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June 13, 2006

Ms. Mary Jo Kunkle  
Executive Secretary  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, Michigan 48909-7721

Re: In the Matter of the Application of Michigan Consolidated Gas Company  
for approval of a Gas Cost Recovery Plan, 5-year Forecast and Monthly  
GCR Factor for the 12 months ending March 31, 2007  
MPSC Case No. U-14717

Dear Ms. Kunkle:

Attached for electronic filing is Michigan Consolidated Gas Company's Motion to Strike  
Testimony and Exhibits of Messrs. Kushler and Crandall Filed on Behalf of MCAAA. Also  
attached is a Proof of Service.

Very truly yours,

**Richard P.  
Middleton**

Digitally signed by Richard P.  
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**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 approval of a Gas Cost Recovery Plan, )      | Case No. U-14717 |
| 5-year Forecast and Monthly GCR Factor )         |                  |
| <u>for the 12 months ending March 31, 2007 )</u> |                  |

**MICHIGAN CONSOLIDATED GAS COMPANY’S**  
**MOTION TO STRIKE TESTIMONY AND EXHIBITS OF MESSRS. KUSHLER**  
**AND CRANDALL FILED ON BEHALF OF MCAAA**

Pursuant to Rule 335, MAC R 460.17335 of the Commission’s Rules of Practice and Procedure, the Michigan Court Rules and the Michigan Administrative Procedures Act MICHIGAN CONSOLIDATED GAS COMPANY (“MichCon”) moves to strike all of the prefiled testimony and exhibits of Martin G. Kushler and Geoffrey C. Crandall filed on behalf of Michigan Community Action Agency Association (“MCAAA”). In support of its motion, MichCon states as follows:

**KUSHLER TESTIMONY AND EXHIBITS**

MichCon moves to strike all of the testimony and exhibits of Martin G. Kushler filed on behalf of the MCAAA for the reasons that follow:

1. Mr. Kushler in his prefiled testimony states that the “purpose of my testimony is to provide the Commission with information about the demonstrated effectiveness of energy efficiency as a low-cost natural gas resource that is being widely used in other states to help lower the total costs of meeting their natural gas system needs and provide significant dollar savings to utility customers.” (Testimony of Kushler p. 2) Mr. Kushler is attempting to improperly insert a discussion regarding natural gas conservation programs and processes in this GCR plan case. Mr. Kushler proposes no specific programs nor explains how these unknown

programs would be funded. This proceeding was initiated only for the purpose of evaluating MichCon's 2006 GCR Plan. The Company's Gas Cost Recovery Clause:

... 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.  
(MCL 460.6h(1)(b))

Mr. Kushler's testimony, simply stated, is a request that the Commission establish more regulatory programs unrelated to the statutory purpose of these proceedings. Mr. Kushler's testimony is not relevant to the question of whether MichCon's 2006 GCR Plan is reasonable and prudent because it will have no tendency to make known the existence of any fact that is of consequence to the determination of the reasonableness and prudence of MichCon's gas cost recovery plan and proposed GCR factors. This irrelevant evidence is inadmissible. (MRE 401,<sup>1</sup> 402<sup>2</sup>)

2. MCAAA has previously offered "energy efficiency" testimony in the context of Act 304 gas cost recovery proceedings. It was determined in each case that evidence regarding energy efficiency measures that the utility might offer were not relevant in an Act 304 case. In MPSC Case No. U-13060, the Commission appropriately concluded that it would not consider energy efficiency issues in a GCR plan proceeding. The Commission ruled that similar material was properly struck by the Administrative Law Judge because it is well established that the Commission has no authority to force a utility to engage in energy efficiency and conservation programs. (MPSC Case No. U-13060 Order dated March 12, 2003, pp. 31-32. Accord Detroit

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<sup>1</sup> MRE Rule 401 provides:

"Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."

<sup>2</sup> MRE Rule 402 relevantly provides:

"Evidence which is not relevant is not admissible."

