

August 31, 2015

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

Re: MPSC Case No. U-17693

Dear Ms. Kunkle:

Enclosed herewith for filing in the above-referenced matter, please find the Initial Brief 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)
approval of a Gas Cost Recovery Plan)
and Authorization of Gas Cost Recovery)
Factors for the 12-month period)
April 2015 – March 2016.)
_____)

Case No. U-17693

**INITIAL BRIEF OF
RETAIL ENERGY SUPPLY ASSOCIATION**

Dated: August 31, 2015

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NOW COMES the Retail Energy Supply Association ("RESA")¹, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and pursuant to the schedule adopted by Administrative Law Judge Suzanne D. Sonneborn ("ALJ"), hereby respectfully submits this Initial Brief on Consumers Energy Company's ("Consumers") application for approval of a gas cost recovery ("GCR") plan and authorization of gas cost recovery factors for the 12-month period April 1, 2015 – March 31, 2016.

I. INTRODUCTION.

RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient customer-oriented outcome than a regulated utility structure. RESA members are licensed to sell natural gas to retail customers in Michigan as Alternative Gas Suppliers ("AGS"), including to customers in Consumers' gas customer choice ("GCC") program. As a result, RESA is keenly interested in the GCC proposals interjected into this GCR reconciliation proceeding by the Michigan Attorney General ("AG").

The AG submitted witness testimony that addresses the interpretation and implementation of Consumers GCC program tariff, calls for changes to that tariff, and proposes a new pipeline reservation charge on GCC customers. The Commission, however, has previously determined that GCC tariff changes are not properly the subject of GCR

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¹ 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.

cases.² Instead, the Commission determined that proposals to modify the GCC tariff should be addressed in general rate cases or proceedings specifically focused on GCC issues.³ To that end, the Commission recently opened a docket to address Consumers' GCC program, including changes to Consumers' Daily Delivery Obligations ("DDOs").⁴ DDOs are the focus of the AG's GCC tariff recommendations.

Additionally, the proposed GCC tariff changes are unwarranted and unreasonable and, if adopted, would harm GCC customers and the GCC program. Any changes to Consumers' GCC program should take into consideration the context in which the changes are proposed and the total structure of the GCC program. Piecemeal changes that do not provide suppliers with a means to accommodate the changes should be rejected.

For the reasons discussed below, the GCC proposals presented in this case are unnecessary, flawed, unreasonable, and, if approved, would be harmful to GCC customers. The AG's GCC proposals should be rejected. Furthermore, the Commission should not adopt the proposed changes to Consumers' GCC program within this GCR plan case. The Commission should heed its July 23, 2015 order on rehearing in Case No. U-17334 and direct that GCC issues be addressed in Consumers new GCC docket, Case No. U-17900.

² See, Order dated March 18, 2010, MPSC Case No. U-16149, p. 5 ("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 September 28, 2010, MPSC Case No. U-16146, p. 3 ("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.")

³ *Id.*

⁴ See, MPSC Case No. U-17900, opened by Order dated July 23, 2015, Case Nos. U-17334 and U-17900, p. 16 ("Accordingly, the Commission grants rehearing for the purpose of scheduling a separate proceeding on its own motion in Case No. U-17900 to address the inequity of GCR gas costs during CTN weather and Consumers' EUT and GCC programs and related tariffs.").

II. STATEMENT OF FACTS.

On December 29, 2014, Consumers filed an application, testimony and exhibits seeking approval of its proposed GCR plan and authorization of GCR factors. Consumers proposed a based GCR factor of not less than \$4.0552 per Mcf plus additional amounts based on a contingent GCR factor mechanism. Importantly, Consumers did not propose any changes to its GCC program, including no proposal to implement a pipeline capacity reservation charge.

