STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the request of COMPUGAS, INC. for a Declaratory Ruling.	))))	Case No. U-8958

At a session of the Michigan Public Service Commission held at its offices in the city of Lansing, Michigan, on the 8th day of February, 1988.

PRESENT: Hon. William E. Long, Chairperson
Hon. Edwyna G. Anderson, Commissioner
Hon. Steven M. Fetter, Commissioner

ORDER GRANTING REQUEST FOR DECLARATORY RULING

On November 18, 1987, Compugas, Inc. filed a Request for Declaratory Ruling and a supporting brief concerning certain aspects of its computerized natural gas allocation system. On November 30, 1987, Compugas filed a revised supporting brief.

Compugas, a corporation organized and existing under the laws of the state of Nebraska, markets, installs and operates a computerized natural gas allocation system that utilizes furnace ratings and run-time measurements to subdivide monthly gas billings in multi-tenant dwellings. The Compugas system is designed for use in master-metered apartment complexes having individual gas furnaces. It calculates the amount of gas used by each unit's furnace based on the Btu rating and the amount of time the furnace demands gas during a billing period. It also attributes a portion of the gas used to produce domestic hot water and similar secondary purposes based upon square footage and the number of bedrooms in each apartment.

The landlord's utility bill is allocated monthly among the tenants on the basis of the Compugas system's approximations of gas consumption. A monthly bill is rendered for each dwelling unit. The landlord is responsible for the utility's monthly customer service charge and for gas consumption attributable to empty apartments and common areas. The total amount billed to the tenants cannot exceed the utility bill received by the landlord.

Compugas claims that its allocation system simply allows a landlord to pass on utility costs to tenants. As the Compugas system does not meter gas consumption or replace any utility service, Compugas argues that its allocation of utility costs should not be considered a utility function. According to Compugas, its system allows for rent stability and rewards energy conscious tenants. Rather than arbitrarily assessing tenants a fixed percentage of projected gas costs for the term of their leases, the Compugas system provides a tenant with a financial incentive to control his or her usage patterns.

Compugas's Request for Declaratory Ruling involves three issues:

A. Does the use of the Compugas system subject a building owner to regulation by the Commission as a public utility?

B. Does the use of the Compugas system violate the Commission's prohibition against sub-metering of gas consumption?

C. Does the use of the Compugas system violate the Commission's prohibition of sales for resale contained in utility tariffs?

In order to understand the Commission's decisions on these issues some background information concerning the Commission's prior discussions of these issues is appropriate.

On December 8, 1975 in Case No. U-4985, the Commission initiated a general inquiry into centrally-metered utility service and the reselling of utility

service. This inquiry was prompted by complaints that changes in Michigan's energy policy had unfairly impacted upon certain centrally-metered customers.

Prior to the energy shortage in the mid-1970s, centrally-metered accounts, including resale, had been traditionally treated as commercial accounts. This rate classification was advantageous because of declining block rate structures and because commercial rates were lower than residential rates. However, with the energy shortage and subsequent switch by the Commission to non-promotional inverted rates, some centrally-metered customers found that they were being required to shoulder an increasing financial burden for energy consumption.

Case No. U-4985 was conducted in the nature of a legislative inquiry for the purpose of obtaining facts and information upon which to determine whether proposed Commission rules or revised tariff rules and rates pertaining to centrally-metered service should be separately noticed and heard for each gas or electric utility. The hearing covered a range of topics, including several that are directly related to this Declaratory Ruling.

The testimony in Case No. U-4985 revealed three basic methodologies for landlords and tenants to arrange for the payment of utility services. First, a tenant may be a direct customer of a utility. The tenant's individual consumption of the energy is individually metered by the utility and the tenant is directly responsible for managing his or her energy consumption. However, this arrangement is not possible in situations where the tenant has no control over energy consumption or if the building in which the tenant resides is centrally-metered and heated.

Another possible arrangement is often referred to as "rent inclusion." Under this arrangement, the landlord is the actual customer of the utility and is responsible for payment of the utility bill. Utility expenses are included

in the monthly rent payment, without regard to consumption patterns. While this alternative is readily available without Commission action for use by all landlords, it is argued that this approach provides tenants with little, if any, incentive to conserve energy.

A third possibility involves making a tenant responsible for payment of utility bills through a sub-metering or allocation process. While the landlord is the actual customer of the utility, the landlord and the tenant agree that the landlord's energy expenses may be passed on to the tenant on the basis of consumption. The Compugas system fits within this category.

