STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of
CONSUMERS ENERGY COMPANY for
approval of a gas cost recovery plan, five-year
forecast and authorization of gas cost recovery
factors for the 12-month period ending
March 31, 2015.

Case No. U-17334

At the June 3, 2015 meeting of the Michigan Public Service Commission in Lansing,

Michigan.

PRESENT:  Hon. John D. Quackenbush, Chairman
          Hon. Greg R. White, Commissioner
          Hon. Sally A. Talberg, Commissioner

ORDER

History of Proceedings

On December 27, 2013, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting approval of its gas cost recovery (GCR) plan and factors for the 12-month period ending March 31, 2015. Consumers’ application was filed pursuant to Section 6h of 1982 PA 304 (Act 304), MCL 460.6h. In its initial filing, Consumers requested to implement a maximum base GCR factor of $4.3962 per thousand cubic feet (Mcf), with a contingency mechanism based on New York Mercantile Exchange (NYMEX) prices. On February 28, 2014, Consumers filed an amended application revising its GCR base factor to $5.575. The company projected total gas costs of approximately $704 million and total delivered
volumes of approximately 160.6 million cubic feet (MMcf). The utility also presented a five-year forecast with its application.

A prehearing conference was held on February 6, 2014, before Administrative Law Judge Peter L. Plummer. At the prehearing conference, the ALJ granted petitions to intervene filed by the Michigan Department of the Attorney General (Attorney General) and the Residential Ratepayer Consortium (RRC). The Commission Staff (Staff) also participated in the proceedings.

On March 7, 2014, Consumers and the Staff filed a joint motion seeking a temporary order approving the amended GCR factor for use in the April 2014 billing month. On May 2, 2014, the Commission issued an order granting Consumers authority to charge a revised factor of $5.575 per Mcf beginning with the first billing month following the issuance of the order. The Attorney General and the RRC subsequently filed a joint motion with the Commission seeking a GCR factor refund for the month of May. The Commission issued an order on September 11, 2014, denying the motion.

An evidentiary hearing was conducted on April 11, 2014. All parties filed briefs and reply briefs on April 21 and April 28, 2014, respectively. The ALJ issued her Proposal for Decision (PFD) on November 12, 2014. Consumers and the Attorney General filed exceptions on December 5, 2014, and Consumers, the Attorney General, and the RRC filed replies to exceptions on December 19, 2014. The record in this case consists of 691 pages of transcript and 61 exhibits that were admitted into evidence, as well as the matters officially noticed.

Proposal for Decision

The ALJ identified the following issues concerning Consumers’ GCR plan and forecast:

(1) the reasonableness and prudency of Consumers’ storage planning for colder-than-normal

1 On May 15, 2014, this case was reassigned to Administrative Law Judge Sharon L. Feldman (ALJ).
(CTN) weather and January through March peak days as well as the daily delivery obligations (DDO) for non-GCR customers; (2) whether Consumers should incorporate minimum daily deliveries/supply requirements to end-use transportation (EUT) customers during the winter period in its GCR plan or whether Consumers should require EUT customers to purchase a monthly minimum amount of gas to keep storage levels near planning levels; (3) whether the Commission should indicate that it will expect Consumers to take all reasonable measures to protect GCR customers from incurring additional expenses to provide interruptible service to the Midland Cogeneration Venture Limited Partnership, Inc., (MCV); (4) whether Consumers’ CTN and peak day planning includes an adequate amount of transportation (pipeline) capacity to meet CTN weather conditions or whether a warning pursuant to MCL 460.6h(7) (Section 6h(7)) indicating that the Commission may disallow increased GCR expenses due Consumers’ failure to contract for sufficient firm transportation capacity is in order; (5) whether the Commission should require Consumers to amend its GCR factor calculation in light of changes in gas prices or sales forecasts that become known after it has filed its plan case; (6) whether Consumers’ forecast should be updated to include a $27.6 million reduction in the cost of gas based on a five-day average of NYMEX strip prices for May 19 to May 23, 2014 or whether the GCR factor should be reduced to reflect more recent NYMEX strip prices as the Attorney General proposed; (7) whether the Commission should require Consumers to revise its GCR factor calculation to reflect an updated basis differential component of the cost of index-based gas, which should be reduced by $4.8 million as the Attorney General recommended; (8) whether Consumers’ GCR factor should be revised to reflect the company’s updated sales forecast; (9) whether the cost of fixed price contracts presented in line 28 of Exhibit A-13 should be reduced by $1.4 million as the Attorney General proposed; (10) whether the $14.1 million in costs for index priced contracts presented in
line 30 of Exhibit A-13 should be excluded as the Attorney General recommended; (11) whether $11.6 million in “net storage-GCR” costs shown in line 38 of Exhibit A-13 should be excluded as the Attorney General proposed; and (12) whether the Commission should prohibit Consumers from rolling in its projected underrecovery from the 2013/2014 GCR year, estimated as approximately $98 million in the Commission’s May 2, 2014 order. These issues are addressed ad seriatim.

Daily Delivery Obligations for Non-GCR Customers

The first contested issue is whether the Commission should require Consumers to adjust the DDOs of gas customer choice (GCC) suppliers during CTN weather, in order to ensure that GCR customers do not incur costs of additional supply purchases, such as those that occurred during January through March 2014. After thorough consideration of the parties’ arguments, the ALJ concluded that the RRC and the Staff identified a valid concern regarding the reasonableness and prudence of Consumers’ planning for CTN weather. The ALJ pointed out that the utility’s testimony indicates it relies heavily on storage withdrawals to meet peak requirements. The ALJ observed that, in the event storage volumes fall below planned levels, additional purchases become necessary to meet the supply requirements of all customers. PFD, p. 27. The ALJ further noted that the RRC and the Staff correctly argue that, in such cases, the company assigns all of the additional incremental costs to the GCR customers. Id. Likewise, the ALJ observed that Consumers does not dispute that storage balances were well below planned levels during the CTN winter of 2013/2014, yet the company failed to articulate any specific plans to control those storage levels or the delivery obligations of GCC and EUT customers in the event of CTN weather this past winter of 2014/2015. Id.
Cognizant of the fact that this proceeding does not allow for changes in the utility’s tariff, the ALJ nevertheless found it appropriate to consider whether Consumers has an ability to control the storage utilization and/or the delivery obligations of its other customer groups so as to avoid significant and unplanned purchases charged to GCR customers during design CTN conditions. *Id.*, pp. 27-28. Regarding GCC supplies, the ALJ disagreed with Consumers that its tariff language limits the company’s ability to adjust its GCC supplier DDO requirements to adjustments for only a specific subset of customers and suggested that this is a misreading of the tariff provision. *Id.*, p. 29. Instead, the ALJ concluded that the provision should be interpreted as only governing the company’s review of supplier requests for individualized daily variances. *Id.* The ALJ also pointed to tariff language that authorizes Consumers to issue operational flow orders or take other action deemed necessary to ensure system reliability even when such action is inconsistent with other rules in the tariff. *Id.*

The ALJ further observed that Consumers did not establish that the RRC’s proposed recommendation regarding the company’s administration of its GCC program delivery obligations is unworkable. *Id.* She concluded that, because the company sets the delivery obligations monthly, it should be able to administer the delivery requirements under CTN conditions to match expected increases in purchase requirements for GCR customers above planned purchase levels. *Id.*, pp. 29-30. She opined that such a parallel approach makes sense as the company does not distinguish GCR from GCC use until the end of each month. *Id.*, p. 30. Thus, the ALJ recommended that Consumers be required to take available steps to control GCC daily deliveries in the event of CTN weather during this 2014/2015 GCR year and that it be required to report any steps taken in the reconciliation of this 2014/2015 GCR year. *Id.* The ALJ further recommended
that the Commission direct Consumers to include a strategy for managing GCC storage balances and/or delivery obligations as part of its supply planning in its next plan case. *Id.*

Consumers argues that the Commission should reject these recommendations that criticized the company’s planning for CTN weather conditions, including peak days. According to the company, the record evidence does not support the ALJ’s conclusion that Consumers should have minimized GCR purchases by restricting storage utilization and/or increasing delivery obligations of its non-GCR customer groups. Consumers further argues that the ALJ used hindsight to punish the company by determining that it should have, in retrospect, restricted the storage utilization and delivery obligations of non-GCR customers based on new information that additional GCR purchases were required to meet total system requirements during extreme CTN weather. The company argues that its actions were based on previously unchallenged provisions of existing Commission-approved GCC and EUT tariffs, and that, it would be unfair to adopt the ALJ’s novel interpretations of tariffs that have never been articulated before by the Commission, any party, or the Staff.

