

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** for a )  
reconciliation of gas cost recovery revenues )  
and costs for the 12-month period April 2002 )  
through March 2003. )  
\_\_\_\_\_ )

Case No. U-13220-R

At the March 29, 2004 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**ORDER APPROVING SETTLEMENT AGREEMENT**

On June 30, 2003, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, seeking a reconciliation of its gas cost recovery (GCR) revenues and expenses for the 12-month period ended March 31, 2003.

Pursuant to due notice, a prehearing conference was held on September 17, 2003 before Administrative Law Judge James N. Rigas. Consumers, the Commission Staff, Attorney General Michael A. Cox, and the Residential Ratepayer Consortium participated in the proceedings.

At an evidentiary hearing on February 9, 2004, Consumers presented four witnesses, and the other parties each presented one witness.

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

According to the terms of the settlement agreement, attached as Exhibit A, the parties agree that, for purposes of the 2002-2003 GCR reconciliation case, Consumers overrecovered \$5,231,288, including interest accrued through March 31, 2003. The parties further agree that Consumers should roll the overrecovery into its 2003-2004 GCR plan using the methodology set forth in Rule B10.2 of its gas tariff.

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 Exhibit A, is approved.
- B. Consumers Energy Company is authorized to credit customers by rolling its overrecovery for the 2002-2003 plan year of \$5,231,288 into its 2003-2004 gas cost recovery plan.

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/ J. Peter Lark  
Chair

( S E A L )

/s/ Robert B. Nelson  
Commissioner

/s/ Laura Chappelle  
Commissioner

By its action of March 29, 2004.

/s/ Mary Jo Kunkle  
Its Executive Secretary

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

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

By its action of March 29, 2004.

\_\_\_\_\_  
Its Executive Secretary

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of )  
CONSUMERS ENERGY COMPANY )  
for a Reconciliation of Gas Cost Recovery Costs )  
and Revenues for the 12-Month Period )  
April 2002 – March 2003 )

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Case No. U-13220-R

MICHIGAN PUBLIC SERVICE COMMISSION  
ADMINISTRATIVE LAW JUDGES DIVISION

**SETTLEMENT AGREEMENT**

Pursuant to MCL 24.278 and Rule 333 of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” or “Commission”), Consumers Energy Company (“Consumers Energy” or the “Company”), the Commission Staff, Attorney General Michael A. Cox (“Attorney General”), and the Residential Ratepayer Consortium (“RRC”) agree as follows:

1. On June 30, 2003, Consumers Energy filed an application seeking a reconciliation of its Gas Cost Recovery (“GCR”) revenues and expenses for the 12-month period April 2002 – March 2003. The Company filed testimony and exhibits in support of its positions concurrently with its application.
2. The initial prehearing conference in this case was held on September 17, 2003 before Administrative Law Judge James N. Rigas. The parties to the case are Consumers Energy, the Commission Staff, the Attorney General, and the RRC.
3. An evidentiary hearing was held on February 9, 2004. At the evidentiary hearing, Consumers Energy presented four witnesses. The Staff, Attorney General, and RRC each presented one witness. The record in the case consists of 241 pages of transcript and 35 exhibits.

4. Consumers Energy presented evidence in Case No. U-13220-R supporting full recovery of the cost of gas incurred by Consumers Energy for gas sold to its customers during the April 2002 through March 2003 GCR year. Consumers Energy calculated that during the 2002-2003 GCR year it experienced a cumulative under-recovery in the cost of gas sold totaling \$6,703,418, calculated as shown on Exhibit A-1. When offset by interest owed customers pursuant to 1982 Act 304, the under-recovery was reduced to \$5,768,712. The Company proposed to recover this amount from customers using the roll-in methodology described in Rule B10.2 of the Company's gas tariff.

5. The Staff, the Attorney General and the RRC presented evidence in Case No. U-13220-R that the cost of gas recovered from customers for the 2002-2003 GCR year should be reduced and that recovery of a portion of the cost of gas incurred should be disallowed. The witness for the Attorney General recommended a reduction in cost of gas of \$17.3 million. The witness for the RRC recommended a reduction in cost of gas of \$31.0 million.

6. For purposes of settlement, the parties agree: (i) that the amount to be recovered from customers for cost of gas during the GCR year should be reduced by \$11.0 million and (ii) the \$11.0 million reduction should be rolled into the over/(under)-recovery balance effective April 1, 2003. Reducing the amount to be recovered from customers by \$11 million will convert the under-recovery of \$5,768,712 for the GCR year calculated by the Company in its filing to an over-recovery of \$5,231,288. The parties agree that this amount should be credited to customers using the roll-in methodology set forth in Rule B10.2 of Consumers Energy's gas tariff.

7. 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.

8. This Settlement Agreement is based on the facts and circumstances of this case and is intended for final disposition of Case No. U-13220-R. 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.

9. 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.

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

11. 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.

12. For the convenience of the Commission, the parties have attached, as Exhibit 1, a proposed form of order which is acceptable to the parties.

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

CONSUMERS ENERGY COMPANY

By: *H. Richard Chambers*  
H. Richard Chambers (P34139)  
Attorney for Consumers Energy  
Company

Dated: March 5, 2004

ATTORNEY GENERAL  
MICHAEL A. COX

By: *Paul F. Novak*  
*for Donald E. Erickson / HEC with permission*  
Donald E. Erickson (P13212)  
Assistant Attorney General

Dated: March 5, 2004

MICHIGAN PUBLIC SERVICE  
COMMISSION STAFF

By: *Michael J. Orris / HEC with permission*  
Michael J. Orris (P51232)  
Assistant Attorney General

Dated: March 5, 2004

RESIDENTIAL RATEPAYER CONSORTIUM

By: *Diane R. Royal / HEC with permission*  
Diane R. Royal (P39965)  
Shaltz & Royal, PC  
Attorney for Residential Ratepayer  
Consortium

Dated: March 5, 2004