Compugas's Declaratory Ruling concerns the Commission's authority to exercise jurisdiction over building owners and regulate their activities as public utilities. This issue was briefly considered by the Commission in Case No. U-4985 in connection with a discussion involving the applicability of the Commission's Consumer Standards and Billing Practices to resale customers and their tenants. The Commission stated:

> "Regarding the applicability of the Commission's Consumer Standards and Billing Practices, there was no support for the proposition that those rules could be made applicable to resale customers and their tenants without the enactment of legislation giving jurisdiction over such customers and tenants to the Commission.
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> "It is interesting to note that legislation has been pending which would give the Commission jurisdiction over resale customers. That legislation, however, is still in committee but it does lend some credence to the argument that the Commission does not, presently, have jurisdiction over resale customers of utilities. In Re: Procedures Governing Sale of Electricity for Resale, . . . the Florida Commission reached the conclusion that 'it is rather clear that landlords engaged in the practice of remetering and reselling electricity, whether for profit or for allocating the cost of the service, are not included in the statutory definition of public utilities and are not subject to the regulatory jurisdiction of this Commission.' (85 PUR 3rd 108, 111)
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> "The Commission tends to agree with the holding of the Florida case and the other cases cited therein and believes

that it does not have the jurisdiction to extend Consumer Standards and Billing Practices to resale customers." (Order, p. 20)

A good discussion of the principles to be considered in determining whether a building may be regulated as a public utility is contained in the annotation, Landlord Supplying Electricity, Gas, Water or Similar Facility to Tenant As Subject to Utility Regulation, 75 ALR 3rd 1204:

> "Whether or not a particular enterprise is subject to public utility regulation is generally determined by whether or not the agency conducting the enterprise holds itself out to serve the public at large in a particular area. To be subject to regulation as a public utility, it is generally considered necessary that the supplier of the utility service offer this service to anyone desiring it in the area served by the facilities involved. This has been the ordinary meaning used by the courts in determining whether the property is 'devoted to a public use' and is the general standard applied to landlords who supply services to their tenants. Under this standard, the overwhelming majority of courts have held that a landlord who provides such services to its tenants is not subject to regulation as a public utility. However, upon rare occasions, some courts have found the landlord to be engaged in a public service and subject to regulation as a public utility." (75 ALR 3rd 1207-1208) (Footnotes deleted.)

The cases reviewed by the Commission, particularly those contained in the report by the Florida Commission in Re: Procedures Governing Sale of Electricity for Resale, 85 PUR 3rd 108 (1970), indicate that supplying utility service for tenants for compensation does not ordinarily make a landlord a public utility.

Recently, in Case No. U-8122, issued April 8, 1986, the Commission found that use of the FareShare Energy Measuring and Allocation System, marketed by Energy Metering Control Corporation, would not constitute making a building owner a gas utility. The FareShare System was described in the Commission's April 8, 1986 order:

> "The FareShare System is an energy measuring and allocating system that is based upon an engineering study that equalizes the variables resulting from exterior exposure, insulation,

window coverage and similar factors; allocates domestic hot water usage on a per-person basis, with children being treated as one-half; allocates energy consumption for vacant apartments and common areas to the building owner; adds no additional fees, mark-ups or late charges to the monthly energy consumption bills; requires that the meters of tenants be read on the same day as the utility reads its central meter; specifies in all lease agreements that the allocated energy expenses are additional "rent" payments; provides that each building owner is notified and abides by the requirement that utility service may not be terminated for non-payment of rent and that the building owner's only remedy is summary proceedings under MCLA 600.5701; bills all administrative costs to the building owners, not the tenants; does not allow building owners to recover the costs of the installation of the FareShare System, the distribution system behind the master meter, or other such costs through the monthly energy consumption bills; provides that the monthly energy consumption bills clearly state that the billings are additional rent and that complaints or inquiries concerning the billings should be directed to the Energy Metering Control Corporation or the building owner, and that the tenant is not a customer of the servicing gas utility and has no right to any dispute over the amount of the billing or the quality of service." (Order, pp. 21-22)

A comparison of the FareShare and Compugas systems reveals many similarities and a few differences. Among the similarities is the fact that the Compugas system allocates natural gas used for space heating of individual apartments by use of a computerized system to subdivide a landlord's monthly gas bill among the tenants in a multi-tenant dwelling. Both systems allocate gas used to heat water for domestic use through arbitrary criteria such as apartment size or the number of occupants. Neither system allows landlords to profit from the collection of gas costs. Both systems attribute the costs associated with vacant apartment and common areas to the landlord.