Regarding the ALJ’s interpretation of the tariff, the company argues that the tariff language, and the litigation that resulted in the tariff language, did not support the ALJ’s conclusion that the tariff provision provides Consumers *carte blanche* authority to unilaterally require all GCC suppliers to increase DDOs for all of the pricing pools above the +/- 10% of the 1/365th estimated annual customer load. Consumers’ exceptions, pp. 3, 9. The company also argued that the ALJ’s conclusion was misplaced when she opined that the company’s actions in February and March 2014, when it required all GCC suppliers to increase deliveries by 0.7% in February and 40% in March supported her interpretation of the relevant tariff provision. *Id.*, p. 10. The company explained that the 0.7% increase complied with the tariff provision’s language because it was
appropriately within the 10% flexibility provided by Section F1.G of the GCC Program tariff at issue in this case. *Id.* It further explained that the 40% the ALJ referenced was authorized by a different tariff provision, Section F1.S. of the GCC Program tariff, which grants Consumers the authority to take action to ensure system reliability even if such action may be inconsistent with other provisions of the program rules. *Id.*

Regarding the ALJ’s conclusion that the administration of the GCC program supplier delivery obligations in the manner the RRC proposed, as supported by the Staff, would not be unworkable, Consumers points out that the existing GCC program tariff does not provide for the ALJ’s desired administration of the GCC supplier requirements. The company states that Section F1.G of the GCC program tariff provides that Consumers will update the GCC supplier delivery schedule on a monthly basis.

The company further contends that, should the Commission agree with the ALJ that the system usage of GCC and EUT customers should be restricted, it argues that its existing GCC and EUT tariffs should only be changed on a prospective basis, and that the Commission should avoid retroactively changing the terms and conditions of the company’s GCC and EUT programs in a GCR plan case not designed or noticed for such a purpose. *Id.*

Consumers further points out that the ALJ’s recommendations regarding the company’s planning for CTN and design weather, and her position that the company should have compromised service to GCC and EUT customers so as to manage its GCR purchases during an extreme winter period fail to recognize Consumers’ obligation to maintain gas service to its customers. The company defends its gas purchasing strategy and its system planning and management by pointing out that it ensured customers did not suffer from supply or capacity...
restrictions during an exceptionally challenging winter period during 2014. Therefore, it argues that it acted reasonably and prudently within the terms of its existing tariffs. *Id.*

In reply, the RRC argues that Consumers’ exceptions do not propose a solution to the problem addressed in the PFD, namely, that GCC and EUT customers do not bear their proportional share of meeting 4% probability months in design or CTN weather. The RRC points out that it made recommendations for how Consumers’ GCR plan should be amended to address the fact that GCR customers bear a disproportionate share of the increased costs that result from the need to purchase extra gas to meet demand in extreme weather. The organization notes that the Staff joined the RRC in these recommendations. The RRC points out that Consumers does not dispute its contention that the GCR customers bear a disproportionate share of the purchased gas costs resulting from extreme CTN weather. The RRC also notes that Consumers never argued that it is reasonable and prudent planning to make the GCR customers bear the extra cost of such purchases. The RRC points out that Consumers never addresses the desirability of making changes to benefit GCR customers, but instead defends its plan by arguing that fixing the problem will require changes to its tariffs. The RRC further points out that the company makes it clear it has no intention of seeking any changes to its existing tariffs to try to mitigate this problem for the GCR customers. The RRC restates its position that it supports the ALJ’s analysis of Consumers’ tariffs and how the company may adjust its operations to address the problems it identified in the RRC’s testimony within the parameters of those tariffs. However, the organization goes on to argue that, if the Commission finds it is necessary for the company to seek a change to its tariffs to address the problems identified in the RRC’s testimony, the Commission should also find that Consumers’ GCR plan is deficient because it does not reflect the utility taking all appropriate legal and regulatory actions to minimize the cost of purchased gas to its GCR customers as required by
MCL 460.6h(6). Finally, the RRC asserts that it is unreasonable and imprudent for Consumers to do nothing to attempt to address this serious problem for its GCR customers, and further argues that the Commission should warn the company that continuing on that path may lead to future disallowances.

Having considered the record evidence and the parties’ respective arguments on this issue, the Commission agrees with the ALJ’s finding that GCR customers have had to pay a disproportionate share of the costs of purchased gas during CTN and design day weather. The evidence in this regard is not disputed. Mr. Frank Hollewa, independent energy consultant retained by the RRC, testified that he looked at the end of month storage balances during the 2013-2014 GCR plan year and information obtained from the company during discovery regarding the actual operations during that plan year. He testified that total delivered pipeline supply for GCR sales was increased from 373,998 Dth/day in January 2014, to 613,425 Dth/day in February, an increase of 64%. 3 Tr 657. He then looked at end-of-month storage volumes in January and February 2014. The corresponding end-of-month storage volume went from a 1.4 Bcf deficit in January to a 1.3 Bcf excess in February. Id. Next, Mr. Hollewa pointed out that the GCC DDO was increased from 176,690 Dth/day in January to 177,936 Dth/day in February for an increase of 0.7%. Id. The corresponding end-of-month storage volume went from a 2.2 Bcf deficit in January to a 3.3 Bcf deficit in February. Id. The information Mr. Hollewa examined led him to conclude that GCC suppliers were not bearing their proportional share of meeting 4% probability months in design and/or CTN weather. Id. He testified that, although the DDO was increased by 40% for March, pipeline deliveries for GCR sales were increased by 58% for March compared to January. Id. He testified that, in his opinion, the GCC customer class is not a privileged customer class and should be treated the same as GCR customers in all planning parameters, including ending with a positive
storage balance at the end of March unless a 4% probability occurs in the month of March. 3 Tr 657-658.

Consumers presented the rebuttal testimony of Lori M. Harvey, Director of Financial and Gas System Planning in Consumers’ Gas Management Services Department, who testified that she felt issues related to GCC and transportation customer tariffs and programs are “outside the scope” of a GCR plan proceeding and should more appropriately be addressed in a general rate case. 3 Tr 402-403. Ms. Harvey also testified about the company’s obligation to serve as the supplier of last resort under both the transportation and GCC programs, and Consumers’ responsibility to meet the peak day requirements of those customers even when third-party supply is low. 3 Tr 403.

Although Ms. Harvey testified that the company has planned to meet all of its customers’ peak day requirements, while cognizant of the tariffs and programs that govern the customers’ and its obligations, she did not address the merits of Mr. Hollewa’s criticism that GCC customers are not bearing their fair share of the costs of purchased gas during CTN and design weather.

Accordingly, the Commission concludes that Mr. Hollewa’s testimony is undisputed.

Cognizant that this GCR plan year has ended, the Commission nevertheless agrees with and adopts the ALJ’s reasoning and conclusions that Consumers consider, under its current GCC tariff, appropriate DDO determinations so as to ensure that GCR customers do not incur costs of additional supply purchases going forward. If GCC tariff changes are required to adequately remedy this issue, Consumers shall review its GCC tariff and program rules with an eye toward addressing any potential inequity in its next gas rate case.

