

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

In the matter of the application of
MICHIGAN CONSOLIDATED GAS COMPANY
for approval of gas cost recovery
plan, 5-year forecast and monthly
GCR factor for the period of
April 1 to December 31, 2001.

Case No. U-12766

MOTION HEARING

Proceedings had in the above-entitled
matters before Barbara A. Stump, J.D., Administrative Law
Judge, at the Michigan Public Service Commission, 6545
Mercantile Way, Lansing, Michigan.

SESSION OF TUESDAY, FEBRUARY 27, 2001

VOLUME 2

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1 Lansing, Michigan
2 Tuesday, February 27, 2001
3 1:30 p.m.

4 - - -

5 (The hearing was resumed pursuant to
6 adjournment.)

7 JUDGE STUMP: We're on the record in the
8 matter of the application of Michigan Consolidated Gas
9 Company to terminate the suspension of its gas cost
10 recovery clause and establish a cashout mechanism, which
11 is Case No. U-12762; and also in the matter of the
12 application of Michigan Consolidated Gas Company for
13 approval of gas cost recovery plan, 5-year forecast and
14 monthly GCR factor for the period April 1 to December 31,
15 2001. That is Case No. U-12766. This is the time that we
16 have scheduled for a hearing on the motion to dismiss
17 filed by the RRC.

18 Could I have the appearances, please.

19 MR. CHAMPION: Good morning -- good
20 afternoon, your Honor. David C. Champion, appearing on
21 behalf of Michigan Consolidated Gas Company.

22 MR. SHALTZ: David L. Shaltz for the
23 Residential Ratepayer Consortium.

24 MR. ISIOGU: Assistant Attorney General
25 Orjiakor Isiogu on behalf of Michigan Attorney General

1 Jennifer M. Granholm.

2 MR. GADALETO: Dave Gadaletto on behalf of
3 the Staff of the Michigan Public Service Commission.

4 JUDGE STUMP: Thank you.

5 I've read --

6 MS. SONERAL: May I enter my appearance
7 too?

8 JUDGE STUMP: Oh. I'm so sorry. I forget
9 you because you're so quiet.

10 MS. SONERAL: Christine Mason Soneral on
11 behalf of Energy America, L.L.P.

12 JUDGE STUMP: Thank you.

13 I have read the motion, the response to the
14 motion, and the reply to the response, so, Mr. Shaltz, if
15 you have some comments you'd like to make, you may do so
16 at this time. I don't need you to repeat everything
17 that's in the motion since I have read it.

18 MR. SHALTZ: I understand. Have you also
19 read the brief that was submitted in support of the
20 motion, your Honor, initially?

21 JUDGE STUMP: Yes.

22 MR. SHALTZ: Thank you.

23 Just briefly, your Honor, all the elements
24 for summary disposition are present in this case. There
25 is no dispute among the parties that MichCon has filed a

1 GCR plan that covers nine months, not 12 months. There's
2 no dispute that the company has filed a forecast of
3 customer requirements that covers four years nine months,
4 not five years, and that what the company is requesting in
5 Case No. U-12762 is a nine-month GCR plan. So there is no
6 dispute of material facts.

7 In our brief and in our response we set
8 forth for you the clear, unambiguous language in Act 304
9 which requires that a GCR plan cover a period of 12
10 months, that there be 12 GCR factors in the plan, and that
11 a forecast of customer requirements must cover five years.

12 So the two elements of a motion for summary disposition
13 are present here.

14 Now, perhaps the most troubling issue of
15 all this is that we have Case No. 12762 on schedule to go
16 to the Commission before April 1st. As I indicated in the
17 reply that I filed today, your Honor, my client's chief
18 concern is that when the Commission issues its decision in
19 Case No. 12762, it have all the information before it to
20 understand how that decision will affect 12766.

21 For example, in the company's application
22 in case No. 12762, it does not inform the Commission that
23 it's not only asking for a nine-month GCR plan period, but
24 it's also asking the Commission in effect to modify the
25 statutory requirement that we have a five-year forecast.

