

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of the )  
ASSOCIATION OF BUSINESSES ADVOCATING )  
TARIFF EQUITY for rulemaking or other )  
appropriate relief. )

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Case No. U-7991

At a session of the Michigan Public Service Commission held at its offices in the city of Lansing, Michigan, on the 17th day of December, 1986.

PRESENT: Hon. William E. Long, Chairperson  
Hon. Edwyna G. Anderson, Commissioner  
Hon. Matthew E. McLogan, Commissioner

ORDER DENYING PETITION FOR RULEMAKING

On July 23, 1984, the Association of Businesses Advocating Tariff Equity (ABATE) filed an application for rulemaking or other appropriate relief concerning the provision of natural gas transportation service by local distribution companies (LDCs) for industrial end-user companies that have purchased natural gas directly from producers. On September 26, 1984, the Commission issued an Order Initiating Inquiry in this docket citing its statutory authority for regulating the rates charged for the transportation of natural gas under 1929 PA 9 (Act 9).

The Commission commenced a generic hearing to address specific issues for the purpose of developing a policy on the provision of transportation service by LDCs. The Commission provided that Consumers Power Company (Consumers) and Michigan Consolidated Gas Company (Mich Con), the state's largest LDCs, would be

required to file prepared testimony addressing the issues involved. All other LDCs and pipeline companies were given an opportunity to file prepared testimony. Additionally, all LDCs, pipeline companies and interested persons were given an opportunity to submit written comments, briefs and reply briefs. Administrative Law Judge George Schankler (ALJ) was assigned to preside over this inquiry.

At the initial hearing on November 28, 1985, the testimony filed by Consumers and Mich Con was presented, and the witnesses were questioned by James Woodruff, Director of the Commission's Gas Division. Testimony by other parties was filed on January 14, 1985 and cross-examination by Mr. Woodruff was conducted on February 11 and 12, 1985; Southeastern Michigan Gas Company (Southeastern), Michigan Gas Utilities Company (MGU) and ABATE presented testimony on those dates. A total of ten witnesses testified and six exhibits were received. Additionally, written comments were filed by the Upjohn Company, Kimball Resources, and Wisconsin Public Service Corporation. Briefs were filed by Mich Con, ABATE, Southeastern, Attorney General Frank J. Kelley (Attorney General), MGU and Consumers. Reply briefs were filed by ABATE, MGU, Southeastern, Mich Con and Consumers.

On February 11, 1986, the Commission, by minute action, requested from the parties further comments in the form of updated briefs regarding changes that had occurred with respect to gas transportation after the close of the record. The Commission was specifically referring to orders of the Federal Energy Regulatory Commission (FERC). On May 30, 1985, FERC issued its Notice of Proposed Rulemaking (NOPR) in Docket No. RM85-1-000. By this NOPR, FERC initiated a rulemaking procedure intended to radically alter the structure of the natural gas business in the United States, primarily with respect to transportation of

gas by pipelines. The NOPR proposed abandonment of most of the long-existing ground rules governing the transportation of gas by interstate pipelines. On October 9, 1985, FERC issued Order No. 436, which adopted some parts of the NOPR, modified others and postponed decisions on still others. Also, in Order No. 436, FERC established a deadline of December 15, 1985 for interstate pipelines to decide whether or not to open their systems to non-discriminatory transportation and to allow LDC customers to reduce contract demands. Further, on December 12, 1985, FERC issued a modification of Order No. 436, known as Order No. 436-A, which postponed the December 15, 1985 deadline to February 15, 1986.

In light of Orders Nos. 436 and 436-A, the Commission deemed it appropriate to provide an opportunity for all interested parties to file additional comments in order to address new issues spawned by the NOPR and its aftermath. The Commission allowed the parties until April 15, 1986 to file additional comments in order to provide an opportunity to determine the effects of the implementation of Order No. 436. Additional comments were filed by the Attorney General, MGU, Consumers, Mich Con, ABATE and Southeastern. Additionally, ABATE filed reply comments even though the Commission's minute action did not expressly provide for replies.

FERC has continued to delay the effective date for portions of the transportation section of Order No. 436. FERC's current deadline for most of the pipelines that serve Michigan is January 1, 1987.

