

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
MICHIGAN CONSOLIDATED GAS COMPANY)	Case No. U-13898
for authority to increase its rates and other relief.)	
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At the December 18, 2007 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

Procedural History

On September 30, 2003, Michigan Consolidated Gas Company (Mich Con) filed an application with supporting testimony and exhibits seeking a general rate increase. Mich Con also requested authority to implement an uncollectibles expense true up mechanism (UETM). In its April 28, 2005 order, (April 28 order) the Commission authorized Mich Con to implement the UETM, which is to remain in effect until the conclusion of Mich Con’s next general rate case. The Commission also approved \$6,914,000 above the test year amount for additional safety and training (S&T) related expenses, subject to a refund to customers of any funds not expended. April 28 order, pp. 70-75.

By March 31 of each year, Mich Con was ordered to file an application in this docket, “[Comparing] Mich Con’s actual uncollectibles expense for the preceding calendar year with the

base level of uncollectibles expense contained within the company's rates. Ninety percent of the difference between those amounts would be collected from, or refunded to, Mich Con's customers through a temporary surcharge or credit over the subsequent 12-month period. The surcharge or credit would be implemented by Commission order after an opportunity for hearing on the annual application." April 28 order, p. 71.

On March 23, 2007, Mich Con filed an application, with supporting testimony and exhibits, requesting Commission approval of its UETM computation and proposed surcharge and its report regarding its S&T related expenditures for 2006. Pursuant to due notice, a prehearing conference was held on May 23, 2007 before Administrative Law Judge James N. Rigas (ALJ). At that time Attorney General Michael A. Cox (Attorney General) was recognized as an intervenor. The Commission Staff (Staff) also participated in the proceeding. The parties agreed to bind the testimony and exhibits of Mich Con's witnesses into the record and to waive cross-examination. The record consists of 33 pages of testimony and 13 exhibits received into evidence.

On August 29, 2007, Mich Con and the Attorney General filed initial briefs, and the Staff filed comments in lieu of a brief. Mich Con and the Staff filed reply briefs on September 12, 2007. On October 9, 2007 the ALJ issued his Proposal for Decision (PFD). The Attorney General filed exceptions on October 23 and the Staff and Mich Con filed replies to exceptions on November 2, 2007.

Positions of the Parties

Mich Con presented the testimony of Anastasia E. Minor, a Controller for the company. Ms. Minor testified that Mich Con had a base uncollectibles amount, included in rates, of \$37.3 million. Mich Con's actual uncollectibles amount for 2006 was \$73.7 million. After

subtracting the base amount and multiplying the remainder by 90%, the resulting recoverable amount was calculated as \$36 million, including carrying costs. *See*, Exhibit A-1.

Ms. Minor also testified that Mich Con had spent \$22.3 million for S&T related expenses in 2006, compared to \$24.7 million authorized in the April 28 order, resulting in an overcollection of \$2.4 million. *See*, Exhibit A-5.

Thomas W. Lacey, a Principal Financial Analyst for The Detroit Edison Company, testified regarding the allocation methods for the 2006 UETM surcharge. The proposed surcharges by customer class are shown on Exhibit A-9.

In their comments, the Staff asserted that Mich Con had developed and presented a reasonable method for recovery of uncollectibles. The Staff recommended that the Commission authorize Mich Con to collect \$33.4 million from ratepayers; an amount equal to the unrecovered uncollectibles amount less the overcollection of the safety and training related expense.

In his brief, the Attorney General argued that the Commission lacked specific statutory authority to authorize Mich Con to implement the UETM. According to the Attorney General, the UETM operates in a similar manner to the gas cost recovery (GCR) mechanism that is provided for by MCL 460.6h, however there is no specific statutory language that permits the utility to retroactively collect uncollectibles expenses through a tracking mechanism such as the UETM.

The Attorney General asserted that the UETM violates the principle of retroactive ratemaking. According to the Attorney General, if a utility sustains a loss because of an underestimate of the cost of a particular item set in current rates, it cannot recover the loss in rates that are subsequently set. The Attorney General argued that the remedy is for the company to file a new rate case and request higher rates. The Attorney General claimed that in authorizing the UETM, the Commission created, “a hybrid mechanism to give MichCon the benefits of both a cost recovery

mechanism and the benefits [of] a high rate of return in its rate base calculation for the apparent risk that it takes in running the business.” Attorney General’s initial brief, pp. 9-10.

The Staff replied that these arguments were rejected by the Commission in its approval of Mich Con’s 2005 UETM calculation. At that time, the Commission found that the Attorney General had never taken exception to the UETM when it was authorized in the April 28 order, nor did he request rehearing or appeal the issue to the appropriate court. The Commission concluded that the Attorney General’s objections to the UETM were not timely raised.

Likewise, Mich Con replied that the Attorney General’s arguments were procedurally barred under MCL 24.281 and *Attorney General v Public Service Comm*, 136 Mich App 52, 56; 355 NW2d 640 (1984), which held that the Attorney General’s challenge to the Commission’s decision to continue Mich Con’s Other Operations and Maintenance Expense Indexing System was barred because the Attorney General failed to file timely exceptions to the PFD. Mich Con argued that even if there were no procedural bar to the Attorney General’s arguments in the instant case, the Court of Appeals has repeatedly dismissed the Attorney General’s claims that the only way rates can be set is through a full rate case. Thus, Mich Con concludes that the Attorney General’s arguments fail on the merits as well as on procedural grounds.