Edison v. Public Service Commission, 221 Mich App 370 (1997)) The “energy efficiency” testimony and exhibits proposed by Mr. Kushler in this proceeding are not materially different from those which the Commission agreed should be stricken in Case No. U-13060. In addition, nearly identical testimony offered by MCAAA in Case No. U-14401 was also stricken as irrelevant to an Act 304 proceeding. (Case No. U-14401, T 276) Therefore, Mr. Kushler’s testimony and exhibits should be stricken in their entirety.<sup>3</sup>

3. The primary basis for Mr. Kushler’s testimony is a study which he co-authored with two (2) other persons. Clearly, since Mr. Kushler did not prepare the entire study (and MCAAA does not offer the testimony of the two (2) other co-authors) this study constitutes impermissible hearsay<sup>4</sup> evidence and should not be admitted on this basis as well. (MRE 801) Also, the risk of unfair prejudice, confusion of the issues, undue delay and waste of time under MRE 403 outweighs the probative value of this 50+ page single-spaced hearsay study. Further, MCAAA has not laid any foundation whatsoever to establish that this hearsay study’s conclusions and the techniques utilized in arriving at them are recognized by disinterested and impartial experts. Thus, aside from their relevance and hearsay problems, MCAAA has not established that the studies are accurate or reliable.

4. Finally, the Commission has no authority to issue an order mandating that MichCon implement conservation or demand side management programs, as recommended by Mr. Kushler, and MichCon has no intention of voluntarily implementing one outside of its next

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<sup>3</sup> Mr. Kushler’s proposed exhibits include his resume’ and a hearsay study.

<sup>4</sup> MRE Rule 801(c) defines hearsay as:

“Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered to prove the truth of the matter asserted.”

general gas rate case. Detroit Edison v. Public Service Commission, 221 Mich App 370 (1997)<sup>5</sup>

Thus, Mr. Kushler's program preferences are clearly irrelevant.

### **CRANDALL TESTIMONY AND EXHIBITS**

MichCon moves to strike all of the testimony (except pages 8, lines 8-22, and page 9, lines 1-5) and exhibits of Geoffrey C. Crandall filed on behalf of the MCAAA for the following reasons:

1. Mr. Crandall's testimony proposes to criticize MichCon's 5-year GCR plan because "MichCon's proposed GCR plan is 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." (Crandall Testimony p. 2)

2. Despite the express purpose of an Act 304 GCR plan proceeding, the Commission's prior admonitions to address these matters elsewhere,<sup>6</sup> and Detroit Edison v. PSC's holding that utilities cannot be mandated to implement demand side management programs, Mr. Crandall illogically concludes that this Act 304 PSCR proceeding is the appropriate place to address those issues. Mr. Crandall makes this assertion based principally on a March 29, 1990 Order in Case No. U-9172 that addressed the Commission's now abandoned Integrated Resource Planning ("IRP") process.<sup>7</sup> (Crandall Testimony p. 4) Mr. Crandall fails, however, to mention that the IRP process on which he relies was abandoned by the Commission,

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<sup>5</sup> "The PSC decided the level of the program, eliminated certain aspects of the program proposed by Detroit Edison, and decided the savings that should be produced by the program. These were managerial decisions that exceeded the PSC's authority... The PSC here exceeded its ratemaking authority by, in effect, requiring Detroit Edison's management to adopt the DSM program the PSC thought best." Detroit Edison v. PSC, pp.387-388.

<sup>6</sup> See March 12, 2003 MPSC Order Case No. U-13060, pp. 31-32.

<sup>7</sup> Mr. Crandall also briefly engages in a similarly irrelevant discussion of Section 14 of 1929 PA 9 which does not apply to an Act 304 proceeding. (Crandall Testimony pp. 7-8)

in that same docket, in 1997 due to the advent of Electric Choice.<sup>8</sup> (See MPSC Case No. U-9172 Order dated January 28, 1997 p. 2) In addition, energy efficiency and conservation programs are specifically addressed in an entirely separate set of statutory provisions set forth in MCL 460.6c. MCL 460.6c(2) expressly requires that recovery of costs for energy efficiency and conservation programs “**shall be included only in general utility rates.**” (emphasis added) Thus, a GCR Plan proceeding is *not* the proper place to consider such matters. Furthermore, the Commission has instituted other active proceedings to address demand side management and energy efficiency. (See MPSC Case No. U-13129 “In the matter, on the Commission’s own motion, regarding administration and operation of the Low-Income and Energy Efficiency Fund”; MPSC Case No. U-14667 “In the Matter, on the Commission’s Own Motion, Directing the Commission Staff to Explore Options for Energy Efficiency Programs in Michigan for Customers of Electric and Gas Utilities”) There is simply no merit in Mr. Crandall’s conclusion that this GCR case is the appropriate place to address his concerns.