On June 6, 1986, the Commission Staff (Staff) completed a "Report on Natural Gas Transportation in Michigan." This report contains a summary of the Staff's perceptions of past, present and future natural gas transportation activities in Michigan. The report also reviewed the appropriateness of Case No.

U-7991 as a vehicle to devise transportation rates and tariffs. The Staff's Report and Recommendation to the Commission rejected Case No. U-7991 as an appropriate forum for the development of transportation rates and tariffs and rejected the administrative rulemaking process as too cumbersome and inflexible for this purpose.

The Staff also questioned the continued regulation of gas transportation under Act 9 and concluded that Act 9 does not enable the Commission to fashion the comprehensive regulatory program needed to deal with transportation-related issues. The Staff report found that 1919 PA 419 and 1939 PA 3 (Acts 419 and 3, respectively) provide the Commission with "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." Based upon this broad grant of regulatory authority, the Staff believes that the Commission should utilize its power under Acts 419 and 3 to develop a system to deal with the many interrelated problems associated with gas transportation.

The Staff's June 6, 1986 report was widely circulated to all known interested parties for the purpose of soliciting comments. On August 26, 1986, the Commission held a study session on gas transportation. Among other things, the Commission provided the Staff with some general policy direction on the issue of transportation. The general consensus at the study session was that the Commission desired to take a more active role in transportation. The Commission expressed a desire not to wait until FERC's Order No. 436 issues are settled with pipeline companies serving Michigan before addressing the intrastate transportation issues. Additionally, the Commission also directed the Staff to continue to work with interested parties to identify issues that the Commission must

address in order to establish a natural gas transportation policy in Michigan.

On September 29, 1986, the Staff met with approximately 25 organizations to discuss both procedural and substantive issues related to the Commission's establishment of a new transportation policy and to determine the most efficient method for the Commission to move from its current regulation under Act 9 to transportation approved under the Commission's general regulatory authority pursuant to Acts 419 and 3.

On November 13, 1986, the Staff issued a Report and Recommendation on the end-use transportation issue. The report indicated that there are currently approximately 800 contracts on file with the Commission that provide for end-user gas transportation by LDCs pursuant to Act 9. The Staff estimated that if current transportation programs are not interrupted, Michigan LDCs could transport over 130 billion cubic feet (Bcf) of gas to end-users during 1987. This would represent 20% of the 1985 gas sales level.

Given the uncertain outcome of FERC's implementation of Order No. 436, the Staff recommended that the Commission begin a formal process to address specific LDC transportation rates and conditions of natural gas transportation service. The Staff noted a need for the resolution of these issues in the near future. Additionally, the Staff pointed out that the various interested parties have reached "a point of minimal productivity" in discussing transportation issues on an informal basis. It was the Staff's recommendation that the contested case process should be utilized to reduce the number of issues to a manageable level and to allow the Commission to decide the issues on an orderly, case-by-case basis. To that end, the Staff recommended that the Commission issue an Order and Notice of Hearing commencing a contested case proceeding for Mich Con for the purpose of developing appropriate rates, charges and conditions of service

relating to the provision of gas transportation service. By a separate order issued today in Case No. U-8635, the Commission has followed the Staff's recommendation and has ordered that a contested case hearing be initiated for Mich Con.

Given the Commission's decision to utilize the contested case process for resolution of issues related to gas transportation service, the Commission finds that further proceedings in this docket are not required. The Administrative Procedures Act affords all interested parties the full panoply of procedural rights not present in a legislative investigation. Additionally, the case-by-case approach will allow the Commission flexibility to address issues that may be unique to each of the LDCs. Under these circumstances, the Commission finds that no further review of the legislative inquiry in this docket is appropriate and that the docket should be closed.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCLA 462.2 et seq.; 1919 PA 419, as amended, MCLA 460.51 et seq.; 1929 PA 9, as amended, MCLA 483.101 et seq.; 1939 PA 3, as amended, MCLA 460.1 et seq.; 1969 PA 306, as amended, MCLA 24.201 et seq.; and the Commission's Rules of Practice and Procedure, 1979 Administrative Code, R 460.11 et seq.

b. The investigation of gas transportation initiated by the filing of the Petition for Rulemaking by the Association of Businesses Advocating Tariff Equity should be closed.

c. The Petition for Rulemaking filed on July 23, 1984 by the Association of Businesses Advocating Tariff Equity should be denied as rulemaking is not an appropriate method for developing a new gas transportation policy.

d. The new gas transportation policy should be developed through a case-by-case approach that will allow the Commission flexibility to address issues that are unique to each gas utility.