Accordingly, the Commission adopts the PFD’s recommendation that it will expect Consumers to take available steps to control GCC daily deliveries in the event of CTN weather going forward. Given the possibility that a GCC tariff amendment may be needed to effectuate
necessary or preferred changes in supply planning to address the disproportionate costs of purchased gas in CTN weather or design conditions, Consumers should also address this issue in the company’s next gas rate case.

Although the RRC requests that the Commission find Consumers’ GCR plan deficient because it does not reflect the utility taking all appropriate legal and regulatory actions to minimize the cost of purchased gas to its GCR customers as required by MCL 460.6h(6), the Commission declines to do so at this time.

End-use Transportation (EUT)

The next contested issue is whether the Commission should require Consumers to incorporate in its 2014-2015 GCR plan efforts to establish minimum daily deliveries to EUT customers during the winter period to mitigate the cost of gas to GCR customers, and whether the Commission should require the company to report on those efforts in its GCR reconciliation filing. The ALJ reviewed the company’s EUT tariff, and observed that the tariff does not include a daily delivery obligation but does impose limits on transportation customers’ ability to withdraw gas from storage during winter months, with penalties imposed for unauthorized usage. The ALJ noted that, during the winter months of November through March, monthly withdrawals are limited to contracted storage quantities plus 3% of the EUT customers’ “Authorized Tolerance Levels” which, according to the ALJ, equal about one month’s supply. PFD, p. 31. The ALJ further observed that, in the event the weather approaches or exceeds design conditions, Consumers has options under the tariff’s curtailment provisions to avoid paying extreme prices for additional gas supplies charged to GCR customers in order to ensure undisturbed service to transportation customers. Id., p. 32. The ALJ concluded that it is appropriate for the Commission to require Consumers to evaluate its options under its existing tariff, implement available measures this GCR
plan year in the event of CTN winter weather, report in its GCR reconciliation filing on any measures taken, and identify in the next GCR plan case the measures available under the existing tariff, regardless of whether the tariff is revised in the pending rate case, and to make reasonable modifications to the tariff as well as setting forth a timeframe for seeking approval of any tariff modifications. *Id.*

Consumers takes exception to these recommendations, arguing that its EUT tariff does not include a DDO, that such a change would require a modification of its EUT tariff, and that the appropriate forum for such a change would be a rate case, not a GCR plan case. The company also argues that it does not currently require daily metering of transportation customers’ loads, and that, if daily delivery requirements are imposed, daily metering would be necessary, at a substantial cost. Consumers further argues that the ALJ’s interpretation of the curtailment provisions of its tariff are inaccurate. Under the existing transportation tariff, no authority exists to require daily deliveries, and, if a transportation customer exceeds its authorized monthly withdrawals, then certain unauthorized gas usage charges would apply. And, contrary to the ALJ’s suggestion, Consumers argues that it is not authorized to require transportation customers to increase daily deliveries or limit transportation customers’ ability to withdraw gas from storage pursuant to their existing contracts for the purpose of minimizing GCR purchases.

The company also urges the Commission to reject the ALJ’s recommendation that the provisions of the company’s curtailment of service tariff should or could be used to manage GCR gas costs. The company explains that the curtailment of service tariff does not permit curtailment of transportation customers because those customers are not customers who purchase natural gas requirements from Consumers. Consumers also points out that, during the extreme and long-lasting CTN winter in January through March 2014, it complied with that part of its curtailment of
service tariff that requires the company to maintain gas service to its customers. The company further argues that, during the winter of 2014, its ability to deliver gas was not compromised, and therefore, under Section C3.3B of the curtailment of service tariff, there was no need to take the extraordinary steps of implementing an operational flow order or a curtailment of service, as the ALJ recommended. Therefore, Consumers recommends that the Commission reject the ALJ’s suggestion to use the curtailment of service tariff to manage GCR supply costs, which it contends is only to be used during emergencies where the company’s ability to deliver sufficient gas is impaired.

The RRC, in reply, again asserts that the Commission should adopt the PFD’s recommendation that EUT customers should bear a proportionate share of the incremental purchased gas costs caused by CTN weather and that a solution is needed that balances the interest of all customers and improves the company’s performance for its GCR customers going forward. The RRC argues that it is unreasonable and imprudent for Consumers to stand by its existing plan and do nothing to remedy this problem in its GCR supply planning.

Having considered the ALJ’s proposed recommendations, the evidentiary record, and the parties’ arguments, the Commission again notes that the undisputed evidence shows that GCR customers are paying a disproportionate share of the incremental purchased gas costs caused by CTN weather. The Commission further agrees with that part of the PFD that recommends Consumers should evaluate its options under its existing EUT tariff to remedy this inequity. In that regard, Consumers shall use the opportunity presented by its next gas rate case to review its EUT tariff with a goal of rectifying any disparities between customer classes that result from purchased gas costs during extreme CTN weather, taking into consideration the recommendations that the company impose either daily supply requirements or monthly minimum amounts on its
EUT suppliers. Regarding the PFD’s recommendation that Consumers be required to implement available measures this GCR plan year in the event of CTN winter weather, the Commission recognizes that this suggestion is not feasible because the plan year has ended. For the same reason, the Commission also rejects the proposed recommendation that it require Consumers to report in its reconciliation filing the changes it implemented this plan year. The Commission agrees with and adopts the PFD’s recommendation that the company shall make reasonable modifications to the tariff necessary to mitigate the costs of purchased gas paid by GCR customers under CTN weather conditions and shall seek Commission approval of any tariff modifications. In addition, Consumers shall identify any measures taken to modify its gas supply planning in its next GCR plan case.

**Midland Cogeneration Venture**

The next issue is whether the Commission should require Consumers to take reasonable measures to protect GCR customers from incurring additional expenses to provide interruptible service to the MCV. As the ALJ recognized in the PFD, there was testimony that, during the 2013/2014 winter, MCV exceeded its firm daily storage withdrawal limit of 120 MMcf/d on two of the five coldest days of the year. 3 Tr 659. The ALJ pointed out that Mr. Hollewa questioned whether this was an unusual occurrence or one that should be addressed in Consumers’ supply planning. In addition, the ALJ considered the company’s testimony that actual MCV usage is not known until after the gas day is over and that such usage is volatile. 3 Tr 404-405. Regarding the two days Mr. Hollewa identified where the MCV exceeded its firm daily storage withdrawal limit, the ALJ noted the company’s testimony that there was no indication the usage caused any operational problems. Further, the ALJ highlighted testimony where the company stated its peak day plans set forth in Exhibit A-20 are reasonable and appropriate because they reflect the
company’s firm MCV daily transportation and storage contract obligations. 3 Tr 405. The company further testified that additional GCR customer purchases should not be required to provide “interruptible” service to MCV, and testified that lowering the MCV plan assumptions might prevent Consumers from meeting its firm obligations. Id. Although the ALJ observed that neither the RRC nor the Staff made specific recommendations regarding company planning related to MCV usage of interruptible storage in testimony or written briefs, she nevertheless recommended that Consumers should be expected to take all reasonable measures to protect GCR customers from incurring additional expenses to provide interruptible service to MCV. PFD, p. 33.

