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 ex parte approval of a special contract with Dynegy Marketing and Trade.	)))))	Case No. U-13002

At the September 27, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER APPROVING APPPLICATION

On July 2, 2001, Michigan Consolidated Gas Company (Mich Con) filed an application for ex parte approval of a special gas transportation and storage agreement (SGTA) with Dynegy Marketing and Trade (Dynegy).

In its application, Mich Con states that: (1) Dynegy is a subsidiary of Dynegy Holdings, Inc., and an affiliate of the Montcalm County Renaissance Trust (Renaissance Trust); (2) Renaissance Trust will design, construct, own, and operate a 680-megawatt natural gas-fired peaking facility in Carson City, Michigan; (3) electric power generated at Renaissance Trust's facility will reach the marketplace through an interconnection with Consumers Energy Company's transmission system and will be sold at wholesale to investor-owned utilities, electric cooperatives, and municipalities; (4) that facility will be one of the largest transportation accounts on Mich Con's system, having an annual load of approximately 7,500,000 thousand cubic feet (Mcf); and (5) the facility will have unique operating requirements that cannot be fully served under Mich Con's transportation tariffs.

Mich Con states that the SGTA has an initial term of 20 years, with an opportunity to renew the contract from year to year thereafter. Mich Con goes on to note that during the term of the agreement, and in addition to the otherwise applicable terms and conditions of Mich Con's tariff, the SGTA provides Dynegy with tiered transportation rates of $0.157 per Mcf for the first 7,500,000 Mcf per contract year and $0.115 per Mcf for all volumes in excess of 7,500,000 Mcf per contract year. Dynegy has also guaranteed Mich Con minimum monthly revenue of $3,532,500 for each three-year period, Mich Con continues, and will pay a $2,100 monthly customer charge and a gas-in-kind charge as provided for in Mich Con's LT-2 rate schedule.

Mich Con goes on to assert that Renaissance Trust will construct, own, and operate a 9.2 mile-long, 20-inch outer diameter pipeline with an interconnection to Mich Con's A-B-C Transmission Pipeline in New Haven Township, Gratiot County. It further asserts that although the Renaissance Trust facility will be located within Mich Con's service territory, competing providers both in the vicinity of Mich Con's A-B-C Pipeline and other sites investigated by the Renaissance Trust have the facilities, the financial ability, and the business incentives to supply all of the Renaissance Trust's natural gas requirements. Moreover, Mich Con maintains that Dynegy has agreed to certain unique operating restrictions related to maximum hourly requirements, storage injection and withdrawal limitations, minimum storage balance requirements, and advance notice of operational requirements to ensure that operation of this peaking facility will not cause Mich Con to change the general operations of its natural gas system.

According to Mich Con, the SGTA is the product of good faith negotiations and compromise between Mich Con and Dynegy, including consideration of existing and future competitive energy supply options for the Renaissance Trust facility. Moreover, Mich Con states that it is not seeking a final Commission determination on the ratemaking treatment of any cost of service under-recovery that may result from the discounts offered by this agreement. Instead, Mich Con suggests that such a determination should be deferred to future proceedings. Finally, Mich Con asserts that because it is not seeking any change in the rates of other customers, the Commission may approve the contract without notice or a hearing.

Discussion

The Commission concludes that it should approve the SGTA as reasonable and in the public interest. In reaching this conclusion, the Commission finds, in the absence of a reason to believe otherwise, that the parties to the SGTA protected their own interests and reached a mutually beneficial bargain. The Commission also finds that Mich Con should have leeway to negotiate agreements as it sees fit, except when their provisions would violate statutes, rules, or Commission orders, would run afoul of clearly established Commission policies, would harm other ratepayers, or would otherwise impede the public interest. On the other hand, the ratemaking treatment to be accorded to the SGTA is within the Commission's exclusive domain. Furthermore, development of non-public utility electric generation capacity supports the Commission's goal of providing a competitive electric marketplace within Michigan.

