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November 13, 2015

Ms. Mary Jo Kunkle  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917

Re: MPSC Case No. U-17133-R

Dear Ms. Kunkle:

Enclosed herewith for filing in the above-referenced matter, please find the *Exceptions of Retail Energy Supply Association* and Certificate of Service. If you have any questions, please feel free to contact my office. Thank you.

Very truly yours,

**Fraser Trebilcock Davis & Dunlap, P.C.**



Jennifer Utter Heston

JUH/ab  
Enclosures  
cc: All parties of record.

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of )  
CONSUMERS ENERGY COMPANY for )  
reconciliation of gas cost recovery costs )  
and revenues for the 12-month period )  
April 2013 – March 2014. )  
\_\_\_\_\_ )

Case No. U-17133-R

**EXCEPTIONS OF**  
**RETAIL ENERGY SUPPLY ASSOCIATION**

Dated: November 13, 2015

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NOW COMES the Retail Energy Supply Association ("RESA")<sup>1</sup>, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and pursuant to the schedule adopted by Administrative Law Judge Mark E. Cummins ("ALJ"), hereby respectfully submits these Exceptions to the Proposal for Decision ("PFD") issued on October 23, 2015.

**I. INTRODUCTION.**

On June 30, 2014, Consumers filed an application, testimony and exhibits seeking approval of its proposed GCR reconciliation. Consumers calculated a total under-recovery for the 2013-2014 GCR period of approximately \$84.2 million. Consumers did not propose any changes to its gas customer choice ("GCC") program.

The Michigan Public Service Commission ("MPSC") Staff, the Michigan Attorney General ("AG"), and the Residential Ratepayer Consortium ("RRC") filed testimony in this proceeding alleging that Consumers inappropriately made relatively expensive pipeline purchases instead of using storage. Staff and intervenors asserted that Consumers should have increased further the Daily Delivery Obligations ("DDO") of GCC suppliers during extreme cold in 2014.<sup>2</sup> According to MPSC Staff and intervenors, increasing deliveries by GCC suppliers would have permitted Consumers to make fewer pipeline purchases for GCR customers when the market price for gas was the most expensive.<sup>3</sup> The MPSC Staff recommended a disallowance of Consumers' gas costs claiming that Consumers did not use

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> See, Quilico Direct, p. 9, 3 Tr. 352; Coppola Direct, pp. 7-9 & 11-13, 3 Tr. 304-306 & 308-310; and Hollewa Direct, pp. 15-16, 3 Tr. 291-292.

<sup>3</sup> *Id.*

its authority under its interpretation of the existing GCC tariff adequately enough to protect GCR customers.<sup>4</sup> The AG and the RRC recommended changes to Consumers' GCC tariff.<sup>5</sup>

In his October 23, 2015 PFD, the ALJ correctly recommended that proposed adjustments to Consumers' GCC tariffs be rejected in this case. The ALJ followed the Commission's policy of not making tariff revisions except in general rate cases or cases initiated for the purpose of evaluating and amending tariffs.<sup>6</sup> The ALJ opined, "While parties may argue about – and the Commission can clearly resolve – disputes regarding the application of a particular tariff, revising the language itself is best left either to general rate cases or to broad proceedings specifically designed to review the tariff's language."<sup>7</sup> Noting that the Commission had already opened another proceeding to address Consumers' tariff, namely Case No. U-17900, the ALJ recommended that the AG's and the RRC's proposed tariff amendments be rejected.<sup>8</sup> In these respects, the Commission should adopt the ALJ's recommendations.

The ALJ, however, erred in his PFD in at least one important respect of specific concern to RESA. The ALJ erroneously determined that Consumers did not appropriately administer its GCC tariff during the Polar Vortex of the winter of 2014 and recommended a \$4.3 million disallowance of Consumers' gas costs.<sup>9</sup> In short, the ALJ's recommendation was

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<sup>4</sup> See, Quilico Direct, p. 14, 3 Tr. 357.

<sup>5</sup> See, Coppola Direct, pp. 10 & 15-18, 3 Tr. 307 & 312-315; Hollewa Direct, pp. 17-18, 3 Tr. 293-294.

