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March 2, 2001

Ms. Dorothy Wideman
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

RE: Michigan Consolidated Gas Company, MPSC Case No. U-12762

Dear Ms. Wideman:

Enclosed for filing in the above matter is the original and four copies of the **Attorney General's Initial Brief**, together with Proof of Service upon all parties.

Very truly yours,

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Encs.
c: Barbara Stump, ALJ
All Parties of Record
MPSC U-12762 Cover Letter

PROOF OF SERVICE

Michigan Consolidated Gas Company, MPSC Case No. U-12762

The undersigned certifies that a copy of the **Attorney General's Initial Brief** was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, or by State Interdepartmental mail as indicated, on the 2nd day of March, 2001.

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Michigan Consolidated Gas Company to terminate the suspension of its Gas Cost Recovery Clause and establish a cashout mechanism. _______________________________________/	Case No. U-12762 (efile)

ATTORNEY GENERAL'S INITIAL BRIEF

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March 2, 2001

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Michigan Consolidated Gas Company to terminate the suspension of its Gas Cost Recovery Clause and establish a cashout mechanism.
____/

Case No. U-12762 (efile)

ATTORNEY GENERAL'S INITIAL BRIEF

I. INTRODUCTION

Attorney General Jennifer M. Granholm submits this initial brief pursuant to the schedule established in this case. This case involves an application of Michigan Consolidated Gas Company ("MichCon" or "the Company") to terminate the suspension of its gas cost recovery (GCR) clause and establish a cashout mechanism. The Attorney General strongly opposes MichCon's attempt to prematurely end the suspension of its GCR clause and increase its rates. Ending the rate freeze nine months early deprives customers of the full benefit of fixed gas prices promised by MichCon and the Michigan Public Service Commission ("MPSC" or "the Commission") in 1998.

When it seemed natural gas prices were headed downward, MichCon obtained MPSC approval to freeze its customers' rates. At that time, the Company promised not to seek a rate increase even if the market price of gas increased. The Company made about $70 million in profits on its gas sales in 1999 and 2000. Unfortunately, now that the price of gas is rising, the Company seeks to unfreeze its rates. MichCon must make good on its promise. After customers paid higher prices at the front end of the price freeze period, it is only fair that they benefit from lower prices at the back end.

The Company's proposal will cause customers to pay $4.26 per Mcf in 2001, rather than the promised $2.95 per Mcf, even after including all the credits included by MichCon in its proposal. The difference between $2.95 and $4.26 per Mcf amounts to $107 million more that customers will pay under MichCon's request. MichCon's proposal is designed to work so that it is a "heads, the Company wins, tails the customers lose," situation. The evidence in this case shows that MichCon made $70 million in 1998 and 1999. Now, with gas costs rising dramatically, approval of MichCon's plan will result in customers paying $107 million more than the promised rate of $2.95. Such an outcome is unfair to ratepayers.

In addition, there is no merit to MichCon's claim that early termination of the freeze is needed to promote competition in the gas market. While higher gas prices likely would cause additional competitive suppliers to enter the market, that is not a good enough reason to unjustly increase customers' rates. The Attorney General firmly believes that customers do not want "competition" if it increases prices. Consequently, the Attorney General respectfully requests that the MPSC deny MichCon's application to prematurely terminate the suspension of its GCR clause.

II. HISTORY OF THE PROCEEDINGS

On December 15, 2000 MichCon filed an application with the MPSC requesting approval to terminate the suspension of its GCR clause nine months before it is scheduled for termination, and to establish a cashout mechanism. On January 22, 2001, pursuant to a December 20, 2000 Notice of Hearing, a prehearing conference was held by Administrative Law Judge ("ALJ") Barbara A. Stump. The ALJ granted intervenor status to the Residential Ratepayer Consortium ("RRC"), the Association of Businesses Advocating Tariff Equity ("ABATE"), New Power Company ("New Power"), and the Attorney General. On February 12, 2001 the ALJ granted the petition to intervene of Energy America.

On February 14, 2001, the MPSC Staff, RRC, and the Attorney General filed direct testimony and exhibits. Blue Circle, Inc. ("Blue Circle") filed a statement pursuant to Rule 207 of the Rules of Practice and Procedure before the Commission, 1992 AACS R460.17207. On February 23, 2001 cross-examination of the parties' witnesses was conducted. (3 Tr 29-210). Pursuant to the schedule established in this case, the parties' initial briefs are due on or before March 2, 2001, and reply briefs are due March 9, 2001. The record in this case consists of 210 transcript pages, and 10 exhibits admitted into evidence.