On April 27, 2015, direct testimony was pre-filed in this proceeding by the Michigan Public Service Commission ("MPSC") Staff and the AG.⁵ The AG witness, Sebastian Coppola, addresses a number of aspects of Consumers' GCR plan application. Of concern to RESA are Mr. Coppola's proposed changes to Consumers' GCC program, including changes to DDOs imposed on AGSs and a brand new pipeline capacity reservation charge on GCC customers. Witness Coppola claims, without substantiation, that Consumers purchased additional pipeline capacity in 2014 in order to serve GCR customers who returned from GCC service.⁶ Witness Coppola then speculates that "should some GCR customers migrate to GCC service in the coming months, the remaining GCR customers will again absorb the full cost of this additional capacity unless a portion of the interstate transportation capacity is allocated to GCC customers."⁷ Witness Coppola then recommends that the Commission direct Consumers to adopt a pipeline capacity reservation charge applicable to both GCC and

⁵ MPSC Staff witness Nora Quilico filed testimony addressing Consumers' proposed contingent factor adjustment mechanism and recommending an alternative to that mechanism. Quilico Direct, 4 Tr. 514-522. RESA takes no position with respect to Consumers' proposed contingent factor adjustment mechanism or the MPSC Staff's response thereto.

⁶ 4 Tr. 450.

⁷ *Id.*

GCR customers consistent with the SOLR reservation charge implemented by DTE Gas Company.⁸

Witness Coppola also alleges that in April and May 2014, GCC customers had a negative gas in storage balance.⁹ Mr. Coppola then references his testimony filed in Consumers' 2013-2014 GCR reconciliation case, Case No. U-17133-R, wherein he testified about alleged incremental costs to GCR customers due to what he believed to be inadequate deliveries by GCC suppliers.¹⁰ In that case, Mr. Coppola claimed that Consumers should have increased the DDOs of GCC suppliers during extreme cold in 2014 to the maximum Mr. Coppola alleges is allowed by the GCC tariff. According to Mr. Coppola, 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. As a result, the AG recommends changes to Consumers' GCC tariff. Specifically, witness Coppola recommends that Consumers modify its GCC program procedures to make adjustments to DDOs mid-month.¹¹

In connection with this proceeding, RESA presented the rebuttal testimony of the highly qualified and well-respected GCC supplier, Mr. Daniel Dishno. Mr. Dishno is employed by Interstate Gas Supply, Inc. ("IGS") as the Director of Gas Supply – Central Division.¹² IGS is a large AGS participating in Consumers' GCC program. Mr. Dishno's responsibilities include overseeing the gas supply activities for IGS in Michigan, Indiana, Illinois, and California.¹³ Mr. Dishno holds a Bachelors of Science Degree with an emphasis

⁸ 4 Tr. 451-454.

⁹ 4 Tr. 470.

¹⁰ *Id.*

¹¹ *Id.*

¹² 4 Tr. 494.

¹³ *Id.*

on business and marketing from Ball State University.¹⁴ Mr. Dishno worked at NiSource, a natural gas utility company, first in the Commercial and Industrial Sales division and later in the finance department.¹⁵ He then worked as a gas buyer at NIPSCO, a natural gas utility in Indiana which is owned by NiSource.¹⁶ At NIPSCO, his responsibilities included gas purchasing and managing pipeline and storage assets while ensuring a reliable source of natural gas to the city-gate.¹⁷ Mr. Dishno has participated in several natural gas proceedings in Michigan.¹⁸

RESA's expert reviewed the GCC proposals put forth by the AG and identified several issues with the proposed changes. First, Mr. Dishno's examination shows that, unlike DTE Gas Company, Consumers does not retain pipeline capacity to serve GCC customers as part of its supplier of last resort ("SOLR") function.¹⁹ Mr. Dishno's observation was confirmed by Consumers witness David Howard.²⁰ Because Consumers does not hold excess pipeline capacity to serve GCC customers—Consumers holds only sufficient capacity to serve its existing GCR load—Mr. Dishno concludes that it would be unreasonable to require GCC customers to pay a pipeline reservation charge to support the cost of nonexistent incremental pipeline capacity.²¹ Mr. Dishno also explains that a pipeline

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Mr. Dishno filed testimony in MPSC Case Nos. U-17133-R, U-17332, and U-17691.

