STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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 April 1 to December 31, 2001.	)	Case No. U-12766

THE RRC'S RESPONSE *IN SUPPORT OF* THE ATTORNEY GENERAL'S MOTION TO DISMISS THE APPLICATION OF MICHIGAN CONSOLIDATED GAS COMPANY FOR APPROVAL OF GAS COST RECOVERY PLAN, 5-YEAR FORECAST AND MONTHLY GCR FACTOR

The Residential Ratepayer Consortium (RRC) supports the Attorney General's January 25, 2001 Motion to Dismiss the Application of Michigan Consolidated Gas Company (MichCon) for Approval of its Gas Cost Recovery Plan, 5-Year Forecast and Monthly GCR Factor for the Period April 1, 2001 to December 31, 2001. In response to each of the numbered averments in the Attorney General's Motion, the RRC says:

1.-2. The RRC concurs with the Attorney General's summary of MichCon's April 21, 1998 Application in Case No. U-11682. In that Application, MichCon made the following specific representations to the Michigan Public Service Commission:

a. "20. Although the Company has been successfully providing reliable gas service at a reasonable cost in a volatile marketplace, it is prepared to assure its customers a more stable gas cost charge ***during the three years covered by the proposed Plan***. The Company proposes to suspend its GCR Clause during the three-year experimental program and fix its gas commodity rate at $2.95 per Mcf for customers who choose to remain as full sales customers of MichCon." Page 13. (Emphasis added).

b. "21. In proposing a fixed gas commodity rate of $2.95 per Mcf, MichCon recognizes that it will also assume significant risks." Page 13.

c. "22. ...Under the Plan's fixed gas rate proposal, MichCon is at risk for ***all*** gas commodity costs during the three year experimental program." Pages 14-15. (Emphasis added).

d. "25. As discussed earlier, by proposing a fixed gas commodity rate that is among the lowest in the Midwest Region (Ohio, Michigan, Indiana, Illinois, Wisconsin, and Minnesota), 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 marketplace supports significantly higher gas prices. Accordingly, it is appropriate that MichCon bear the risk of its gas procurement strategies and be directly affected by the benefit/shortfall attributable to the sale of gas at the proposed fixed rate.*** " Pages 16-17. (Emphasis added).

3.-4. The RRC concurs with the Attorney General's presentation of the relevant portions of the Commission's April 29, 1998 Order in Case No. U-11682. Those rulings were based on the representations made by MichCon in its Application in Case No. U-11682, set forth above in paragraphs 1.-2.

5.-6. The RRC concurs with the Attorney General's averments.

7. The RRC concurs with the Attorney General's position that MichCon's application is invalid because the Company's GCR Clause is suspended. MCL 460.6h(1)(b) defines a "Gas cost recovery clause" as an adjustment clause "***in*** the rates or rate schedule of a gas utility" (emphasis added). When MichCon filed its Application in this case, there was no gas cost recovery clause in its rates or rate schedules and there is none now.

MCL 460. 6h(3) states:

"In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file . . . a complete gas cost recovery plan . . . "

When MichCon filed its gas cost recovery plan, there was no gas cost recovery clause "to implement", nor is there one now. **Unless and until MichCon's GCR Clause is reinstated, the Commission has no jurisdiction over MichCon's Application.** Without a GCR Clause in the Company's rates or rate schedules, there is nothing for MichCon's GCR Plan to implement. Stated another way, MichCon's GCR Plan is a nullity in the absence of an intact GCR Clause because MCL 460.6h(3) makes no provision for a gas utility with no GCR Clause to file a GCR plan.

8.-9. The RRC concurs with the Attorney General's presentation of the law governing summary disposition.

10.-12. The RRC concurs with the arguments made by the Attorney General that demonstrate that MichCon's Application in this case violates the Commission's Order in Case No. U-11682. Moreover, the Company's filing breaches the representations and assurances MichCon made to the MPSC to secure its approval of the utility's Application in Case No. U-11682. These include the Company's statements that:

- it was prepared to provide gas service at $2.95 per Mcf for customers who chose to remain as full sales customers during the three years covered by the experimental gas customer choice Plan, despite an increasingly volatile natural gas market
- it recognized that it would assume significant risks in proposing a fixed gas commodity rate of $2.95 per Mcf and that MichCon was, in fact, "at risk for ***all*** gas commodity costs during the ***three year*** experimental program." (Emphasis Added).

- it would not increase charges for gas "even if the natural gas marketplace supports significantly higher gas prices" and
- "it is appropriate that MichCon bear the risk of its gas procurement strategies and be directly affected by the benefit/shortfall attributable to the sale of gas at the proposed fixed rate."

(These representations are set forth fully in paragraphs 1 and 2 of this Response).

Because there was no opportunity for public comment and no hearing on MichCon's Application in Case No. U-11682, the MPSC relied on these representations as the basis for its *ex parte* order in that case. MichCon's decision to file a GCR Plan for April - December 2001 and to seek a GCR factor of $5.17 per Mcf for that period breaks the explicit promises the Company made to secure the approval of its Application in Case No. U-11682 and violates the terms of the Commission's Order in Case No. U-11682.

For all these reasons, the Administrative Law Judge should ***grant*** the Attorney General's request for dismissal of MichCon's Application in this case.

REPLY TO MICHCON'S RESPONSE
TO THE ATTORNEY GENERAL'S MOTION

On January 29, 2001 MichCon filed its Response to the Attorney General's Motion to Dismiss The Application.