Neither the FareShare nor Compugas systems allows building owners to include their own costs of installation or administration in the energy bills.

While there are some differences between the FareShare and Compugas systems, the Commission finds the differences to be of minor importance. The Fare-

Share system requires that tenants' meters must be read on the same day as the utility reads its central meter. Compugas has no similar requirement. Rather, Compugas admits that its allocation data is not totally congruent with the utility's billing cycle. However, Compugas asserts that its allocation factors are only infinitesimally affected by the lack of total congruity as the sum of the tenants' bills must always be equal to or less than the total landlord master utility bill. Another difference between FareShare and Compugas is that FareShare provides that the monthly energy consumption bills clearly state that the billings are additional rent and that complaints or inquiries concerning the billings should be directed to the Energy Metering Control Corporation or the building owner, and that the tenant is not a customer of the gas utility and has no right to any dispute over the amount of the billing or the quality of service. The Compugas system lacks the ability to incorporate messages of this length on its bills. However, during informal meetings between Compugas and the Commission Staff (Staff), Compugas represented that it could print a short message on its bills indicating that comparative usage data is available from the apartment manager. According to Compugas, it provides usage reports to the landlord, showing usage by apartment number and common areas and that this information would be available to tenants from the landlord during reasonable business hours. Therefore, tenants will have available comparative usage information so their portion of the total utility bill may be compared with other tenants' usage, particularly with tenants who have similar size apartments.

As the Compugas system is intended for use in multi-tenant dwellings that are master-metered and does not alter the existing gas piping in the building, building owners have no additional means to resort to the self-help tactic of terminating gas service to an individual apartment in order to force payment

from the tenant. Rather, as recognized in the attachments to Compugas' request for a declaratory ruling, in the event of a billing dispute, the tenant has the traditional landlord/tenant "avenue of complaint." Tenants are informed about the Compugas System, their obligation to make the Compugas bill payment in conjunction with their rent payment and other such information by the distribution of a "Resident Brochure." Therefore, while there are some differences between the methods by which the FareShare and Compugas systems inform tenants of their rights, it appears that both groups of tenants receive similar information.

Every energy allocation system need not offer the same package of goods and services in order to avoid subjecting a building owner to regulation as a public utility. The important question is whether the totality of the circumstances suggests any intent or attempt on the part of the building owner to depart from the traditional landlord/tenant relationship by operating the energy cost recovery portion of the rental business in a manner similar to a public utility's operation.

The Commission finds that if the Compugas system is operated in the manner described above, tenants will be assured of approximately the same degree of consumer protection afforded by the FareShare system. Further, the Commission believes that both the Compugas and FareShare systems are structured to preserve the traditional landlord/tenant relationship and dispute resolution process. In examining the totality of the circumstances, the Commission finds no reason to conclude that building owners utilizing the Compugas system would be engaged in any public utility function. Therefore, based upon the factual representations made by Compugas in its efforts to obtain this Declaratory Ruling and in light of the position taken by a majority of the courts that have addressed this issue and the Commission's recent ruling in Case No. U-8122, the Commission

finds that the use of the Compugas system would not subject a building's owner to regulation by the Commission as a gas utility.

Another aspect of Compugas's Declaratory Ruling concerns whether its system is a "sub-meter" under utility tariffs approved by the Commission. Rule 23 of Michigan Consolidated Gas Company's tariffs provides as follows:

> "Gas Not to be Sub-Metered for Resale: No gas purchased from the Company shall, for the purpose of resale, be sub-metered or re-measured by the customer. The presently existing contracts for or consents to sub-metering for resale will be terminated at the earliest practicable date."

Similarly, Rule B4.5 of Consumer Power Company's (Consumers) tariffs provides that:

> "No customer shall resell his service to others except when he is served under the Company rate made available for resale purposes, and then only as permitted under said rate and under this rule. Gas service for resale purposes shall not be available on or after March 22, 1977 except to existing gas resale customers of the Company as of that date.
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> The renting of premises with the cost of gas service included in the rental as an incident of tenancy is not considered to be a resale of such service."