<sup>6</sup> The Commission previously determined that GCC tariff changes should not be addressed within the context of GCR cases. In Consumers' 2010-2011 GCR plan case, the Commission stated, "GCR cases do not address the terms and conditions of GCC tariffs, nor do they address the effects of implementation of GCC tariffs; these issues should be taken up in general rate cases." Order dated March 18, 2010, MPSC Case No. U-16149, p. 5. Similarly, in Michigan Consolidated Gas Company's 2010-2011 GCR plan proceeding, the Commission again reiterated that, "GCR cases do not address the terms and conditions of GCC tariffs, nor do they address the effects of implementation of GCC tariffs; these issues should be taken up in a general rate case." Order dated September 28, 2010, MPSC Case No. U-16146, p. 3.

<sup>7</sup> PFD, p. 36.

<sup>8</sup> *Id.*, p. 37.

<sup>9</sup> *Id.*, p. 34.

based on an erroneous interpretation of the utility's GCC tariff and second-guessing the utility's actions based on impermissible hindsight. If the MPSC Staff's interpretation of Consumers' GCC tariff that is the basis of the proposed disallowance is adopted, it would be tantamount to an impermissible change to the GCC tariff. The Commission should issue an order in this proceeding rejecting the ALJ's proposed disallowance.

**II. THE ALJ ERRED IN RECOMMENDING A DISALLOWANCE OF CONSUMERS' GAS COSTS. THE PROPOSED DISALLOWANCE IS BASED ON AN ERRONEOUS INTERPRETATION OF CONSUMERS' GCC TARIFF AND IMPERMISSIBLE HINDSIGHT.**

The ALJ cited five findings in support of his recommended disallowance of Consumers' gas costs.<sup>10</sup> First, GCR sales were much higher than usual due to colder-than-normal ("CTN") weather resulting in increased pipeline purchases.<sup>11</sup> Second, Consumers "began the winter heating season with 11% less GCC stored gas than required to meet the normal weather target contained in the company's Commission-approved GCR plan", and storage deficiencies increased through the winter.<sup>12</sup> Third, Consumers' failure to raise DDOs quickly and aggressively enough led to some cost shifting from GCC to GCR customers.<sup>13</sup> Fourth, Consumers knew or should have known of "the need to more closely monitor the DDOs that gas utilities establish".<sup>14</sup> Fifth, the ALJ was not persuaded that Consumers could not have set the February 2014 DDO at the 150% level.<sup>15</sup> For these reasons, the ALJ recommended the Staff's proposed \$4.3 million disallowance.

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<sup>10</sup> *Id.*, pp. 31-34.

<sup>11</sup> *Id.*, p. 31.

<sup>12</sup> *Id.*, pp. 31-32.

<sup>13</sup> *Id.*, p. 32.

<sup>14</sup> *Id.*, p. 33.

<sup>15</sup> *Id.*, p. 34.

**A. *The ALJ's recommended disallowance is based on impermissible hindsight.***

Consumers is entitled to recover its reasonably and prudently incurred gas costs in its GCR reconciliation proceeding.<sup>16</sup> The \$4.3 million in gas costs that the ALJ disallowed stems from pipeline purchases Consumers made during extreme CTN weather that was the Polar Vortex of the winter of 2014. During the 2013-2014 gas year, Consumers experienced the coldest winter in its recorded history.<sup>17</sup> The reasonableness and prudence of Consumers' decisions to make additional pipeline purchases must be evaluated based upon the circumstances known (or which reasonably should have been known) at the time the decisions were made.<sup>18</sup> To base a recommendation on facts as they subsequently evolved is to evaluate the prudence of Consumers' decision with impermissible hindsight.

Going into the winter heating season, Consumers could not have known that the Polar Vortex would occur. Consumers could not have known that sales volumes would be so high during the 2013-2014 winter. It was not unreasonable or imprudent, in and of itself, for storage inventories to be slightly behind target going into the winter heating season. It is only when storage inventories are evaluated in conjunction with subsequent information about the presence of extreme CTN weather does a storage shortfall raise concerns.

