

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.)	
_____)	

In the matter of the application of)	
MICHIGAN CONSOLIDATED GAS COMPANY)	
for a gas cost recovery reconciliation proceeding for)	Case No. U-13060-R
the 12-month period ended December 31, 2002.)	
_____)	

At the April 28, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

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

OPINION AND ORDER

History of Proceedings — Case No. U-13060-R

On February 28, 2003, Michigan Consolidated Gas Company (Mich Con) filed an application, with prefiled testimony and exhibits, to reconcile its gas cost recovery (GCR) revenues and expenses for the 12-month period ended December 31, 2002, pursuant to 1982 PA 304 (Act 304), MCL 460.6h *et seq.*, claiming an underrecovery of approximately \$18.5 million. Pursuant to due notice, a prehearing conference was conducted on May 1, 2003 by Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ). The Commission Staff (Staff) made its appearance at the

prehearing conference. Intervenor status was granted to Attorney General Michael A. Cox (Attorney General) and the Residential Ratepayers Consortium (RRC).¹

Motions to strike certain supplemental direct testimony filed by Mich Con regarding storage decrement practices were filed by the Staff on June 23 and 26, 2003, and the Attorney General on July 1, 2003. The ALJ granted the motions at an oral hearing held July 16, 2003. Mich Con filed an application for leave to appeal the stricken supplemental testimony on July 31, 2003. On October 2, 2003, the Attorney General filed a motion to strike similar rebuttal testimony filed by Mich Con. On October 9, 2003, Mich Con filed its response. On October 10, 2003, the ALJ granted the Attorney General's motion. In so doing, the ALJ also granted Mich Con a three week extension of the proceedings to allow the Commission to rule on the appeals.²

Mich Con, the RRC, the Attorney General, and the Staff presented witnesses and participated in cross examination on November 17, 2003. Initial briefs were filed by the parties on December 12, 2003 and reply briefs on December 22, 2003. On March 26, 2004, the ALJ issued his Proposal for Decision (PFD). On April 9, 2004, Mich Con, the RRC, and the Staff filed

¹On May 28, 2003, the Michigan Community Action Agency Association (MCAAA) was denied intervention in Case No. U-13060-R due to its tardy petition to intervene. However, MCAAA was a participant in Case No. U-13060, Mich Con's 2002 GCR plan proceeding.

²In an order issued March 12, 2003 in Case No. U-13060, the Commission found that Mich Con's decision to decrement storage levels during 2001 was not reasonable and prudent under the terms of the April 28, 1998 order in Case No. U-11682 and directed a disallowance of \$26.5 million in calculation of the 2002 GCR factor. On April 11, 2003, Mich Con filed an appeal of the March 12 order regarding its 2001 storage decrement practices to the Michigan Court of Appeals. *See, Michigan Consolidated Gas Co v Public Service Comm*, 264 Mich App 424; 691 NW2d 29 (2004), wherein the court upheld the Commission's authority to consider Mich Con's 2001 storage management practices in the company's 2002 GCR plan proceeding. As a result, the storage decrement matters raised in Cases Nos. U-13060 and U-13060-R have been resolved except for replacement of estimated figures with actual figures for a disallowance of \$26,263,000. Therefore, Mich Con's outstanding emergency appeals regarding the stricken testimony concerning the storage decrement issue are moot.

exceptions to the PFD. On April 23, 2004, Mich Con, the RRC, the Attorney General, and the Staff submitted replies to exceptions.

Related Residual Issues—Case No. U-13060

On April 21, 1998, Mich Con filed an application in Case No. U-11682 for approval of a three-year gas choice pilot program that, among other things, froze rates at \$2.95 per thousand cubic feet (Mcf) from January 1999 to December 2001 in lieu of the traditional GCR process. The application was approved *ex parte* by the Commission on April 28, 1998.

On August 31, 2001, Mich Con filed an application in Case No. U-13060 for approval of its GCR plan and factors for 2002, with prefiled testimony and exhibits supporting a factor of up to \$4.54 per Mcf. 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). The order noted that if Mich Con were to self-implement a GCR factor of \$4.54 per Mcf in January 2002, the abrupt transition from the fixed rate of \$2.95 per Mcf to the GCR factor could pose a hardship for customers.