MichCon's first argument is that the AG's Motion should be denied because Case No. U-12762 will decide whether "it is appropriate and in the public interest for an early end to the GCR suspension that was adopted as part of MichCon's experimental pilot program in Case No. U-11682". The Company suggests "it is crucial to have the adjudication in the instant proceeding at the ready so that new GCR factors can be approved and implemented as expeditiously as possible and consistent with the GCR Act, 1982 PA 304; MCL 460.6(h). It would be inequitable and inefficient to have to re-start this proceeding from square one if the Commission approves the termination of the GCR suspension." Page 2.

MichCon has the cart before the horse. It has made a filing in anticipation that its GCR Clause will be reinstated and is asking that proceedings commence just in case that happens. Notwithstanding the Company's concerns over expedition, equity and efficiency, the MPSC has no jurisdiction to commence proceedings over MichCon's proposed GCR Plan because that utility does not now have an operational GCR Clause to be implemented by that Plan. (This argument is set forth more fully in paragraph 7., pages 2-3 of this Response). It is inequitable and inefficient to require the parties to expend resources to prepare for a case that may never materialize. Because MichCon has no operative GCR Clause, its Application should be dismissed.

MichCon next argues that the AG's Motion should fail because the suspension of MichCon's GCR Clause was part of an "experimental pilot program", meaning that the experiment can be truncated "at any time... in order to meet the overriding objective of enhancing customer choice". As shown earlier in this Response, this claim is belied by MichCon's Application in Case No. U-11682 which contains the Company's unequivocal promises that its experimental gas customer choice program would last for three years and that MichCon's sales customers would pay $2.95 for their gas for that entire period. Despite the Company's repeated acknowledgments in that Application that gas prices were volatile, MichCon made no provision in its proposal for unfreezing the gas commodity rate and/or reinstating its GCR clause if gas prices rose above certain thresholds that made it uneconomic for alternative gas suppliers to compete with the utility's $2.95/Mcf factor. Nor did it describe any other conditions under which the three-year term of the experiment could be curtailed.

As to the "overriding objective of enhancing customer choice", that objective does not override the interests of the majority of MichCon's gas sales customers who cannot participate in this experiment and who are entitled to the benefits promised by MichCon when it proposed this program. The Company was content to live with the experiment and charge its sales customers the $2.95 frozen gas commodity rate as long as that rate exceeded the market price for natural gas and generated profits for MichCon. Now that market prices have increased, MichCon seeks to abandon its pledge to bear ***all*** risks of ***all*** price increases during the three year experiment and to shift those risks on to its sales customers.

Next, MichCon suggests that its Application <u>in this case</u> is at "the Commission's direction", citing the Order in Case No. U-12550. A close examination of this claim shows it has no substance. In Case No. U-12550, the Commission said:

> "The Commission acknowledges MichCon's desire to end its pilot program in conjunction with the termination of Consumers' request. However, the Commission finds that Case No. U-12550 is not the appropriate forum for that determination. Rather, if MichCon desires to prematurely terminate its pilot program, MichCon should file an application to do so." Order, page 6.

Nowhere in the Order did the Commission indicate that MichCon should file an application for a GCR Plan.

At page 5 of its Response, MichCon says:

> "Thus, MichCon's ... application for approval of a new GCR Plan and factors in this proceeding are in response to the Commission's direction expressed in its Order in Case No. U-12550".

There was no such direction expressed in the Commission's Order.

Finally, MichCon argues that there ***are*** issues of material fact and justification for early termination of the GCR suspension based on the Application and testimony filed by MichCon in Case No. U-12762. The Company states:

> "The application and testimony in the instant proceeding represents the next step in the process to re-institute the GCR, to wit, establish the GCR factors and submit a five year plan in accordance with the provisions of the GCR Act."

The subjects of MichCon's Application in this case are the Company's proposed GCR Plan and 5-Year Forecast -- ***not*** whether MichCon's GCR Clause should be reinstated. There is no issue of material fact as to whether MichCon's GCR Clause is suspended. As argued earlier in this response, MichCon's application should be dismissed because the Commission has no jurisdiction over this filing. MCL 460.6h(3) makes no provision for utilities without an operative GCR Clause to file a GCR Plan. Unless and until MichCon's GCR Clause is reinstated, MichCon's application is null and void.

THE RESIDENTIAL RATEPAYER CONSORTIUM

January 31, 2001

By: ______________________

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MICHIGAN PUBLIC SERVICE COMMISSION

FEB 01 2001

FILED

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PROOF OF SERVICE

David L. Shaltz says that on January 31, 2001 he sent by facsimile transmission and deposited in a U.S. Postal Service mail receptacle THE RRC'S RESPONSE *IN SUPPORT OF* THE ATTORNEY GENERAL'S MOTION TO DISMISS THE APPLICATION OF MICHIGAN CONSOLIDATED GAS COMPANY FOR APPROVAL OF GAS COST RECOVERY PLAN, 5-YEAR FORECAST AND MONTHLY GCR FACTOR in the above-captioned case, addressed to the parties on the attached service list, with first class postage thereon.

David L. Shaltz

State Of Michigan)
) ss
County of Ingham)

David L. Shaltz appeared before me on January 31, 2001 and certified that the statement above is true, accurate and correct.

Diane R. Royal, Notary Public
Ingham County, Michigan
My Commission Expires: 2/13/03

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