Consumers disagrees with the PFD’s proposed recommendation, arguing that it is not supported by the record and is unnecessary. It contends that there was no evidence that the MCV’s use of storage on two days caused any operational problems or any increase in GCR costs. The company further points out that the ALJ’s description of MCV’s service as “interruptible” does not explain that only MCV’s daily storage withdrawal above the firm contract amount is “on an interruptible, best-efforts basis and is not subject to penalties.” Consumers exceptions, p. 17. Further, the company highlights testimony that, on the two days identified by Mr. Hollewa, MCV only exceeded the firm storage contract obligation of 120,000 MMBtu/day by 13,643 MMBtu/day on January 6, 2014, and by 19,187 MMBtu/day on January 21, 2014. 3 Tr 404. Consumers also presents testimony that, on those two days, MCV’s use of additional gas from storage did not affect the company’s GCR purchase requirements and did not cause unusual operational problems. Consumers’ exceptions, p. 18. The company also explains that, under Mr. Hollewa’s proposal that the company’s peak-day plans be reviewed to reflect MCV actuals for January 2014, more, rather
than less, GCR supply would be required. Thus, Consumers argued that the Commission should reject the PFD’s recommendation concerning the company’s service to MCV.

The Commission notes that neither the RRC’s nor the Attorney General’s replies to exceptions specifically address this issue. Having considered the record evidence, the PFD, and the arguments presented, the Commission agrees with Consumers that the record evidence does not establish excess costs paid by GCR customers or operational issues resulting from MCV’s usage of additional gas from storage beyond the firm storage contract obligation amount on the two days identified in January 2014. Further, the Commission concludes that Consumers’ peak-day planning pertaining to MCV’s usage is reasonable and prudent based on the company’s testimony that lowering plan assumptions could inhibit Consumers from meeting its firm obligations and that increasing the assumptions would increase GCR purchase requirements to support an interruptible MCV service that would be inappropriate. Additionally, the Commission recognizes that the information regarding MCV’s actual gas usage is not available until after the gas day has ended, rendering alternative MCV gas usage peak-day planning based on actual usage problematic. Accordingly, because it has not been established that GCR customers suffered from MCV’s additional gas usage on the two days identified and because there was evidence that the company’s peak-day planning regarding MCV is reasonable and prudent, the Commission rejects the ALJ’s recommendation that the company take steps to protect GCR customers from incurring additional expenses to provide interruptible service to MCV.

Transportation Capacity

The next issue is whether the Commission should require Consumers to make sure it obtains an adequate amount of pipeline capacity to meet CTN weather scenarios. In the PFD, the ALJ recommended a Section 6h(7) warning regarding Consumers’ increased GCR gas purchases
caused by CTN weather experienced during January through March 2014. The ALJ pointed to testimony that the Attorney General presented showing that Consumers is relying less on gas withdrawals from storage and more on spot market purchases during peak demand periods, and that this results in purchases during periods when prices are higher. The Attorney General argued that insufficient firm interstate transportation capacity during peak demand periods will require Consumers to buy more transportation capacity at potentially higher prices when that capacity is selling at a premium. The Attorney General recommended that the Commission require Consumers to review its peak day supply plan in light of this experience during the CTN weather conditions in 2014 and further argued that the Commission should issue a Section 6h(7) warning indicating that it may disallow increased GCR expenses the company incurred because it failed to contract for sufficient firm capacity. PFD, pp. 34-35.

The ALJ also considered the testimony Consumers presented on this issue, indicating that the company’s plans are reasonable and achievable, and further explaining that the Attorney General predicated its claims on data taken from actual days in which third-party supply was higher than the design plans. Consumers also presented testimony that it had taken measures to remedy the problem the Attorney General identified when it increased its firm transportation volume to approximately 300 million cubic feet per day (MMcf/d). There was also testimony that Consumers had secured 20,000 dekatherms per day (dth/d) of firm citygate supply to meet design CTN conditions during the November 2014 through March 2015 period. PFD, p. 36.

With respect to the parties’ opposing arguments on the need for a Section 6h(7) warning, the ALJ observed that the Attorney General asserted Consumers’ plan was not per se unreasonable but had not been adequately supported. She viewed the Attorney General’s request for such a warning as being directly related to the company’s management of the GCC and EUT storage balances and
deliveries. The ALJ reasoned that the Staff’s and the RRC’s arguments imply that Consumers’ estimates of CTN winter transportation and supply requirements will only be reasonable if the company takes steps to ensure that non-GCR customer groups are maintaining their storage balances or contributing additional supplies under design or near-design conditions. PFD, p. 38. The ALJ observed that Consumers did not revise its CTN supply plan after its experiences during the winter months of the GCR plan year. The ALJ pointed out that in the chart Mr. Hollewa presented in Exhibit A-21, actual GCR purchases for February and March 2014, amounting to 606 MMcf/d and 585 MMcf/d respectively, were “literally off the chart” when compared to the 373 MMcf/d that was depicted as the top of the planning range. Id., p. 39. The ALJ further concluded that the company’s failure to provide any analysis showing that the additional firm transportation the company identified in its rebuttal testimony and in Exhibit A-50 is supported by a reasonable evaluation of Consumers’ CTN supply requirements in light of the 2013/2014 winter experience, the ALJ concluded that the Commission should issue the Section 6h(7) warning, considering this to be an appropriate companion to her recommendation that Consumers take reasonable steps to limit the supplier-of-last-resort costs imposed on GCR customers. Id.

Consumers takes exception to this recommendation and argues that its plans regarding interstate transportation capacity are reasonable and adequate. Consumers’ exceptions, p. 20. The company highlighted its testimony by David W. Howard, Director of Gas Supply for Consumers, that its firm transportation contracts represent prudent transportation agreements at reasonable prices. 3 Tr 468. It also pointed to Mr. Howard’s testimony that, after last winter, Consumers evaluated its winter 2014-2015 GCR requirements and secured approximately 300,000 dth/d of firm transport along with 20,000 dth/d of firm city gate supply to meet design CTN conditions during the November through March 2015 period. 3 Tr 483; Exhibit A-50. The company asserts
that its previously existing firm transportation contracts shown in Exhibit A-15, coupled with its
demonstrated ability to secure firm citygate supply as needed, call into question the accuracy of
the Attorney General’s assumption that Consumers has insufficient transportation capacity.

Consumers further argues that the record evidence does not support the Attorney General’s
suggestion that it has insufficient firm transportation capacity because the Staff acknowledged the
company’s acquisition of additional firm transportation capacity and because Mr. Hollewa decided
a recommendation regarding firm transportation capacity was unnecessary given the company’s
additional acquisitions of such capacity. 3 Tr 665. The company argues that a section 6h(7)
warning is inappropriate. Consumers points out that the ALJ made incorrect findings that are
belied by the record evidence. Notably, it considers “incorrect” the ALJ’s finding that the
company did not provide any analysis showing that the additional firm transportation is supported
by a reasonable evaluation of Consumers’ CTN supply requirements in light of the 2013/2014
winter experiences. Consumers argues that it offered sufficient testimony to establish that it acted
reasonably and prudently when it planned for the supplies necessary to serve GCR customers
during CTN and design peak weather conditions.2

Although Section 6h(7) warnings are a tool that the Legislature envisioned the Commission
could implement when it enacted the provision, the Commission has limited its use of such
warnings to unique and unusual circumstances. For example, in Case Nos. U-9524 and U-9536,
the Commission agreed to issue a Section 6h(7) warning that it might disallow a utility’s take-or-
pay costs if that utility failed to take all reasonable steps to prevail on its legal claims regarding a
settlement agreement with an interstate pipeline company. Similarly, in Case No. U-9282, the
Commission agreed to issue a Section 6h(7) warning it would disallow excess demand charges

2 The Attorney General did not specifically address this issue in his replies to exceptions.
resulting from a utility’s contracts with a specific interstate pipeline company that contained a take-or-pay clause, as well as a Section 6h(7) warning to encourage that utility to take all necessary steps to avoid payment of take-or-pay costs in pending litigation at the Federal Energy Regulatory Commission. In contrast, in the Commission’s February 28, 2013 order in Case No. U-16924, the Commission rejected the invitation to issue a Section 6h(7) warning in a GCR plan case regarding changes to Consumers’ firm transportation contracts because there was no evidence regarding excessive costs associated with the company’s replacement of firm supply as those costs were conjectural.