In Case No. U-4985, it was pointed out that, in the past, utilities were reluctant to directly serve individual lots of mobile home parks because of concern about the transient nature of the tenants and because it was difficult to recover the investment necessary to directly serve each mobile home park tenant. Accordingly, mobile home park owners were required to install their own distribution systems and sub-meters so that they might resell utility service to their tenants, basing the charges on metered usage. Similar problems with facilities such as marinas and campgrounds make individual customer metering impractical.

The testimony in Case No. U-4985 described several problems that had arisen

with respect to the resale of utility services. These problems included the appropriate rate to charge resale customers, the state of disrepair of distribution systems, the adequacy of audits conducted in relation to tenant billings, and questions regarding whether the Commission's Consumer Standards and Billing Practices should be made applicable to resale customers and tenants. A representative of Consumers testified that any sale of the utility's services by a landlord to a tenant on a re-metered basis is a violation of Consumers' rules and regulations unless there is in effect a resale contract between the reseller and the company. He also stated that a landlord would have the right to include the cost of the utility's service into the rent charge so long as the charge for utilities would be incident to the rental of the premises:

> "They would have to issue a statement each month for 'X' number of dollars which included water, sewer, electric, gas, the rent of the space, period." (Vol. II, p. 118)

Cases Nos. U-4985 and U-8122 indicate that, while rent inclusion is a workable solution to the problem of payment of utility bills that may be implemented by a landlord without Commission action or approval, rent inclusion does not provide tenants with an incentive to conserve energy. Studies mentioned in the testimony in both cases indicate that residential or apartment tenants whose utility service is provided through a master meter without sub-metering consume approximately 30% more energy than those individuals who receive service through an individual meter and pay directly for their energy usage.

While the Commission is convinced that energy conservation is an important objective, not every plan that has claimed to further the Commission's goal of energy conservation has met with Commission approval. In Cases Nos. U-4985, U-4717 and U-5365, Steven Victor, a representative of the Apartment Association of Michigan and Premier Properties, proposed the "single meter, multiple billing

plan" (Victor Plan). According to Mr. Victor, under the Victor Plan, each individual tenant would be billed by the utility for his or her pro rata share of total gas usage shown under the master meter determined by the percentage of total cubic footage that the tenant's apartment bears to total residential usage. Included within the tenant's bill would not only be gas related to the tenant's apartment, but also gas related to common areas, such as hallways, laundry rooms and storage facilities. Only gas usage related to separate recreational facilities, such as swimming pools, would be billed to apartment building owners. The Victor Plan was proposed to apply only to rental apartment units, with other multiple residential units such as condominiums and cooperatives being excluded. However, the Victor Plan would be applied on a mandatory basis to all rental units served through a master meter. The responsibility for supplying the utility with all necessary cubic footage information would be on the building's owner. In addition, the plan provided that the building's owner would be responsible to advise the utility on a monthly basis of move-outs and move-ins on forms provided by the utility.

All costs of implementing and operating the Victor Plan were to be recovered only from customers under the plan. In the event of non-payment by an individual tenant, the plan provided for building owners to assume responsibility for the payments of the tenant, provided the utility had sent written notices of delinquencies to both the building's owner and the individual tenant. Mr. Victor argued that implementation of the Victor Plan would make individual tenants responsible for utility bills and result in conservation of energy.

However, in its decisions in Cases Nos. U-4717 and U-5365, the Commission rejected the Victor Plan. Although noting that conservation was the stated goal of the Victor Plan and that conservation of gas is certainly a matter of impor-

tance to the Commission, the Commission nevertheless agreed that, from the evidence presented, it could not be said that the Victor Plan would result in conservation, at least to any quantifiable degree. The Commission also noted that the Victor Plan would present a potential for apartment building owners not to engage in conservation practices by removing their existing financial incentives to keep utility costs down. Furthermore, the Commission believed that tenant peer pressure would not be an effective assurance of conservation. Additionally, in Case No. U-4717, the Commission agreed that the Victor Plan could be unfair:

> "Another problem concerning the Victor Plan is its potential to unfairly treat tenants. Applicant's evidence indicates that gas consumption in individual apartment units relates not so much to apartment size but to such other factors as the individual apartment's location within the apartment structure. Also, Applicant indicates that individual efforts by tenants to conserve may produce negligible results. Furthermore, the inclusion of common areas other than separate recreational facilities within the tenant's direct bill-paying responsibility seems questionable since control of gas usage in these areas would relate to both tenants and apartment owners. Also, in apartments where tenants have no control over their own thermostats, conservation under the Victor Plan might be virtually impossible. Therefore, it does not appear that the Victor Plan would operate in a fair and equitable manner upon apartment tenants." (Order p. 103)