¹⁹ 4 Tr. 497-499.

²⁰ "As stated earlier, the Company will act as supplier of last resort under the GCC Program; this requirement, however, does not require the Company to hold interstate transportation capacity to serve GCC customers, and the Company does not do so." 4 Tr. 134; "The Company does not purchase incremental firm transportation capacity to backstop potential GCC supplier defaults or to serve GCC customers as the supplier of last resort." *Id.*; "Consumers Energy does not hold firm transportation capacity on interstate pipelines in order to serve GCC customers as the supplier of last resort." 4 Tr. 135; "The Company does not, therefore, maintain interstate pipeline capacity to serve GCC loads, and there is no subsidization." 4 Tr. 136.

²¹ 4 Tr. 499-501.

reservation charge is unjust and unreasonable because only GCR customers benefit from Consumers' pipeline holdings.²²

Second, Mr. Dishno's examination reveals that the AG's DDO recommendations are likewise unjust and unreasonable. Mr. Dishno finds that the AG's DDO recommendations are based on a very small sub-set of unusual delivery data stemming from historic colder than normal ("CTN") Polar Vortex weather conditions and ignore the longer-term impact of Consumers' GCC program on GCR customers.²³ Furthermore, Mr. Dishno observes that the AG made the same DDO recommendation in other Commission cases and raised no new arguments here.²⁴ Mr. Dishno recommends that the Commission reject the proposed changes to Consumers' GCC program.

III. STATEMENT OF LAW.

Consumers' GCR plan proceeding is being conducted pursuant to Section 6h of Act 304, as amended, MCL 460.6h. Section 6h prescribes, in relevant part, the following:

(3) In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific gas cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan

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²² *Id.*

²³ 4 Tr. 505-507.

²⁴ 4 Tr. 507.

shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

(5) If a utility files a gas cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility. The gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts

contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

(7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.²⁵

Thus, a GCR plan proceeding is a statutorily prescribed proceeding that evaluates the reasonableness and prudence of a utility's GCR plan and establishes GCR factors to implement the GCR clause. The GCR plan proceeding is also a forum for evaluating a utility's 5-year forecast of customer demand, supply sources, and gas costs. There are no other issues to be addressed in a GCR plan case. The terms and conditions of GCC programs, and recommended changes thereto, are not properly within the scope of a GCR proceeding.²⁶

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."²⁷ 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

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²⁵ MCL 460.6h(3) – (7) (emphasis added).

²⁶ See Order dated March 18, 2010, MPSC Case No. U-16149, p. 5.

²⁷ *Id.*

GCC tariffs; these issues should be taken up in a general rate case."²⁸ Thus, GCC program changes are not within the scope of a GCR proceeding.

IV. THE PROPOSED CHANGES TO CONSUMERS' GCC PROGRAM ARE WITHOUT MERIT. THE COMMISSION SHOULD REJECT THE AG'S GCC RECOMMENDATIONS.

The AG seeks to change Consumers' GCC program. First, the AG recommends that the Commission direct Consumers to implement a new pipeline capacity reservation charge on GCC customers. Additionally, the AG proposes to change Consumers' determinations of DDOs on AGSs pursuant to Section F1.G of Consumers' GCC program tariff. To the extent that the Commission considers the AG's proposals in this improper forum, the proposed changes to Consumers' GCC program are without merit and should be rejected.

Furthermore, it should be noted that the Commission has already set GCC issues raised by the AG in this case for a fully contested proceeding in Case No. U-17900. Case No. U-17900 was opened to ensure that all interested parties had notice and an opportunity to be heard on proposed GCC program changes.²⁹ The Commission should direct that GCC issues be addressed in the new Consumers GCC proceeding. In so doing, the Commission will ensure that all interested parties affected by the AG's proposal are afforded due process.

