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January 4, 2016

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 Replies to 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)
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

**RETAIL ENERGY SUPPLY ASSOCIATION'S
REPLIES TO EXCEPTIONS**

Dated: January 4, 2016

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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 these Replies to Exceptions to the ALJ's Proposal for Decision ("PFD"). In these Replies to Exceptions, RESA will respond to certain specific positions advanced by the Michigan Attorney General ("AG") in his exceptions filed December 21, 2015.

I. INTRODUCTION.

The ALJ's November 30, 2015 PFD correctly recommended that the AG's proposed adjustments to 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 be rejected. Specifically, the ALJ appropriately recommended that the Commission reject the AG's proposed pipeline capacity reservation charge.² The ALJ determined that the underlying basis for the AG's recommendation, that Consumers holds excess pipeline capacity to serve gas customer choice ("GCC") customers, was without factual support and was contradicted by Consumers' witness.³ The ALJ further found that Consumers' gas planning and purchasing strategy was distinguished from that of other utilities with a capacity reservation charge.⁴ The ALJ further noted that the Commission opened a proceeding, MPSC Case No. U-17900, that is a more appropriate forum for addressing the

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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.

² PFD, pp. 92-93.

³ *Id.*, p. 92.

⁴ *Id.*, pp. 92-93.

AG's proposed charge.⁵ For these reasons, the ALJ recommended that the AG's proposed charge be denied.⁶

In his exceptions, the AG opposed the ALJ's recommendation to reject the AG's proposed capacity reservation charge. The AG contends that Consumers is the supplier of last resort ("SOLR").⁷ As such, the AG reiterates his argument that Consumers must maintain pipeline capacity to serve GCC customers returning to GCR service, and that GCC customers should pay for the cost of maintaining that capacity.⁸

For the reasons identified in the PFD and discussed further below, the Commission should adopt the ALJ's recommendation to reject the AG's proposed pipeline capacity reservation charge. The AG's proposal is unsupported, flawed, and unreasonable, and, if approved, would be harmful to GCC customers. Furthermore, the Commission should not adopt the proposed change 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 a new GCC docket.

II. RESPONSE TO THE AG'S EXCEPTION NO. 4: THE ALJ CORRECTLY DETERMINED THAT THE AG'S PROPOSED CAPACITY RESERVATION CHARGE WAS WITHOUT MERIT AND SHOULD BE REJECTED.

In his exceptions, the AG recommends that the Commission direct Consumers to implement a new pipeline capacity reservation charge on GCC customers.⁹ The AG is proposing a solution to a problem that does not exist. Consumers' gas supply planning and pipeline portfolio are decidedly different than other utilities' gas supply plans and capacity

⁵ *Id.*, p. 93.

⁶ *Id.*

⁷ AG's Exceptions, p. 12.

⁸ *Id.*

⁹ AG's Exceptions, pp. 12-13.

portfolios with reservation charges. Other utilities claim to hold substantial excess pipeline capacity whereas Consumers does not hold any excess pipeline capacity to serve returning GCC customers. The AG raises no new issues in his exceptions that were not fully addressed by the ALJ in her reasoned PFD, and no other party to this proceeding supports the AG's recommendation, including the Michigan Public Service Commission ("MPSC") Staff. The AG's proposed change to Consumers' GCC program is without merit and should be rejected.

Furthermore, it should be noted that the Commission has already set Consumers GCC issues 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.¹⁰ Importantly, Consumers proposed no GCC program changes as part of its application in this case, and no notice was provided disclosing any proposed GCC program changes. The Commission should reject the AG's proposed GCC program change within the context of this proceeding.

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

The AG's witness, Mr. Coppola, claimed that Consumers has an obligation to provide gas to any GCC customer that returns to the GCR tariff.¹¹ Mr. Coppola also claimed that if "an alternative gas supplier ("AGS") is not able to or defaults on delivery of gas to the utility, the Company must make up that shortfall with gas previously purchased for GCR

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¹⁰ "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.

¹¹ 4 Tr. 449.

customers."¹² Mr. Coppola claimed that, as a result of its SOLR obligation, Consumers must maintain sufficient capacity and storage assets to serve all customers on its system.¹³

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

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).¹⁴

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 concluded:

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.¹⁵

In short, the AG failed to show that there are any facts to support his recommendation. Instead, the AG'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

¹² *Id.*

¹³ *Id.*

¹⁴ 4 Tr. 497.

¹⁵ 4 Tr. 497-498.

failed to recognize, however, was 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."¹⁶

In contrast, Consumers' witness testified that Consumers *does not* hold any such excess pipeline capacity.¹⁷ 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.

B. 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.¹⁸

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¹⁶ 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.

¹⁷ See, Exhibit RES-1 (DDS-1).

¹⁸ 4 Tr. 499.

Under the AG'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."¹⁹

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 recognized 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.²⁰

¹⁹ 4 Tr. 500.

²⁰ *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.

C. *The AG's recommendation is based on unsupported speculation.*

Next, AG witness Mr. Coppola alleged 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 speculated 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."²¹ 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."²² Indeed, fewer than 2% of Consumers' customers migrated back to GCR service during the winter of 2014.²³

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.

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²¹ *Id.*

²² 4 Tr. 501.

²³ *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."²⁴ 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.²⁵ 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.²⁶

D. Due process requires that interested parties receive notice and an opportunity to be heard.

Consumers filed an application, testimony and exhibits in this case on December 29, 2014 seeking approval of its proposed GCR plan and authorization of GCR factors. Importantly, Consumers did not propose any changes to its GCC program, including no proposal to implement a pipeline capacity reservation charge. Notice of Hearing was issued by the Commission's Executive Secretary on January 8, 2015 and by Consumers on January 20, 2015. It was not until the AG filed its witness' testimony months later, on April 27, 2015, that changes to Consumers' GCC program were introduced into this case.

The Commission previously recognized the importance of providing all interested parties with notice and an opportunity to be heard on GCC program changes before any such changes are made. Indeed, Case No. U-17900 was opened to ensure that all interested

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²⁴ 4 Tr. 502.

²⁵ *Id.*

²⁶ *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.

parties had notice and an opportunity to be heard on proposed changes to Consumers' GCC program.²⁷ The Commission should reject the AG's recommendation as part of this proceeding.

III. CONCLUSION AND PRAYER FOR RELIEF.

For all the reasons explained in the preceding sections of these Replies to Exceptions, RESA respectfully requests that the Commission issue an order adopting the ALJ's recommendation to reject the proposed capacity reservation charge.

Respectfully submitted,

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ATTORNEYS FOR RETAIL ENERGY SUPPLY ASSOCIATION



Date: January 4, 2016

By: _____

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²⁷ "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.

STATE OF MICHIGAN

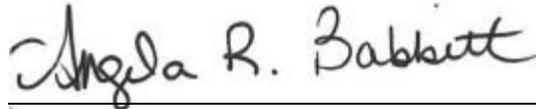
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CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 4th day of January, 2016, she served the *Replies to 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-17693

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