The Commission believes that there are significant differences between the Victor Plan and the Compugas proposal. The primary distinction between the plans is that under the Victor Plan utility bills are sent directly to tenants, while under the Compugas proposal landlords are solely liable to pay utility bills. Further, instead of public utilities being responsible for the administration and billing of the tenants, under the Compugas system Compugas and the landlords would be responsible for these activities and costs. Another difference involves the Compugas system's allocation of the costs for all common areas

and vacant apartments to the landlord. Finally, under the Compugas system, tenants are assured of an opporunity to control their gas consumption by virtue of their exclusive control of their thermostats.

The Compugas system is not simply a sub-metering system. The Compugas system does not meter an apartment dweller's usage of domestic hot water. Instead, charges for this expense are divided among tenants based on apartment size. The Compugas system offers building owners an alternative to rent inclusion. The Compugas system is designed for apartments that have a central gas meter and individual gas furnaces in each apartment. This type of construction was popular when natural gas was an inexpensive fuel. Apartment buildings with individual gas furnaces were master-metered to take advantage of lower rates for commercial accounts. Because gas prices were low and relatively stable, building owners could reasonably expect to recover their costs by including the cost of gas in the rent base.

Buildings with individual gas furnaces are capable of being individually metered by utilities, but the conversion costs may be more expensive than the cost of installing the Compugas system. In Case No. U-8122, the testimony established that it was approximately $150.00 per unit less expensive for a building owner to install the FareShare System than to install new individual gas meters. In this case, information contained in Exhibit No. 1, attached to Compugas's brief, indicates that most "master-metered" apartment buildings cannot be converted to individual apartment gas meters for a number of reasons. Safety standards issued by the American Gas Association and the Michigan Gas Safety Code impose restrictions about the use of inside gas meters. Additionally, physical considerations such as building construction, installation cost, tenant disturbance and meter reading procedures further preclude the use of

individual gas meters. The Compugas system has been designed to overcome these problems and yet provide a reasonably fair and equitable approach to natural gas allocation.

On page 4 of its supporting brief, Compugas states that its representatives have had discussions with the Staff regarding the issue of whether the use of the Compugas system constitutes improper sub-metering of gas consumption. Apparently, the Staff informally expressed its opinion that use of a furnace's Btu rating along with the furnace's run-time would constitute an inferential metering of gas consumption. Compugas argues that the Staff's analysis is flawed.

While the Staff's position on sub-metering is not expressed in this case, its position is long-standing and has been described in other cases. In Case No. U-8122, Gary Kitts, then a Public Utility Engineer in the Commission's Gas Division, explained that natural gas can be metered directly by the measurement of the actual volume of gas passing through the meter. The ordinary residential gas meter uses a diaphragm to directly measure the volume of gas consumed. On the other hand, an inferential meter does not directly measure the volume of gas passing through the meter but, rather, measures some other variable and from that infers the amount of gas used. Examples of inferential meters commonly used in the gas industry include orifice, pitot and turbine meters.

Mr. Kitts believed that measurement of the amount of time that a furnace is operating through the use of a flame sensor could result in the FareShare system's "flame sensor" being used as an inferential meter. He reached this conclusion because the amount of gas consumed by a furnace could be inferred from knowledge of the amount of time that the furnace is operated, the size of the furnace, and a comparison of total gas usage. According to Mr. Kitts, the

use of an inferential meter to infer the amount of gas used by individual apartment units would be an example of sub-metering that is not permitted by Commission-approved tariffs. Mr. Kitts concluded that the use of the FareShare System's "flame sensor" would violate the sale-for-resale bans included in those tariffs.

After reconsidering the Staff's long-standing position on inferential metering, the Commission believes the Staff's strict opposition to inferential metering is no longer appropriate in a residential apartment building setting where retrofitting existing facilities with energy allocation devices is cheaper than installation of individual utility meters and where the energy allocation system allocates gas consumption on some basis other than strict energy consumption.

In the case of the Compugas system, the alleged inferential metering consists of the use of a furnace's Btu rating and data regarding the furnace's run-time. However, this information is not the sole determinant of a tenant's consumption. Rather, it is a combination of data taken from individual furnaces, in conjunction with apartment size and use, that determines gas consumption.