At a November 28, 2001 prehearing conference, a procedural schedule for an expedited hearing on a temporary factor was established. On December 10 and 11, 2001, Mich Con, the Attorney General, the MCAAA, and the Staff presented witnesses for cross examination. On December 20, 2001, the Commission approved a temporary GCR factor of \$3.62 per Mcf for the January billing month of 2002 and \$4.38 per Mcf for the remaining months of that year. In addition, the Commission authorized³ Mich Con to record a regulatory asset equal to the difference between the January factor and the \$4.38 per Mcf factor as multiplied by the December 2001 unbilled volumes to put Mich Con in the same position it would have been absent the

³Commissioner Robert B. Nelson dissented from this aspect of the order.

temporary order while moderating the effect (rate shock) of the rate increase on customers. *See*, December 20, 2001 order in Case No. U-13060, p. 9. However, the Commission specifically stated that a temporary order, “does not adjudicate any prudence or accounting issues that may arise during the GCR plan or the reconciliation cases” and the temporary factor, “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.” *See*, December 20, 2001 order in Case No. U-13060, p. 8.

On January 16, 2002, the Attorney General filed a petition for rehearing in Case No. U-13060 regarding the Commission’s authorization of a regulatory asset. The petition was supported by the RRC and opposed by Mich Con. On July 10, 2002, the Commission granted rehearing and remanded the issues of rate shock and lawfulness of creating the regulatory asset to the ALJ for further evidence and argument.

On February 26, 2003, the ALJ issued a PFD on the remanded issues. In essence, he found that Mich Con’s implementation of the December 20, 2001 order caused rate shock for some GCR customers and recommended rescission of the regulatory asset authorization. Mich Con and the MCAAA filed timely exceptions to the PFD. Mich Con, the MCAAA, the Attorney General, and the Staff filed timely replies to exceptions.

As previously noted, on March 12, 2003, the Commission issued an order in Case No. U-13060. On April 11, 2003, the MCAAA filed a petition for rehearing to clarify that the March 12 order in Case No. U-13060 “did not rule upon, supersede, or render moot the Commission’s review of the ‘rate shock’ and ‘regulatory asset’ issues addressed by the parties” in the proceedings that followed the July 10, 2002 order in that case. On May 2, 2003, Mich Con filed a reply to the MCAAA’s petition for rehearing.

Discussion

1. Unbilled Revenues Issues⁴

The issue of the appropriate treatment of Mich Con's December 2001 unbilled revenues permeates throughout Cases Nos. U-13060 and U-13060-R. Mich Con argued that its December 2001 unbilled revenues should be treated the same as end of the year unbilled revenues have from the inception of its GCR clause. According to Mich Con, the GCR factor in effect on the date a bill is *rendered* is applied to the entire bill, regardless of when the gas was actually consumed. Mich Con maintained that its December 2001 unbilled revenues must therefore be priced at the January 2002 rate because nothing in its application in Case No. U-11682 provided for a different treatment. In fact, the company noted that the treatment it proposed for its December 2001 unbilled revenues was the same approach approved in Case No. U-11455-R, its last reconciliation case prior to the rate freeze. Further, Mich Con asserted that its December 1998 unbilled volumes were the first month of the 36-month period for the frozen factor billed at \$2.95 per Mcf so that November 2001 was the 36th month of the period. Therefore, if the December 2001 unbilled revenues are calculated using the \$2.95 factor, Mich Con would erroneously be forced to apply the fixed price for 37 months, contrary to the Case No. U-11682 application. In addition, Mich Con stated that the December 2001 unbilled revenues have already undergone Commission review pursuant to its 2001 annual income sharing reconciliation.

The Staff contended that resolution of this issue rests on interpretation of the order in Case No. U-11682. The Staff insisted that the three-year period during which the rate was frozen at

⁴While the discussion of this topic focuses on the exceptions and replies to exceptions filed to the February 26, 2003 PFD in Case No. U-13060, another outstanding matter affecting resolution of this issue is the MCAAA's April 11, 2003 petition for rehearing filed in the 2002 plan, Case No. U-13060. MCAAA requested clarification that the March 12, 2003 order in that case did not "rule upon, supersede, or render moot the Commission's review of the 'rate shock' and 'regulatory asset' issues" addressed by the parties to the case. MCAAA's petition for rehearing, p. 1.