The Commission recognizes that under the terms and conditions of the SGTA, Mich Con is assuming significant new performance obligations that could adversely affect its non-participating customers if the utility's gas system and the SGTA are not carefully managed, both operationally and financially. In approving this contract, the Commission expects that Mich Con will meet its obligations under the SGTA and will take the necessary actions to avoid any adverse impact on its non-participating customers.

The Commission finds that other customers and the public interest are adequately protected. The Commission previously indicated its view on the future ratemaking treatment of rate discounts offered by special contracts in the March 23, 1995 order in Case No. U-10646, which approved contracts between The Detroit Edison Company (Detroit Edison) and General Motors Corporation, Ford Motor Company, and Chrysler Corporation, and the Commission's October 25, 1995 order in Case No. U-10961, which approved a contract between Consumers Power Company and General Motors. The Commission said that it would not make a definitive ruling on the future ratemaking effects of the contracts, but discussed the general principles that should guide future Commission action:

> [T]he contracts are the product of Detroit Edison's negotiations. It follows that Detroit Edison should assume full responsibility for negotiating the discounted prices and that its shareholders should expect to absorb much, if not all, of any revenue shortfall caused by the pricing and other contract provisions that the utility negotiates. Therefore, unless Detroit Edison can make a compelling showing why a different ratemaking treatment is justified, the Commission will not permit Detroit Edison to reallocate the costs of serving contract customers to other ratepayer classes. To make a compelling showing for a different treatment, Detroit Edison would bear a substantial burden. This burden would require, at a minimum, a clear, convincing, and unequivocal demonstration either (1) that the contract prices and terms are justified on the basis of the cost of service, or (2) that the benefits for other (non-participating) ratepayers are substantial and have a value that outweighs the costs that are not recovered from the contract customers. Either showing would require support from a cost-of-service study that identifies and quantifies all costs incurred under the contracts. In addition, both showings would require Detroit Edison to demonstrate that its service provided in conjunction with the contracts has not, and will not in the future, impede the development of competition in its service territory.

March 23, 1995 order, Case No. U-10646, p. 21.

The Commission also indicated that other ratepayers should be protected from any under-recoveries of power supply costs and other surcharges and that if average costs recovered under the power supply cost recovery clause increased as a result of incremental load attributable to the contracts, the added costs would be treated the same as any other category of unrecovered cost created by the contracts. Id., p. 20. To facilitate implementation of these protections, the Commission required Detroit Edison to treat service under the contracts as a separate rate class for purposes of cost allocation studies in future rate cases and to file annual reports showing actual contract revenues and hypothetical tariff rate revenues using the same billing determinants.

The Commission concluded that, taken as a whole, these protections increased the incentive for the utility to negotiate for the benefit of all customers and decreased the likelihood that contract customers would be subsidized by other customers. The Commission did not find it in the public interest for a utility to negotiate contracts under the belief that the Commission would necessarily shift to other customers the full discount offered by the contracts.

If Mich Con seeks to increase other customers' rates as a result of the SGTA, it is on notice that the principles discussed in the March 23, 1995 order in Case No. U-10646 and the October 25, 1995 order in Case No. U-10961 should apply. Furthermore, Mich Con will be required to account for the SGTA as a separate rate class in future cost of service studies and to report the revenue and volumes associated with the SGTA separately in its annual report to the Commission.

Approval of the SGTA does not increase any customer's rates. Therefore, the Commission may approve the SGTA without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a(1).

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The contract should be approved as reasonable and in the public interest.

c. Ex parte approval is appropriate, subject to the conditions set forth in this order.

THEREFORE, IT IS ORDERED that the special gas transportation and storage agreement between Michigan Consolidated Gas Company and Dynegy Marketing and Trade is approved, subject to the conditions set forth in this order.

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, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of September 27, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Chairman

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Commissioner

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By its action of September 27, 2001.

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Suggested Minute:

> "Adopt and issue order dated September 27, 2001 approving a special contract for natural gas transportation and storage service between Michigan Consolidated Gas Company and Dynegy Marketing and Trade, as set forth in the order."