III. ARGUMENT

A. MichCon's Application for Early Termination of its GCR Clause Suspension Should be Denied.

The MPSC should deny MichCon's application to prematurely terminate the suspension of its GCR clause. MichCon's application is a blatant attempt to unfairly and improperly transfer the risk of the current high cost of gas to the Company's customers despite promises made by the Company to fully assume any and all risks attendant to its requested three-year suspension of its GCR clause. On April 21, 1998, MichCon filed an application with the MPSC for approval of a program which the Company referred to as MichCon Select. Under its MichCon Select program, the Company proposed, among other things, to suspend its GCR clause, freeze its commodity charge at $2.95 per Mcf, freeze its distribution service rates at the then current levels, and establish a revenue sharing mechanism.

Under MichCon's April 21, 1998 application, the distribution freeze proposed by the Company was subject to only two exceptions. First, MichCon would credit customers' bills pursuant to an income sharing mechanism if earnings exceed certain levels. Second, MichCon or other interested parties may seek a limited issue rate case to adjust rates to reflect the effect of legislative action or new authoritative accounting rules promulgated by either the Financial Accounting Standards Board or the Securities and Exchange Commission that affect the Company's annual revenue requirement by more than $5 million.

Indeed, as the Attorney General's witness, Mr. Ralph E. Miller, testified:

> MichCon made the following statement in its application in that proceeding:
>
> 21. In proposing a fixed gas commodity rate of $2.95 per Mcf, MichCon recognizes that it will also assume significant risks. Portions of the Company's gas supply contract costs could be unrecoverable . . . . MichCon will permit customers who initially chose third party suppliers to return to MichCon sales service at the proposed fixed gas commodity rate of $2.95 per Mcf plus existing non-gas rates irrespective of prevailing market prices. To the extent that MichCon does not have sufficient gas supplies to provide for the gas requirements of these returning customers, MichCon will assume the risk of purchasing gas supplies on the open market at rates in excess of the fixed $2.95 per Mcf gas commodity rate.
>
> (3 Tr 164).

On April 28, 1998, one week after MichCon filed its application, and without any opportunity for others to be heard on the issue of the reasonableness of MichCon's proposal, the

MPSC issued its order approving MichCon's application in Case No. U-11682. At page 6 of its order the MPSC stated:

> The proposed program would freeze existing noncommodity rates and the gas commodity rates for three years. <u>A fixed distribution rate and gas commodity charge would insulate customers from potential cost increases that, under traditional regulation, would be recoverable through increased rates</u>.
>
> (Emphasis added.)

The MPSC also stated:

> During the three-year program, there is no mechanism in MichCon's proposal to increase charges for system supply gas <u>even if gas commodity prices increase</u>. However, there are two exceptions to the freeze on noncommodity rates: one is the potential implementation of the income sharing mechanism, and the other is rate revisions arising in response to unanticipated legislative or accounting actions. The income sharing mechanism provides for a portion of earnings to be returned to customers if earnings on common equity exceed certain levels. MichCon states that it would credit customers' bills for the customers allocable share of the excess. <u>No rate increases can result from the operation of this mechanism even if MichCon's gas utility business earned return on equity falls below its authorized level.</u>
>
> (*Id.,* at 6) (Emphasis added).

As the RRC's witness, Mr. Frank J. Hollewa testified: "MichCon was fully cognizant of the risk associated with suspending its GCR Clause and charging a fixed gas commodity price for the three years covered by the GCC program;" (3 Tr 108). It is noteworthy that the fixed gas supply price of $2.95 per Mcf established in Case No. U-11682 is not and never was a cost-based rate. Neither MichCon nor the MPSC claimed that the proposed rate of $2.95 per Mcf was based on any expectation of gas costs for the three-year period (*i.e.,* January 1, 1999 through December 31, 2001) of the GCR clause suspension. (3 Tr 144). As the evidence is this case demonstrates, as a result of the GCR clause suspension in 1998, MichCon's actual gas costs during 1999 and

2000 were significantly less then the arbitrarily fixed gas commodity rate of $2.95 per Mcf, and as a result MichCon reaped $70 million in profit for its gas supply activities during these two years. (3 Tr 108, 145). Mr. William G. Aldrich, witness for the MPSC Staff, testified that MichCon's profits for the January 1999 through March 2001 period would be $66 million. (2 Tr 200).