In the instant matter, the Commission has reviewed the record, arguments, and PFD, and believes that a Section 6h(7) warning is unnecessary. Act 304 provides that gas costs may be disallowed if they are not reasonable regardless of whether a Section 6h(7) warning is issued. Accordingly, the Commission rejects the PFD’s recommendation to issue a Section 6h(7) warning. Nevertheless, the Commission believes that a detailed analysis regarding the appropriateness of actual firm transportation capacity levels going into the 2014/2015 winter should be provided in the reconciliation case for the 2014/2015 GCR year.

GCR Factor

The PFD next discussed several arguments that the Attorney General presented regarding revisions to the GCR cost of gas in Exhibit A-13 and the GCR factor calculation in Exhibit A-35. The Attorney General recommended reductions in the cost of gas totaling $59.5 million as well as an additional adjustment of the cost of gas and factor calculation that reflects Consumers’ updated sales forecast. Additionally, the Attorney General recommended that the Commission exclude from the GCR factor the 2013/2014 estimated underrecovery.
As a preliminary matter, the ALJ first considered the Attorney General’s and Consumers’ competing arguments regarding the frequency and parameters that would cause the company to update its GCR factor calculation. The company’s position is that only changes it deems “extraordinary” to gas prices or sales forecasts are included in the company’s amended GCR factor calculation after it has filed its plan and factor. In contrast, the Attorney General argued that there is no statutory support for the company’s position that only “extraordinary changes” should be recognized. The ALJ agreed with the Attorney General that there is no “extraordinary” threshold for updating or revising the company’s GCR factor in a plan proceeding. PFD, p. 42. The ALJ further observed that, as the Attorney General pointed out, the Commission, in determining the reasonableness of a GCR factor, considers the record as a whole and its review is not limited to whether the company’s projections were reasonable when they were made. *Id.* The ALJ also concluded that the company offered contradictory testimony regarding the impracticality and unworkability of updating its factor calculation. She explained that the company presented testimony that it monitors its cost of gas and revises its GCR factors on a monthly basis, at or below the authorized amount. *Id.*, citing 2 Tr 166, 237-238; 3 Tr 481, 549, 552, 558, 611.

The ALJ also clarified a misconception on Consumers’ part that the update being suggested consisted of daily updates that were unduly burdensome. According to the ALJ’s interpretation, the parties suggested the factor be updated one time as part of the Commission’s final decision in this case. The ALJ rejected Consumers’ current procedure of updating the factor for only extraordinary changes and instead recommended that the Commission require the company to recognize “material changes.” The PFD described Consumers’ proposed extraordinary standard as

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3 The Staff argued that the GCR factor should not be updated in this case, but did not weigh in on the frequency or parameters for updating the factor after the company has filed its GCR plan and factor.
being unworkable. The PFD also recommended that the Commission should ensure the factor is set at a level to cover the company’s projected costs. Finally, the ALJ supports the PFD’s recommendation by pointing out that in calculating the cost of gas in a GCR plan case the goal is to determine with as much accuracy as possible, the future cost of gas during the plan year so that a GCR factor is developed that recovers the cost of gas without overrecoveries or underrecoveries. The ALJ considered this to be a reasonable objective for a GCR plan case.

Consumers takes exception to the ALJ’s recommendation that material changes in the cost of gas and sales forecasts be recognized when calculating the GCR factor during the plan year after a plan case has been filed. The company first points out that the ALJ did not articulate or define what would constitute a material change in the elements used to derive the factor. The company argues that the ALJ improperly relied on company testimony regarding how it manages the monthly GCR factor it bills for costs as proof that Consumers is able to update its GCR factor calculation. According to Consumers, the process of determining the monthly GCR factor is “qualitatively different” than changing a GCR plan based on minor or ordinary changes like the one the Attorney General recommended. The company further argued that, because ordinarily-occurring updates and changes are already accounted for in the calculation of the factor to be billed during the plan year, this avoids the need for continuous and formal updates to the factor in the GCR plan case. It also warned that, if the Commission chose to require the company to more frequently update its GCR factor calculation for ordinary changes, then this would have negative implications for its gas sales forecast because it would substantially increase the time, expense and burden of conducting annual GCR plan proceedings without improving results for customers in
this case or future cases. Accordingly, Consumers argues that the Commission should reject the proposed recommendation.\(^4\)

Although The Commission agrees with the ALJ’s conclusion that there is no statutory authority that supports Consumers’ position that updates to its GCR factor after the filing of a plan case should be made only in the event of extraordinary changes to the price of gas or sales forecasts. In addition, the ALJ correctly observed it should be the company’s goal to, as best as practicable, match its GCR factor with future GCR gas costs in order to avoid overrecoveries or underrecoveries. However, regarding the ALJ’s determination that Consumers be required to update its GCR factor a single time in this plan case to account for ordinary changes, the Commission agrees with the Staff’s position that such a change was not warranted at the time. The Commission is cognizant of the time lag in processing these cases and does not want to prolong the process even further in future cases due to ever-changing assumptions. Regardless, because the GCR plan year has ended, updates to the GCR factor are of limited use at this time.

NYMEX Price Projections

The PFD indicates that, in February 2014, Consumers amended its filing, basing its revised cost of gas for gas not yet purchased at fixed prices on a five-day average of NYMEX strip prices from February 20 to February 26, 2014. The Attorney General’s witness, Mr. Sebastian Coppola, an independent energy business consultant, proposed a $27.6 million reduction in the cost of gas based on a comparable five-day average of NYMEX strip prices for May 19 to May 23, 2014. According to the PFD, Consumers argued that the data Mr. Coppola used was not more representative of likely gas costs than the data Consumers used. Consumers presented data in its

\(^4\) The Attorney General did not present new arguments on this issue in his reply brief but instead chose to rely upon the position he articulates in his exceptions.
rebuttal testimony showing the fluctuation in NYMEX prices from November 2013 to June 2014. Consumers also noted that prices after that time period were trending down.

The PFD summarized the Attorney General’s arguments in favor of a reduced GCR factor reflecting more recent NYMEX strip prices as follows. The Attorney General argued the utility’s projected underrecoveries were understated, noting that the 45-day reports the utility filed show a smaller underrecovery than what more recent reports would have shown. The Attorney General requested that the Commission take official notice of the 45-day reports for the months of April through June 2014, in order to show that Consumers’ projected underrecoveries were understated.

The PFD notes that the Staff supports Consumers’ position by arguing that the utility should have discretion to manage its factor below the ceiling level so that Consumers would not be required to update the factor to reflect more recent NYMEX price decreases.

The ALJ pointed out that Consumers’ arguments acknowledge that a five-day average of NYMEX forward prices is not likely to be a solid or reliable basis for forecasting. Yet, the ALJ, considering the 4% price difference the Attorney General identified and considering the price volatility the utility demonstrated regarding NYMEX prices between November 2013 and June 2014, concluded that the Commission should not require Consumers to adjust the GCR factor to reflect the potential cost difference. The PFD emphasized that the basis for the recommendation is the conclusion that recent price volatility makes the five-day NYMEX strip a “poor predictor of future prices” and that the PFD does not recommend a rejection of updates generally. PFD, p. 48. Further, the PFD recommends that the Commission direct Consumers to develop a “more robust NYMEX price estimate in its next plan case, if the company believes the market remains volatile.” PFD, p. 49.
The Attorney General takes exception to these recommendations, arguing that the ALJ shifts the burden of proof from Consumers to the Attorney General and adopts Consumers’ evidence without explaining why she found Consumers’ evidence more credible. For example, the Attorney General contends that the PFD accepts Consumers’ testimony that the basis differentials have been fluctuating, and that the change in basis differentials between the time of Consumers’ amended filing in February 2014, and the Attorney General’s data in April would not have a significant impact on the cost of gas. He then argues that Consumers presented no facts to support this conclusion.