Further, the Commission is impressed by the fact that approved tariffs do not specifically contemplate inferential metering in a residential setting. It is well-known that inferential metering is not utilized in the residential setting. Instead, inferential metering is limited to much larger measurements of gas. Ordinarily, inferential metering takes place in situations involving pipeline-to-pipeline transactions or between local distribution companies and their larger industrial customers. As the Compugas system does not directly measure gas consumption and the alleged inferential measurement of gas consump-

tion is not the sole determinant of a tenant's liability for gas costs, the Commission finds that the Compugas system does not violate existing tariffs prohibiting sub-metering of gas consumption.

Compugas's Request for Declaratory Ruling also concerns whether use of its system constitutes a violation of the Commission's prohibition on sale-for-resale contained in Commission-approved utility tariffs. This analysis is virtually identical to the Commission's previous discussion of sub-metering. For the reasons previously stated, the Commission finds that the use of the Compugas system to allocate energy consumption in a centrally-metered apartment building does not constitute sale-for-resale in violation of applicable utility tariffs.

The Commission observes that, under the Compugas system, the landlord does not profit from the sale of natural gas. Instead, the Compugas system is a method of simply allocating actual costs incurred by the landlord to the tenants. So long as the landlord does not attempt to use the Compugas system to recover the cost of the distribution system behind the master meter or the costs of billing and administration or otherwise receive monies in addition to the actual costs incurred for energy consumption, the Commission does not believe that simple allocation of the monthly energy costs in a manner agreed to by both landlord and tenant would constitute a violation of current utility tariffs if sub-metering is not involved.

Although Compugas's Request for Declaratory Ruling is quite specific, the Commission wishes to emphasize that this Declaratory Ruling is being issued in response to, and is limited by, the precise facts presented in Compugas's application. This Declaratory Ruling is not intended to, and should not be interpreted as, creating precedent for any other fact or situation. In addition, for the purpose of this Declaratory Ruling, the Commission assumes that

payments made by tenants to landlords for energy consumption will be made pursuant to specific contractual provisions defining those payments to be "rent." The Commission expresses no opinion on the accuracy of this assumption and leaves the determination of the exact legal status of such payments to a more appropriate forum.

Finally, with the exception of the previous discussion regarding inferential metering of gas, it should be noted that the issuance of this Declaratory Ruling does not change existing Commission policies toward conservation, central-metering, sub-metering or sale-for-resale and, most definitely, should not be viewed as an endorsement of the Compugas system. The Commission has made no determination of the alleged fairness of the Compugas system either in theory or in practice. This Declaratory Ruling should not be considered as giving any support or credibility to the claims or promises of either the manufacturer or the distributors of the Compugas system.

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.; 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 Compugas System is an energy measuring and allocation system that allocates natural gas consumption in centrally-metered multi-tenant dwellings through use of a computerized system that utilizes furnace ratings and run-times to sub-divide a landlord's monthly gas bill among the tenants; allocates the gas used to produce domestic hot water and similar secondary purposes on the basis

of square footage and the number of bedrooms in each apartment; allocates energy consumption for vacant apartments and common areas to the building owner; does not directly measure gas flow, change or attach any device to a piping or change safety features of the gas delivery system; uses a "Resident Brochure" to inform tenants about the operation of the Compugas system and to advise each tenant that the payment for the Compugas bill should be remitted directly to the landlord in connection with the monthly rent payment; provides a biannual notice to tenants that comparative usage data is available from the apartment managers; and allows tenants to compare usage data for all apartments with their Compugas billing.

c. As limited by the factual representations made in conjunction with Compugas' Request for Declaratory Ruling and the language in this order, the use of the Compugas system does not subject a building's owner to regulation by the Commission as a public utility.

d. As limited by the factual representations made in conjunction with Compugas' Request for Declaratory Ruling and the language in this order, the Compugas system does not sub-meter gas consumption within the meaning of the utility tariffs approved by the Commission.

e. As limited by the factual representations made in conjunction with Compugas' Request for Declaratory Ruling and the language in this order, the measurement and allocation procedure incorporated in the Compugas system is not a sale-for-resale within the meaning of utility tariffs approved by the Commission.

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.

Any party desiring to appeal this order must perfect an appeal to the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ William E. Long
Chairperson

(S E A L)

/s/ Edwyna G. Anderson
Commissioner

/s/ Steven M. Fetter
Commissioner

By the Commission and pursuant to
its action of February 8, 1988.

/s/ Dorothy Wideman
Its Executive Secretary