MichCon's GCR clause had been in effect for 15 years prior to its 1998 suspension. Under the GCR clause, MichCon's gas supply rates to its customers were required to be cost-based. Consequently, the Company was allowed to recover from its customers only those actual gas costs which the Company reasonably and prudently incurred on behalf of its customers. (3 Tr 143). At a time when gas prices were declining, MichCon persuaded the Commission to suspend its GCR clause. Therefore, the Company was put in the unique position of being able to keep the resultant gas cost savings for itself, rather than pass them on to its GCR customers by way of refunds under the cost-based GCR procedure. The Attorney General believes that it would be extremely unfair to allow MichCon to prematurely terminate its GCR clause suspension because gas costs have now increased above the approved $2.95 per Mcf established pursuant to MichCon's request. As Mr. Miller testified:

> MichCon should not be permitted to increase its gas charges to reflect higher costs at times when costs are increasing, but also to refrain from decreasing its gas charges to reflect lower costs at times when costs are decreasing.
>
> (3 Tr 145).

The Attorney General submits that "MichCon's gas sales customers are entitled to receive the full benefit of the gas price of $2.95 per Mcf that was promised them for three years" when the GCR clause suspension was approved in 1998. (3 Tr 142).

With the exception of MichCon and Energy America for obvious reasons, the RRC, the Attorney General, Blue Circle, and the MPSC Staff are solidly unified around the proposition that it is unfair to terminate the suspension of MichCon's GCR clause if it results in shifting all the risk of gas price increases on to the Company's customers. As Mr. Hollewa succinctly put it, allowing MichCon to prematurely terminate its GCR clause suspension "shifts all the <u>risk</u> of gas price increases for the balance of 2001 onto MichCon's customers" and it "belies the representations and breaks the pledge made by MichCon in its Application in Case No. U-11682." (3 Tr 110) (Emphasis added). Mr. Miller testified:

> MichCon should be required to adhere to that promise, and to assure its customers that they will receive the benefit of the promised $2.95 gas commodity price for the full 36 months of the originally requested suspension period. The <u>risk</u> transfer is unwarranted and unjustified.
>
> (3 Tr 164) (Emphasis added).

Mr. Larry Ladomer, Plant Operations Manager, Blue Circle, stated as follows:

> We believe that MichCon likewise should honor its contract with its customers to have its GCR factor frozen at $2.95 per Mcf through the end of 2001. I am sure that Blue Circle, Inc. is not the only MichCon customer that established its budget for 2001 based upon the frozen GCR factor of $2.95 per Mcf. MichCon voluntarily requested this freeze and picked the period of the freeze. Moreover, MichCon was in a position to manage its price <u>risk</u> throughout the freeze period. Accordingly, MichCon should be held to the deal it made with the Commission and MichCon's customers.
>
> (3 Tr 36) (Emphasis added).

Finally, Mr. Aldrich testified as follows:

> Q. Is it fair to require MichCon to provide a guarantee of $2.95 per Mcf gas through December 2001?

> A Yes, it is. Customers now have that guarantee with the current three-year customer choice program. Why should they have to <u>risk</u> higher gas prices with the new program?
>
> (3 Tr 202) (Emphasis added).

Based on the incontrovertible evidence in this case, MichCon's proposal is designed to unfairly transfer the risk which properly rests with the Company on to the customers in violent contradiction to the clear, unambiguous and unequivocal promises made by the Company in its effort to convince the MPSC on the efficacy of suspending its GCR clause. The Attorney General believes that MichCon's application is untenable and therefore, should be rejected by the MPSC.

B. MichCon's Proposal is Structured so that the Customers are Highly Likely to Pay Significantly More than \$2.95 per Mcf for their Gas Commodity Purchases.