The Attorney General criticizes the PFD’s conclusion that the relative value of his proposed adjustments make them immaterial and further suggests that the PFD incorrectly appears to conclude that, if the evidence is unclear, it is proper to adopt the positions a utility supports. The Attorney General claims that if an inference favorable to the applicant can only be arrived at through conjecture or speculation, then, the applicant may not recover those costs, and further contends that, where there are two or more inferences that are equally consistent with the facts, the applicant’s position must fail. Thus, the Attorney General requests that the Commission adopt the recommended reductions in the projected 2014-2015 GCR expenses that are identified in the PFD because Consumers failed to satisfy its legal duty to go forward with evidence and meet its burden of persuasion.

Consumers replies that it provided ample evidence supporting its forecasted 2014-2015 GCR expense amounts. It explains that it detailed the company’s expectations for NYMEX and basis pricing during the GCR plan year, its purchasing strategy with respect to fixed and indexed price contracts, its costs associated with its firm interstate transportation contracts, and its net cost of gas in storage. Consumers also points out that it has no incentive to overstate the cost of gas. It
likewise presented evidence explaining that Consumers makes no profit on the natural gas commodity. The company further argues that its testimony shows the monthly billed GCR factor is designed to result in a zero annual overrecovery or underrecovery. Thus, it argues that its evidence supports its amended Exhibit A-13, where Consumers calculates its total GCR costs. The company further asserts that its evidence presenting its forecasts regarding the cost of gas respond to the Attorney General’s testimony and exhibits offered in opposition to Consumers’ 2014-2015 GCR plan.

The company also disagrees with the Attorney General’s argument that, where conflicting opinions appear in the record, the burden of proof can never be met. Consumers points out that it is the trier-of-fact’s prerogative to determine the relative weight and credence to assign to expert testimony. Consumers’ replies, p. 16, citing Gilroy v Conway, 151 Mich App 628, 633; 391 NW2d 419 (1986). The company claims that it is the Commission’s responsibility to weigh conflicting expert opinion testimony to determine how the evidence preponderated, and points out that expert opinion testimony is “substantial” if it is offered by a qualified expert with a rational basis for his or her views, even though other experts may disagree. Id., p. 17, quoting from Antrim Resources v Pub Serv Comm, 179 Mich App 603, 620; 446 NW2d 515 (1989) and Mayor of City of Lansing v Pub Serv Comm, 257 Mich App 1, 20-21; 666 NW2d 298 (2003) aff’d sub nom 470 Mich 154 (2004).

Having considered the evidence, the parties’ arguments on this issue and the PFD, the Commission finds that the PFD’s recommendation is reasonable and adopts the ALJ’s findings and conclusions. The Commission agrees with Consumers that it is the trier-of-fact’s responsibility to find the facts and reach legal conclusions based on the record evidence presented. In this matter, the ALJ determined that the proposed adjustment was unnecessary because the
volatility of the five-day average of NYMEX strip prices makes it a poor indicator of future gas prices. The Commission agrees with the ALJ that the more-recent five-day average the Attorney General used does not justify an adjustment regarding the cost of gas. For that reason, rejection of the proposed adjustment is proper. In addition, the Commission disagrees with the Attorney General’s assertion that the ALJ improperly shifted the burden of proof from Consumers to the Attorney General. On the contrary, the ALJ considered the record evidence before her, including the evidence Consumers presented regarding volatile fluctuations in NYMEX strip prices, and made the requisite findings. Accordingly, there was no legal error. Finally, the Commission agrees with the ALJ’s recommendation that Consumers should be encouraged to rethink its reliance on the five-day average of NYMEX strip prices as an indicator of future prices if this pattern of volatility should continue. Thus, the Commission rejects the Attorney General’s proposal requesting a $27.6 million reduction in the cost of gas.

Basis Differential

The ALJ next considered whether the Commission should require Consumers to revise its GCR factor calculation to reflect an updated basis differential component of the cost of index-based gas, which would be reduced by $4.8 million as proposed by the Attorney General. The Attorney General’s witness identified information that showed an average decrease of 16% in the basis differentials Consumers used in its February 2014 amended filing when compared with the basis differentials in April 2014. Although Consumers’ witness acknowledged the decrease, he testified that the basis differentials are not a significant contribution to the cost of gas, pointing out that the resulting $4.8 million decrease in gas cost is only 0.6% of the total projected GCR purchased and produced cost of $785 million. 3 Tr 480. Consumers’ witness also testified that its February filing reflected a 20% increase in the basis differential component over the amount
Consumers included in its initial filing. He explained during his direct testimony that, when the company buys gas at NYMEX-indexed prices, it determines the delivery point for the purchased gas so as to achieve the lowest overall delivered price taking into consideration locational basis adjustments and transportation costs. 3 Tr 455.

The ALJ considered the arguments presented, observing that the parties presented the same arguments they made regarding the NYMEX price adjustment. PFD, p. 49. The PFD accepted Consumers’ testimony that the basis differentials have been fluctuating and that the change in basis differentials between the time of the company’s amended filing in February 2014, and the data the Attorney General offered in April 2014, would not have a significant impact on the cost of gas. The ALJ also pointed out that, even though most of the revised basis differentials in Exhibit A-6 decreased from February to April, that exhibit also shows that some of them increased during that time period. The ALJ concluded that, consistent with the PFD’s recommendation regarding the NYMEX price adjustment, the Commission should not require Consumers to revise its GCR factor calculation to reflect updated basis differentials. Thus, it appears that the PFD rejects the Attorney General’s request for a $4.8 million reduction in the basis differential component of the cost of index-based gas.

The Attorney General takes exception to the PFD’s recommendation on this issue, pointing out that the PFD wrongly accepts Consumers’ testimony that the basis differentials have been fluctuating and that the change in basis differentials between the time of the amended filing in February 2014, and the Attorney General’s more recent data in April 2014, would not have a significant impact on the cost of gas. According to the Attorney General, no underlying facts were presented to support these conclusions.
In contrast, Consumers argues that it provided ample evidence in support of its forecasted 2014-2015 GCR expense amounts. It claims it presented extensive testimony and exhibits detailing the company’s expectations for NYMEX and basis pricing during the GCR plan year. It also asserts that it has no incentive to overstate the cost of gas because it makes no profit on the natural gas commodity.

The Commission finds that the PFD’s recommendation is reasonable and adopts its findings and conclusions on this issue. The Commission agrees with the ALJ that Consumers presented evidence in support of its position that the basis differentials fluctuate over time, and that some have increased and some have decreased. The Commission further agrees that the GCR factor calculation should not be updated to reflect a revised basis differential component of the cost of index-based gas that would be reduced by $4.8 million as proposed by the Attorney General.

**Sales Volumes**

The next issue identified in the PFD was whether Consumers’ GCR factor should be revised to reflect the company’s updated sales forecast. Based on Mr. Coppola’s testimony that the company’s revised forecast projects an additional 5.1 Bcf of GCR sales during the plan year at an additional cost of $27.4 million, the Attorney General recommended the revision. The company presented rebuttal testimony that, while acknowledging the revised forecast, explained it was made for long-term planning purposes rather than for purposes of this GCR plan case. Consumers argued that the Attorney General never challenged the company’s underlying method or analysis that led to the company’s GCR sales forecast. Rather, the company pointed out that the Attorney General merely argued that the forecast should be replaced by a subsequent forecast developed for other purposes simply because it is more recent. The company pointed out that the Attorney General’s recommendation would substantially increase the time, expense, and burden of...
conducting annual GCR plan case proceedings without benefitting customers. Therefore, Consumers argued that the Commission should reject the Attorney General’s recommendation.