2. Mr. Crandall’s testimony, simply stated, is a request that the Commission establish more regulatory programs unrelated to the statutory purpose of these proceedings. Mr. Crandall’s testimony is not relevant to the question of whether MichCon’s 2006 GCR Plan is reasonable and prudent. Mr. Crandall’s testimony and exhibits have no tendency to make the existence of any fact that is of consequence to these proceedings more probable or less probable than it would be without his testimony. This irrelevant evidence is inadmissible. (MRE 401, 402)

3. In addition, MichCon submits that Mr. Crandall’s testimony is irrelevant to these proceedings because Mr. Crandall’s testimony is merely repetitive. Repetitive evidence is not

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<sup>8</sup> The Commission stated “[i]n recognition of its goal of increased competition in Michigan’s electric industry, the Commission concludes that Consumers should no longer be required to file integrated resource plans. Public review of and comment on integrated resource plans are not consistent with the competitive electric industry environment envisioned for Michigan. Such plans might provide information that could be useful to potential competitors and thus create a competitive disadvantage for Consumers.” (MPSC Case No. U-9172, Order dated January 28, 1997, p. 2)

relevant. (MRE 401, 402) Mr. Crandall relies on the testimony of Mr. Kushler as well as the hearsay study offered by Mr. Kushler as an exhibit. (Crandall Testimony p. 12) In sum, Mr. Crandall's proposed testimony and exhibits are duplicative assertions that MichCon should be required to implement some undetermined demand side management programs. Finally, even if arguably relevant, the probative value of Mr. Crandall's testimony is substantially outweighed by the danger of unfair prejudice, confusion of the issues, undue delay, waste of time and needless presentation of cumulative evidence and should therefore be stricken. (MRE 403)

4. Of course, MPSC Case No. U-13060 Order dated March 12, 2003 (pp. 31-32) and Detroit Edison v. Public Service Commission, 221 Mich App 370 (1997) also operate to render Mr. Crandall's proposed testimony inadmissible in this Act 304 proceeding. The "energy efficiency" testimony and exhibits proposed by Mr. Crandall in this proceeding are not materially different from those which the Commission agreed should be stricken in Case No. U-13060 and Detroit Edison v. PSC, conclusively establishes that the Commission has no authority to mandate that a utility implement a demand side management program. Therefore, Mr. Crandall's testimony and exhibits should be stricken in their entirety.<sup>9</sup>

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<sup>9</sup> One of Mr. Crandall's two proposed exhibits is his resume'.

WHEREFORE, Michigan Consolidated Gas Company respectfully requests that the Presiding Officer strike the testimony and exhibits of Messrs. Kushler and Crandall in their entirety.

Respectfully submitted:

MICHIGAN CONSOLIDATED GAS COMPANY

**Richard P.  
Middleton**

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Dated: June 13, 2006

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the Application of )  
Michigan Consolidated Gas Company )  
for approval of a Gas Cost Recovery Plan, )  
5-year Forecast and Monthly GCR Factor )  
for the 12 months ending March 31, 2007 )

Case No. U-14717

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF WAYNE )

ESTELLA R. BRANSON, being duly sworn, deposes and says that on the 13<sup>th</sup> day of June, 2006, she served a copy of Michigan Consolidated Gas Company's Motion to Strike Testimony and Exhibits of Messrs. Kushler and Crandall Filed on Behalf of MCAAA to be served upon the parties on the attached service list via electronic mail.

Estella R. Branson

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ESTELLA R. BRANSON

Subscribed and sworn to before  
me this 13<sup>th</sup> day of June, 2006

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**SERVICE LIST**  
**MPSC CASE NO: U-14717**  
**April 2006**

**ADMINISTRATIVE LAW JUDGE**

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