MichCon's proposal for the early termination of GCR clause suspension is designed to ensure that under all situations, the Company reaps benefits to the detriment of its customers. Under the Company's proposal, customers are likely to pay more than \$2.95 for gas in 2001. (3 Tr 176-184 and Exhibit I-8). As Mr. Miller testified, "MichCon's proposal is structured so that "heads, the Company wins; and tails, the customers lose." (3 Tr 145). Mr. Miller explained:

> Under MichCon's proposal, if gas costs in 2001 remain sufficiently favorable, then customers will continue to pay the fixed gas commodity charge of \$2.95 per Mcf, as they were promised, and MichCon will retain all or much of the \$70 million it obtained by charging an above-cost rate in 1999 and 2000. This scenario is the "heads, MichCon wins" aspect of the Company's proposal.
>
> If gas costs in 2001 turn out to be less favorable, then MichCon will have to return some of the \$70 million profit from 1999 and 2000 to its customers in 2001, to keep the net costs to customers at the \$2.95 level. But if gas costs in 2001 are so high that the entire \$70 million of gas supply profits accumulated by MichCon in 1999 and 2000 is not sufficient to keep the costs for customers at

> $2.95 per Mcf, then it is the customers and not MichCon who would be at risk under MichCon's proposal. This scenario is the "tails, the customers lose" aspect of the Company's proposal.
>
> In short, under MichCon's proposal, customers cannot end up paying less than $2.95 for their gas commodity purchases in 2001, but they can end up paying more.
>
> (3 Tr 145).

Mr. Miller testified that under MichCon's proposal, if the Company's fixed price gas purchase contracts are cashed out at the NYMEX prices used by MichCon in developing its GCR plan for the "stub" period April through December 2001, then the GCR customers would be charged $4.26 per Mcf during the last nine months of 2001 as opposed to the promised $2.95 per Mcf. (3 Tr 147). As Mr. Miller explained, this $4.26 per Mcf gas price is the Company's proposed GCR rate of $5.17 per Mcf less a cashout credit of $0.91 per Mcf, which he derived by dividing MichCon's cashout amount of $101 million reflected in Exhibit A-2, by 198.1 Bcf of rate schedule sales for the period April 2001 through March 2002. (3 Tr 147). Mr. Hollewa testified that:

> MichCon's entire testimony and exhibits relating to cash-outs and the gross refund mechanism obfuscate the fact that GCR customers will pay more for gas during the April through December 2001 period if the Company's proposal is approved. Even if volumetric credits are applied to customer bills during this period, customers will pay more.
>
> (3 Tr 112).

In his direct testimony, Mr. Aldrich stated:

> Staff is concerned that under MichCon's proposal, MichCon sales customers (GCR customers) and gas customer choice customers (GCC customers) will almost surely pay more for gas than they would if MichCon's current three-year customer choice program is continued through its original expiration date. In Staff's view, any proposal that does not guarantee that MichCon customers would

> not be adversely impacted by the new program should be rejected by the Commission.
>
> (3 Tr 199).

It is worthy of mention that both Mr. Hollewa and Mr. Miller are quite dubious of the purported NYMEX prices used by MichCon in developing its rates in this proceeding. In his prefiled direct testimony, Mr. Hollewa stated:

> Another flaw in MichCon's proposal is that Mr. Stanczak's exhibits are based on the use of NYMEX prices of unknown origin. They bear no relationship to real NYMEX prices for the period covered by the Company's application.
>
> (3 Tr 113).

Similarly, Mr. Miller testified that the NYMEX prices used by MichCon to develop its GCR plan for the last nine months of 2001 "are not realistic in relation to the current NYMEX gas futures market." (3 Tr 148). Mr. Miller explained how the prices to be paid by customers under MichCon's proposal would be affected by the realistic NYMEX prices of 60¢ to $1.00 per Dth higher than the unsubstantiated NYMEX prices used by MichCon. Based on verifiable NYMEX prices, MichCon's customers could potentially be charged $4.87 per Mcf under MichCon's proposal to prematurely terminate its GCR clause suspension. (3 Tr 149 and Exhibit I-6). Indeed, if MichCon's proposal is approved, and if the real NYMEX gas prices end up being higher than those used by MichCon, the Company's customers would be compelled to pay $107 million more than the promised rate of $2.95 per Mcf. (3 Tr 151-153).

Under MichCon's proposal, effective April 2001, based on the Company's NYMEX prices of "unknown origin," there will be a rate increase of $1.31 per Mcf and there could be a larger rate increase based on realistic NYMEX prices. (3 Tr 157). As Mr. miller testified, the

April 2001 “rate increase would provide an over-collection of much more than $100 million above the promised gas price of $2.95 for the last nine months of 2001.” (3 Tr 157). Subsequently, in 2002, if as it currently appears, prices in 2002 moderate, the gas commodity price paid by MichCon’s customers would decrease for a while only to go up again toward the end of 2002. The Attorney General submits that there is absolutely no justification for increasing MichCon’s gas commodity price from $2.95 to $4.26 for the last nine months of 2001 merely to accumulate an over-collection so huge that customers “are charged a rate that is less than $4.26 for most of 2002, and less also than MichCon’s 2002 gas costs.” (3 Tr 158 and Exhibit I-7).