1 If you look at the filing in 12766, in fact the company's
2 filed a four-year nine-month forecast.

3 The company also seems to be concerned that
4 today at this hearing if you make a decision, somehow this
5 is going to short-circuit what happens in 12762. Your
6 Honor, the rules governing summary disposition require
7 that you issue some type of proposal for decision to which
8 the companies could file exceptions, and our only concern
9 and goal in this matter is that the Commission have your
10 ruling and any exceptions before it before the time that
11 it issues its decision in 12762.

12 So I understand this is a procedurally
13 difficult and unusual situation and if there were some way
14 we could accommodate the two, I'd like to do that.

15 JUDGE STUMP: But a PFD is only required if
16 summary disposition is granted as to all of the case.

17 MR. SHALTZ: That's not correct, your
18 Honor. If you request partial disposition of a case by
19 summary disposition, I believe the very last phrase of the
20 rule says that if you dispose of part of the case by
21 summary disposition, that also should be done by a
22 proposal for decision.

23 JUDGE STUMP: It says that "If only part of
24 a proceeding is disposed of, the presiding officer may
25 issue a partial proposal for decision."

1 MR. SHALTZ: I see.

2 JUDGE STUMP: So it's discretionary.

3 MR. SHALTZ: Okay. In any event, it's our
4 concern that these matters be placed before the Commission
5 before it reaches its decision on May 1st because we'd
6 hate to be in a position where it didn't have all the
7 information it needed to adequately review this important
8 issue.

9 JUDGE STUMP: All right, thank you.

10 Mr. Champion?

11 MR. CHAMPION: Thank you.

12 MR. ISIOGU: Your Honor, before Mr.
13 Champion responds, I just want to note for the record that
14 the Attorney General is in support of the RRC's motion in
15 this case.

16 JUDGE STUMP: All right. Your support will
17 be noted.

18 MR. CHAMPION: Thank you, your Honor.

19 As I indicated in the company's response to
20 the RRC's motion, we believe the Commission does have the
21 authority to rule on our request for a nine-month GCR
22 period beginning April 1, 2001, ending December 31, 2001.
23 The statute itself, Act 304, requires that the period --
24 the future period during which a GCR factor is placed in
25 effect must be specified by the Commission. The

1 Commission can't specify a future period after the fact.
2 It must do so before the fact, and that's why, in the
3 context of our application to lift the suspension of our
4 GCR clause, we also requested approval of a nine-month
5 stub period GCR plan.

6 With respect to the question of whether or
7 not MichCon has filed a GCR plan and forecast that meet
8 the requirements of Act 304, the company acknowledges that
9 nine months is less than the 12 months stated in the
10 statute but believe the circumstances in an experimental
11 circumstance such as the Commission has directed MichCon
12 to undertake, and which MichCon now seeks to terminate,
13 the Commission and not your Honor should determine whether
14 or not MichCon must comply with the 12-month criteria set
15 forth in the statute or, given the experimental nature of
16 the circumstance we find ourselves in, the Commission
17 finds it appropriate to approve our nine-month GCR factor
18 request for the purpose of returning us to the calendar-
19 year GCR program that MichCon traditionally operated
20 under.

21 With respect to the notion of the forecast,
22 I would note only that the statute, unlike the 12-month
23 phraseology used with respect to GCR factors, references a
24 five-year period. It doesn't say 60 months, it says five
25 years, and I have on behalf of my client filed an

1 application in U-12766 that addresses, among other things,
2 a five-year period for future gas prices, the years 2001
3 through 2005. Admittedly the forecast covers four years
4 nine months, but in the context of the express language of
5 the statute it seems that on the one hand the RRC would
6 like the Commission to strictly follow the 12-month
7 criteria and yet interpret the five-year criteria to mean
8 60 months, not five years.