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²⁸ Order dated September 28, 2010, MPSC Case No. U-16146, p. 3.

²⁹ "Although the Commission does not conclude that an Act 304 proceeding is an inappropriate forum to consider the company's gas supply plan and the management of its gas supply, the Commission is concerned that AGSs may not have received adequate notice of the issues addressed in the June 3 order. The Commission further concludes that the administrative burden of proceeding with a separate docket to address the GCR gas cost equity issues identified in the June 3 order is outweighed by the Commission's responsibility to afford all interested parties due process of law." Order dated July 23, 2105, MPSC Case Nos. U-17334 and U-17900, pp. 15-16.

A. *The AG's proposed pipeline reservation charge on GCC customers is unjust and unreasonable and should be rejected.*

As part of his direct testimony, AG witness Coppola recommended that the Commission order Consumers to implement a pipeline capacity reservation charge, like the one the Commission approved for DTE Gas Company.³⁰ Witness Coppola is concerned that customer migration between Consumers' GCC program and the Consumers' GCR may result in a situation where Consumers holds excess pipeline capacity.³¹ In order to avoid GCR customers potentially having to pay for excess pipeline capacity, witness Coppola recommends implementing a pipeline capacity reservation charge now.³²

The AG's recommendation is without merit and should be rejected. Witness Coppola is proposing a solution to a problem that does not exist. Consumers' gas supply planning and pipeline portfolio are decidedly different than DTE Gas Company's gas supply plan and capacity portfolio. DTE Gas Company holds substantial excess pipeline capacity whereas Consumers does not hold any excess pipeline capacity to serve returning GCC customers. Whereas DTE Gas Company proposed a pipeline capacity reservation charge, Consumers is actively opposes a new reservation charge.³³

1. Consumers does not maintain excess pipeline capacity to meet its SOLR function to GCC customers.

Mr. Coppola claims that Consumers has an obligation to provide gas to any GCC customer that returns to the GCR tariff.³⁴ Mr. Coppola also claims that if "an alternative gas supplier ("AGS") is not able to or defaults on delivery of gas to the utility, the Company

³⁰ 4 Tr. 449.

³¹ 4 Tr. 450.

³² *Id.*

³³ "The Company does not, therefore, maintain interstate pipeline capacity to serve GCC loads, and there is no subsidization. Applying a capacity reservation charge to the Company's GCC customers would, therefore, be inappropriate." 4 Tr. 136.

³⁴ 4 Tr. 449.

must make up that shortfall with gas previously purchased for GCR customers."³⁵ Mr. Coppola claims that, as a result of its SOLR obligation, Consumers must maintain sufficient capacity and storage assets to serve all customers on its system.³⁶

Mr. Coppola's assertions lack factual support. RESA's witness, Mr. Dishno explains:

Mr. Coppola does not provide any factual data to support his assertions. In fact, Mr. Coppola's claims contradict the statements made by Consumers that it is not holding additional pipeline capacity to serve GCC customers in the event they return to the GCR. See, attached Exhibit RES-1 (DDS-1).³⁷

Exhibit RES-1 (DDS) is a discovery response from Consumers wherein Consumers unequivocally states that it does not maintain pipeline capacity in excess of what is needed to serve GCR customers in order to meet its SOLR obligations to GCC customers. In light of Consumers' statement, Mr. Dishno concludes,

Mr. Coppola has incorrectly assumed that Consumers utilizes its capacity to serve GCC customers. Based upon a review of the application and Consumers' response to discovery, however, it appears that Consumers has contracted enough pipeline assets only to serve its GCR load. Thus, Mr. Coppola has incorrectly concluded that Consumers maintains sufficient pipeline capacity to serve customers other than GCR customers.³⁸

In short, the AG failed to show that there are any facts to support his recommendation. Instead, Mr. Coppola's recommendation is based on an unsupported theory and assumptions that Consumers manages its SOLR obligation in the same way as other Michigan utilities claim to manage their SOLR obligation.

