

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of	)	
DETROIT THERMAL, LLC , for approval of a	)	
gas cost adjustment mechanism recovery plan	)	Case No. U-14722
and factors for the 12-month period from	)	
April 1, 2006 through March 31, 2007.	)	
_____	)	

At the May 25, 2006 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Laura Chappelle, Commissioner
Hon. Monica Martinez, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On December 28, 2005, Detroit Thermal, LLC, filed an application together with prefiled testimony and exhibits for approval of its gas cost adjustment mechanism (GCAM) plan and factors for the 12-month period ending March 31, 2007. The application supported a monthly factor of \$4.09 per thousand pounds of steam (Mlb).

At a prehearing conference on February 9, 2006, Administrative Law Judge Mark E. Cummins (ALJ) granted leave to intervene to Wayne State University (WSU), the County of Wayne (Wayne), and Henry Ford Health System (HFHS), and approved a procedural schedule. The Commission Staff (Staff) also participated in the proceedings.

Subsequently, Detroit Thermal and the Staff submitted a settlement agreement resolving the issues in this case. WSU, Wayne, and HFHS submitted statements of non-objection to approval of the settlement agreement.

According to the terms of the settlement agreement, which is appended to this order as Attachment A, Detroit Thermal should be authorized to charge a GCAM factor up to \$3.05 per Mlb beginning with the first billing cycle in April 2006 and continuing through March 2007. The settlement agreement also states that the monthly GCAM factors chart, attached as Exhibit A to the settlement agreement, should be approved and incorporated into Detroit Thermal's tariff.

The settlement agreement further provides that the initial GCAM factor of \$3.05 may be adjusted upward by a quarterly GCAM contingency mechanism during the 2006-2007 plan year. The contingency mechanism will operate on a quarterly basis during the first three quarters of the plan period and monthly during the final quarter of the plan period. The settlement agreement provides that the contingency mechanism, attached as Exhibit B to the settlement agreement, should be approved and incorporated into Detroit Thermal's tariff.¹

Detroit Thermal and the Staff believe that the settlement agreement will promote the public interest, WSU, Wayne, and HFHS do not object to its approval, and the Staff has certified that the settlement agreement is reasonable and in the public interest.

The Commission is persuaded that granting the relief recommended in the settlement agreement is in the public interest provided that one minor revision is made. It is axiomatic that, in the absence of statutory authority, the Commission cannot approve implementation of the

¹The Commission notes that the GMAC contingency mechanism does not contain a ceiling price. The absence of a ceiling price in the contingency mechanism is acceptable because of the unique circumstances of Detroit Thermal's situation. Detroit Thermal's GMAC does not permit Detroit Thermal to recover any plan year undercollections, which is different from the power supply and gas cost recovery clauses allowed for electric and gas utilities by 1982 PA 304, as amended, MCL 460.6h *et seq.*

GCAM on a retroactive basis. Paragraph 3(a) of the settlement agreement, which requests that the Commission authorize Detroit Thermal to implement the GCAM “beginning on the date of the Commission order approving this Settlement Agreement” would constitute a technical violation of the prohibition against retroactive ratemaking and cannot be approved. The earliest date that the Commission may make the rate change effective is for service rendered on and after the day following issuance of the order. After the initial billing period, Detroit Thermal may implement the increases permitted by the GCAM factor and quarterly GCAM contingency mechanism on a bills rendered basis. Subject to this revision, the Commission finds that the settlement agreement should be approved.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; 1939 PA 3, as amended, MCL 460.1 *et seq.*; 1969 PA 306, as amended, MCL 24.20 1 *et seq.*; and the Commission’s Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*
- b. As revised by this order, the settlement agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that:

- A. As revised by this order, the settlement agreement, appended to this order as Attachment A, is approved.
- B. Detroit Thermal, LLC, is authorized to implement the \$3.05 per thousand pounds of steam gas cost adjustment mechanism factor and contingency mechanism effective for service rendered on and after the day following issuance of the order. After the initial billing period, Detroit

Thermal, LLC, shall implement any increases required by the gas cost adjustment mechanism factor and quarterly gas cost adjustment mechanism contingency mechanism on a bills rendered basis.

C. Detroit Thermal, LLC, shall incorporate the monthly gas cost adjustment mechanism factors chart and contingency mechanism attached as Exhibits A and B to the settlement agreement into its tariff.

D. Detroit Thermal, LLC, shall file, within 30 days, tariff sheets reflecting the approvals granted above, consistent with the terms of the settlement agreement.