\$2.95 per Mcf applied to gas *consumed* between January 1, 1999 and December 31, 2001, not gas billed during the period. According to the Staff, if a higher GCR factor is applied to Mich Con's December 2001 unbilled revenues, Mich Con will realize a windfall. Further, though the December 1998 unbilled revenues were charged at the \$2.95 rate in place during January 1999, the Staff observed that those revenues were reconciled in Case No. U-11455-R (1998 reconciliation case). For this reason, the Staff averred that December 1998 should not be counted as the first month of the 36-month period because Mich Con bore no risk in gas costs during that month. The Staff asserted that the only way the utility could assume three full years of risk as contemplated by the order in Case No. U-11682, would be if the \$2.95 GCR factor is applicable to its December 2001 unbilled volumes. Moreover, the Staff pointed out that Consumers Energy Company's (Consumers) treatment of unbilled revenues at the end of its experimental gas customer choice program, which was procedurally similar to Mich Con's, was remarkably similar to the Staff's position in this proceeding. Specifically, in Case No. U-12752-R, Consumers billed the frozen factor for an additional month past the close of the frozen period, which eliminated the controversy over unbilled revenues present in this case. The Staff maintained that Consumers recognized the need to maintain the frozen factor to cover revenues unbilled when the rate freeze expired and the same precedent should apply to Mich Con.

The Attorney General argued that the regulatory asset established by the December 20, 2001 order in Case No. U-13060 should be eliminated and \$13.9 million added to Mich Con's 2002 GCR revenues as a result. Like the Staff, the Attorney General contended that December 2001 unbilled revenues should be adjusted to the frozen rate of \$2.95 per Mcf and that December 1998 cannot be considered as the first month of the 36-month GCR factor freeze established by the order in Case No. U-11682. Conversely, in the event that the Commission rejected his position,

the Attorney General advocated that Mich Con's December 2001 unbilled revenues should be calculated at the \$3.62 rate as authorized by the Commission for January 2002, not \$4.38 as requested by Mich Con.

In its reply brief, the RRC expressed its support of the position taken by the Attorney General and the Staff that December 2001 unbilled volumes should be priced at \$2.95 per Mcf.

The ALJ agreed with the Staff, the Attorney General, and the RRC in finding that Mich Con's unbilled December 2001 volumes should be priced at the frozen rate of \$2.95. He explained that the lack of an operational GCR clause in December 2001 prevented the company from reconciling the cost of gas consumed during the GCR suspension period and the lack of a reconciliation proceeding requires Mich Con to apply the frozen rate to all volumes consumed during the period. He found that the Commission's intent in approving the freeze did not involve exclusion of December 2001 consumption not billed until January 2002. In fact, the ALJ stated that allowance of billing at the higher rate would result in an "imprudent, unreasonable, and patently unfair" windfall to Mich Con. PFD, p. 7.

In its exceptions, Mich Con claims the findings in the PFD are erroneous, not based on "competent, material, and substantial evidence," and therefore should not be adopted by the Commission. Mich Con points to the income sharing mechanism included in its Case No. U-11682 application to address the argument that the December 2001 unbilled revenues would escape regulatory review. Further, Mich Con argues that the Commission's adoption of a 1998 reconciliation "in the normal fashion" as part of the Case No. U-11682 order supports its contention that the December 2001 unbilled revenues would also be treated as other December unbilled revenues had in past reconciliations for at least 15 years. Finally, the company states that

if special accounting treatment were intended by the Commission, such a requirement would have been noted in the April 28, 1998 order in Case No. U-11682.

The immediate concern regarding rate shock in January 2002 addressed by the December 20, 2001 order in Case No. U-13060 has faded with the passage of time. However, the Commission finds it prudent to address the parties' arguments on the matter to establish direction should a similar situation arise in the future. The Commission granted rehearing to allow the parties to "address the manner in which Mich Con implemented the December 20, 2001 order and the effect that implementation had on the Commission's primary concern, rate shock to Mich Con's customers." July 10, 2002 order, Case No. U-13060, p. 2. Hearings were held on the matter in which the Staff and the Attorney General asserted that billing and meter reading errors that resulted in lower bills being rendered in January 2002 shifted an even greater burden on approximately 480,000 of Mich Con's customers because their February 2002 bills included the January 2002 undercollection. Mich Con countered that billing errors were addressed in Case No. U-13287⁵ and therefore required no additional review, and that the magnitude of a rate increase resulting from a GCR rate is beyond the scope of Act 304. Mich Con also insisted that the effect of its error on customers was insignificant; approximately \$6.00 to \$9.00 per customer.

The ALJ agreed with the Staff and the Attorney General, holding that the errors were contrary to the Commission's direction in the December 20, 2001 order to dampen the effect of increased rates on customers. Further, the ALJ relied on MCL 460.6h(6) language that allows the Commission to consider "other relevant factors" in evaluating a gas cost recovery plan to determine that rate shock is an appropriate consideration in Act 304 cases. PFD, p. 9. Finally, he found that the proceedings in Case No. U-13287 provided no basis to evaluate the rate shock issue.

