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 cash-out mechanism.	)))))	Case No. U-12762

REPLY BRIEF OF ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill P.L.C., hereby submits its Reply Brief to the Michigan Public Service Commission ("Commission" or "PSC") in accordance with the schedule established by the presiding Administrative Law Judge.

I

ARGUMENT

A. Reply to MichCon and Energy America.

MichCon makes the argument that a price guarantee of $2.95 per Mcf " . . . is patently unfair and wholly unjustified." Initial Brief, p. 10. Further, MichCon states that "Imposition of the guarantee requirement as a condition of approving MichCon's application amounts to nothing more than a penalty for offering customers a choice." Id. There appears to be a disconnect between MichCon's legal position and the testimony of MichCon's witness. For example, Mr. Stanczak testified:

> "I believe that there is a high probability that customers will not pay more than the $2.95 per Mcf rate." 3 TR 52

Apparently, MichCon does not have a high degree of certainty that Mr. Stanczak's testimony will prove to be accurate because it is fighting against a price guarantee in its Brief. MichCon's legal position would lead most parties to the conclusion that it was more than likely that customers would pay more than $2.95 per Mcf for gas if MichCon's proposal were approved. Otherwise, why would MichCon be so vigorously opposed to a price guarantee? Yet, MichCon offered a price guarantee when it applied for a suspension of its GCR clause. Although there are many other statements in its Application in Case No. U-11682, the following indicates that MichCon was making a price guarantee for the three year term of its program.

> "MichCon will be exposed to considerable risks previously mitigated by the GCR process. Specifically, a **fixed-gas commodity rate of $2.95 per Mcf** shifts the risk of volatile natural gas prices from its sales customers to MichCon. The Company will not increase charges for gas even if the natural gas market place supports significantly higher gas prices." Application, Case No. U-11682, p. 16.; 3 TR 105. (emphasis added)

What is "patently unfair" and "wholly unjustified" in holding MichCon to a promise it made when it applied for the suspension of its GCR clause? This is a bed that MichCon made and it should be required to lay in it. The PSC should simply reject MichCon's Application in this proceeding and allow service to go forward at a fixed price of $2.95 per Mcf. This was the advertised number and this was the number that companies like Blue Circle, Inc. used in their budgeting process for calendar year 2001. 3 TR 35. In fact, ABATE submits that it is more patently unfair and unjustified to change the commodity pricing in mid year. As noted in the Statement of Blue Circle, Inc. some very real business decisions were made based upon the guaranteed price of $2.95 per Mcf for 2001. MichCon seeks to replace this price certainty with the complicated system that will not derive final prices until sometime in 2002 which, as discussed below, belies MichCon's arguments on the need to raise prices in order promote competition in the GCC program. In summary, in order to protect the customers and provide some certainty in the regulatory process, the PSC should reject MichCon's Application.

MichCon also argues that because customers have received savings under the GCC program that this is sufficient justification for lifting the suspension of the GCR factor. It is a major stretch to try to argue that because the GCC customer have saved money that the GCR customers should say goodbye to gas at $2.95 per Mcf and embrace a new GCR factor of $5.17 per Mcf for the remainder of 2001. GCR customers either chose to remain GCR customers because that satisfied their economic and risk criteria or were forced to remain GCR customers because they could not participate in the GCC program because of the limitations on the number of participants. In any event, GCR customers were promised a stable price for the three year term of the program and they are entitled to receive that stable price through the end of this year.

It is illogical to argue that because the limited number of participants in the GCC program benefitted that somehow justifies the early termination of the fixed commodity price for GCR customers. This is akin to arguing that because the Colorado Avalanche had a winning season that we should raise the price of tickets for the Red Wings. What is the connection? In light of the representations and promises made by MichCon, MichCon should be held to the bargain it struck with the PSC.

