

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Application of	)	
MICHIGAN CONSOLIDATED GAS	)	Case No. U-14717
COMPANY for approval of Gas Cost	)	(e-file/paperless)
Recovery Plan, 5-year Forecast and monthly	)	
GCR Factor for the 12 months ending March	)	
31, 2007.	)	

**BRIEF IN SUPPORT OF
MOTION FOR DECLARATORY RULING
OF MICHIGAN COMMUNITY ACTION AGENCY ASSOCIATION**

The Michigan Community Action Agency Association (MCAAA) file this brief in support of its accompanying Motion for Declaratory Ruling filed in this case pursuant to Sections 33, 63, and 64 of the Administrative Procedures Act (APA), MCL 24.233 *et seq.*, and Rule 701 of the Commission's Rules of Practice and Procedure, 1992 AACS R 460.17701, and also pursuant to the statutory authority cited in this brief. This brief is also filed in support of MCAAA's alternative request to the ALJ to issue proposed findings of law in this case as requested by MCAAA in accordance with Section 85 of the APA, MCL 24.285, and the contested case process under the APA and the Commission's Rules.

I. HISTORY OF PROCEEDINGS

On December 29, 2005, Michigan Consolidated Gas Company (MichCon) filed testimony and exhibits, and its application, in this gas cost recovery (GCR) Plan and 5-year forecast case, pursuant to 1982 PA 304, including Section 6a of 1939 PA 3, MCL 460.6a, and various provisions of Section 6h *et seq.*, MCL 460.6h *et seq.*

Subsequent to the issuance of the Commission's notice of hearing, the ALJ granted the interventions of the various parties to this case, including the MCAAA. A period of discovery also ensued.

On May 2, 2006, the Staff and intervening parties, including MCAAA, filed their responsive testimony and exhibits to MichCon's case filing.

MichCon's GCR plan and forecast, and its supporting expert testimony and exhibits, excludes any consideration for the development and implementation of energy efficiency, conservation, or load management programs as an important resource for meeting the planning requirements, reasonableness and prudent standards, and cost minimization duties assigned the utility under Act 304. In contrast, the expert testimony of Geoff C. Crandall and Dr. Martin Kushler, filed on behalf of MCAAA, fully discusses the benefits of, and the need to implement, said programs to address the requirements and goals of Act 304, and to reduce the cost of energy for the utility and the utility's ratepayers (while also realizing important other economic and environmental benefits).

On this date, June 13, 2006, MCAAA has filed a motion for declaratory ruling, and this brief in support, asserting that the ALJ should declare or recommend, and the Commission should declare, that the development and implementation of energy efficiency, conservation, and load management programs is an important duty which should be performed by MichCon under Act 304.

II. MCAAA'S EVIDENTIARY FILING

MCAAA's evidentiary filing made on May 2, 2006, demonstrates persuasively the direct relationship between energy efficiency programs, and the various duties and standards

established by Act 304. In this regard, the testimony of MCAAA witnesses Crandall and Kushler are briefly summarized as follows:¹

A. Summary of Testimony and Exhibits of Geoffrey C. Crandall:

Mr. Crandall's revised prefiled testimony, p 2, states that MichCon's GCR plan filing is "deficient and incomplete" and "inadequate because it fails to integrate natural gas cost reduction strategies i.e. demand management and usage reduction strategy in its long-range plan to acquire natural gas resources". MichCon's proposed GCR factor is also unnecessarily high and should not be authorized for several reasons described in his testimony and that of Mr. Mendl (pp 2-3). Witness Crandall also makes several specific recommendations (pp 3-4, 12-15), including approval of a lower GCR factor than requested by MichCon (see exhibit MCA-5) and the establishment of a process to develop energy efficiency programs. Witness Crandall's downward rate adjustment of \$18,400,000 in this case (pp 12-15, MCA-5) calculates gas costs that MichCon could readily save in 2006 from energy efficiency and demand management programs (wholly aside from the additional benefits noted next).

Witness Crandall also discusses the important reasons for implementing energy efficiency programs including the high cost of natural gas, the duty to minimize gas costs under Act 304, benefits to customers including low income customers, economic benefits to the state and its citizens, consistency with emerging state and federal policies, benefits to Michigan's troubled economy, ameliorating rate shock and gas cost volatility, among other benefits (pp 4-12). Witness Crandall also indicates the cost-effective nature of energy efficiency programs, and the past success and experience with said programs (pp 6-7, 12).

¹ A third MCAAA witness, Mr. Jerry E. Mendl, is not summarized here because his testimony deals with separate issues, not involving energy efficiency.

Witness Crandall (pp 12-15) makes a number of recommendations for the ALJ's and Commission's consideration as follows:

Q. Are there further GCR Plan and resource related actions the Commission should consider?

A. Yes. The Commission should ensure that the applicant makes a good faith effort to help keep gas costs down for GCR customers by initiating weatherization and energy efficiency assistance. (p 12).

....

I believe that an achievable level of savings of 1% per year is reasonable in MichCon's service territory. Such a program could be designed, implemented and managed by MichCon. If implemented in a cost-effective manner, GCR customer gas costs would be less than proposed in this application. For example, if an energy efficiency program having an 1% impact on MichCon's forecast for 2006-2007 was operational, GCR customer gas costs would be reduced from the proposed level by over \$18,400,000. (See Exhibit MCA-5 (GCC-2). The savings to GCR customers would result from the reduced gas consumption costing less than \$3 Mcf. This would create GCR customer savings of over \$12 per Mcf, compared to the GCR rates proposed in the application. The GCR customer gas bills would be lower by using energy efficiency to displace far more expensive and price-volatile natural gas.

We are presenting this analysis in this case because we believe that gas savings opportunities are clearly present and MichCon has an obligation and duty, in accordance with Act 304, to pursue cost reduction alternatives. If MichCon had continued its past cost effective energy efficiency resource programs with its customers, GCR customer bills would have been less. Unfortunately this was not done and GCR customer bills are unnecessarily high as a result.