⁵This case was opened to investigate assorted billing problems by DTE Energy Company, Mich Con's parent company.

The Commission agrees with the Staff, the Attorney General, and the ALJ that Mich Con's implementation of the December 20, 2001 order exacerbated the rate shock the Commission intended to moderate in the order. The effect of Mich Con's billing error was to underbill hundreds of customers in January 2002 and to then add on the underbilled amounts in February 2002 to the increased GCR factor. The proceedings in Case No. U-13287 do not preclude the Commission's consideration in this proceeding of the effect of the billing errors on Mich Con's GCR customers. Further, the Commission rejects the suggestion that the Commission lacks authority to investigate the effects of a regulated utility's faulty implementation of one of the Commission's orders. The Commission also rejects Mich Con's contention that the incident should be overlooked because it only involved a \$6.00 to \$9.00 overcharge levied on 480,000 customers.

As for the MCAAA's request for an analysis of remedies to address and assuage rate shock in future cases, the Commission is not persuaded that it should be addressed at this time. Though the MCAAA's request has some merit, the Commission finds that it would be more appropriate to fashion such remedies as circumstances arise.

Another related issue involving "the advisability and lawfulness of granting Mich Con's request to record a regulatory asset for the difference between its proposed factor and the temporary factor times the December 2001 unbilled volumes," is an integral part of the final outcome of the unbilled revenues issue in this reconciliation proceeding. July 10, 2002 order, Case No. U-13060, p. 2. The Commission specifically deferred the treatment of unbilled revenues for further development of the record in the 2002 reconciliation proceeding and established the regulatory asset as a temporary mechanism to allow Mich Con to continue serving customers into 2002 while the record was being developed. December 20, 2001 order in Case No. U-13060, p. 7.

During the rehearing proceeding, Mich Con stated that the Commission has broad powers to regulate public utilities and that every GCR proceeding includes use of regulatory assets “in the form of over or under collections of gas costs from its GCR sales customers.” Mich Con’s brief, pp. 7, 13. Mich Con goes on to explain that the authorization of the regulatory asset was advisable to accomplish the Commission’s goal of holding it harmless while beginning implementation of the higher GCR factor for the coming year. Moreover, Mich Con claims that the requirements of Statement of Financial Accounting Standards No. 71 (FAS 71) were met in this instance because recovery of the revenue equal to the asset is “probable” based on the Commission’s authorization creating the asset in the December 20, 2001 order.

Conversely, the MCAA, the Staff, and the Attorney General rely on statements from the December 20, 2001 order to support their contention that the regulatory asset was inappropriate because the level of assurance required under FAS 71 was not satisfied. Specifically, they point to the following language:

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 [treatment of unbilled revenues] is not an appropriate issue for determination in an order approving a temporary GCR factor. * * * 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. * * * 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.

December 20, 2001 order, p. 7.

The parties also question the procedural grounds for creating the regulatory asset because it was not raised during the contested portion of the relevant proceedings, but was suggested for the first time by Mich Con in its post hearing brief.

The ALJ agreed with the MCAAA, the Staff, and the Attorney General in holding that the regulatory asset created in the December 20, 2001 order was inappropriate and accordingly recommended rescission of that portion of the order.

The Commission is sympathetic to the arguments of all parties regarding the regulatory asset at issue. However, the intent of the December 20, 2001 order, when taken as a whole, is abundantly clear. Issuance of a temporary order was necessary to provide Mich Con the regulatory means to serve and bill customers for service into 2002. With the new year quickly approaching and with recognition of Mich Con's need to close its books for 2001, the Commission provided the regulatory asset as a temporary mechanism to allow Mich Con to continue moving forward while a complete record was developed on the proper treatment of December 2001 unbilled revenues.

Though allowing recognition of a regulatory asset in most circumstances could be construed as providing sufficient probability of recovery, the Commission's language cited above unmistakably tempered the degree of recovery assurance that might otherwise be associated with creation of a regulatory asset. All parties to the case were well aware of the contentiousness associated with the unbilled revenue issue and blind reliance on use of a regulatory asset in this instance as assurance that a specific amount would be recovered in this case was unwarranted.

As part of this reconciliation proceeding, the parties have subsequently developed an extensive record on the proper treatment of the December 2001 unbilled revenues. Mich Con contends it should recover \$4.38 per Mcf for the unbilled volumes while the Staff, the Attorney General, the RRC, and the ALJ have all agreed that \$2.95 per Mcf is the appropriate amount.