Next, the AG's witness sought to justify a capacity reservation charge on the basis that other Michigan utilities, namely DTE Gas, have such a charge. What Mr. Coppola fails

³⁵ *Id.*

³⁶ *Id.*

³⁷ 4 Tr. 497.

³⁸ 4 Tr. 497-498.

to recognize, however, is that Consumers does not meet its SOLR function in the same manner as DTE Gas. Mr. Dishno explained,

DTE Gas (formally MichCon) submitted testimony stating that it holds excess pipeline capacity necessary to serve the entire GCC load in the event of a return to the GCR. Specifically, DTE's witness stated "MichCon has always maintained, and will continue to maintain into the future, a portfolio of interstate transportation capacity sufficient to serve both GCR and GCC customers, regardless of the level of GCC participation, whether that is 0% of total sales markets requirements, 100%, or anywhere in between."³⁹

In contrast, Consumers testified that *it does not* hold any such excess pipeline capacity.⁴⁰ As such, GCR customers are not currently paying for any pipeline capacity held to serve GCC customers. Because Consumers does not hold excess pipeline assets to serve GCC customers, it would be unjust and unreasonable to require GCC customers to pay for Consumers' pipeline assets.

2. GCC customers do not benefit from Consumers' pipeline assets; it would not be just and reasonable for GCC customers to pay costs for which they receive no benefit.

Furthermore, GCC customers do not receive the benefit of Consumers' pipeline assets. Mr. Dishno explained,

The benefit of holding pipeline capacity is having the ability to transport natural gas from Point A to Point B through the pipeline. Delivering supply from Point A to Point B allows Consumers to capture a market spread value, which ultimately lowers the average supply cost for GCR customers. Currently, Consumers utilizes the pipeline assets it retains to transport gas for GCR customers to the Consumers city-gate. Conversely, AGSs are responsible for delivering the gas to the city-gate for GCC customers, thus GCC customers do not get the benefit from Consumers' pipeline assets.⁴¹

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³⁹ 4 Tr. 498, quoting the Direct Testimony of DTE witness W.W. Clinton, submitted in MPSC Case No. U-17131, at 3 Tr. 170, ln. 1-4.

⁴⁰ See, supra fn. 20.

⁴¹ 4 Tr. 499.

Under Mr. Coppola's proposal, GCC customers would pay the same pipeline reservation charge that GCR customers would pay. However, the two classes of customers do not receive the same benefits. Mr. Dishno testified, "Charging GCC customers a reservation charge allows Consumers to recoup demand charges from GCC customers while giving only GCR customers the benefit of the Point A to Point B market spread."⁴²

This very issue is being litigated in DTE Gas Company's 2015-2016 GCR plan proceeding, MPSC Case No. U-17691. In that proceeding, Mr. Dishno explained the inequity between GCR and GCC customers with respect to the reservation charge. Both classes of customers are forced to pay the same charge, but only GCR customers receive the commodity cost savings that are derived from the pipeline asset. Charging both GCC and GCR customers the same reservation charge results in GCC customers subsidizing GCR customers.

The AG himself recognizes the inequity of charging GCC and GCR customers the same reservation charge. Mr. Dishno explained,

In the most recent DTE Gas GCR proceeding, AG witness Ralph Miller stated that, "the newly established Reservation Charge tilts the playing field in favor of DTE Gas and its GCR program. GCC customers must pay the Reservation Charge for capacity that their commodity gas suppliers cannot use to serve them, and DTE Gas itself can use that capacity (paid for by GCC customers) to reduce its own cost of serving GCR customers. This tilting of the playing field is an unnecessary and inappropriate impediment to competition." Thus, the AG acknowledged that even the DTE Gas reservation charge resulted in a subsidy from GCC customers to GCR customers. To levy a reservation charge on Consumers customers, when Consumers is not even procuring pipeline capacity to serve those customers in event of a return, would result in an even greater subsidy from GCC customers to the GCR.⁴³

⁴² 4 Tr. 500.