Q. What are your recommendations?

A. I recommend the Commission find that MichCon proposed five year GCR plan not be approved as filed, and that the Commission adopt MCAAA's adjustments consistent with the recommendations of MCAAA Witness Mendl and in my testimony.

The Commission should require that the Applicant immediately develop and initiate a substantial energy efficiency/conservation program and offer it to its GCR customers as a cost reduction strategy. This should be created by the Company in conjunction with a collaborative working group made up the Commission staff, intervenors, customers and interested parties. The Commission should require that MichCon adopt a similar program development and implementation strategy it employed in the Consumers Power Company U-9346 docket to establish the optimal design, phase-in schedule and overall implementation strategy. The Commission should require the applicant to file a progress report within six months of the date of the order in this case and integrate expected impacts into its ongoing GCR planning activities and next GCR five year plan filing.

The Commission should require that the applicant establish energy efficiency programs and strategies that will result in a new increment of 1% savings of natural gas per year (5% for its GCR customers over the upcoming five years) as a cost mitigation strategy for GCR customers.

The Commission should not authorize the proposed \$0.64/Mcf, \$96,000,000 alleged 2005-2006 underrecovery.

The Commission should require that vulnerable, low-income customers be exempt and held harmless from the MichCon contingency mechanism and factor.

The Commission should require the applicant to waive its disconnect, reconnect and collection fees for its vulnerable, low income customers resulting from problems of non-payment or at a minimum make permanent the rule changes that were in effect for the 2005-2006 heating season.

B. Summary of Testimony and Exhibits of Dr. Martin Kushler:

Dr. Kushler is the Director of the Utility Program for the American Council for an Energy Efficient Economy (ACEEE), a non-profit organization, with headquarters in Washington, D.C., dedicated to research and policy development in the area of energy efficiency (p 1). Dr. Kushler's background (Exhibit MCA-1), includes 20 years in the field of energy and utility programs, including 10 years as the supervisor of an MPSC Staff unit responsible for overseeing the evaluation of energy efficiency programs conducted by Michigan utilities (p 1).

Dr. Kushler's testimony demonstrates the effectiveness of energy efficiency as a low-cost natural gas resource being widely used in other states to help lower total electric system costs and provide significant dollar savings to utility customers (p 2). Dr. Kushler states that "[E]nergy efficiency is a very low-cost natural gas system resource" that "customers strongly support" (p 1). He sponsors two exhaustive studies he co-authored (exhibits MCA-2 and MCA-3) that describe how energy efficiency programs can reduce natural gas supply costs claimed by utilities under Act 304 and can provide significant cost savings to customers (p 3). These studies include: *Examining the Potential for Energy Efficiency to Help Address the Natural Gas Crisis in the Midwest*, January 2005, Report Number U051, Exhibit MCA-2, (MGK-2), and *Responding to the Natural Gas crisis: America's Best Natural Gas Energy Efficiency Programs*, December 2003, Report Number U-35 MCA-3, (MGK-3). He described (p 4) the two key findings of these reports as follows:

- Energy efficiency programs to save natural gas are very cost-effective in terms of direct savings. Across a group of two dozen different programs examined, the median (mid-point) levelized cost of natural gas saved was about \$2.80 per Mcf. This is much less than half the current market wholesale cost of natural gas.
- Because the natural gas market is so constrained, reductions in demand from energy efficiency can actually reduce the wholesale market price of natural gas. Our analyses indicate that an aggressive but achievable program of energy efficiency for the 8 Midwest states (IA, IL, IN, MI, MN, MO, OH and WI) would produce up to a 13% reduction in the wholesale market price of natural gas in the region. These energy efficiency programs would significantly reduce natural gas costs for all customers, and produce hundreds of millions of dollars per year in total energy cost savings for Michigan ratepayers.

Dr. Kushler (pp 4-5) also states that today's updated energy efficiency programs are very cost-effective, stating in part:

. . . . By evaluating what works and doesn't work, today's efficiency programs are producing savings at lower costs than in

the past. Numerous states have documented the ability of these programs to save natural gas at a cost of less than \$3.00 per Mcf.

Q. Can you provide specific examples of successful utility sector energy efficiency programs from other states?

A. Yes. The best reference for this would be the report I co-authored, entitled: *Responding to the Natural Gas Crisis: America's Best Natural Gas Energy Efficiency Programs*, Exhibit MCA-3. This project provided detailed case studies on a total of 29 different exemplary natural gas energy efficiency programs from around the nation.

Dr. Kushler (pp 5-6) also documents the high customer support for energy efficiency programs.

Dr. Kushler's Exhibit MCA-2 is an exhaustive study demonstrating the benefits of energy efficiency programs, and presents numerous examples of said programs that have been implemented throughout the nation. Excerpts from this academic study are very noteworthy.

For example (MCA-2, p 5):

. . .Because of the very tight and volatile natural gas market, a reduction of about 1 percent per year in total gas demand could result in wholesale natural gas price reduction of 10 to 20 percent. A 5-year total national investment of approximately \$30 billion in natural gas and electricity¹⁵ saving technologies could produce over \$100 billion dollars in savings for residential, commercial, and industrial customers (about half due to direct savings from customers participating in the energy efficiency programs and about half from the reduced wholesale market prices for natural gas).

¹⁵ Electric energy efficiency is an important part of the package because of the huge use of natural gas for electric generation. Reductions in electricity use, especially during summer months, can have a large effect on reducing total natural gas consumption.

At page 12 of MCA-2, the following is stated:

. . . At 2002 wholesale prices, the Midwest states sent \$14 billion flowing out of the region to pay for natural gas imports. (Individual states can see their own dollar drain in Table 5.)

