

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
MICHIGAN CONSOLIDATED GAS COMPANY)	
for authority to increase its rates, amend its rate)	Case No. U-15985
schedules and rules governing the distribution)	
and supply of natural gas, and for miscellaneous)	
accounting authority.)	
_____)	

At the February 8, 2010 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On October 6, 2008, Governor Jennifer M. Granholm signed Public Act 286 of 2008 (the Act), amending Public Act 3 of 1939; MCL 460.6 *et seq.* Section 6a(1) of the Act sets out certain requirements and procedures for electric utility rate cases. Section 6a(1) provides that:

If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. . . . For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges.

Section 6a(1) further provides that such implementation may not take place prior to the commencement of the projected test year (if a projected test year has been used in developing the requested rates and charges), and that, if the implemented rate exceeds the rate authorized in the final order, the excess shall be refunded to customers with interest. MCL 460.6a(1).

On June 9, 2009, Michigan Consolidated Gas Company (Mich Con) filed an application requesting a \$192.4 million rate increase, and other relief. The application relies on a 2010 projected test year. A prehearing conference was held before Administrative Law Judge Mark E. Cummins (ALJ) on July 14, 2009, where intervention was granted to numerous parties, including the Association of Businesses Advocating Tariff Equity (ABATE). The Commission Staff (Staff) also participated in the proceedings.

During the initial prehearing conference on July 14, 2009, the ALJ established deadlines for the submission of testimony regarding the issue of self-implementation of a rate increase by Mich Con pursuant to MCL 460.6a(1). The schedule provided for the filing of testimony and exhibits by Mich Con on November 25, 2009. The Staff and intervenors were given until December 3, 2009 to file their testimony and exhibits, if any.

An evidentiary hearing was held on December 7, 2009. Mich Con's witness, Gerardo Norcia, supported self-implementation by his company on January 1, 2010 of \$170 million of the \$192.4 million rate increase requested in Mich Con's June 9, 2009 application. He also supported using an alternative rate design in place of the statutory equal-percentage default rate design.

On December 29, 2009, Mich Con filed a Notification of Self-Implementation of Rates, in which the company stated that it would self-implement increases to its natural gas general service rates totaling \$170 million effective January 1, 2010. Mich Con stated that, in the absence of a Commission order approving the use of the proposed alternative rate design, the company would abide by the statute and self-implement rate increases on an equal percentage basis applied across the board to all customer classes. *See*, MCL 460.6a(1).

On January 8, 2010, ABATE filed a motion for a temporary order or other order on self-implementation and for immediate consideration. On January 26, 2010, the Commission's

Executive Secretary informed all parties that they would have until 5:00 p.m. on February 1, 2010, to file a response to the motion. No responses were filed.

In its motion, ABATE argues that the Commission should issue an immediate order addressing the rate design of Mich Con's self-implemented rates. ABATE states that Mich Con imposed the equal percentage rate increases on January 1, 2010. ABATE argues that this equal percentage increase is unjust and unreasonable. ABATE states that, applying the alternative rate design proposed by Mich Con, the self-implemented rate increase for Rate XLT would have been \$0.0402 per thousand cubic feet (Mcf) of natural gas; but that, under the equal percentage rate design, the actual increase is \$0.2010 Mcf, five times the amount proposed by Mich Con in its testimony in support of self-implementation. Accompanying ABATE's motion is an affidavit from George Shaffner, the Plant Manager of Marathon Petroleum Company LLC's Detroit Refining Facility, in which Mr. Shaffner states that the self-implemented surcharge imposed on Rate XLT will "make it more beneficial for Marathon to cease taking natural gas transportation service from MichCon and to install a natural gas by-pass connected to an interstate gas pipeline." ABATE's motion for temporary order, Exhibit A.

ABATE points out that the Commission has twice concluded that allowing self-implementation of an across the board equal percentage rate increase would produce volatile rate swings and was not in the public interest. ABATE maintains that no party, including Mich Con, opposed use of the alternative rate design. Further, ABATE contends that the mechanism for a refund of overpaid amounts is ambiguous, and has not yet been applied. Finally, ABATE argues that MCL 460.6a(1), as amended by the Act, is unconstitutionally vague and internally inconsistent, because it provides that no utility may increase rates "without first receiving

commission approval,” and later provides for the self-implementation of unapproved rates if the Commission has not issued an order within 180 days of the filing of a complete application.

ABATE asserts that the Commission has authority to act under MCL 460.6a(1), because good cause exists to prevent or delay implementation of the new rates. Alternatively, ABATE asserts that the Commission may take action pursuant to its authority to regulate rates and charges of gas utilities, and its mandate to ensure that rates are just and reasonable. MCL 460.1 *et seq.* ABATE contends that MCL 460.6a(1) does not require that a temporary order is issued before the date of self-implementation.

The language of the statute is clear; it provides that “If the commission has not issued an order within 180 days of the filing of a complete application,” then the utility may self-implement new rates up to the amount of the proposed rate request. MCL 460.6a(1). The Commission is not persuaded that it is authorized to issue an order “preventing or delaying” self-implemented rate increases more than 180 days after the filing of a complete rate case application. *Id.* That deadline has passed. The Legislature prescribed how a utility should apply a rate increase in the absence of a Commission order preventing or delaying self-implemented rates. Here, the Commission resolved not to issue an order before the date by which Mich Con was statutorily authorized to self-implement its interim rate increase. Nothing in MCL 460.6a indicates that the Commission has any authority to roll back or otherwise revise Mich Con’s interim rates at this time.

Additionally, ABATE fails to note that the Commission’s previous findings on self-implementation were in electric rate cases. *See*, May 12, 2009 order in Case No. U-15645; July 16, 2009 order in Case No. U-15768. In those cases, the necessity of preventing an across the board equal percentage rate increase arose from the need to address the conflicting language of the statute that required the Commission to move to cost based rates for electric utilities. Presumably, after cost

based rates have been achieved, it is unnecessary to issue orders preventing equal percentage increases.

With respect to the Commission's general authority to regulate rates and charges, the Commission finds that, in light of the Act's amendments to Section 6a(1) and the new process adopted therein, the Commission's obligation to set just and reasonable rates is confined to the conduct of rate cases and the mandate to issue a refund order where the statute so requires.

THEREFORE, IT IS ORDERED that the motion for a temporary order or other order filed by the Association of Businesses Advocating Tariff Equity is denied.

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

Greg R. White, Commissioner

By its action of February 8, 2010.

Mary Jo Kunkle, Executive Secretary