In his direct testimony, Mr. Miller explained that the problem with the timing of the rate increases that would result if MichCon’s proposal is adopted could perhaps be improved if the cashout proceeds are distributed to customers during the last nine months of 2001, which is the period during which they were generated. Moreover, any gross margin refund required in addition to the disbursed cashout proceeds should be issued beginning January 2002, and the distribution of the refunds should spread over the three months January through March 2002. (3 Tr 167-170 and Exhibit I-7). The Attorney General believes that putting aside the inherent unfairness of MichCon’s proposed significant premature rate increase, Mr. Miller’s alternative program design is better because it results in a gradual progression of rate increases (Exhibit I-7), rather than the steep increases and decreases associated with MichCon’s proposal.

C. The Early Termination of MichCon's GCR Clause Suspension is not Needed to Promote Gas Supply Competition in MichCon's Service Territory.

In both its application and testimony presented in this case, MichCon claims that an early termination of its GCR clause suspension is needed to promote gas supply competition in MichCon's service territory. The Attorney General submits that contrary to MichCon's assertion, the premature termination of the suspension of MichCon's GCR clause suspension will do nothing to facilitate competition in the Company's gas supply market. Clearly, MichCon's "competition" assertion is a barely disguised argument for enriching itself to the great detriment of its customers. The Attorney General agrees with Mr. Ladomer when he states:

> It is ludicrous to even suggest that it is in the best interests of customers to eliminate the freeze so that customers will have more "competition." What customers would rather have is the fixed price per Mcf promised by MichCon.
>
> (3 Tr 36).

In his direct testimony, Mr. Hollewa was appropriately critical of MichCon's "competition" rationale for early termination of its GCR clause suspension. Mr. Hollewa testified:

> MichCon's sales customers are currently in a position where most of them (especially commercial) did not or could not avail themselves of the incremental savings achieved by choice customers in 1999 and 2000 because of enrollment limits in the GCC program. However, they are now in a position where the selection of a supplier (choice) is far less important than the continuation of a fixed price that is extremely advantageous and beneficial to them. <u>Can any logical person believe that a survey of customers would be necessary to determine whether choice at $5.00 per Mcf is preferable to a fixed price of $2.95 from MichCon</u>? Why would anyone want choice simply for the sake of choice?
>
> (3 Tr 109) (Emphasis added).

As Mr. Hollewa correctly stated, MichCon and Energy America's "competition" argument is understandably self-serving:

> It is my conclusion that it is self-serving for the Company and/or the marketers to claim that:
>
> - the $2.95 fixed price is a deterrent to choice;
> - that irreparable damage may be done to the GCC program because no new customers are participating because of price: and
> - that the suspension of MichCon's GCR Clause should be terminated to coincide with the reinstatement of Consumers Energy Company's GCR Clause in order to foster competition and develop greater uniformity among customer choice programs.
>
> The transition to customer choice is expected to cover years, not months. Experience in other states supports the conclusion that this is a slow process, especially for residential customers. The harm to MichCon's customers that will result from the early termination of the MichCon's (sic) GCR Clause suspension outweighs any result that may flow from placing marketers in the position to "compete" with MichCon by increasing customer gas charges, thereby offering customers "choice."
>
> (3 Tr 109-110).

In his direct testimony, Mr. Miller refuted the argument that the premature termination of MichCon's GCR clause suspension is essential to promoting gas supply competition in Michigan. He stated:

> Early termination of the GCR suspension will not promote gas supply competition in Michigan. It will not lead to increased gas supply competition during the last nine months of 2001, except perhaps at the expense of MichCon's customers who would be forced to pay more than $2.95 per Mcf for their gas purchases during this period. Also, moving the termination date of the GCR suspension up from December 2001 to March 2001 will not provide any benefits for competition in 2002 and beyond.
>
> (3 Tr 139).