The table shows a Baseline Natural Gas Dollar Drain of more than \$2.2 billion in dollar drain from Michigan alone.

Exhibit MCA-2 (p 13) states:

Industry experts readily concede that the Midwest region as a whole has lagged far behind such leading regions as the Northeast, California, and the Northwest in terms of energy efficiency policies and programs.¹⁹ Indeed, with a few notable exceptions (i.e., Minnesota, Wisconsin, and to some extent Iowa), most states in the Midwest have had few or no electric utility energy efficiency programs over the past decade, and even less on the natural gas side.

. . .

. . . The purpose of this study is to help estimate the economic benefits that could accrue to the region if sufficient energy efficiency policies were adopted.

¹⁹ In ACEEE's most recent "scorecard" assessment of electric utility energy efficiency spending per capita, only one Midwest state (Wisconsin) was ranked in the top ten states nationally (York and Kushler 2002). Moreover, subsequent state budget raids on Wisconsin's public benefits energy efficiency funding will have dropped that state out of the top ten in the next assessment.

The Study in Exhibit MCA-2, p 26, also shows that energy efficiency can reduce the price of natural gas long-term:

In addition to direct bill savings from energy efficiency improvements made by program participants, there are also dollar savings to all customers due to the effect of energy efficiency on lowering wholesale market prices for natural gas. . .

(After the graph)

As can be seen, the natural gas consumption reductions produced by the energy efficiency policy implementation produces a notable and gradually increasing level of reduction in wholesale gas prices,

beginning with 2 percent in the first year (2006), rising to 6 percent by 2010, and a peak of 13 percent by 2014. . . .

Exhibit MCA-2, p 32, also highlighted the following:

As can be seen in Figures 7 and 8, the cumulative dollar savings from an aggressive but achievable energy efficiency policy initiative would be quite substantial. After just 5 years, cumulative savings to customers in the region would total over \$16 billion, and after 15 years, cumulative savings would approach \$100 billion. The single largest component (over 40 percent) would be due to the direct savings from electric energy efficiency. Roughly another 20 to 25 percent each would result from direct natural gas energy efficiency improvements and reductions in the market price of natural gas. The remaining 10 percent would result from the reduction in the cost of natural gas used in electricity generation.

. . . .

As a general frame of reference, there is considerable research from leading states to document that a portfolio of electric energy efficiency programs can save electricity at a cost of 3 cents/kWh, and a portfolio of natural gas energy efficiency programs can save natural gas at a cost of \$1.50 per Mcf (Elliott et al. 2003)

Exhibit MCA-2, p 33, also states:

Consistent with patterns observed in decades of research in the energy efficiency field, the levelized cost per lifetime unit of energy saved is the most expensive in the residential sector (\$2.57 per Mcf and \$.044 per kWh), followed by the commercial sector (\$.86 per Mcf and \$.024 per kWh), and least expensive in the industrial section (\$.74 per Mcf and \$.02 per kWh). More importantly, all of these costs of conserved energy are much cheaper than the corresponding costs to obtain “supply side” energy resources,²⁶ thus these energy efficiency programs would be very cost-effective just for the energy “resource” they provide without even including their beneficial impacts on lowering wholesale market prices. When those larger benefits are taken into account, the benefits to customers exceed the costs by nearly 4 to 1.

²⁶ For example, the projected wholesale cost of natural gas in 2006 is over \$7.00 per Mcf, and a typical average cost for delivered electricity might be in the range of 5 to 6 cents per kWh.

The Study (Exhibit MCA-2, p 37) concluded in part:

The results of this study are very encouraging. The data suggest that a modestly aggressive, but pragmatically achievable, energy efficiency campaign (achieving on the order of a 5 percent reduction in both electricity and natural gas customer use over 5 years) could produce tens of billions of dollars in net cost savings for residential, commercial, and industrial customers in the Midwest. Moreover, we estimate that such an effort would produce over 30,000 net new jobs and \$750 million in net additional employee compensation over that time period.

The appendix which is a part of Exhibit MCA-2 demonstrates the many programs throughout the nation in which energy efficiency programs have been very successfully implemented.

Dr. Kushler's sponsored Exhibit MCA-3 is a comprehensive study co-authored by Dr. Kushler, as identified earlier. This study surveys the various energy efficiency programs in the natural gas area across the United States. The study notes that the sharp increases in natural gas costs in recent years, and natural gas price volatility, can be ameliorated by addressing both the demand and supply sides of the natural gas situation, and specifically by the implementation of natural gas energy efficiency efforts and programs. (pp 1-2, MCA-3). The study also states (pp 2-3) in part as follows:

What can be done to brighten this outlook for consumers? The answer lies with this textbook case of market economics—reduce demand through energy efficiency and conservation. As the National Petroleum Council concludes in its report, in the very near term, reducing demand is the primary means to keep the market in balance because of the lead times required to bring new supply to market (NPC 2003).

.....

Recent research by ACEEE and the Environmental and Energy Analysis, Inc. (Elliott et al, 2003) clearly shows the benefits of an increased emphasis on energy efficiency and conservation to reduce demand, along with parallel efforts to increase use of renewable energy. Results of this analysis are that modestly

reducing both natural gas and electricity consumption along with accelerating installation of renewable energy generation can dramatically affect natural gas prices and availability. Such actions could stabilize natural gas prices and save gas and electricity consumers billions of dollars. The researchers analyzed the potential impacts of aggressive but readily achievable energy efficiency programs and renewable energy resources in the lower 48 states.