The PFD recommended that no adjustment be made based on the ALJ’s conclusion that an increase in the sales forecast carries with it an additional increase in the cost of gas supply with little effect on the factor itself from revising the calculations. The PFD instead recommended that the Commission caution Consumers that it must adjust its supply plans, including peak-day and CTN winter plans to meet the additional expected load. PFD, p. 51.

Consumers takes exception to that part of the PFD’s recommendation suggesting that the Commission should caution the company that it must adjust its supply plans, including peak-day and CTN winter plans to meet additional expected load. Specifically, Consumers views the recommended warning as unnecessary and points out that the evidence presented in the proceeding demonstrates the company’s commitment to adjusting its planning and operational activities to ensure it meets the demands of customers, including demands during CTN weather. Consumers further argues that no evidence was presented in this proceeding that suggested that the company was not committed to adjusting its actions to ensure it meets demand. Accordingly, Consumers argued that the Commission should reject the ALJ’s request for an unnecessary warning.  

The Commission agrees with Consumers that a cautionary warning regarding the company’s supply plans is unnecessary. The Commission notes that the company’s tariffs identify its obligation to serve as the supplier of last resort for both choice and GCR customers. Thus, Consumers already has the responsibility to meet demand. The Commission further agrees with Consumers that there was no indication in the proceeding that the company has failed in this  

5 The Attorney General did not address this particular aspect of the case in his replies to exceptions.
regard. Accordingly, the Commission declines to issue the recommended cautionary warning at this time.

**Fixed Price Contracts; Net Storage GCR Costs; and Index-Priced Contracts**

The Attorney General recommended several other adjustments, including: a $1.4 million reduction in the cost of fixed price contracts that was presented in line 28 of Consumers’ amended Exhibit A-13; the exclusion of all $11.6 million in net storage GCR costs shown in line 38 of Exhibit A-13; and, the exclusion of all $14.1 million in costs for index priced contracts presented in line 30 of Exhibit A-13.

Regarding the fixed price contracts, the Attorney General’s expert witness testified that he attempted to recreate the company’s calculation of the $46.8 million amount included on line 28, but that he calculated $45.4 million instead. He testified that he suspected some of the difference represents the cost of transportation of these purchases to Michigan, but could not validate his assumption without more information. He therefore recommended that the unexplained remaining $1.4 million be excluded from the cost of gas. 3 Tr 679.

Regarding the storage costs in line 38 of Exhibit A-13, the Attorney General’s expert witness was skeptical about whether Consumers had correctly estimated the cost of storage withdrawals. Specifically, Mr. Coppola doubted whether the average cost of net gas withdrawals, which the company identified as being $3.07 per Mcf, was accurate in light of the fact that the company forecasted an average cost rate for gas purchases of $4.99 for the 2014-2015 period. He further testified that he had asked for supporting details and that Consumers only provided a general explanation. Therefore, Mr. Coppola recommended excluding the entire amount of the storage costs from the cost of gas forecast. 3 Tr 681-682.
As noted in the PFD, Consumers’ expert disagrees with the Attorney General’s contention that the storage costs were not adequately supported by the record. Mr. Howard testified that the company did provide the necessary information to support the calculation and responded to the Attorney General’s discovery requests on this issue. Specifically, he contends that discovery responses were included in Exhibit AG-7 and his Exhibit A-49. He further testified that the projected cost of gas in storage used in the calculation is also included in line 47 of Exhibit A-13. 3 Tr 482.

Regarding the estimated cost of index-priced contracts, the Attorney General’s expert recommended excluding the entire amount included on line 30 of Exhibit A-13 because Consumers failed to provide the index price components or transportation cost components when the company responded to the Attorney General’s request for the cost components and calculations in the discovery request in Exhibit AG-7.

In response, Consumers’ expert testified that its discovery response provided that the index-priced contracts were priced at NYMEX minus $0.076 basis at the company’s city gate at a volume of 20,000 dth/d in the winter and that the NYMEX prices were provided in the company’s Exhibit A-19. The company provided an example as to how these cost components combine to provide the cost estimate in line 30 of Exhibit A-13. 3 Tr 481. Further explanation about the source of the basis price information was provided during cross-examination. 3 Tr 497-499.

The ALJ observed that Consumers did not address the Attorney General’s recommendations in its written briefs. Nevertheless, the ALJ determined that Consumers adequately supported these items in its amended exhibit. The ALJ concluded that the company did provide sufficient information to support its calculations in lines 38 and 30 of that exhibit, but noted that the information may not have been as detailed or in the format that the Attorney General expected.
The PFD also notes that the $1.4 million fixed-price contract calculation discrepancy is a minor one relative to the total cost and is likely due to the use of rounding in the company’s spreadsheet. The ALJ goes on to reason that, because the Attorney General did not dispute that fixed-price gas is an appropriate element in the cost-of-gas calculation and that, because this case is a plan case rather than a reconciliation, the use of the stated figure for the purposes of the cost of gas calculation is reasonable. The ALJ also observed that greater cooperation and responsiveness on the company’s part to the Attorney General’s requests for information during discovery could have resolved these disputes. Thus, although the PFD recommends that the Commission reject these proposed adjustments, the ALJ further requests that the Commission emphasize the obligations of all parties to make sure discovery is completed.

The Attorney General takes exception to the PFD’s recommendation rejecting his proposed adjustments because he argues that the PFD seems to conclude that the relative value of the proposed adjustments make them immaterial. Again, the Attorney General also argues that, if the evidence is unclear, it is not proper to adopt the utility’s position on the basis of conjecture or speculation alone.

Consumers responds to this argument by arguing both that it presented extensive testimony to support its amended Exhibit A-13, which calculates total GCR costs in the case. The company further asserts that a detailed recital of its evidence in support of its gas cost calculations for the 2014-2015 GCR plan year can be found in Consumers’ initial brief. Consumers also argues that, contrary to the Attorney General’s argument, it is not the law that the burden of proof can never be carried where conflicting opinions appear on the record and where contrary evidence is offered regarding GCR cost-of-gas calculations. Instead, the company cites law that explains it is the Commission’s job to weigh expert opinion testimony and determine how it preponderates.
Consumers contends that it presented substantial evidence throughout the record of numerous experts who are responsible for the day-to-day operational, planning, and purchasing decisions that support its cost-of-gas forecast. The company claims that the ALJ correctly weighed the substantial evidence presented and the credibility and first-hand experience of its witnesses in rejecting this disallowance. Accordingly, it asks the Commission to adopt the ALJ’s conclusions regarding the Attorney Generals proposed disallowances.

Having considered the parties arguments, the evidentiary record, and the PFD’s recommendations regarding these adjustments, the Commission finds that the PFD’s conclusions are reasonable and adopts its recommendation to reject each of the proposed adjustments as well as its recommendation to remind the parties of their obligations during discovery to complete the discovery process. The Commission agrees with the ALJ that Consumers presented evidence sufficient to support its calculations on lines 28, 30, and 38 of its amended Exhibit A-13. Further, because Consumers met its evidentiary burden on each of these issues, no adjustments are necessary.

2013/2014 Underrecovery

The final issue is whether the Commission should prohibit Consumers from rolling in its projected underrecovery from the 2013/2014 GCR year, which is estimated to be approximately $98 million according to the Commission’s May 2, 2014 order in this proceeding. The Attorney General argued that rolling in a prior underrecovery of this magnitude distorts price signals and shifts costs from those who used the gas last winter to those who are Consumers’ customers the following year. Although the Attorney General’s expert acknowledged a line of Commission cases that prefers the administrative convenience of the roll-in method, he further testified that the Commission adopted this method at a time when there was no choice program. The Attorney
General argued that it is inequitable that GCR customers can avoid paying a share of past underrecoveries by switching to the GCC program and further argues that providing a motive for switching can negatively affect gas supply operations and costs. 2 Tr 291-297; 3 Tr 684-687. The Attorney General provided testimony recommending that the Commission use a historical basis for billing significant surcharges or refunds in order to avoid any negative effects on supply operations or costs. In addition, the Attorney General would minimize the administrative burden by exempting customers who move out of Consumers’ service territory from rebilling and by including GCC customers. 2 Tr 336-337. The Attorney General also argued that the roll-in method is unlawful.