9 I'll reserve further argument pending the
10 RRC's response, your Honor.

11 JUDGE STUMP: Does Staff want to offer
12 anything?

13 MR. GADALETO: Just that it seems that
14 RRC's motion, the timing of it, given the fact that the
15 testimony has already been submitted by RRC, that the
16 Commission could deal with this motion as they are dealing
17 with the rest of the case since they're reading the
18 record.

19 RRC's justification that they want the
20 Commission to have a full record of the plan case I want
21 to say is -- I don't know, it seems somewhat contradictory
22 to the position that the AG took when he brought his
23 motion in the plan case suggesting that because the two
24 cases weren't joined and we didn't have the factor in
25 place, there couldn't be a plan, and now it seems like

1 they're arguing the reverse, and I go on and on and am not
2 making any sense at all.

3 JUDGE STUMP: It's quite all right.

4 MR. GADALETO: But my rhythm is good.

5 JUDGE STUMP: Yeah, I'm listening to you.

6 MR. GADALETO: And I had a point there,
7 your Honor, but I've lost it.

8 JUDGE STUMP: Why not just take your first
9 point.

10 MR. GADALETO: The first one was good; I
11 should have stopped, and I will at this point and save me
12 any further embarrassment.

13 JUDGE STUMP: That's fine. Thank you for
14 offering that.

15 MR. CHAMPION: Your Honor, if I may, the
16 last point that I wanted to make and could not recall at
17 the end of my prior argument was that there is testimony
18 in the record in U-12762 addressing MichCon's request for
19 a nine-month GCR factor. That testimony was not -- no one
20 asked to strike it from the record prior to the hearing
21 going forward. It is therefore before the Commission as
22 part of the record that it will consider in making its
23 decision.

24 We believe it appropriate for you to deny
25 the RRC's motion at this time, allow the Commission to

1 decide the extent of its authority under the statute, and
2 if the Commission so chooses, to either reject our request
3 for a nine-month GCR factor, alternatively grant it, or as
4 a third alternative direct us to implement GCR factors for
5 a 12-month period ending March 31, 2001. The information
6 the Commission would need to do that is in the application
7 in 12766, and therefore is available to not only the
8 Commission but all the parties for their analysis,
9 consideration and argument, assuming our GCR plan goes
10 forward.

11 JUDGE STUMP: All right, thank you.

12 Any final comments?

13 MR. SHALTZ: Just, your Honor, that there
14 are two issues. The specific relief the company requests
15 in 12762 is approval of a nine-month GCR plan period.
16 That's all that the company puts before the Commission.
17 In 12766 the company has actually put together a plan,
18 factors and forecasts.

19 There are separate issues as to the
20 legality of a nine-month GCR period under Act 304 versus
21 the legality of a plan that does not comply with Act 304,
22 factors that do not comply with Act 304, and a forecast
23 that does not comply with Act 304. We don't have the
24 ability in 12762 to argue that the plan that the company's
25 filed does not meet the requirements of Act 304.

1 The problem is if the company is successful
2 in 12762 with its request for a nine-month GCR plan period
3 without having put before the Commission the fact that the
4 plan it has filed doesn't comply with the statute, the
5 company will be authorized on April 1st to self-implement
6 the factors contained in the plan. Once that happens, as
7 a practical matter for any of the parties to try to come
8 before the Commission to argue that the plan, the forecast
9 and the factors don't meet the requirements of the
10 statute, it's going to be a nightmare to try to undo that,
11 because once the factors are in place, if the Commission
12 five months down the road found that the whole thing was
13 unlawful, how you put customers back to where they were on
14 April 1st would be a very difficult thing.

15 Finally, in terms of specifying a 12-month
16 period, it's not the Commission in this case that is being
17 asked to specify a 12-month period. All that the company
18 has done is to ask for an exception to the normal
19 procedure of a 12-month period that the Commission's
20 already specified for MichCon, which is January through
21 December. It's asked for a one-time exception allowing it
22 to do it on a nine-month basis here. So the talk about
23 the Commission specifying a 12-month period is wrong.

