$2.95 per Mcf. Only then, the Staff says, would Mich Con truly be “at risk for all gas commodity costs during the three year experimental Program,” as it promised in Case No. U-11682. Mich Con’s application, Case No. U-11682, at 15. As it stands, the Staff says, Mich Con’s method of accounting creates a perverse incentive to inflate the January 2002 factor as much as possible because the company would record all of the excess over \$2.95, as applied to the December volumes billed in January, as shareholder earnings in 2001. (As stated in the April 28, 1998 order in Case No. U-11682, at 9, revenues earned in December 2001 would not be subject to reconciliation.)

The Staff contends that its proposal is consistent with the treatment of the first month’s revenues in the experimental program. The Staff explains that Mich Con issued bills in January 1999 at the gas commodity rate of \$2.95 per Mcf (less a credit of \$0.30 for a prior GCR overrecovery), but it accounted for the December 1998 volumes included in those billings in the 1998 GCR reconciliation, which permitted it to recover its approved GCR costs for those volumes (as opposed to \$2.95 per Mcf).

e. RRC

The RRC did not present testimony, but it developed its position in its brief with information on the record. The RRC supports the weighted average approach developed by the Attorney General and the Staff to reflect the sales volumes that are delivered in December 2001, but billed in January 2002. The RRC calculates a weighted average January temporary factor of \$3.6139 per Mcf. For the remaining 11 months of 2002, the RRC projects the cost of the approximately

30 Bcf, market-based component of Mich Con's supply on the basis of actual NYMEX strip prices that are lower than Mich Con's NYMEX price forecast. The RRC computes February through December factors of either \$4.28 or \$4.25 per Mcf, depending upon whether the NYMEX strip prices it uses are from November 21 or December 10, 2001. In its brief, MCAA supports a similar adjustment.

Discussion

Despite the numerous arguments presented by the parties regarding the treatment of unbilled revenues for volumes delivered in December 2001 but billed in January 2002, the Commission concludes that this is not an appropriate issue for determination in an order approving a temporary GCR factor. The issue involves the reconciliation of GCR revenues with gas costs, which will occur after the close of the GCR period. It would not be appropriate to prejudge that issue based on the record developed for consideration of the temporary factor. Accordingly, the Commission will not make a determination of the unbilled revenue issue until the parties have had an opportunity to develop a record on that issue in the reconciliation case.

The Commission finds that the January 2002 temporary factor should be no more than \$3.62 per Mcf and that temporary factors should be no more than \$4.38 per Mcf for the following months in 2002, or until the Commission issues a final order in the GCR plan case. The Commission reaches this conclusion for two reasons.

First, the Commission attaches much importance to the public interest in avoiding rate shock. GCR customers depend upon Mich Con for a service that is vital during the Michigan heating season. Many customers may not be able to absorb the economic hardship of sudden increases in utility bills that are unforeseeable to persons who do not follow utility regulation closely, particularly if their incomes are fixed or they do not have discretionary financial resources. In this

sense, the public interest implicates the health, safety, and well-being of Mich Con's customer base.

The Commission finds no merit in Mich Con's argument that the cost-based standard of Act 304 precludes a temporary factor to reduce rate shock. A temporary factor does not prevent a utility from recovering its reasonable cost of gas, but rather it affects the timing of the collection of the revenues. The elaborate, balanced process set forth in Act 304, including the reconciliation, ensures that Mich Con will recover its reasonable costs incurred to provide service in the 2002 GCR plan year. This order approves reasonable temporary factors on the basis of the circumstances presented on the record. It does not adjudicate any prudence or accounting issues that may arise during the GCR plan or the reconciliation cases. All issues affecting a temporary factor are subject to review in the full plan case.

Second, the approval of a \$3.62 factor for January will maintain the status quo with respect to the unbilled revenue issue. While the temporary factor achieves the Commission's objective of moderating the price increase to customers, it is not indicative of any predetermination of the appropriateness of the GCR factor proposed by Mich Con or of the arguments presented regarding unbilled revenues. The Commission is cognizant of Mich Con's argument that the temporary rate being approved for January 2002 could have an impact on Mich Con's recorded revenues in 2001. The Commission's temporary factor determination for 2002 is not intended to have any impact on Mich Con's recorded revenues or earnings in 2001. Mich Con presented an alternative proposal in its brief that acknowledged the Commission could avoid such an impact by allowing Mich Con to recognize a regulatory asset pursuant to the Statement of Financial Accounting Standards No. 71. The Commission concludes that it would be appropriate to do so and authorizes Mich Con to record a regulatory asset equal to the difference between Mich Con's proposed annual GCR factor

of \$4.38 per Mcf and the \$3.62 factor reflected in this order, times Mich Con's December 2001 unbilled volumes. This places Mich Con in the same position it would have been absent this temporary order, while still enabling customers of Mich Con to experience a more moderate rate change in January 2002.

Accompanying MCAAA's brief filed on December 13, 2001 is an application for leave to appeal from the ALJ's ruling striking prefiled testimony. The Commission finds that the ALJ ruled appropriately on the motion to strike.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACRS, R 460.17101 et seq.

b. Mich Con should be authorized to implement temporary GCR factors of no more than \$3.62 per Mcf during the January 2002 billing month and no more than \$4.38 per Mcf during the following months of 2002, unless it obtains authorization from the Commission to charge a different factor.

c. MCAAA's application for leave to appeal should be denied.

d. Mich Con should be authorized to record a regulatory asset pursuant to the provisions of this order.

THEREFORE, IT IS ORDERED that:

A. Michigan Consolidated Gas Company is authorized to implement temporary gas cost recovery factors of no more than \$3.62 per thousand cubic feet during the January 2002 billing

month and no more than \$4.38 per thousand cubic feet during the following months of 2002, unless it obtains authorization from the Commission to charge a different factor.

B. Michigan Consolidated Gas Company shall file with the Commission, within 30 days, tariff sheets consistent with this order.

C. The application of the Michigan Community Action Agency Association for leave to appeal is denied.

D. Michigan Consolidated Gas Company is authorized to record a regulatory asset pursuant to the provisions of this order.

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

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; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner, concurring and dissenting in a separate opinion.

By its action of December 20, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

month and no more than \$4.38 per thousand cubic feet during the following months of 2002, unless it obtains authorization from the Commission to charge a different factor.

B. Michigan Consolidated Gas Company shall file with the Commission, within 30 days, tariff sheets consistent with this order.

C. The application of the Michigan Community Action Agency Association for leave to appeal is denied.

D. Michigan Consolidated Gas Company is authorized to record a regulatory asset pursuant to the provisions of this order.

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

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

Chairman

Commissioner

Commissioner, concurring and dissenting in a separate opinion.

By its action of December 20, 2001.

Its Executive Secretary

In the matter of the application of)
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for approval of a gas cost recovery plan, five-year)
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_____)

Case No. U-13060

Suggested Minute:

“Adopt and issue order dated December 20, 2001 authorizing Michigan Consolidated Gas Company to implement temporary gas cost recovery factors of no more than \$3.62 per Mcf for the January 2002 billing month and no more than \$4.38 per Mcf for the remaining months of the 2002 plan year, as set forth in the order.”