Likewise, Consumers' decision to increase DDOs to 110% in January and February 2014, rather than the 150% proposed by Staff, was not questionable until you learn that extreme CTN weather occurred in February and March 2014. Had extreme CTN weather not

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<sup>16</sup> See, MCL 460.6h(12).

<sup>17</sup> 3 Tr. 139.

<sup>18</sup> See, *ABATE v. PSC*, 208 Mich App 248 (1994); *Attorney General v PSC*, 161 Mich App 506, 516-518 (1987); Order dated July 1, 2010, MPSC Case No. U-15981, p. 7; Order dated March 12, 2003, MPSC Case No. U-13266, pp. 12-14.

occurred in February and March 2014, Consumers' decision to raise DDOs to 110% prior to the start of February 2014 would not have raised concerns.

The reasonableness and prudence of Consumers' decisions must be evaluated based on the information known at the time the decisions were made. Consumers could not have predicted the historic weather circumstances that ultimately led to additional pipeline purchases. Consumers increased its DDOs as quickly and aggressively as its tariff permitted under the circumstances known at the time.

***B. Despite the ALJ's conclusion to the contrary, Consumers could not have increased DDOs to 150% in February 2014.***

In his PFD, the ALJ states that he was unconvinced that Consumers could not have raised its DDO to 150% for February 2014.<sup>19</sup> The ALJ's finding, however, is based on an erroneous interpretation of Consumers' tariff and the facts known the time Consumers' decisions were made.

Section F1.G. of Consumers' GCC tariff permits Consumers to adjust DDOs on a monthly basis, which "will not normally vary by more than plus/minus 10% from 1/365<sup>th</sup> of the estimated annual customer load to be served by the Supplier." Thus, prior to the start of each month, Consumers sets the DDOs that AGSs must deliver to within a range of 90% to 110% from the average day.

During the months of January through March, Consumers will consider variances in deliveries up to +/- 50% from the 1/365<sup>th</sup> of estimated annual load, "provided that the Supplier identifies the pools to be reviewed". Section F1.G. states, "The Company will consider variances in deliveries up to +/- 50% from 1/365<sup>th</sup> of the estimated annual customer load to be served by the Supplier for the delivery months of January – March, provided that

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<sup>19</sup> *Id.*, p. 34.

the Supplier identifies the pools to be reviewed by the first business day of the month prior to the scheduled delivery." Once a supplier identifies up to five pools to be reviewed, Consumers will review the pools. Importantly, variances from January to March of +/-50% under Section F1.G. of Consumers' tariff must be initiated by an AGS.

Additionally, Consumers' GCC tariff permits Consumers to take other steps necessary to ensure system reliability. Section F1.S. permits Consumers to "issue operational flow orders, or take other action which it deems necessary, to ensure system reliability, even if such action may be inconsistent with other provisions of these Program rules." It was this provision that Consumers relied upon to increase DDOs to 150% of 1/365<sup>th</sup> of the AGSs' estimated annual load in March 2014.

Thus, it is only if system reliability was at issue going into February 2014 that Consumers could have increased DDOs beyond +/- 10% on its own initiative. Consumers' witness Ms. Curtis testified that system reliability was not an issue at the time DDOs were set for February 2014.<sup>20</sup> Ms. Curtis' testimony about the known conditions at the time DDOs were established for February 2014 was un rebutted.

Moreover, the ALJ makes no finding that system reliability was at issue going into February 2014. The ALJ merely opines that he could not see how the conditions in February 2014 were any different than what they were for March 2014 when Consumers did determine that higher DDOs were required for system reliability purposes. It is axiomatic, however, that the conditions at the time DDOs were set going into March 2014 included the actual February 2014 experiences. In February 2014, Consumers increased pipeline purchases to 220% higher than planned. At the time the February DDOs were set, Consumers only had

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<sup>20</sup> 3 Tr. 232-233.

the benefit of known conditions into January 2014. While sales leading up to February 2014 were higher than normal, the extreme cold that was the Polar Vortex did not arise until February and into March 2014.