That research by ACEEE and EEA suggests that nationwide efforts in just 12 months could reduce natural gas consumption by 1.9% from the base case and could reduce electricity consumption by 2.2%. Such reductions could in turn lead to a 20% reduction in wholesale natural gas prices. In the longer term, the researchers project that America can reduce electricity consumption by 3.2% and natural gas consumption by 4.1%, and increase renewable generation from 2.3 to 6.3% of national generation by 2008, which would lower wholesale natural gas prices by 22%. National retail savings to residential, commercial, and industrial consumers would exceed \$75 billion for the five-year period of 2004-2008. The researchers also examined state and regional impacts. They found that reducing energy consumption and increasing renewable energy generation in just one state or region can result in dramatic wholesale price reductions on the order of 5 to 7% in the region (Elliott et al. 2003).

Dr. Kushler's study (MCA-3, pp 5-7) incorporated a national survey that found that 22 states have natural gas efficiency programs. States with the most significant programs include California, Massachusetts, Minnesota, New Jersey, Oregon, Vermont, Washington, and Wisconsin. After surveying the types of energy efficiency programs and services that are provided nationally, Dr. Kushler's exhibit study (MCA-3, pp 20-21) makes the following conclusions and recommendations, in part as follows:

Conclusions

Our research for this study shows that there clearly are a number of excellent programs being provided to natural gas customers to reduce their use of natural gas through efficiency improvements. Programs exist for all types of customers and for all principal natural gas end-use technologies. Some organizations offer comprehensive portfolios of services, while others may offer a single-focused program.

While we found many good models of natural gas efficiency programs worthy of emulation by others, we also found that such programs tend to be concentrated in a relatively few number of states. Natural gas customers in most states, unfortunately, do not have access to such programs, thereby limiting their ability to reduce their energy costs through improved efficiency. This lack of energy efficiency programs also seriously hinders the ability of states and utilities to respond to the problem of higher natural gas market prices. As just presented in a new ACEEE study (Elliott et al. 2003), aggressive but readily achievable reductions in natural gas use can produce significant reductions in the market cost of natural gas (on the order of 10 to 20%), thereby benefiting all customers and the economy as a whole.

The fact that natural gas efficiency programs tend to be concentrated in a relatively few states and regions means that there is a lot of room for expansion of such efforts, especially in light of impending natural gas price increases and possible supply constraints. Customers not currently served by programs will be looking for ways to reduce their energy costs as prices rise. The types of programs we profile in this study clearly offer tremendous opportunities for assisting customers in lowering their energy costs through efficiency improvements. Such programs demonstrate the real benefits of energy efficiency for individual customers, their utilities, and society as a whole.

Recommendations

Natural gas customers are facing rapidly rising costs. This has significant adverse effects on individual customers as well as the broader economy. We recommend creating and offering energy efficiency programs to customers in areas not presently served by such programs, and expanding such efforts in areas where only limited programs currently exist. Improved energy efficiency is a concrete step that customers can take to offset price increases, but decades of experience with natural gas customers suggests that they won't necessarily take such a step without facilitation via energy efficiency programs. Moreover, the natural gas price problem creates serious societal costs as well, which strengthens the rationale for affirmative government policies to help address this problem through energy efficiency.

....

The challenging natural gas market situation—higher prices and constrained supplies—is not likely to go away for years, if ever. Utility companies, governments, and related organizations should

view natural gas efficiency programs as both a near-term and long-term element in an overall strategy of helping natural gas customers manage their energy costs, as well as helping our economy deal with higher market energy prices. Some actions can be taken now to address very near-term conditions, while other actions can be taken over the next few years to begin laying the foundation for long-term beneficial effects. This report presents many examples of successful energy efficiency programs that could be applied to each of those time frames.

The overall conclusion of MCAAA's evidentiary presentation is that this Commission should now once again take up the reins of leadership, and should declare and require the saving of energy and reduction of energy waste as a resource to be recognized among the alternative resources which are to be considered under Act 304. Energy conservation was a potential great resource even when gas prices were far lower. It is unquestionably a greater resource at the far higher gas rate levels sought by MichCon in this case.

III. ARGUMENT

A. The ALJ and Commission should grant MCAAA's accompanying Motion for Declaratory Ruling.

The ALJ and Commission, within the context of this case, should grant MCAAA's accompanying Motion for Declaratory Ruling. This motion requests the follow rulings:

(a) A proper and comprehensive gas supply cost recovery (GCR) Plan and 5-year forecast filed by a utility under 1982 PA 304, Section 6a, MCL 460.6a *et seq.* and Section 6h *et seq.*, MCL 460.6h *et seq.*, should include as an energy resource the development and implementation of programs to reduce, moderate, or mitigate gas consumption loads over time, through energy conservation, energy efficiency, or demand-supply-management (DSM) efforts and programs (for simplicity, sometimes referred to collectively as energy efficiency programs).

(b) The development and implementation of energy efficiency programs is fully lawful under Act 304, and in fact should be regarded as an ongoing duty of any utility subject to Act 304, as more fully explained in the accompanying brief in support of this motion;

(c) The development and implementation of energy efficiency programs is also directly relevant to the proper functioning of Act 304; the statute was adopted to require the use of comprehensive energy resource and cost planning strategies by utilities, and to avoid many of the abuses that had occurred under automatic fuel adjustment clauses in effect in the 1970's and early 1980's; energy efficiency programs represent a valuable resource to reduce the

cost of energy supplies, both in terms of price per unit of energy and through the reduction of energy waste and avoidable consumption; energy efficiency programs can accomplish these results by reducing energy loads and consumption, thereby reducing gas costs and customer bills. Energy efficiency programs directly serve to assist the statutory duty of the utility and the Commission under Act 304 to “minimize” energy costs, to consider all alternative sources of energy (which includes as a resource the reduction in energy waste and conservation), and to assist energy consumers and ratepayers in mitigating the cost of energy on an ongoing and long-term basis.

(d) The implementation and development of energy efficiency programs would also greatly promote the public interests of the state and its citizens as it would assist in ameliorating energy costs, and the attendant outflow of billions of energy-cost dollars out of Michigan, and would also promote economic development and job creation by providing greater financial resources to businesses arising from the energy savings obtained from the more efficient utilization of energy resources in Michigan; said programs would also result in ongoing and long-term energy savings to the various units of local and state government in Michigan, thereby directly saving scarce taxpayer dollars for more beneficial uses; energy efficiency programs also result in significant other economic and environmental benefits.