In contrast, Consumers argued that nothing has changed since the roll-in method was adopted, that it has worked well in the past, and that it would be administratively burdensome to return to the earlier historical-based billing method. The company estimates it would cost roughly $1 million and would take a year to implement a different system. It further asserts there would be ongoing administrative costs associated with maintaining a revised system. And, Consumers argued that an additional line item on a customer bill would confuse customers. In response, the Attorney General asserts that the company’s high level cost estimates are speculative and disputes that an additional line item on a bill will confuse customers.

Consumers cites the Commission’s December 21, 2006 order in Case No. U-15001, its June 30, 1994 order in Case No. U-10384, and its September 17, 1994 order in Case No. U-10490 as providing additional support for its position on this issue. The company also relies on testimony that shifting cost recovery one year later into the 2015-2016 GCR year would further distort price signals in those later years. The company argues that, although rate impacts might be deferred, they would still occur and at a point further removed from gas usage. 2 Tr 178-179.
Consumers further argued in its reply brief that none of the conditions that led the Commission to implement the roll-in method have changed, pointing out that the Commission has already considered and rejected in prior cases the Attorney General’s arguments regarding price signals, precise matching of the person paying with the person who consumed the gas, and rate shock.

However, the PFD indicates that Consumers specifically failed to mention or address the choice program or the potential inequities of allowing customers to avoid paying a share of past underrecoveries by switching to the choice program, or the potential impact on the choice program from having Consumers’ comparison price reflect significant underrecoveries. PFD, p. 57. The PFD found that there is merit to both parties’ positions on this issue. The ALJ acknowledged that the Commission and gas utilities have lawfully used the roll-in method successfully for many years. The ALJ also acknowledged the many benefits of the roll-in method, including the fact that it avoids requiring the utility to retain historical billing data, track customers who leave its system to issue refunds or credits, and that it allows the company to accurately refund or collect the calculated amounts without the need for separate, additional reconciliations. However, the ALJ further opined that the roll-in method does not promote accurate price signals. She further recognized that, under the current method, the rates paid for future gas use will include the additional costs or offsetting credits that are associated with prior consumption. The ALJ also pointed out that Consumers never addressed the potential significant impact on the number of customers becoming choice customers.

The PFD refers to the fact that the Commission recognized in its May 2, 2014 order that this plan case is not the appropriate case to consider specific modifications to refund methods. Further, the ALJ notes that because it would take Consumers at least a year to reconfigure its system, no change in the method could realistically be implemented for this GCR year. Nevertheless, the
PFD recommended that the Commission encourage the parties to confer and consider whether alternatives exist that would avoid influencing a customer’s choice of supplier, and ideally avoid significant distortions in the per Mcf rates that customers pay, in the event of any significant over or underrecoveries.

Consumers takes exception to the ALJ’s recommendation that the Commission encourage the parties to confer and consider whether alternatives to the roll-in method exist that would avoid distortions in the rates customers pay. The company asserts that the ALJ’s assumptions are faulty because the evidence contradicts the statement that the roll-in method promotes inaccurate price signals. Specifically, Consumers presented evidence that delaying the recovery of a prior year’s GCR underrecovery results in inaccurate price signals. The company also points to testimony where the Attorney General’s expert even acknowledges that it is better when pricing information is available to the marketplace sooner rather than later. 2 Tr 331. Consumers also rebutted testimony that the roll-in method causes the wrong customers to pay for the underrecovery by explaining that it is administratively cost prohibitive to match a specific customer’s usage with that customer’s payment. 2 Tr 178-179. The company also alludes to evidence it presented that described the burdens and costs associated with adopting the Attorney General’s proposed separate surcharge method of recovering prior years’ GCR underrecoveries. Thus, according to the company, the evidence presented shows that altering the long-established roll-in method would lead to increased price distortions and increased costs for customers without commensurate benefits.

Consumers likewise argues that the Commission should reject the ALJ’s conclusion that the GCC program should influence the company’s continued use of the roll-in method. The company argues that no causal connection was shown between the continued use of the roll-in method and
the potential for customers to avoid paying a share of prior years’ GCR underrecoveries by switching to choice. Consumers points out that choice has been in existence since 1998 and that fluctuations in the company’s GCR factor have always existed. Consumers argues that the existence of a GCC program is not a sufficient reason to abandon the well-established benefits of the roll-in method.

The Attorney General also takes exception to the PFD’s recommendation on this issue. The Attorney General argues that the company’s roll in method conflicts with existing legislation found in MCL 460.6h, because, according to him, the Commission’s power to allocate over or underrecoveries is restricted to the Commission’s decisions in its final order in a gas supply and cost review and not to GCR plan cases. The Attorney General further argues that, because of the language of that statute, it is not lawful to shift recovery of GCR costs from one year to the next. Accordingly, he argues that the Commission should reject the PFD’s recommendation and should require Consumers to discontinue the roll-in method.

The Commission finds reasonable that part of the PFD’s conclusions and recommendations that reject the Attorney General’s proposal requesting that the Commission require Consumers to adopt a different method based on historical consumption and impose a separate surcharge on the GCR customer’s bill. The Commission further concludes that the roll-in method is not per se unlawful as the Attorney General suggested. As the Commission previously noted in its December 21, 2006 order in Case No. U-15001:

…the Michigan Court of Appeals has already ruled several times that the Commission has statutory power to roll past period underrecoveries into current GCR factors. Attorney General v Public Service Comm, 215 Mich App 356, 369; 546 NW2d 266 (1996), and Attorney General v Public Service Comm, 235 Mich App 308, 314-315; 592 NW2d 264 (1999).
Likewise, the Commission agrees with the utility that there is no evidence that the existence of a choice program causes GCR customers to avoid paying their share of the GCR costs associated with the use of the roll-in method. This argument assumes that the average GCR customer knows and understands the roll-in method, has all of the information regarding how to avoid paying their share of GCR costs, and would expend the effort and act rationally to avoid costs attributable to that method. However, conventional wisdom suggests that the average utility customer is not well-versed in the nuances of a utility’s chosen method for reconciling underrecoveries, and the Commission declines to accept as true the suggestion that GCR customers would alter behavior to avoid paying the costs that arise from the continued use of this method. Moreover, the Commission agrees with the utility that the evidentiary record in this case does not support the Attorney General’s assumptions that suggest a causal relationship between switching to choice and use of the roll-in method. Accordingly, the Commission rejects this argument because it is not supported by the record in this case. Further, as noted in its May 2, 2014 order, the Commission declines to adopt the separate surcharge proposal that the Attorney General presented in this plan case.

Regarding the expressed concerns about distorted price signals that can result from a significant underrecovery, the Commission accepts as reasonable the PFD’s recommendation that the parties should be encouraged to consider the feasibility of other methods with the goal of addressing this issue. Accordingly, the Commission adopts the PFD’s recommendations and conclusions in this regard.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company’s gas cost recovery plan and factors for the 12-month period ended March 31, 2015, as modified by this order, are approved.
B. Consumers Energy Company’s five-year forecast is accepted.

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, under MCL 462.26. To comply with the Michigan Rules of Court’s requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission’s Executive Secretary and to the Commission’s Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscdockets@michigan.gov and to the Michigan Department of the Attorney General – Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 West Saginaw Hwy, Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

________________________________________
John D. Quackenbush, Chairman

By its action of June 3, 2015. Greg R. White, Commissioner

Mary Jo Kunkle, Executive Secretary Sally A. Talberg, Commissioner