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/ J. Peter Lark
Chairman

(S E A L)

/s/ Laura Chappelle
Commissioner

/s/ Monica Martinez
Commissioner

By its action of May 25, 2006.

/s/ Mary Jo Kunkle
Its Executive Secretary

Thermal, LLC, shall implement any increases required by the gas cost adjustment mechanism factor and quarterly gas cost adjustment mechanism contingency mechanism on a bills rendered basis.

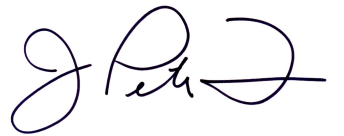
C. Detroit Thermal, LLC, shall incorporate the monthly gas cost adjustment mechanism factors chart and contingency mechanism attached as Exhibits A and B to the settlement agreement into its tariff.

D. Detroit Thermal, LLC, shall file, within 30 days, tariff sheets reflecting the approvals granted above, consistent with the terms of the settlement agreement.

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



Chairman



Commissioner



Commissioner

By its action of May 25, 2006.



Its Executive Secretary

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Detroit	)	
Thermal, LLC for approval of a Gas	)	Case No. U-14722
Cost Adjustment Mechanism Recovery	)	
Plan and Factors for the 12-month	)	
period from April 1, 2006 through	)	
<u>March 31, 2007</u>	)	

SETTLEMENT AGREEMENT

As provided in Section 78 of the Administrative Procedures Act of 1969 (“APA”), as amended, MCL 24.278, and Rule 333 of the Commission’s Rules of Practice and Procedure, 2000 AC, R 460.17333, and supported by the Commission’s own policy towards settlement of contested issues, Detroit Thermal, LLC, (“Detroit Thermal”), Wayne State University, (“WSU”), The County of Wayne, (Wayne County”), and Henry Ford Health System (“HFHS”), and the Michigan Public Service Commission Staff (“Staff”) (hereafter, collectively referred to as the “Parties”) have resolved through settlement discussions the issues before the Commission regarding Detroit Thermal’s Gas Cost Adjustment Mechanism (“GCAM”) Factors and Quarterly GCAM Adjustment (“Contingency”) Mechanism for the twelve-month period ending March 31, 2007 and agree as follows:

1. As required by the Michigan Public Service Commission’s (“MPSC” or “Commission”) Order in Case No. U-13691, on December 28, 2005 Detroit Thermal filed the testimony and exhibit of its witness Mark A. Butta in support of its application for approval of a 12 month GCAM Plan ending March 31, 2007, a maximum GCAM Factor, and a contingent factor matrix.

2. On February 9, 2006, a prehearing conference was held. Administrative Law Judge Mark A. Cummins granted leave to intervene to WSU, Wayne County and HFHS; he also approved a procedural schedule. The Commission Staff (Staff) also participated.

3. Subsequent to the prehearing conference, the parties engaged in settlement discussions and have agreed as follows:

a. Detroit Thermal should be authorized to implement a GCAM Factor of \$3.05 per thousand pounds of steam ("Mlb.") for the twelve-month plan period beginning on the date of the Commission order approving this Settlement Agreement and continuing through March 31, 2007.

b. The Monthly GCAM Factors Chart, attached as Exhibit A to this Settlement Agreement, contemporaneous with Commission approval of this Settlement Agreement, should be implemented and incorporated into Detroit Thermal's tariff.

c. Detroit Thermal should be authorized to adjust upward the GCAM factor of \$3.05 per Mlb. as of the beginning of the second and third quarters of the plan period and monthly during the final quarter of the plan period by implementation of the Contingency Mechanism as described in Exhibit B.

d. The Contingency Mechanism attached as Exhibit B to this Settlement Agreement, contemporaneous with Commission approval of this Settlement Agreement, should be implemented and incorporated into Detroit Thermal's tariff.

e. All issues relating to MPSC Case No. U-14722 are resolved by this settlement agreement without prejudicing any parties rights in regard to any

subsequent reconciliation proceedings. Any party may support or challenge the reasonableness and prudence of Detroit Thermal's actual gas supply costs in Detroit Thermal's 2006-2007 GCAM reconciliation case.

4. The parties believe that this settlement agreement will promote the public interest and will aid in the expeditious conclusion of this case.

5. This Settlement Agreement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are considered privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, the parties to the settlement shall not make any reference to, or use this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position in any other case or proceeding; provided however, such references may be made to enforce or implement the provisions of this Settlement Agreement.