Proposal for Decision

The ALJ found that Mich Con had a total uncollectibles expense of \$73.7 million, \$36.4 million over the amount included in Mich Con’s base rates. Ninety percent of this amount was \$32.8 million, and that amount plus carrying charges summed to \$36 million in unrecovered uncollectibles expense. The ALJ found that the allocation factors used by Mich Con to determine its proposed surcharge were consistent with the Commission’s direction in the April 28 order. Regarding Mich Con’s S&T expense report, the ALJ found that Mich Con spent \$2.4 million less

than authorized in 2006. The ALJ noted that Mich Con had filed revised exhibits to reflect a decrease in the UETM deficiency amount after the S&T overrecovery was subtracted. *See*, Exhibits A-10 through A-13. The ALJ noted that none of the parties disputed Mich Con's revised calculation of the UETM surcharge or its S&T expense report. The ALJ recommended that the Commission approve Mich Con's proposed UETM surcharge for 2006.

The ALJ observed that in Mich Con's 2005 UETM proceeding the Attorney General had raised the same arguments regarding the Commission's authority to approve the UETM surcharge and had also argued that the UETM violated the rule prohibiting retroactive ratemaking. The Commission rejected these arguments in its December 21, 2006 order (December 21 order). The ALJ found that the Attorney General had presented nothing new in this proceeding and therefore recommended that the Commission again reject the Attorney General's position.

Exceptions and Replies

The Attorney General took exception to the PFD, arguing that the ALJ erred in relying on the December 21 order. The Attorney General reasserted that the UETM is a retroactive ratemaking mechanism that is not authorized by any statute. Because the Commission lacks statutory authority to authorize the UETM, the Attorney General claims that the Commission lacks subject matter jurisdiction. The Attorney General further contends that because subject matter jurisdiction may be raised at any time, he is not barred from raising this issue in the instant case. According to the Attorney General, the Commission's argument, that his objections are untimely, relies on principles of res judicata or collateral estoppel. The Attorney General asserts that neither of these principles applies in the context of this case.

The Staff and Mich Con replied that the Attorney General's exceptions should be rejected. Mich Con asserted that the Commission has considered and rejected each of the Attorney

General's arguments in the December 21 order and that the Commission should dismiss them now.

Discussion

The Commission agrees with the ALJ's findings and reasoning and adopts the PFD. The Attorney General's objections to the UETM are not timely raised and are thus procedurally barred. Moreover, the Attorney General's arguments were rejected by the Commission in its December 21 order, pp. 6-8. The Attorney General raises no new arguments here that persuade the Commission that it should reach a different result.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, MCL 462.2 *et seq.*; 1919 PA 419, MCL 460.51 *et seq.*; 1939 PA 3, MCL 460.1 *et seq.*; 1969 PA 306, MCL 24.201 *et seq.*; and the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17101 *et seq.*
- b. Mich Con's computation and proposed surcharges as reflected on Exhibit A-13, and attached here as Exhibit A, should be approved.
- c. Mich Con's 2006 annual S&T related expenditure report should be approved as filed.

THEREFORE, IT IS ORDERED that:

- A. Michigan Consolidated Gas Company's computation of its uncollectible expense true-up mechanism surcharge is approved.
- B. Michigan Consolidated Gas Company is authorized to implement the uncollectible expense true-up mechanism surcharge reflected on Attachment A for service rendered on and after January 1, 2008.

C. Michigan Consolidated Gas Company shall file within 10 days of the date of this order a tariff reflecting the new surcharge, substantially in the form of the tariff attached to this order as Attachment A.

D. Michigan Consolidated Gas Company's report of its 2006 annual safety and training related expenses is approved.

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, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of December 18, 2007.

Mary Jo Kunkle, Executive Secretary

To add 2006 Uncollectible Expense True-up Mechanism Surcharge (UETM)

SURCHARGES

	Rate Schedule No.	2005 Uncollectible Expense True-up Mechanism Surcharge (UETM)	2006 Uncollectible Expense True-up Mechanism Surcharge (UETM)
A	Residential	0.5456¢/Ccf	1.6633¢/Ccf
AS	Low Income Senior Citizens	0.5456¢/Ccf	1.6633¢/Ccf
2A	Residential Multiple Family Dwelling Class 1	0.5899¢/Ccf	1.7985¢/Ccf
2A	Residential Multiple Family Dwelling Class 2	0.4680¢/Ccf	1.4269¢/Ccf
GS-1	Non-Residential General Service	0.4913¢/Ccf	1.4978¢/Ccf
GS-2	Large Volume	0.5438¢/Ccf	1.6578¢/Ccf
S	School	0.3577¢/Ccf	1.0905¢/Ccf
ST	Small Volume Transportation	0.0846¢/Ccf	0.2581¢/Ccf
LT	Large Volume Transportation	0.0418¢/Ccf	0.1273¢/Ccf
XLT	Extra Large Volume Transportation	0.0349¢/Ccf	0.1064¢/Ccf

In addition to the above surcharges, Rate Schedules A, AS, 2A, GS-1, GS-2, and S are subject to Rule B10, Gas Cost Recovery and may be subject to Rule 7.3, Area Expansion Program, or to Rule B12, Customer Attachment Program.

ISSUED _____
 BY: D. G. BRUDZYNSKI
 VICE PRESIDENT
 REGULATORY AFFAIRS
 DETROIT, MICHIGAN

EFFECTIVE FOR GAS SERVICE
 RENDERED ON AND AFTER _____
 ISSUED UNDER AUTHORITY OF THE
 MICHIGAN PUBLIC SERVICE COMM.
 DATED _____
 IN CASE NO. _____