

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**MICHIGAN CONSOLIDATED GAS COMPANY** )  
for approval of an experimental pilot program for )  
expanded gas customer choice, including an expanded )  
gas transportation program, a transportation )  
aggregation tariff, an earnings sharing mechanism, a )  
suspension of its gas cost recovery clause, a )  
moratorium on non-GCR rate adjustments, and )  
related relief. )  
\_\_\_\_\_ )

Case No. U-11682

At the October 12, 1998 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. David A. Svanda, Commissioner

**OPINION AND ORDER**

On April 28, 1998, the Commission approved an experimental customer choice program for Michigan Consolidated Gas Company (Mich Con). As approved, the program expands the current gas transportation program, adopts transportation standards of conduct, suspends Mich Con's gas cost recovery (GCR) clause, freezes the gas commodity charge at \$2.95 per thousand cubic feet (Mcf), freezes distribution service rates at current levels, establishes an earnings sharing mechanism, and implements a transportation aggregation tariff. Because approval of the program would

not increase any customer's rates, the Commission approved the program without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a; MSA 22.13(6a).

On May 28, 1998, Attorney General Frank J. Kelley (Attorney General) filed a petition for leave to intervene and a motion for reconsideration. In his motion, the Attorney General argues that the Commission lacks authority to approve Mich Con's proposal, cannot issue an order that implicitly decides questions of material fact without providing the opportunity for a hearing, and cannot increase rates (as he alleges the order does) without providing notice and an opportunity for a hearing.

On June 18, 1998, Mich Con filed a response.

The Attorney General renews the argument raised in other cases that the Commission may not suspend a GCR clause, or at least may not do so without conducting a full contested case. He also renews the argument that an order that eliminates the potential for future rate reductions or refunds increases rates within the meaning of MCL 460.6a; MSA 22.13(6a). The Commission has previously rejected both arguments, and the Michigan Court of Appeals has affirmed the Commission's decision. See, Attorney General v PSC, unpublished opinion per curiam of the Court of Appeals, decided January 20, 1998 (Docket Nos. 191946, 192000, 192001, and 192515).

Furthermore, the Commission rejects the argument that a shift of gas costs from the GCR factor to base rates is an increase in rates within the meaning of the statute. The net effect is not an increase in rates. Likewise, the Commission rejects the argument that a hearing was required to resolve issues of disputed fact. MCL 460.6a; MSA 22.13(6a) specifically authorizes the Commission to proceed without conducting a hearing. The more general standard for granting summary disposition in administrative proceedings is not applicable.

The remainder of the Attorney General's motion is essentially an argument that if the Commission had conducted a hearing, the Commission might have modified Mich Con's proposal in some respects to address the Attorney General's concerns. By providing that the Commission must hold a hearing only when the effect of the order will be to increase rates, the Legislature has entrusted to the Commission's sound discretion both the choice of whether to conduct a hearing when one is not required by statute and the terms of the order that it should approve if it decides to proceed without conducting a hearing. In this case, the Commission exercised its discretion to proceed without a hearing, and concluded that the program outlined in Mich Con's application was in the public interest and did not require modification.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.
- b. The motion for reconsideration should be denied.

THEREFORE, IT IS ORDERED that Attorney General Frank J. Kelley's motion for reconsideration is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

( S E A L )

/s/ David A. Svanda

Commissioner

By its action of October 12, 1998.

/s/ Dorothy Wideman

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated October 12, 1998 denying Attorney General Frank J. Kelley’s motion for reconsideration, as set forth in the order.”