B. The ALJ and Commission should rule that MichCon’s plan and forecast case is deficient and incomplete on the basis that it fails to include any alternative options or programs to promote minimization of energy costs and greater gas supply reliability through energy efficiency, gas conservation, and demand mitigation programs.

1. Energy efficiency, conservation, and demand supply management programs are directly related to gas cost and supply issues under Act 304; MichCon’s failure to address these resource alternatives justifies rejection of (and the refiling of) its plan and forecast, or PSCR rate factor reductions.

Energy efficiency, conservation, and demand supply mitigation and management programs are an important alternative and additional resource that can minimize the cost of energy, and increase energy supply reliability, on a short and long-term basis, consistent with Section 6h(3) Programs to encourage energy efficiency and conservation, reduction in energy waste, and to reduce usage, (and to thereby reduce customer bills and long-term prices of energy) are thus fully consistent with the goals and objectives of Act 304.

Higher energy usage and waste, related to the failure to plan for and implement said programs, results in uneconomical energy costs (and also higher energy prices) which should

also be deemed unreasonable and imprudent. Any GCR plan and forecast that addresses only maximizing energy supply and rate collections, and wholly ignores opportunities and resources to minimize energy usage and costs, must be deemed prima facie unreasonable and imprudent, and woefully one-sided. Yet the plan and forecast cases presented by MichCon and the Staff seek to emphasize the maximization of rate collections. MichCon's plan and forecast is deficient on its face, however, since it fails to incorporate any options, programs, or alternatives to stretch energy supplies (thereby enhancing reliability) and moderating or minimizing the cost of energy, both through the reduction of energy consumption and waste, and on a longer term basis by moderating energy prices by flattening the demand curve over time. MichCon's one-sided plan and forecast is glaringly deficient, and not consistent with options available to the Commission through a balanced and proper implementation of Act 304.

In contrast to the Staff and MichCon, the proffered testimony and exhibits filed by MCAAA indicates the manner in which MichCon's plan and forecast is deficient in these respects, and highlights the importance of pursuing such options on behalf of ratepayers given the increasing cost of energy, and the resulting severe impacts on customers under present economic circumstances.²

The overall conclusion derived from MCAAA's evidentiary filing is that this Commission should now once again take up the reins of leadership, and should declare and require the saving of energy and reduction of energy waste as a resource to be recognized among the alternative resources which are to be considered under Act 304.

² MCAAA has filed the testimony of Geoff C. Crandall and Dr. Martin Kushler (summarized earlier) in support of their position that MichCon's PSCR plan and forecast case is incomplete and deficient, since it fails to address any programs to minimize the cost of gas energy and to stretch out supplies through use of energy efficiency, gas conservation, or demand supply mitigation programs. Extensive recent studies have reconfirmed the benefits of energy efficiency and conservation programs generally, and the numerous such programs undertaken by utilities nationally.

2. Energy efficiency, conservation, and demand supply management issues are authorized by Commission statutes, including Act 304.

Michigan law grants general authority to the Commission to oversee the operation of public utilities in this state. 1939 PA 3, MCL 460.6; MSA 22.13(6) states in relevant part as follows:

Sec. 6. Powers and jurisdiction. The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state. . . The public service commission is vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of such public utilities. The public service commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of all public utilities, ...

With respect to the conservation of natural gas (which is used directly for heating, but also in part for electrical generation), Michigan law provides in 1929 PA 9, MCL 483.114; MSA 22.1324 as follows:

Sec. 14. The commission shall have authority to prevent the waste of natural gas in producing operations and in the piping and distribution thereof and to make rules and regulations for that purpose. It is hereby authorized and empowered to all things necessary for the conservation of natural gas in connection with the production, piping and distribution thereof and to establish such other rules and regulations as will be necessary to carry into effect this act; to conserve the natural gas resources of the state and to preserve the public peace, safety, and convenience in relation thereto.

Under Act 304, the Commission can find that a utility's plan and 5-year forecast is deficient and incomplete if it does not include utility proposals to address the reduction of unnecessary and wasteful energy usage, and to promote energy efficiency, conservation, and better energy demand management. Under Act 304, the Commission is required to evaluate the reasonableness and prudence of the Company's plan and forecast and has authority to disapprove

or amend that plan. The statute also requires the Company to acquire and provide energy in a manner that minimizes costs. While the Commission may not direct the Company's management on specific proposals, the Commission can order MichCon to implement (as an alternative and additional resource) cost-effective programs as part of its planned "supply arrangements." MCL 460.6h.

The MPSC under Section 6h(1)(b) and (c) has direct authority to disapprove unreasonable or imprudent gas supply plans and arrangements:

(b) "Gas cost recovery clause" means an adjustment clause in the rates or rate schedule of a gas utility which permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.

(c) "Gas cost recovery factor" means that element of the rates to be charged for gas service to reflect gas costs incurred by a gas utility and made pursuant to a gas cost recovery clause incorporated in the rates or rate schedules of a gas utility. (MCL 460.6h(1)(b) and (c).

Section 6h(3) requires a utility to file annually:

. . . a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission . . . The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contracts or arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

Along with its plan, the utility is required by Section 6h(4) to also file a 5-year forecast, and any other information the Commission requires:

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

In evaluating the utility's plan, the Commission is given broad powers to consider, without limitation, all alternatives to minimize costs, and to require an amendment or change in the plan:

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate the utility; the cost of alternative fuels available to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

Section 6(m) of Act 304, MCL 460.6m, indicates the public purpose and factors to be considered by the Utility Consumer Participation Board (UCPB) as criteria for accepting grant applications for Act 304 case participants, by stating in part:

For purposes of making grants, the board may consider protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources. . . .