Absent a system reliability issue for February 2014, Consumers made adjustments to DDOs in response to historic conditions as far as it could within the constraints of Consumers' tariff. In a similar situation involving historic warmer than normal conditions, the Commission rejected proposed adjustments to DTE Gas' GCR. In MPSC Case No. U-16921-R, the Commission recognized that the 2011-2012 warmer than normal conditions were "historic, and the GCC tariff did not allow for adjustment to the daily schedule greater than +/- 10%."<sup>21</sup> The Commission rejected the RRC's recommended adjustments in that case finding that DTE Gas made adjustments to DDOs in response to historic conditions as far as it could within the constraints of DTE Gas' tariff.<sup>22</sup> The Commission should apply the same reasoning within the context of likewise historic conditions present in this case.

**C. *The MPSC Staff's calculated disallowance is flawed.***

MPSC Staff witness Nora Quilico testified that, during the months of February and March 2014, GCR customers suffered negative price impacts as a result of Consumers' GCC gas purchases.<sup>23</sup> In her exhibit S-5, Ms. Quilico used Consumers' weighted-average cost of gas ("WACOG") minus Consumers' February average purchase price to calculate the negative impact of GCC spot purchases on the GCR. Consumers, however, does not collect the WACOG from GCC customers. Instead, Consumers collects the GCC billed price and any positive difference between Consumers GCC billed price and the WACOG is credited to

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<sup>21</sup> Order dated May 14, 2015, MPSC Case No. U-16921-R, p. 16.

<sup>22</sup> *Id.*

<sup>23</sup> 3 Tr. 351.

the GCR. Thus, the Staff's calculation is flawed and should not be the basis of any disallowance.

AGSs often over-deliver gas supplies to Consumers. RESA's witness Mr. Dishno testified that DDOs established by Consumers frequently overestimate GCC customer consumption,<sup>24</sup> which was confirmed by Consumers. In fact, Consumers witness Ms. Curtis testified that Consumers' method of calculating DDOs "produced a positive balance for GCC for all of the years I have been working in this program, and ever since 2001, actually. The only under/delivery we've ever had was in this extreme weather."<sup>25</sup> Thus, Consumers' DDO calculations resulted in over-deliveries to Consumers for every year of Consumers' expanded GCC program under its current tariff, except for one year - the winter of 2014 when Michigan experienced the historic cold Polar Vortex.

In years when the DDOs over-estimate GCC demand, GCR customers can and do benefit.<sup>26</sup> In instances of over-deliveries, there is a reconciliation at the end of the gas year where the AGS purchases back from Consumers the amount of gas that was over-delivered.<sup>27</sup> Where there are over-deliveries by AGSs, Consumers could reduce the spot purchases required to serve GCR customers.<sup>28</sup> The GCR also can receive a credit when the GCC billed price for gas is higher than Consumers' WACOG. Thus, as Mr. Dishno explained, in order to do a true price-impact analysis on the GCR stemming from Consumers' GCC program, one would have to also look at years of GCC over-deliveries, not just isolated instances of under-deliveries.<sup>29</sup>

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<sup>24</sup> 4 Tr. 416.

<sup>25</sup> 3 Tr. 249, ln. 23 through 3 Tr. 250, ln. 3.

<sup>26</sup> 4 Tr. 416.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

Also missing from the Staff's analysis is that Consumers pays AGSs the AGS average billed price for the gas AGSs deliver to Consumers.<sup>30</sup> Consumers then collects that price from GCC customers once that gas is consumed.<sup>31</sup> In years when there are under-deliveries, Consumers still collects the AGS bill price from GCC customers for 100% of the gas consumed even though Consumers has paid the AGS only for the gas delivered.<sup>32</sup> At times, the AGS bill price is greater than Consumers' WACOG.<sup>33</sup> In instances when there are AGS under-deliveries and Consumers is collecting an AGS bill price that is higher than Consumers' WACOG, the difference is credited to GCR customers, not AGSs.<sup>34</sup> Consumers witness Ms. Pittelkow confirmed that the difference is credited to GCR customers.<sup>35</sup> Thus, in these instances, the GCR customers are getting a positive net benefit due to AGS under-deliveries.<sup>36</sup>

To further explain how the GCR customers benefit from the GCC program, RESA witness Mr. Dishno provided an example. Mr. Dishno testified:

For instance, assume customer A contracted with an AGS to receive gas at \$5 per MCF and that customer uses 100 MCF in the year. Also, assume that the AGS under-delivered based on the delivery schedule provided by Consumers so that the AGS only delivered 97 MCF for that customer. Finally, assume the Consumers' WACOG was \$4 an MCF. In that example, Consumers is supplying customer A with 3 MCF of gas at its WACOG of \$4 per MCF, but Consumers is collecting from the customer \$5 per MCF which is the AGS bill price. The incremental difference of \$1 per MCF is credited to the GCR, not to the AGS.<sup>37</sup>

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<sup>30</sup> 4 Tr. 417.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> 3 Tr. 206, ln 18-23.

<sup>36</sup> 4 Tr. 417.

<sup>37</sup> 4 Tr. 417, ln 16-23.

Consumers' witness Ms. Pittelkow confirmed the accounting. She testified that Consumers does, in fact, record that cost for GCC purchases and credit its GCR costs.<sup>38</sup>

Staff's recommended disallowance is focused exclusively on February and March of 2014 when Consumers' purchase price for those months was above Consumers' WACOG for the year. Staff uses the average price for purchases in February and March and subtracts those prices from Consumers' WACOG for the year. They then conclude that the incremental difference between those two prices should be multiplied by the cumulative AGS under-delivery for the entire year to calculate the negative impact on GCR customers because of Consumers' purchases.

There are a number of reasons why the Staff's disallowance calculation is flawed. First, as explained by witness Dishno, Staff should not be using the WACOG price to calculate the price differential between the price of the gas purchased by Consumers and the price paid by GCC customers.<sup>39</sup> Staff should have used the GCC customer billed price.<sup>40</sup> As explained above, Consumers collects the GCC billed price from GCC customers not the WACOG price. Consumers retains the GCC billed price for any amount of under-delivered gas. An AGS is paid only on AGS deliveries, not GCC customer usage.

Furthermore, to truly calculate an appropriate GCR impact analysis stemming from the GCC program, one should look at a span of multiple years. In years when there are AGS under-deliveries and the AGS average billed price is above the WACOG, there is a positive net benefit to GCR. Staff and intervenors' negative price impact calculations are focused only on two isolated months and are otherwise missing important factors that must be

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<sup>38</sup> 3 Tr. 207, ln 1-11.

<sup>39</sup> 4 Tr. 419.

<sup>40</sup> *Id.*

accounted for to determine the true cost impact on the GCR stemming from the GCC program.

For these reasons, Staff's focus on two months during historic cold weather should not be a basis for a disallowance of Consumers' gas costs in this proceeding. Consumers appropriately applied its longstanding GCC tariff in establishing DDOs during the historic cold weather. GCR customers have significantly benefitted from the GCC program in every year since the inception of the program.

**III. CONCLUSION AND PRAYER FOR RELIEF.**

For all the reasons explained in the preceding sections of these Exceptions, RESA respectfully requests that the Commission issue an order rejecting the proposed disallowance.

*Respectfully submitted,*

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.  
RETAIL ENERGY SUPPLY ASSOCIATION



Date: November 13, 2015

By: \_\_\_\_\_

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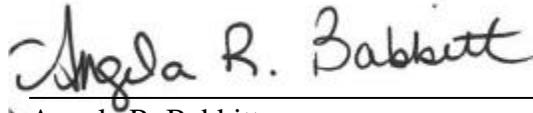
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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CONSUMERS ENERGY COMPANY for )  
Reconciliation of Gas Cost Recovery Costs )  
and Revenues for the 12-month period )  
April 2013 - March 2014 )  
\_\_\_\_\_ )

Case No. U-17133-R

**CERTIFICATE OF SERVICE**

Angela R. Babbitt hereby certifies that on the 13<sup>th</sup> day of November, 2015, she served the *Exceptions of Retail Energy Supply Association* and this Certificate of Service on the persons identified on the attached service list via electronic mail.

  
\_\_\_\_\_  
Angela R. Babbitt

## Service List for U-17133-R

### **Administrative Law Judge – Also via U.S. mail**

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