⁴³ *Id.*, quoting from the Attorney General's Corrected Direct Testimony of Ralph. E. Miller, MPSC Case No. U-17332, at 5 Tr. 544, ln. 2-9.

Thus, even if Consumers were holding excess pipeline assets to serve GCC customers, which it is not, the AG's proposed SOLR charge would not be just and reasonable.

3. The AG's recommendation is based on unsupported speculation.

Next, AG witness Mr. Coppola alleges that there was a significant migration of GCC customers back to GCR service in the winter of 2014 that caused Consumers to acquire additional pipeline capacity. Mr. Coppola then speculates that, "should some GCR customers migrate to GCC service in the coming months, the remaining GCR customers will again absorb the full cost of this additional capacity unless a portion of the interstate transportation capacity is allocated to GCC customers."⁴⁴ Mr. Coppola's speculative assertion is unsupported and contrary to historical GCC customer migration.

Mr. Dishno explained in his testimony that large migrations of GCC customers back to GCR service and then back again to GCC service is unrealistic. He testified, "It would be extremely unusual for customers to migrate all at once from GCC service back to the GCR. It is my experience that migration occurs in small increments over time, not mass fluctuations to and from the GCR."⁴⁵ Indeed, fewer than 2% of Consumers' customers migrated back to GCR service during the winter of 2014.⁴⁶

As further support, admitted into evidence was RESA's Exhibit RES-2 (DDS-2). That exhibit shows the history of GCC customer participation data over the more than 15 years that Consumers' GCC program has been in existence. That exhibit shows gradual changes in GCC program participation over the program's history, with approximately 9 years of steady growth in GCC customer participation to the winter of 2014.

⁴⁴ *Id.*

⁴⁵ 4 Tr. 501.

⁴⁶ *Id.*

Even if there was a sudden, mass migration of GCC customers, Consumers would not need additional pipeline assets to meet its SOLR function, as Mr. Coppola suggests. Mr. Dishno explained, "Consumers is located at a liquid city gate. Thus, Consumers can serve any additional incremental load for the GCR with additional city-gate spot purchases."⁴⁷ Even in the unlikely event that an AGS defaults and GCC customers return to utility service, there are adequate protections in Consumers' GCC tariff to protect GCR customers.⁴⁸ For instance there are significant collateral requirements on AGSs as a prerequisite to participate in the GCC program, and AGSs face steep penalties if they fail to deliver the necessary gas for their customers.⁴⁹

B. The AG's proposed adjustment to Consumers' Daily Delivery Obligations tariff provision is unjust and unreasonable and should be rejected.

Next, Mr. Coppola recommends adjustments to Consumers' DDOs tariff in summary fashion.⁵⁰ Mr. Coppola recommends that Consumers update its DDOs to AGSs more often than once a month.⁵¹ Mr. Coppola made the same recommendation in other Consumers GCR proceedings.⁵² Mr. Coppola's recommendation should be rejected.

1. The price impact analysis on Consumers' GCR is flawed and should not be the basis of proposed changes to daily delivery obligations.

In his testimony, AG witness Mr. Coppola examined Consumers purchasing practices during the winter of 2014 in which Michigan experienced the Polar Vortex. According to

⁴⁷ 4 Tr. 502.

⁴⁸ *Id.*

⁴⁹ *See*, Section F1.J. of Consumers' GCC program tariff pertaining to Failure Fees; *see also*, Consumers witness Curtis' testimony at 4 Tr. 393-395 wherein she explains how GCR customers are compensated by GCC suppliers through Failure Fees, the GCC Reconciliation process and the Supply Equalization Charge.