THEREFORE, IT IS ORDERED that:

A. The investigation of gas transportation initiated by the filing of the Petition for Rulemaking by the Association of Businesses Advocating Tariff Equity on July 23, 1984 is closed.

B. The Petition for Rulemaking filed on July 23, 1984 by the Association of Businesses Advocating Tariff Equity is denied.

The Commission specifically reserves jurisdiction of the matters herein contained and the authority to issue such further order or orders as the facts and circumstances may require.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ William E. Long  
Chairperson

( S E A L )

/s/ Edwyna G. Anderson  
Commissioner

/s/ Matthew E. McLogan  
Commissioner

By the Commission and pursuant to  
its action of December 17, 1986.

/s/ Bruce R. Maughan  
Its Secretary

Michigan Department of Commerce  
Public Service Commission

INTEROFFICE COMMUNICATION

To: Chairperson Long  
Commissioner Anderson  
Commissioner McLogan

Date: 1/31/86

From: Lana Shafer

Subject: Case No. U-7991 Application for Gas Transportation Rulemaking

On September 26, 1984, in response to an application for rulemaking by the Association of Businesses Advocating Tariff Equity (ABATE), the Commission initiated hearings in the nature of a legislative inquiry for the purpose of determining whether the Commission should develop, by rulemaking or otherwise, a policy governing the provision of transportation service by gas distribution utilities. Pursuant to that order, three days of public hearings were held during which testimony was received from ten witnesses who were questioned by the Staff. By his report to the Commission of March 6, 1985, Administrative Law Judge George Schankler (ALJ) transmitted the hearing record to the Commission. Following the established schedule, briefs were filed by Michigan Consolidated Gas Company, ABATE, Southeastern Michigan Gas Company, Attorney General, Michigan Gas Utilities Company and Consumers Power Company on March 13, 1985 and reply briefs were filed by Michigan Consolidated Gas Company, Consumers Power Company, ABATE, Michigan Gas Utilities Company and Southeastern Michigan Gas Company on March 27, 1985.

Before the Commission had an opportunity to consider the information obtained in this fact-finding inquiry or to deal with the gas transportation issues raised, the Federal Energy Regulatory Commission (FERC) issued its May 30, 1985 Notice of Proposed Rulemaking (NOPR) in Docket No. RM85-1-000. By this NOPR, FERC initiated a rulemaking procedure intended to radically alter the structure of the natural gas business in the United States, especially with respect to the transportation of gas by pipelines. In essence, the NOPR proposed throwing out most of the long-existing premises and ground rules with regard to the transportation of gas by interstate pipelines. On October 9, 1985, FERC issued Order No. 436 adopting some parts of the NOPR, modifying others and postponing decisions on still others. Further, on December 12, 1985, FERC issued a modification of Order No. 436 known as Order No. 436-A. In Order No. 436, FERC had established a deadline of December 15, 1985 for pipelines to decide whether or not to open their systems to non-discriminatory transportation and to allow customer utilities to reduce contract demands. Order No. 436-A postponed that deadline to February 15, 1986.

Given the comprehensive changes in the natural gas industry, particularly as it pertains to gas transportation, the comments and briefs originally filed in this docket may no longer be relevant. Instead it would be advantageous for the Commission to consider comments that account for the FERC changes. Moreover, since FERC's deadline for pipeline responses does not expire until February 15, 1986, any deadline on comments imposed by the Commission should allow sufficient time for consideration of the responses to FERC as well as FERC's subsequent reaction.



Therefore, the Regulatory Affairs Division suggests the following Minute for the February 11th Commission agenda:

"The Commission requests further comments in the form of up-dated briefs from the parties to Case No. U-7991 on changes that have occurred with respect to gas transportation since the close of the record. Such comments should be received no later than April 15, 1986."

cc: Daniels  
Woodruff  
Fischer  
Nelson  
Morris

*William E. Long* 2/11/86

*George D. Anderson* 2/11/86

*Matthew E. Mubighan* 2/11/86

*BKM* 2-11-86