Section 6m(13), MCL 460.6m(13), provides that the UCPB shall:

Encourage the representation of the interest of identifiable types of residential utility customers whose interest may differ, including various social and economic classes in areas of the state. . . .

Related statutes applicable to the MPSC grant additional specific authority to approve energy conservation programs. Section 6c(1), MCL 460.6c(1) states that the MPSC “may approve energy conservation programs, including energy conservation load programs, for residential customers of electric and gas utilities.” Section 6n, MCL 460.6n establishes legislative policy in favor of energy conservation. Section 6n(2) and (4) state in part:

(2) Rates reconstructed pursuant to this section shall encourage residential energy conservation and shall be based upon cost of service and other relevant factors.

* * *

(4) The commission shall take steps necessary to inform the public of the advantages of conservation.

The Commission therefore has authority under Act 304 and related statutes to ensure that both electricity and natural gas is not wasted. As such, the Commission has authority to implement appropriate energy conservation programs.

3. Past Commission precedent establishes that energy efficiency, conservation, and load management fall within the scope of Act 304.

The Commission in past cases, including Act 304 cases, has found that issues and remedial programs involving energy efficiency, conservation, and demand management (sometimes called demand side management or DSM) fall within the proper purview and scope of the Commission's authority. The Commission has also found that such issues and programs relate to power (or gas) supply arrangements and costs subject to review under Act 304. Accordingly, the MPSC can disapprove of GCR or PSCR plans which fail to take into account reasonable cost-effective DSM or energy conservation alternatives.

The Commission in U-4404, found as follows in its October 5, 1973, order:

The overriding public interest in the conservation of natural gas, as well as alternative forms of energy is indisputable. It is equally clear that the program proposed by Michigan Consolidated will serve the public interest by substantially contributing to the national goal of energy conservation and offering assistance to all of Michigan Consolidated's residential heating customers who own uninsulated or poorly insulated premises, including many low-income persons who are especially in need of means to economize on gas bills. As shown by the evidence of both the Staff and the Company, the program will also benefit Michigan Consolidated's customers as a whole To the extent that conservation measures enable the Company to serve the needs of its service area with less expensive supplies its overall cost of service is reduced, to the benefit of all customers.

The Commission Order in Case No. U-5510 also found:

Finally, it should be noted that under the provisions of Rule 11 of the Standards (R 460.2411), it is not necessary that the Commission arrive at a precise quantitative decision concerning the supply of gas in the future or its cost versus the cost of conserved gas. All that is required under Rule 11 is that:

. . . the commission finds that the energy conservation program is apt to result in the foreseeable future, in lower rates for all utility ratepayers than could be achieved

without the energy conservation program. (Emphasis added in original U-5510 order.)

Based on the evidence in this record and the arguments set forth above, the Commission finds that the proposed program is indeed apt, and is probably almost certain, to result in lower rates for all utility ratepayers than could be achieved without an energy conservation program.

The Commission in its order in Case No. U-6871, June 29, 1982, page 11, stated as follows:

Additionally, the Commission finds that the offering of conservation programs by public utilities is a legitimate public utility function. The Commission, therefore, has the authority to not only authorize the implementation of such a program, but to also authorize the application of a surcharge to customers' bills to recover expenses incurred in carrying out such a program. . . . The Commission is also under the obligation of ensuring that our energy resources are used in the most efficient manner possible. . .

In U-9172, involving Consumers Energy Company (MichCon) for 1989, Staff urged that MichCon revise its 5-year forecast using integrated resource planning (IRP) methods, or alternatively, alert the utility under MCL 460.6j(7) that factors may be adjusted and costs disallowed in future PSCR proceedings if lower cost DSM options were not selected. While not granting relief for a retroactive version of this plan, the Commission found that it clearly had justification under Act 304 to require certain programs and planning approaches, as follows:

On the other hand, the Commission notes that there is no provision in Act 304 that would exempt an electric utility from a cost adjustment or disallowance should it be found that the utility acted unreasonably or imprudently by failing to use integrated resource planning methods or by failing to incorporate lower cost demand-side resource options in its PSCR plan and five-year forecast.

The Commission finds that in order to evaluate the reasonableness and prudence of the decisions underlying the PSCR plan and five-year forecast by the utility, Consumers' future PSCR plans and forecasts must be derived from and consistent with the company's most recent integrated resource plan.

* * *

Further, the Commission directs the company's future PSCR plans and five-year forecasts . . . must derive from and be consistent with the company's most recently filed integrated resource plan. Documentation of the five-year forecast must include a thorough evaluation of the cost-effectiveness of demand-side management and non-utility resource options relative to other resource options.

* * *

Deriving the company's plan and five-year forecast from its biennially filed integrated resource plan will give the Commission essential information concerning the relative costs and merits of a reasonably broad range of resource options for determining the reasonableness and prudence of decisions underlying the company's PSCR plan and forecast. This information allows the Commission to consider whether Consumers has considered all reasonable options and has formulated its plan and forecasts on the basis of the most cost effective options available. *In re Consumers Power Company*, Opinion and Order, Case No. U-9172, March 29, 1990. (Emphasis added).

In a Michigan Gas Company case, U-9752, the MPSC concluded that DSM is relevant to a GCR plan case and found that:

The major purpose of the hearing was to provide information sufficient for the Commission to evaluate the GCR plan, to set an appropriate GCR factor for the plan period, and to evaluate the decisions underlying the five-year forecast. **The demand-side management activities of Michigan Gas can be relevant in that context.** The may be able to develop information designed to show that Michigan Gas has not engaged in reasonable and prudent activities that could lower the cost of gas. **This suggests, for example, that greater conservation efforts by Michigan Gas could lower peak-day demand, which might have an effect on peak supply costs for the period. That is a relevant issue in a GCR plan case. It is also relevant in considering the company's five-year forecast.** *In re Michigan Gas Company*, Opinion and Order, Case No. U-9752, February 21, 1991, p. 7. (Emphasis added).