⁵⁰ 4 Tr. 469-470.

⁵¹ 4 Tr. 470.

⁵² *See*, Case Nos. U-17334 and U-17133-R.

Mr. Coppola, AGSs were under-delivered during the winter which had an adverse effect on Consumers' GCR.⁵³

As explained further below, Mr. Coppola's analysis only examined a two month period, and ignored the significant majority of time when the GCR program receives a significant positive rate impact from GCC deliveries. As such, Mr. Coppola's analysis is flawed and should not be the basis of any changes to Consumers' GCC program, generally, or Consumers' DDOs, specifically.

As RESA witness Mr. Dishno explained, Consumers determines AGSs' DDOs.⁵⁴ Consumers requires AGSs to make baseload deliveries throughout the year.⁵⁵ Each month, Consumers provides AGSs with a DDO, which is the amount of gas the AGS must deliver to Consumers each day during that month.⁵⁶ The DDO is intended to approximate AGS customers' aggregate average daily demand.⁵⁷ Pursuant to Section F1.G of Consumers' GCC tariff, Consumers has the flexibility to modify the DDO to an amount above or below (normally 90%-110%) of the AGS customers' aggregate average daily demand if it appears that the AGS is over or under-delivered for the year.⁵⁸ The tariff, however, does not allow Consumers to modify a DDO mid-month.⁵⁹

⁵³ 4 Tr. 470.

⁵⁴ 4 Tr. 503.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*, quoting Consumers' GCC Tariff F1.G:

The Company will provide each Supplier with a monthly schedule of quantities for delivery of gas into the Company system on behalf of the Supplier's customers. The initial schedule will indicate volumes that the Supplier is required to deliver each day. This schedule will be updated by the Company on a monthly basis. For most Gas Customer Choice customers, scheduled daily volumes will not normally vary by more than plus/minus 10% from 1/365th of the estimated annual customer load to be served by the Supplier. *The Company will consider variances in deliveries up to +/-50% from 1/365th of the estimated annual customer load to be served by the Supplier for the delivery months of January - March, provided that the Supplier identifies the pools to be reviewed by the first business day of the month prior to the scheduled delivery . The Company will review no more than 5 (five) pools per Supplier per month, and any variance in delivery beyond +/-10% will be at the Company's sole*

Importantly, AGS deliveries do not always equal the exact amount of GCC customer demand. Consumers estimates what GCC customers will use in any given year, but the estimates will vary somewhat from actual consumption.⁶⁰ Some years AGSs may deliver less than GCC demand, and some years AGSs may deliver more than GCC customer demand.⁶¹

More often than not AGSs over-deliver gas supplies to Consumers. Mr. Dishno testified that DDOs established by Consumers frequently overestimate GCC customer consumption,⁶² 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."⁶³ Thus, Consumers' DDO calculations have 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. The 2013-2014 winter, Consumers experienced the coldest winter in its recorded history.

As explained by witness Dishno, in years when the DDOs over-estimate GCC demand, GCR customers can and do benefit.⁶⁴ In instances of over-deliveries, there is a reconciliation at the end of the gas year where the AGS purchases back from Consumers the

discretion. Scheduled daily volumes for Gas Customer Choice customers for electric peakers, greenhouses, grain dryers, asphalt plants and large new loads without historical load information may be determined by the Company on a different basis than set forth above. The Supplier shall be responsible for obtaining sufficient pipeline capacity to meet its delivery obligations.

⁵⁹ 4 Tr. 504.

⁶⁰ 4 Tr. 506.

⁶¹ *Id.*

⁶² 4 Tr. 506.

⁶³ *See*, MPSC Case No. U-17133-R, 3 Tr. 249, ln. 23 through 3 Tr. 250, ln. 3.