Lastly, MichCon and Energy America argue that the PSC should raise prices in order to promote competition. For those customers enjoying a gas commodity gas of $2.95 per Mcf, raising the commodity cost in order to promote competition simply makes no sense whatsoever. In fact, it would appear that raising prices is perhaps an inevitability during 2002 so in MichCon's happy world, competition will flourish then. To try to jump start competition nine months early at the expense of terminating a commodity price of $2.95 per Mcf in today's market boarders on the insane. Customers have established their business plans based upon a fixed commodity price of $2.95 per Mcf for 2001 and any change would be disruptive and unfair.

Mr. Larry Ladomer, Plant Operations Manager for Blue Circle, Inc. demonstrated why it would be patently unfair to change the fixed commodity price of $2.95 per Mcf:

> "The cement and slag businesses are very competitive. Margins are very narrow and companies are required to develop precise budgets so that they can price their products for the next year. Blue Circle, Inc. very carefully prepared its budget for 2001 and set its prices accordingly. All of Blue Circle, Inc.'s production for 2001 has been bought out by customers for delivery throughout the year so any change in Blue Circle, Inc.'s cost structure will eat into profits. The only variable cost at the plant is labor so a large increase in costs could force a loss of jobs.
>
> Blue Circle, Inc. will have to honor its contracts with its buyers at the stated prices regardless of any adverse changes in Blue Circle, Inc.'s cost structure. 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. . . .
>
> . . . 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 35-36.

Moreover, MichCon's proposal will not promote competition as MichCon has alleged because the end price of the commodity will not be known until sometime in 2002 as a result of the crediting methodology proposed by MichCon. If MichCon is to be taken at its word and there is a high probability that the price of gas will be equal or less than $2.95 per Mcf then how does

MichCon's proposal promote competition? According to MichCon, marketers cannot compete with $2.95 per Mcf gas so the cost must be higher to promote competition. How does this square with Mr. Stanczak's statement? Would rationale customers voluntarily move off the GCR factor to the GCC program at a higher price under circumstances that if they had remained GCR customers and were eligible for the various credits and refunds that MichCon was proposing that could result in a high probability their gas cost being equal to $2.95 per Mcf? The obvious answer to this is "no" and that customers would stay on MichCon in order to be eligible to receive the benefits. Although, MichCon has proposed to provide credits to GCC customers, the natural inclination is for customers to remain where they are because of the complicated nature of the GCC program and the uncertainty surrounding it.

In summary, MichCon's arguments simply do not make sense and do not justify an early termination of the suspension of the GCR factor. MichCon's Application should be rejected in order to allow customers to receive the fixed price guarantee offered by MichCon at the beginning of this program. MichCon had the means by which to protect itself financially and supposedly was in a position to manage its risk. Customers, on the other hand, do not have MichCon's sophistication and relied upon MichCon's fixed price guarantee through December 31, 2001.

B. Replies to Other Parties.

ABATE generally agrees with the other parties' positions in this proceeding and therefore will not file any replies. ABATE, however, would like to reiterate that it favors a rejection of the Application as opposed to the alternative proposed by the Staff which is to accept the Application with a number of modifications. The Staff's modifications are overly complicated and could lead to the need for audits which would be an unnecessary waste of resources where the alternative would be simply reject MichCon's Application. Moreover, accepting the Staff's position would lead to timing differences in that customers would be paying higher rates during 2001 and really would not receive the full benefit of the price guarantee until 2002. People who moved, or otherwise relocated, between the time they took gas service in 2001 and the credits were calculated in 2002 could totally lose those credits. Such a result is poor public policy and it can easily be remedied by simply rejecting MichCon's Application.

II

RELIEF

WHEREFORE, ABATE requests the PSC to reject MichCon's Application and grant such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

CLARK HILL P.L.C.

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PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Lisa Ann Teets, being first duly sworn, deposes and says that she filed electronically a copy of the attached "Reply Brief of Association of Businesses Advocating Tariff Equity" in the above docket on the persons identified on the attached service list by depositing the same on March 9, 2001, in the United States mail in the City of Birmingham, Michigan with first-class postage thereon fully paid.

Lisa Ann Teets

Lisa Ann Teets

Peggy A. Green

Notary Public, Oakland County, Michigan
My Commission Expires 8/18/03

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MPSC Case No. U-12762

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