The MPSC has ruled elsewhere that energy efficiency resources obtained through Integrated Resource Planning (IRP) are power supply arrangements and that IRP and DSM fall

within the planning process mandated by Act 304, the omission of which can lead to a rate disallowance in a PSCR proceeding. *In Re Commission's Own Motion to Examine Federal Standards for Electric Utilities*, Opinion and Order, Case No. U-10574, October 12, 1994. The Commission cited Act 304 as being related to the federal IRP standard, described as follows::

. . . a planning and selection process for new energy resources that evaluate the full range of alternatives, **including** new generating capacity, power purchases, **energy conservation and efficiency**, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, ability to verify **energy savings achieved through energy conservation and efficiency** and the projected durability of such savings measured over time; and **shall treat demand and supply resources on a consistent and integrated basis.**

* * *

IRP issues are considered . . . [in] the PSCR proceedings. . . . Disallowance for fuel or purchase power could be argued . . . if other less costly resource options could have been procured by the company. *Ibid.*, pp. 10-11 and p. 6, emphasis added.

The Commission later terminated the specific DSM program for MichCon, however, by its order in U-10554, dated June 19, 1995, which order included positive findings regarding DSM. The Commission in U-10554 found that DSM is a necessary part of the utility planning process so as to encourage the efficient identification of all power supply arrangements and to encourage the development of more cost-effective DSM programs for electric utilities. In particular, the Commission stated that:

. . . one purpose of the planning process is to compare supply-and demand-side options on an equivalent basis so that the most efficient resources can be identified and implemented. . . . The Commission has long recognized that demand-side measures may provide a competitive alternative to the construction of new power plants as a means of meeting the demand for electricity. . . . The fact that DSM provides an alternative to construction of new power

plants provides not only the reason for adoption of DSM programs, but also provides the basis for the design of rates associated with those programs. Savings resulting from the delay or elimination of the construction of new power plants benefit all customers, whether or not they are direct participants in the DSM program. *In Re Consumers Power Company*, Opinion and Order, June 19, 1995, pp. 12-13. (Emphasis added).

The dissenting opinion of Commissioner Russell in U-10554, (June 19, 1995, p 3) summarized the MPSC's approach to DSM in several other cases, and noted that any DSM resource should be evaluated on the basis of total costs avoided:

The appropriate method of assessing the value of a DSM resource is on the basis of total costs avoided, including capacity costs, energy costs, operating costs, and transmission and distribution (T&D) costs. Assessing the value of any resource option, including DSM, on the basis of its effect on total costs is a principle which the Commission has repeatedly endorsed, including the order establishing Integrated Resource Planning (IRP) for Consumers Power in Case No., U-9172 dated March 29, 1990; the orders establishing Consumers Power's DSM programs in Case Nos. U-9346 dated May 7, 1991 and U-10335 dated May 10, 1994, and the order on rehearing in Case No. U-10335 dated August 18, 1994; and the Commission's recent order examining issues related to the 1992 Energy Policy Act and its standards regarding IRP and energy efficiency in Case No. U-10574 dated October 12, 1994.

In its October 12, 1995 order in U-10671, the Commission indicated it did not intend to abandon DSM efforts and encouraged DECo to explore DSM options and program formats that might benefit utility customers. In its September 12, 1996 order in U-10932, where the Commission suspended DECo's DSM program, the Commission likewise encouraged DECo to explore DSM options.

The Commission in substantial past precedent has thus endorsed consideration of such matters. In the same fashion, the Commission can certainly encourage and promote energy efficiency, conservation, and enhanced demand management in its Act 304 orders. In fact, under the specific provisions of Act 304, the Commission can find that a plan which fails to incorporate

such plans and programs is incomplete, and that rate adjustments may result from a utilities' unreasonable and imprudent incurrence of avoidable costs and for failures to minimize costs. The Commission in this PSCR case should thus find that energy efficiency, conservation, and load mitigation and management programs, should be considered and implemented as a means to reduce energy usage, to minimize or moderate fuel and purchased power costs, and to yield related savings such as a reduced transmission and pollution emission and allowance costs.

4. All judicial precedent has generally upheld the Commission's jurisdiction over energy efficiency, conservation, and demand management programs.

Applicable judicial precedent has also held that the Commission possesses the authority to identify cost items associated with a utility's fuel and purchase power costs, which can be disallowed in part if a utility could have reasonably avoided or minimized those costs through alternative power supply arrangements. This principle is clearly established in *Union Carbide v Public Service Commission*, 431 Mich 135; 428 NW2d 322 (1988), which held that the MPSC under Act 304 has the power to disapprove rates based upon expenses it found to have been uneconomical. Similarly, while the MPSC cannot require utilities to enter into contracts, the Commission can under Act 304 disallow unreasonable, imprudent and uneconomic costs association with those contracts. DSM comprises arrangements through which a utility can demonstrably avoid or mitigate increases in gas, or fuel and purchase power costs.

In a review of a Detroit Edison general rate case, U-10202, the Michigan Court of Appeals found in *Detroit Edison Company v Public Service Commission*, 221 Mich App 370, 385; 562 NW2d 224 (1997), that DSM is directly related to electric utilities' power supplies and that MPSC-approved **DSM program costs can be collected in rates**. The court held that the MPSC could not impinge on "managerial prerogatives", but found "nothing unlawful regarding the costs associated with [Detroit Edison's] DSM program" and that the "**program is directly**

related to power supplied by Detroit Edison.” The Michigan Court of Appeals defined DSM in the context of this statutory authority, as follows:

Demand-side management is “the planning and implementation of activities designed to influence customer use of electricity in ways that will produce changes in the time pattern and magnitude of a utility’s load

* * *

The fact that MCL 460.6c; MSA 22.13(6c) provides specific authority to develop energy conservation programs for residential customers. . . . does not imply that the PSC has no authority to establish rates on the basis of similar programs for industrial and commercial customers . . . *Detroit Edison, supra.*, pp. 383, 385.