Though the specifics of managing the unbilled revenues at the close of the fixed-rate period was not specifically addressed in the Case No. U-11682 order, Mich Con's interpretation that it only applied through November 2001 is contrary to the text of the order and the intent of the

Commission. The most persuasive and telling fact in this determination is Mich Con's promise to assume risk for 36 months of gas purchases while the fixed rate was in effect. As the Staff, the Attorney General, and the RRC indicate, the December 1998 unbilled volumes were reconciled in the 1998 reconciliation case (Case No. U-11455-R) and all associated costs of gas were recovered therein. As a result, Mich Con did not face any risk for these volumes, and its argument to the contrary is not well-taken. Further, Mich Con's argument that 2002 income sharing proceedings brought the December 2001 revenues under Commission review is also unpersuasive. Therefore, in order to comply with the requirements of Case No. U-11682, Mich Con's December 2001 unbilled volumes must be calculated at \$2.95 per Mcf and the corresponding amount removed from 2002 revenues. Such determination obviates the need for reliance on a regulatory asset.

Mich Con is not being ordered to alter its long-standing billing procedures or retroactively change the rate charged to customers. The Commission is merely solidifying its intent in Case No. U-11682 that the \$2.95 per Mcf fixed rate applies to volumes consumed from January 1, 1999 through December 31, 2001 because that is the period Mich Con was free of GCR rate regulation.

2. Enron Contract Costs

In September 2002, Mich Con booked a \$10 million expense associated with the early termination of a supply arrangement with Enron. Later, Mich Con made a negative adjustment of \$2 million when the costs became known and measurable. Combined, these costs result in an \$8 million cost. Mich Con argued that because the amount was known and measurable in 2002, it should be recovered in this reconciliation. However, Mich Con also conceded that the \$8 million was not actually paid until 2003.

The Staff and the Attorney General opposed Mich Con's recovery of the \$8 million expense in this proceeding. They claimed that the cost is not recoverable in this proceeding because payment was not made until 2003.

The RRC asked the Commission to disallow \$4,320,000 in gas supply costs for what it claimed was the failure by Mich Con to follow its 2002 GCR plan. Specifically, the RRC referred to a 2,711 million cubic feet (Mmcf) storage shortfall at the beginning of 2002 associated with termination of the Enron contract that was not replaced through other means. RRC claims that if Mich Con had purchased gas from January through March of 2002, Mich Con would have saved \$4,320,000 under the price that it eventually paid later in the year. However, the RRC recognized that a warmer-than-normal winter eliminated the potential effect of these decisions, but submitted that Mich Con had no way of knowing what weather conditions would be and therefore put GCR customers at risk if the weather had been colder-than-normal.

Because the Enron charges were not paid during 2002, the ALJ agreed with the Staff and the Attorney General that they should be included in the 2003 reconciliation case. The Commission agrees.

Further, the ALJ found no merit in the RRC's contention that Mich Con's gas purchases in the summer months of 2002 to make up for the cancelled Enron contract were imprudent. The ALJ pointed to the normally inexpensive prices during the summer months and the lack of evidence that Mich Con could have known that during 2002, gas prices would be abnormally high. Because gas prices are traditionally less expensive in the summer months, he found that it was reasonable that Mich Con replenished storage during this time. Again, the Commission agrees with the ALJ's findings.

3. Incremental ANR Pipeline Company Transportation Agreement Costs

In the September 25, 1991 order in Case No. U-9638, the Commission approved a request by Mich Con to recover the costs associated with two contracts between Mich Con and ANR Pipeline Company (ANR). The “Amended Precedent Agreement” requires ANR to provide Mich Con approximately 400 Mmcf per day of firm transportation to its Grand Rapids market for a maximum annual fee of \$3.5 million. The “New Precedent Agreement” obligates Mich Con to transport up to 500 Mmcf per day of gas during winter months and up to 250 Mmcf per day of gas during summer months between ANR’s Woolfolk receipt point and the existing ANR/Mich Con interconnection at Willow Run. These contractual arrangements, which serve as a substitute for a potential connecting pipeline because of the favorable pricing provisions, are now commonly referred to as a “paper pipeline” or the “Trufant Agreement.”⁶

Mich Con requested recovery of \$91,456 related to two incremental transportation agreements with ANR to serve the Grand Rapids area as gas costs. The company stated that these contracts are no different than other interstate pipeline contracts used to meet customer needs throughout its territory and should be recovered in a similar manner. It noted that additional supply was purchased under these contracts to meet peak demand in Grand Rapids and therefore is recoverable in this reconciliation as transportation service.