Mr. Miller explained that there is no merit to the claim that early termination of the GCR clause suspension is desirable to promote gas supply competition in the last nine months of 2001:

> No, there is not. Competition does not benefit consumers unless it is expected to lead to lower prices or improved products and services. But MichCon's proposal for an early termination of the suspension would have exactly the opposite effect – it would force MichCon's GCR sales customers to pay prices higher than the $2.95 price established for the GCR suspension period. Additional competition during this limited nine-month period would not provide any economic benefits – just economic losses – if it is obtained only by making customers pay prices higher than those promised under the GCR suspension as originally proposed by MichCon and approved by this Commission; and that is the most likely result of an early termination of the suspension as now proposed by MichCon.
>
> Gas supply competition has been hampered in many states during the past several months by the unsettled conditions in the natural gas market and the fly-up of gas prices. There is nothing that MichCon can do to make gas supply competition take off in these unsettled conditions, except perhaps to subsidize competition by charging prices that exceed its own cost of gas, and any such subsidy of sufficient size to promote extensive competition would be improper. It is much more appropriate to let the GCR suspension end normally at December 31, 2001 and let competition develop further as gas market conditions become more stable.
>
> (3 Tr 171-172).

In addition, the Attorney General believes that in light of the considerable company-owned storage facilities available to MichCon which allows the Company to separate baseload supply concerns from the storage and balancing activities needed to operate its system, MichCon's reports of a "danger" to "competition" are greatly exaggerated. (3 Tr 172). As Mr. Miller testified, the absence of one or more marketers who choose not to operate in Michigan because of the GCR clause suspension would not invalidate the sound conclusion that competition will not be affected by continuation of the GCR clause suspension through December 31, 2001. (3 Tr 173).

In its effort to justify the early termination of its GCR clause suspension in order to shift the risk of the current high gas prices to its customers, MichCon argues that premature termination is necessary to assist in achieving the goal of greater uniformity set forth in the Commission's October 13, 2000 Order in Case No. U-12550. The Attorney General submits that MichCon's argument is quite disingenuous. Contrary to MichCon's assertion, program uniformity is wholly unrelated to the issue of gas pricing. In addition, uniformity was found in the Case No. U-12550 collaborative to be desirable for matters such as operational features, program rules and an authorized gas supplier. As Mr. Miller testified:

> If MichCon believes that some uniformity in gas pricing practices between it and Consumers is desirable, then it should address these major differences in gas procurement, storage accounting, and GCR factor design. MichCon's focus on the nine-month timing difference between its own GCR suspension and that of Consumers is a transparent excuse for seeking an early termination of the $2.95 gas price obligation that is now threatening to overwhelm the gas supply profits which MichCon accumulated in the first two years of its GCR suspension.
>
> (3 Tr 175).

The bogus nature of the "uniformity" argument is perhaps best illustrated by the testimony of Mr. Al McDonald, witness for Energy America. On cross-examination, Mr. McDonald testified as follows:

> Q O.K. As a marketer for Energy America are you testifying that what you will offer to MichCon customers and to Consumers' customers will be identical?
>
> A Will be similar.
>
> Q Will they be identical?
>
> A They'll be similar.

Q Will they be the same price?

A I can't answer that because the MichCon program hasn't been approved yet.

Q Well, if it were approved, would it be the same price as what is offered to Consumers' customers?

A I can't answer that.

Q O.K. Would the length of contracts that are offered to MichCon customers versus Consumers' contracts be identical?

A To the best of my knowledge yes, they would be.

Q <u>But you're not sure about price</u>?

A <u>No, I'm not sure about price</u>. We had a ruling on Consumers prior to which allowed us, based on our experience, to anticipate what the participation would be in the Consumers territory and therefore allowed us to go to the market at a specific time to hedge against what we believe will be the success of our customers.

(3 Tr 87-88) (Emphasis added).

Clearly, one marketer is not committed to making the price it charges prospective customers uniform to the price MichCon charges. Consequently, very little weight should be accorded MichCon and Energy America's uniformity argument.

IV. **RELIEF**

For the reasons stated above, the Attorney General respectfully requests that the MPSC deny MichCon's application to prematurely terminate its GCR clause suspension. Alternatively, MichCon should be made to guarantee that the Company's customers do not get charged any more than $2.95 per Mcf for gas for the last nine months of 2001. The MPSC should adopt the Attorney General's recommendations as presented by Mr. Miller because it is in the public interest to do so. There is no justification to allow MichCon to transfer to its customers the risks which it voluntarily took when it requested and obtained approval to suspend its GCR clause for three years. Justice and basic fairness demands that the MPSC ensure that the customers receive the full benefit of the suspension of MichCon's GCR clause.

Respectfully submitted,

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