6. This Settlement Agreement is based on the facts and circumstances of this case and is intended as the final disposition of Case No. U-14722. If the Commission approves this Settlement Agreement without modification, the undersigned parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise stated in this Agreement, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new or different positions on similar issues in other administrative proceedings, or appeals.

7. This Settlement Agreement is not severable. Each provision of this Settlement Agreement is dependant upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement

constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of this Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall not operate to prejudice the pre-negotiation positions of any party.

8. The Staff certifies this Settlement Agreement is reasonable and in the public interest.

9. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969, MCL 24.281 if the Commission approves this Settlement Agreement without modification.

WHEREFORE, the undersigned parties respectfully request that the Commission approve this Settlement Agreement without modification, and make it effective, in accordance with its terms, by final order.

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

By: _____
Thomas E. McClear (P25585)
Assistant Attorney General
Public Service Division
6545 Mercantile Way Suite 15
Lansing, MI 48911

Dated: May 12, 2006

DETROIT THERMAL, LLC

By: _____
Arthur J. LeVasseur (P29394)
Matthew M. Peck (P66361)
Fischer, Franklin & Ford
Attorneys for Detroit Thermal, LLC
500 Griswold St. Suite 3500
Detroit, MI 48226-3808

Dated: May 12, 2006

EXHIBIT A

<i>Billing Month</i>	<i>Maximum GCAM Factor (\$/Mlb)</i>	<i>Billed GCAM Factor (\$/Mlb)</i>
<i>April</i>		
<i>May</i>	\$3.05	
<i>June</i>	\$3.05	
<i>July</i>		
<i>August</i>		
<i>September</i>		
<i>October</i>		
<i>November</i>		
<i>December</i>		
<i>January</i>		
<i>February</i>		
<i>March</i>		

Quarterly GCAM Adjustment (Contingency) Mechanism

The GCAM factors listed in the table above may be increased on a quarterly basis and on a monthly basis during the last quarter, for the remaining quarters of the GCAM Plan year, contingent upon NYMEX futures prices for natural gas increasing to a level above that which was incorporated into the calculation of the GCAM Factor ceiling prices. At least fifteen days prior to the beginning of each quarter, and prior to the beginning of each month during the last quarter, the Company shall file a notice with the revised GCAM Factors with the Michigan Public Service Commission if NYMEX futures prices increase to a level allowing for the implementation of a higher contingent GCAM price ceiling. The filing shall include all supporting documents necessary to verify the new price ceiling, including the calculation of the five-day average of the NYMEX strip for the remaining months of the GCAM period, and a copy of the published NYMEX futures price sheets for the first five trading days of the month, such sheet being an authoritative source used by the gas industry. The filing shall be incorporated into the GCAM Plan Docket. The following Contingent Gas Cost Recovery Factors are authorized for the plan period:

	1 st Quarter Apr - Mar	2 nd Quarter Jul - Mar	3 rd Quarter Oct - Mar	4 th Quarter Jan - Mar	4 th Quarter Feb- Mar	4 th Quarter Mar
Plan NYMEX (X_{plan})	\$8.77	\$9.34	\$10.37	\$11.41	\$11.38	\$11.28
NYMEX Increases	Contingent GCAM Price Ceiling (Rate per Mlb)					
$X - X_{plan} = 0.00$	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05	\$3.05
$X - X_{plan} = 0.20$	\$3.22	\$3.22	\$3.22	\$3.22	\$3.22	\$3.22
$X - X_{plan} \leq 0.40$	\$3.39	\$3.39	\$3.39	\$3.39	\$3.39	\$3.39
$X - X_{plan} \leq 0.60$	\$3.56	\$3.56	\$3.56	\$3.56	\$3.56	\$3.56
$X - X_{plan} \leq 0.80$	\$3.74	\$3.74	\$3.74	\$3.74	\$3.74	\$3.74
$X - X_{plan} \leq 1.00$	\$3.91	\$3.91	\$3.91	\$3.91	\$3.91	\$3.91
$X - X_{plan} \leq 1.20$	\$4.08	\$4.08	\$4.08	\$4.08	\$4.08	\$4.08
$X - X_{plan} \leq 1.40$	\$4.25	\$4.25	\$4.25	\$4.25	\$4.25	\$4.25
$X - X_{plan} \leq 1.60$	\$4.42	\$4.42	\$4.42	\$4.42	\$4.42	\$4.42
$X - X_{plan} \leq 1.80$	\$4.59	\$4.59	\$4.59	\$4.59	\$4.59	\$4.59
$X - X_{plan} \leq 2.00$	\$4.76	\$4.76	\$4.76	\$4.76	\$4.76	\$4.76
$X - X_{plan} \leq 2.20$	\$4.94	\$4.94	\$4.94	\$4.94	\$4.94	\$4.94
$X - X_{plan} \leq 2.40$	\$5.11	\$5.11	\$5.11	\$5.11	\$5.11	\$5.11
$X - X_{plan} \leq 2.60$	\$5.28	\$5.28	\$5.28	\$5.28	\$5.28	\$5.28
$X - X_{plan} \leq 2.80$	\$5.45	\$5.45	\$5.45	\$5.45	\$5.45	\$5.45
$X - X_{plan} \leq 3.00$	\$5.62	\$5.62	\$5.62	\$5.62	\$5.62	\$5.62
$X - X_{plan} \leq 3.20$	\$5.79	\$5.79	\$5.79	\$5.79	\$5.79	\$5.79
$X - X_{plan} \leq 3.40$	\$5.96	\$5.96	\$5.96	\$5.96	\$5.96	\$5.96
$X - X_{plan} \leq 3.60$	\$6.14	\$6.14	\$6.14	\$6.14	\$6.14	\$6.14
$X - X_{plan} \leq 3.80$	\$6.31	\$6.31	\$6.31	\$6.31	\$6.31	\$6.31
$X - X_{plan} \leq 4.00$	\$6.48	\$6.48	\$6.48	\$6.48	\$6.48	\$6.48
$X - X_{plan} \leq 4.20$	\$6.65	\$6.65	\$6.65	\$6.65	\$6.65	\$6.65
$X - X_{plan} \leq 4.40$	\$6.82	\$6.82	\$6.82	\$6.82	\$6.82	\$6.82
$X - X_{plan} \leq 4.60$	\$6.99	\$6.99	\$6.99	\$6.99	\$6.99	\$6.99
$X - X_{plan} \leq 4.80$	\$7.16	\$7.16	\$7.16	\$7.16	\$7.16	\$7.16
$X - X_{plan} \leq 5.00$	\$7.34	\$7.34	\$7.34	\$7.34	\$7.34	\$7.34
$X - X_{plan} \leq 5.20$	\$7.51	\$7.51	\$7.51	\$7.51	\$7.51	\$7.51
$X - X_{plan} \leq 5.40$	\$7.68	\$7.68	\$7.68	\$7.68	\$7.68	\$7.68
$X - X_{plan} \leq 5.60$	\$7.85	\$7.85	\$7.85	\$7.85	\$7.85	\$7.85
$X - X_{plan} \leq 5.80$	\$8.02	\$8.02	\$8.02	\$8.02	\$8.02	\$8.02
$X - X_{plan} \leq 6.00$	\$8.19	\$8.19	\$8.19	\$8.19	\$8.19	\$8.19
$X - X_{plan} > 6.00$	+ \$0.17 for every additional \$0.20 increase in $X - X_{plan}$	+ \$0.17 for every additional \$0.20 increase in $X - X_{plan}$	+ \$0.17 for every additional \$0.20 increase in $X - X_{plan}$	+ \$0.17 for every additional \$0.20 increase in $X - X_{plan}$	+ \$0.17 for every additional \$0.20 increase in $X - X_{plan}$	+ \$0.17 for every additional \$0.20 increase in $X - X_{plan}$

- NYMEX Increase = $(X - X_{plan})$
- X = the simple average of the actual NYMEX monthly natural gas futures contract prices, (\$/MMBtu), for the remaining months of the GCAM Plan period, (averaged over the first five trading days of the month prior to implementation).
- X_{plan} = the NYMEX average incorporated in the calculation of the base GCAM factor, as delineated in the above chart.

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-14722

County of Ingham)

Patricia A. Fronta being duly sworn, deposes and says that on May 25, 2006, A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Patricia
A. Fronta

Digitally signed by Patricia
A. Fronta
DN: CN = Patricia A.
Fronta, C = US, O = Case
Management, OU = MPSC
Date: 2006.05.26 14:39:51
-04'00'

Patricia Fronta

Subscribed and sworn to before me
this 25th day of May 2006

Gloria Pearl
Jones

Digitally signed by Gloria Pearl
Jones
DN: CN = Gloria Pearl Jones, C =
US, O = DLEG/MPSC, OU =
Executive Secretary
Date: 2006.05.26 13:30:38 -04'00'

Notary Public, Eaton County, Michigan
Acting in Ingham, County, Michigan
My Commission expires June 5, 2007

SERVICE LIST FOR DOCKET # U – 14722
DATE OF PREPARATION: 05/26/2006

CASE #

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