⁶ In an order issued today in Cases Nos. U-13898 and U-13899, the Commission rejected Mich Con’s request for approval to pass the costs of these Mich Con/ANR supply arrangements through Mich Con’s GCR clause. Therefore, the scope of the issue presented in this case is limited to the incremental costs associated with recent load growth in the Grand Rapids area.

The ALJ found that the determinative question in this matter is whether or not the transportation contracts and associated costs were incurred in an effort to obtain gas,⁷ or merely to distribute gas to customers within the system, p. 13. The ALJ reasoned that if the contracts are used to transport gas to Grand Rapids from outside the Mich Con distribution system, they may properly be included in the GCR. However, he found nothing in the record to support a finding that supplies were obtained from outside the system and therefore recommended removal of these charges from the 2002 cost of gas.

Mich Con and the Staff assert that the costs associated with these contracts should be recoverable as a cost of gas. They argue that the ALJ incorrectly determined that the contracts serve a distribution function rather than a transmission function and note that there are no statutory provisions limiting the Commission's discretion to allow the recovery of third-party transmission costs in either base rates or via the GCR clause. They also assert that the contracts allow Mich Con to provide a diverse supply of gas during peak demand periods rather than having only suppliers in ANR's system available. Further, they maintain that these costs will not be recovered if disallowed in this case because such short-term contracts are difficult to include in base rates. Finally, they submit that these contracts minimized the cost of gas to Mich Con customers, which is the intent of Act 304.

The Attorney General and the RRC argue that these contracts were for distribution service and are only recoverable in base rates as are the Trufant Agreement costs. They also maintain that it is impossible to use the Detroit to Grand Rapids contract to obtain gas supplies because both cities are within the utility's distribution system and therefore must be within the Mich Con system

⁷Under MCL 460.6h(3), in implementing a GCR clause, the utility may include "...major contracts and gas supply arrangements entered into by the utility for *obtaining gas* during the specified 12-month period." (emphasis added).

before any transportation by ANR can take place. Further, they insist that the Chicago-to-Grand Rapids contract is for system integration purposes, not to obtain gas supplies. According to the Attorney General and RRC, these contracts are “paper pipelines” because they are used in lieu of constructing a new transmission line into the Grand Rapids area.

The Commission finds persuasive the arguments by Mich Con and the Staff regarding recovery of costs associated with the supplemental ANR contracts as GCR costs. These contracts specifically serve incremental load in the growing Grand Rapids market and therefore are appropriate for recovery in a GCR proceeding. While they could also be recoverable in base rates, the Commission finds that their incremental nature justifies their recovery via Mich Con’s GCR clause. In an order issued today in Case No. U-13898, the Commission found that the cost of the Trufant agreement should be included in base rates and incremental contracts, such as these ANR contracts, should be recovered in the GCR clause.

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.*; 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. Mich Con’s December 2001 unbilled volumes should be recovered at \$2.95 per Mcf.
- c. Costs associated with the terminated Enron contracts should be evaluated for recovery in Mich Con’s 2003 GCR reconciliation proceeding.
- d. Mich Con’s supplemental contracts with ANR should be recovered in accordance with this order.

e. Mich Con overrecovered its 2002 GCR costs by \$42,609,726, plus interest of \$1,458,366 during the period, for a total overrecovery of \$44,068,091, which amount should be included as an adjustment to its January 2003 cost of gas in Case No. U-13549-R.

THEREFORE, IT IS ORDERED that:

A. Michigan Consolidated Gas Company's December 2001 unbilled volumes shall be recovered at \$2.95 per thousand cubic feet.

B. Costs associated with the terminated Enron contracts shall be evaluated for recovery in Michigan Consolidated Gas Company's 2003 gas cost recovery reconciliation case.

C. Michigan Consolidated Gas Company's supplemental contracts with ANR Pipeline Company shall be recovered in accordance with this order.

D. Michigan Consolidated Gas Company overrecovered its 2002 gas cost recovery costs by \$42,609,726, plus interest of \$1,458,366 during the period, for a total overrecovery of \$44,068,091, which amount shall be included as an adjustment to its January 2003 cost of gas in Case No. U-13549-R.

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
Chairman

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of April 28, 2005.

/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

Chairman

Commissioner

Commissioner

By its action of April 28, 2005.

Its Executive Secretary