In another case, the Court of Appeals similarly found that the MPSC possessed the authority to order an electric utility to implement DSM generally and also to fund DSM in rates, as follows:

Finally, were we to reach the merits, we would hold that the PSC did not overstep the bounds of its authority [to order an electric utility to implement DSM or to fund DSM in rates]. The PSC informed Consumers of its opinion that the time was ripe to implement DSM programs and outlined the conditions under which the costs of such programs would be approved, leaving Consumers the choice of whether and how to implement such programs. The PSC’s actions are consistent with its authority to establish reasonable rates and charges and did not encroach upon the ultimate managerial authority of the utility. *ABATE v PSC*, 205 Mich App 383, 388-389; ___ NW2d ___ (1994).

In *Consumer Power v PSC*, 460 Mich 148, 158 (1999), the Michigan Supreme Court also found that, while the MPSC had no authority to require an experimental retail wheeling program, the PSC “can encourage a specific management decision through the exercise of its ratemaking power, but it may not directly order the utility to make the decision”, referencing its previous *Union Carbide* decision. The Commission can thus “encourage” such specific management

decisions, such as spending by utilities on operations and maintenance,³ or setting standards to encourage improved plant performance under a “system availability incentive provision.”⁴ The Commission could also thus implement a downward PSCR rate reduction to account for a utility’s failure to avoid or mitigate fuel, purchased power, transmission, pollution emission, and other costs by implementing appropriate energy efficiency and conservation programs.

The Ingham Circuit Court, in ruling against an equal protection challenge to a conservation program, stated:

As reasonably found by the PSC, there is an expected benefit to all . . . gas customers of lower gas prices because of lower gas consumption. The Court would note that there is also a public interest in lower consumption of natural resources. Opinion and Order dated Sept 10, 1985, Ingham Circuit Court No. 82-29260-AA, J. Stell.

The Michigan Supreme Court in *City of Detroit v PSC*, 308 Mich 706; 14 NW2d 784 (1944) emphasized that the Commission has the duty in ratemaking to balance the interest of the utility investors and ratepayers, and ensure that ratepayers are not assigned unnecessary costs. In like fashion, the mandating that ratepayers pay for avoidable energy and other costs that result from a lack of energy efficiency, conservation, and demand management programs, constitutes the placing of unnecessary costs upon ratepayers.

In conclusion, no Court has ever held that energy efficiency, conservation, or DSM-type programs are beyond the jurisdiction of the Commission, either generally or under Act 304. On the other hand, plenty of statutory authority, and Commission and Court precedent, supports the Commission’s jurisdiction in this area. Moreover, the encouragement of such programs is

³ *Attorney General v PSC #1*, 133 Mich App 719 (1984); *Attorney General v PSC #1*, 136 Mich App 52 (1984); *Attorney General v PSC*, 141 Mich App 505 (198).

⁴ *SAIP – System Availability Incentive Provisions. Attorney General v PSC #2*, 133 Mich App 790 (1984); *Attorney General v PSC #2*, 136 Mich App 515 (1984).

greatly in the public interest, as can be seen from the following passage in the MPSC Staff's brief filed in MPSC Case No. U-8528 on August 21, 1987 (p 1-2):

The Commission instituted this proceeding in order to consider on a generic basis, Michigan's utility conservation programs. Staff believes that conservation of electricity and gas is essential for the well being of the State's ratepayers and the State as a whole. Staff has extensively evaluated the conservation efforts undertaken to date by Michigan utilities as authorized by the Michigan Public Service Commission, and asserts that these programs are effective and beneficial and should be continued, and expanded in the future. Those who object to such programs, by and large, are utilizing short-sighted logic which springs no doubt from their own pecuniary interest in preserving maximum profits while ignoring the benefits to the economy and to the people of this State. Such viewpoints should be rejected as the conservation programs operating in Michigan benefit not only the direct participants but the entire populace of the State.

The Commission should therefore conclude that MichCon's plan and forecast as filed in this case is deficient and incomplete since it fails to incorporate any resource options to minimize the cost of energy and to reasonably and prudently promote energy efficiency, conservation, and the better management of energy usage loads and patterns. In fact, by this omission, MichCon's Plan and forecast preordains excessive and unreasonable (avoidable) costs and GCR rate factors.⁵ The Commission should henceforth require MichCon to file adequate plans and forecasts to incorporate these resource options in this and future cases.

In absence of any consideration by MichCon of these resource options, the Commission should also reduce MichCon's GCR rates in this case accordingly.

⁵ Witness Crandall (p 13, Exhibit MCA-5) has calculated a specific downward adjustment of \$18.4 million in this case to reflect costs that would be reduced by these programs; witness Kushler has also specifically described the economic, and avoided cost benefits arising from these programs operating around the nation (prefiled testimony and exhibits, summarized *supra*).

IV. CONCLUSION AND RELIEF

MCAAA respectfully request the ALJ and Commission to grant its Motion for Declaratory Ruling, and to reject MichCon's requested GCR rates, and to adopt MCAAA's GCR rate adjustment. MCAAA alternatively request the ALJ to make the proposed legal findings requested by MCAAA in accordance with APA Section 85 and the contested case process. MCAAA also request the ALJ to recommend that the Commission re-implement energy efficiency, conservation, and DSM programs as an important energy resource, and as a pre-requisite to any finding of reasonableness and prudence and for GCR rate recovery, under Act 304. MCAAA request such further and consistent relief which is lawful and reasonable.

Respectfully submitted,

CLARK HILL PLC

Don L. Keskey

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