

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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| In the matter of the application of |) | |
| CONSUMERS ENERGY COMPANY for approval |) | |
| of a gas cost recovery plan and authorization of gas |) | Case No. U-13570 |
| cost recovery factors for the 12-month period |) | |
| April 2003 through March 2004. |) | |
| _____ |) | |

At the July 8, 2003 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

ORDER APPROVING SETTLEMENT AGREEMENT

On December 27, 2002, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting approval of its gas cost recovery (GCR) plan and factors for the 12-month period ending March 31, 2004.

Pursuant to due notice, a prehearing conference was held on February 10, 2003 before Administrative Law Judge James N. Rigas. Consumers, the Residential Ratepayer Consortium, Attorney General Michael A. Cox, and the Commission Staff participated in the proceedings.

On February 18, 2003, Consumers filed revisions to portions of its prefiled exhibits. On March 7, 2003, the parties filed a joint motion for a temporary order. On March 12, 2003, the Commission issued an order approving a temporary GCR factor of \$4.8500 per thousand cubic feet (Mcf) for April 2003. As approved in the order, the temporary factors for subsequent months

were subject to adjustment under the GCR factor ceiling price adjustment methodology set forth in the joint motion.

Subsequently, the parties submitted a final settlement agreement resolving all issues in this case.

According to the terms of the settlement agreement, attached as Appendix A, the parties agree that Consumers should be authorized to implement a uniform GCR factor of \$4.8500 per Mcf for the billing month of April 2003 and \$5.1830 per Mcf for the billing months of May 2003 through March 2004. Recent and unanticipated increases in market prices for natural gas have caused New York Mercantile Exchange future market prices to remain significantly higher than forecasted by Consumers. Indeed, in an order issued on June 27, 2003, Case No. U-13816, the Commission commenced a proceeding to increase the public's awareness of recent increases in natural gas prices. The Commission will conduct a public hearing on July 22, 2003 at 9:00 a.m. in its Lansing offices to draw attention to significant natural gas price increases that are expected next winter, to solicit comments from interested persons regarding the best methods for informing the public of the problems associated with higher gas prices, and to discuss potential load management solutions, such as conservation, weatherization, and insulation activities.

The parties also agree that the GCR factors for July 2003 through March 2004 should be subject to the quarterly ceiling price adjustment mechanism set forth on Exhibit 2 attached to the settlement agreement. The parties request that the Commission authorize Consumers to implement the adjustment for the second quarter of the plan year (the billing months of July through September 2003) as soon as possible and further agree that the Commission should waive the tariff requirement on Sheet E-2.10 to file a revised tariff sheet and supporting documents 15 days before implementing the second quarter adjustment.

The parties further agree that (1) the quarterly ceiling price adjustment mechanism for reflecting market price increases on Exhibit 2 is reasonable, (2) it is reasonable for Consumers to follow the gas purchasing strategy guidelines set forth on Exhibit 3 to the settlement agreement for the 2003-2004 GCR plan year, and (3) it is reasonable and prudent for Consumers to follow the guidelines regarding the use of hedging instruments set forth on Exhibit 4.

The Commission is persuaded that granting the relief recommended in the settlement agreement is in the public interest. Based on current natural gas prices, the Commission estimates that operation of the quarterly ceiling price adjustment mechanism authorized by today's action will mean that the monthly bills of a typical residential customer using 1,200 cubic feet (ccf) of gas will increase by an average of \$2.75 per month during the summer and by an average of \$9.69 per month during the winter.

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, 1999 AC, R 460.17101 et seq.
- b. The settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

- A. The settlement agreement, attached as Appendix A, is approved.
- B. Consumers Energy Company is authorized to incorporate into its rates uniform gas cost recovery factors of \$4.8500 per thousand cubic feet for the billing month of April 2003 and \$5.1830 per thousand cubic feet for the billing months of May 2003 through March 2004, which

shall be subject to the quarterly ceiling price adjustment mechanism set forth on Exhibit 2 attached to the settlement agreement.

C. The 15-day advance filing requirement for implementing the quarterly ceiling price adjustment for the second quarter of the 2003-2004 gas cost recovery plan year is waived.

D. The methodology for adjusting the gas cost recovery factors on a quarterly basis to reflect market price increases, the gas acquisition plan for the 2003-2004 gas cost recovery plan year, and the proposed use and treatment of hedging instruments are approved in accordance with the terms of the settlement agreement.

E. Consumers Energy Company shall file, within 30 days, tariff sheets consistent with Exhibits 1 and 2 attached to the settlement agreement.

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

(S E A L)

/s/ Laura Chappelle

Chairman

/s/ David A. Svanda

Commissioner

By its action of July 8, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

/s/ Robert B. Nelson

Commissioner

shall be subject to the quarterly ceiling price adjustment mechanism set forth on Exhibit 2 attached to the settlement agreement.

C. The 15-day advance filing requirement for implementing the quarterly ceiling price adjustment for the second quarter of the 2003-2004 gas cost recovery plan year is waived.

D. The methodology for adjusting the gas cost recovery factors on a quarterly basis to reflect market price increases, the gas acquisition plan for the 2003-2004 gas cost recovery plan year, and the proposed use and treatment of hedging instruments are approved in accordance with the terms of the settlement agreement.