⁶⁴ 4 Tr. 506.

amount of gas that was over-delivered.⁶⁵ Where there are over-deliveries by AGSs, Consumers could reduce the spot purchases required to serve GCR customers.⁶⁶ The GCR also can receive a credit when the GCC billed price for gas is higher than Consumers' weighted average cost of gas. 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 instances of under-deliveries.⁶⁷

As further explained by Mr. Dishno, also missing from the analysis put forth by Mr. Coppola is that Consumers pays AGSs the AGS average bill price for the gas AGSs deliver to Consumers.⁶⁸ Consumers then collects that price from GCC customers once that gas is consumed.⁶⁹ 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.⁷⁰ At times, the AGS bill price is greater than Consumers' cost of gas.⁷¹ In instances when there are AGS under-deliveries and Consumers is collecting an AGS bill price that is higher than Consumers' cost of gas, the difference is credited to GCR customers, not AGSs.⁷² Thus, in these instances, the GCR customers are getting a positive net benefit due to AGS under-deliveries.⁷³

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

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⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ 4 Tr. 506.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ 4 Tr. 507.

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.⁷⁴

Thus, more times than not, the GCR is benefitting from the GCC program. Thus, Mr. Coppola's assertion that GCR customers were negatively impacted by GCC supplies in 2014 is erroneous.

Furthermore, Mr. Coppola's analysis focuses on the Polar Vortex which was the coldest winter in Consumers' recorded history. Historic anomalies should not be a basis for making significant changes to a GCC program that otherwise has provided significant benefits to GCR customers. 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%."⁷⁵ 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.⁷⁶ The Commission should apply the same reasoning within the context of likewise historic conditions present in this case. The Commission should resist making significant

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⁷⁴ 4 Tr. 507, ln 6-13.

⁷⁵ Order dated May 14, 2015, MPSC Case No. U-16921-R, p. 16.

⁷⁶ *Id.*

adjustments to an otherwise successful GCC program based solely on historic anomalies that are unlikely to recur.

Furthermore, to truly do a 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 bill price is above Consumers' cost of gas, there is a positive net benefit to GCR. Accordingly, the Commission should reject the AG's unreasonable proposal.

2. The proposed changes to Consumers' tariff should not be adopted in the absence of providing suppliers with access to the storage resources necessary to comply.

The AG's proposed tariff modification to permit intra-month DDO modification would completely alter the fundamental design of the Consumers GCC program by requiring AGSs to modify deliveries based on daily temperature demand. Without corresponding access to storage assets, it would be unreasonable for AGSs to be susceptible to last minute daily delivery modifications. At this time, all of the storage assets are kept by Consumers to balance the entire system.⁷⁷ Storage costs are recovered through distribution rates, which GCC customers pay, to support the system.⁷⁸ The Commission should not change the GCC program in a vacuum without considering other changes that would also be required to the GCC program in order to appropriately balance both GCR and GCC interests.

V. CONCLUSION AND PRAYER FOR RELIEF.

For all the reasons explained in the preceding sections of this Initial Brief, RESA respectfully requests that the Honorable Administrative Law Judge issue a proposal for decision recommending that the Commission reject the proposed adjustments to Consumers' GCC program. The Commission should heed its July 23, 2015 order on rehearing in Case

⁷⁷ 4 Tr. 505.

⁷⁸ *Id.*

No. U-17334 and direct that GCC issues be addressed in Consumers new GCC docket, Case No. U-17900.

Respectfully submitted,

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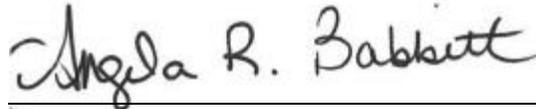
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY for)
approval of a Gas Cost Recovery Plan)
and Authorization of Gas Cost Recovery)
Factors for the 12-month period)
April 2015 – March 2016.)
_____)

Case No. U-17693

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 31st day of August, 2015, she served the *Initial Brief of Retail Energy Supply Association* and this Certificate of Service on the persons identified on the attached service list via electronic mail.



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