24 And finally with respect to whether what
25 the company has filed is a five-year forecast, if you

1 simply look at the company's exhibits in 12766, they span
2 the period April 1, 2001 through December 2005. That is a
3 four-year, nine-month period. To suggest that because
4 those months fall in five sequential years means that that
5 comports with the statute's meaning of five years I think
6 is a real stretch. I think when the Legislature says five
7 years, it means five years. It doesn't mean four years
8 and one month as long as you can cover five calendar
9 years. It just doesn't make sense.

10 So, your Honor, for the reasons stated in
11 our brief and our reply, we ask that you grant the motion.

12 JUDGE STUMP: All right, thank you.

13 All right, I'm ready to rule at this time.

14 I'm going to deny the motion to dismiss
15 because, as I stated in my ruling denying the Attorney
16 General's motion to dismiss, it does not make any sense
17 from a procedural standpoint to dismiss 12766 at this
18 time. Recommending dismissal of that case prior to the
19 Commission issuing its order in 12762 I believe is
20 premature and would only result in MichCon having to
21 refile its application if the Commission decides to
22 approve the early lifting of the GCR suspension.

23 As you know, I've deferred the schedule in
24 12766 until after the Commission issues its order in
25 12762, and we have a second prehearing conference

1 scheduled in 12766 for April 11th.

2 I understand that the issue presented in
3 the RRC's motion is different than what the Attorney
4 General presented in her motion, but I'm nevertheless
5 denying it for essentially the same reason and in effect
6 reaffirming my previous ruling.

7 Now, I'm also denying the RRC's motion to
8 dismiss that portion of 12762 that references the
9 company's proposed nine-month GCR plan and related
10 forecast. Again, it just does not make sense procedurally
11 to recommend even partial dismissal of that case. At the
12 outset of 12762 the Commission indicated it would read the
13 record and it even established in its notice of hearing
14 the date for the filing of reply briefs in that case. As
15 a result, it's clear to me that the Commission views the
16 issues in 12762 as extremely important and it wants to
17 address those issues by April 1st. I'm not going to
18 disrupt the schedule and frustrate the Commission's intent
19 at this stage of the proceedings.

20 I also note that the RRC has stated in its
21 reply to the company's response to its motion that I don't
22 even have authority to decide this motion to dismiss
23 anyway.

24 So I am denying the motion, and in ruling
25 this way I don't believe that the RRC or any of the other

1 intervenors are prejudiced in any way. You've made your
2 record today and you can also make your arguments in your
3 briefs to the Commission in 12762 that are due this
4 Friday, March 2nd.

5 I agree with the company that the
6 Commission can determine the extent of its authority under
7 Act 304 in its order in 12762, and it's not necessary for
8 me to even get into that issue given the expedited nature
9 of the case. You know, I don't need to tell the
10 Commission what its authority is in this particular
11 matter.

12 So in conclusion, I am denying the motion
13 in its entirety.

14 MR. SHALTZ: Your Honor, just a matter of
15 clarification. With respect to that part of the motion
16 that is denied for dismissing 12766, am I correct, then,
17 you're issuing an oral proposal for decision from the
18 bench, then, under the Commission's rules?

19 JUDGE STUMP: Well, under the Commission
20 rules the only time that the ALJ has to issue a proposal
21 for decision is when there is summary disposition of the
22 entire proceeding, and since I'm denying the motion, there
23 is no summary disposition. Do you see what I mean?

24 MR. SHALTZ: Okay. So if you were to have
25 granted the motion or recommended that, but since you're

1 denying the motion, you're not doing a proposal for
2 decision. It's just a straight denial.

3 JUDGE STUMP: No, no. It's only because,
4 according to the rules, it's only when summary disposition
5 is granted as to all of a case is a proposal for decision
6 necessary.