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

By its action of July 8, 2003

Commissioner

Its Acting Executive Secretary

Commissioner

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
CONSUMERS ENERGY COMPANY)
for Approval of a Gas Cost Recovery Plan)
and Authorization of Gas cost Recovery)
Factors for the 12-Month Period)
April 2003 – March 2004)
_____)

Case No. U-13570

SETTLEMENT AGREEMENT

On December 27, 2002 Consumers Energy Company (“Consumers Energy”) filed an application with the Michigan Public Service Commission (“MPSC” or “Commission”) in the above captioned case seeking approval of a gas cost recovery (“GCR”) plan for the 12-month period April 2003-March 2004 (the “2003-2004 GCR Year”) and authorization of GCR factors for the 2003-2004 GCR Year. Consumers Energy Company filed testimony and exhibits in support of its positions concurrently with its application.

The initial prehearing conference in this case was held February 10, 2003 before Administrative Law Judge James N. Rigas. The parties to the case are Consumers Energy, the Commission Staff (“Staff”), Attorney General Michael A. Cox (“Attorney General”), and the Residential Ratepayer Consortium (“RRC”).

On February 18, 2003 Consumers Energy filed revisions to portions of the prefiled exhibits, which provided updated information.

On March 7, 2003 the parties filed a Joint Motion with the Commission for a Temporary Order. On March 12, 2003 the Commission issued a Temporary Order.

For purposes of settling the issues in Case No. U-13570, and subject to the acceptance and approval of the Commission without modification, the undersigned parties agree and stipulate as follows:

1. The GCR factors for the 2003-2004 GCR Year shall be those factors as set forth on Sheet No. E-2.00, attached as Exhibit 1. The factors for the months of July 2003 through March 2004 shall be subject to adjustment pursuant to the Quarterly GCR Factor Ceiling Price Adjustment (Contingency) Mechanism set forth on Sheet No. E-2.10, which is attached as Exhibit 2. The Commission is authorized to approve GCR ceiling price adjustments contingent on future events pursuant to Section 6h(6) of 1982 PA 304, as amended. The parties (i) have reviewed and are in agreement with Consumers Energy's calculation of the adjustment resulting from implementation of the quarterly adjustment mechanism for the second quarter of the GCR year, and (ii) are in agreement that Consumers Energy should be authorized to implement the quarterly adjustment for the July-March billing months as soon as possible following a Commission order. The parties agree that the requirement on Sheet E-2.10 that a revised tariff sheet and supporting documents be filed 15 days before a GCR Factor ceiling price adjustment is implemented should be waived for the July-October quarter.

2. The undersigned parties stipulate and agree that the Gas Purchasing Strategy Guidelines set forth in Exhibit 3 should be approved for the remainder of the 2003-2004 GCR Year. The parties stipulate and agree that the gas acquisition plan as filed by Consumers Energy and as modified by this Settlement Agreement should be deemed reasonable and prudent.

3. Attached as Exhibit 4 to the Settlement Agreement are "Guidelines for Use of Hedging Instruments in the Form of Put and Call Options." The parties stipulate and agree that use and treatment of hedging instruments in the manner set forth on Exhibit 4 is reasonable and

that it is reasonable and prudent for Consumers Energy to follow the Guidelines set forth on Exhibit 4.

4. Consumers Energy's Standard Refund Procedures for Gas Cost Recovery and Other Supplier Refunds, Rule B10.2, provides for use of a "roll-in methodology" for GCR over and under-recoveries. The Attorney General and the RRC have raised a question in this GCR Plan Case regarding whether gas cost recovery (GCR) factors should include any amount for past or projected over or under recoveries of gas costs or whether the "roll-in methodology" should be replaced by crediting or billing customers separately under MCL 460.6h(12)-(16) based on historical consumption during the period of any over or under recovery. Issues related to this question are currently pending before the Commission in the Aquila-MGU GCR Plan Case No. U-13550. The parties stipulate and agree that if the Commission adopts a historical refund methodology in the Aquila case and the decision becomes final without or after any appeal, then a historical refund methodology, and any thresholds adopted, will be applied to Consumers Energy's GCR over and under recoveries. The parties stipulate and agree that if the Commission adopts a roll-in methodology in the Aquila case, and the decision becomes final without or after any appeal, then a roll-in methodology will continue to apply to Consumers Energy's GCR over and under recoveries. Notwithstanding the above, a party may seek to argue in a subsequent case that facts and circumstances support a change in the procedure for handling over and under recoveries pursuant to MCL 460.6h(12)-(16).

5. The parties request the Commission to approve the attachments, which include revised tariff sheets E-2.00 (Exhibit 1) and E-2.10 (Exhibit 2).

6. This Settlement Agreement is entered into for the sole and express purpose of reaching a compromise among the positions of the parties. All offers of settlement and

discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

7. This Settlement Agreement is based on the facts and circumstances of this case and is intended for final disposition of Case No. U-13570. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise set forth herein, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

8. This Settlement Agreement is not severable. Each provision of this Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of this Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

9. The Staff certifies this Agreement is reasonable and in the public interest.

10. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues in this proceeding, if the Commission approves this Settlement Agreement without modification.

11. For the convenience of the Commission, the parties have attached as Exhibit 5, a proposed form of order which is acceptable to the parties.

WHEREFORE, the parties hereto respectfully request the Commission approve this Settlement Agreement and make it effective in accordance with its terms by final order.

CONSUMERS ENERGY COMPANY

Dated: June 13, 2003

By: H. Richard Chambers
H. Richard Chambers
Attorney for Consumers Energy Company

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Dated: June 13, 2003

By: Patricia S. Barone
Patricia S. Barone P29560
Assistant Attorney General for the Staff

ATTORNEY GENERAL MICHAEL A. COX

Dated: June 18, 2003

By: Donald E. Erickson
Donald E. Erickson
Assistant Attorney General

RESIDENTIAL RATEPAYER CONSORTIUM

Dated: June 13, 2003

By: Diane R. Royal
Diane R. Royal
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Attorney for the Residential Ratepayer Consortium