7 MR. SHALTZ: Okay, thank you.

8 JUDGE STUMP: You know, if you'd look over
9 that rule again, I think you'll see what I'm talking
10 about.

11 MR. ISIOGU: Your Honor, I also have some
12 requests for clarification in light of your ruling.

13 As you indicated in your ruling, you've
14 scheduled a second prehearing conference in 12766 for
15 April 11th.

16 JUDGE STUMP: Yes.

17 MR. ISIOGU: And you've held that case in
18 abeyance, your Honor. I understood your ruling as meaning
19 that as long as a case is held in abeyance, MichCon would
20 not self-implement its proposed factor, because if it
21 does, then it defeats the purpose of your ruling holding
22 the case in abeyance, because as of April 1, if the
23 company self-implements, that factor goes into effect.

24 So I just want to establish for the record
25 that your ruling encompasses the holding in abeyance of

1 not only the case but also the implementation of any GCR
2 factor.

3 JUDGE STUMP: I never addressed it that
4 way. I said that the schedule would be held in abeyance.
5 We never even got into that when we had the hearing on
6 your motion to dismiss.

7 MR. CHAMPION: And I would submit it's
8 inappropriate to attempt to get into it now, your Honor,
9 on the basis of some claimed misperception or need for
10 clarification of your prior ruling.

11 MR. ISIOGU: Well, then, perhaps I may have
12 to bring a motion before the Commission, because that was
13 the heart -- it goes to the thrust of my motion to dismiss
14 in that case, to prevent the self-implementation.

15 JUDGE STUMP: But I denied the motion but I
16 said I would hold the schedule in abeyance and we would
17 pick up the schedule after the Commission issued its order
18 in 12762.

19 MR. ISIOGU: So is it your Honor's
20 position, then, that the company could self-implement as
21 of April 1, while we pick up the case on April 11th?

22 JUDGE STUMP: I don't know. I don't have a
23 position on that because it wasn't before me.

24 MR. ISIOGU: I understand, your Honor. I
25 probably will be considering bringing the issue before the

1 Commission.

2 JUDGE STUMP: Yeah. You kind of put me on
3 the spot here.

4 MR. ISIOGU: I'm sorry. I didn't intend to
5 do that.

6 JUDGE STUMP: No, it's all right.

7 MR. GADALETO: Well, maybe informally the
8 Attorney General could ask the company what their intent
9 is before they bring a motion, and their response may
10 obviate the need.

11 MR. ISIOGU: I always do that, counsel.
12 Thank you for that suggestion.

13 MR. GADALETO: Well, I mean rather than
14 putting the Judge on the spot with respect to an issue not
15 before her when one opportunity was to ask the company did
16 they intend to do it.

17 MR. ISIOGU: It wasn't my intention to put
18 the Judge on the spot. I just wanted to get an
19 understanding.

20 JUDGE STUMP: No, I understand. You just
21 wanted to clarify it.

22 MR. ISIOGU: Get clarification, exactly.

23 JUDGE STUMP: It just surprised me because
24 I had never even considered anything like that when I made
25 the ruling holding the schedule in abeyance.

1 MR. ISIOGU: In fact, I think, based on
2 conversations I had with counsel, that I had reason to.
3 But I think I will take it up off the record with counsel.

4 JUDGE STUMP: That's a good idea. Why
5 don't you do that.

6 Okay, anything further today?

7 All right, thank you.

8 MR. CHAMPION: Thank you, your Honor.

9 MR. GADALETO: Thanks, Judge.

10 (At 1:55 p.m. the hearing was adjourned to
11 9:00 a.m., Wednesday, April 11, 2001.)

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C E R T I F I C A T E

I, Evelyn R. Merrill, do hereby certify that I reported stenographically the foregoing proceedings had in the within-entitled matters, being Case Nos. U-12762 and U-12766, before Barbara A. Stump, J.D., Administrative Law Judge, at the Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan, on Tuesday, February 27, 2001; and that the foregoing transcript constitutes a true and correct transcript of my said stenographic notes.

Dated: March 1, 2001

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