

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for reconciliation of its gas cost recovery plan ) Case No. U-20209  
(Case No. U-18411) for the 12-month period )  
April 1, 2018 through March 31, 2019. )  
\_\_\_\_\_)

At the September 24, 2020 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair  
Hon. Sally A. Talberg, Commissioner  
Hon. Tremaine L. Phillips, Commissioner

**ORDER**

On June 28, 2019, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting authority to reconcile its gas cost recovery (GCR) costs and revenues for the 12-month period ended March 31, 2019, pursuant to Section 6h of 1982 PA 304, MCL 460.6h. Consumers' GCR plan for this period was approved in the October 24, 2018 order in Case No. U-18411. Consumers seeks approval of a cumulative underrecovery of \$17,473,154 inclusive of interest through the end of the GCR year, to be rolled into the next GCR year as described in Consumers' tariff Rule C7.2.

A prehearing conference was held on August 13, 2019, before Administrative Law Judge Kandra K. Robbins (ALJ), where intervention was granted to the Michigan Department of the

Attorney General (Attorney General), the Residential Customer Group (RCG), and the Retail Energy Supply Association. The Commission Staff (Staff) also participated in the proceeding.

An evidentiary hearing was held on May 5, 2020, and timely initial and reply briefs were filed. The ALJ issued a Proposal for Decision (PFD) on July 29, 2020. Exceptions were filed by Consumers, the Attorney General, and RCG on August 19, 2020, and replies to exceptions were filed by Consumers, the Staff, RCG, and the Attorney General on September 2, 2020. The record consists of 270 pages of transcript and 50 exhibits admitted into evidence.

The PFD contains an overview of the record on pp. 2-21. Consumers seeks approval of a net cumulative underrecovery of \$17,473,154, which consists of an underrecovery of \$17,520,929 minus interest owed to customers of \$47,775. 3 Tr 62, 70. The Staff supported an underrecovery of \$9,743,081 (inclusive of interest), as a result of adjustments related to a fire at the Ray Compressor Station on January 30, 2019. 3 Tr 160-163, 208. The Attorney General and RCG also proposed disallowances. The ALJ addressed the following three issues.

#### Ray Compressor Station Fire

The Staff argued that the Ray Compressor Station Fire resulted in purchases made in January and March 2019 that would not have been made but for the effect of the fire on deliverability. The Staff noted that, based on evidence provided by Consumers in Case No. U-20463 (the Commission's investigation of the fire), the company concluded that improper design of the compressor station was the cause of the fire; on that basis, the Staff argued that ratepayers should not be responsible for incremental GCR costs associated with the fire. *See*, July 2, 2019 order in Case No. U-20463, p. 18; January 31, 2020 Staff Investigation Report, p. 4, filed in Case No. U-20463; 3 Tr 218-221. Consumers identified all of the purchases made on January 30 and 31, 2019, that were the result of the fire, and compared those purchases to

the January storage inventory value. The result shows that the incremental cost attributable to the fire for January 30-31 is \$7,158,412. Exhibit A-22, p. 23. The Staff confirmed the accuracy of this amount and argued that the full amount should be disallowed. The Staff also determined that in March 2019, which was colder than normal, the company was again affected by the reduced deliverability from the Ray storage field resulting from the fire. Using the same method that Consumers applied to January, the Staff argued that an additional \$788,863 should be disallowed for March. Exhibit S-2; 3 Tr 222. The Staff noted that, in testimony, Consumers indicated that “March Intra-month purchases also reflect lower Ray field deliverability and were made to cover projected daily customer demand and provide peak day reserve.” 3 Tr 163. The Staff’s total proposed disallowance results in an underrecovery of \$9,743,081 (inclusive of interest). The Attorney General and RCG agreed with the Staff.

On rebuttal, Consumers argued that the incremental purchases were necessary because the utility’s first duty is to obtain reliable supply for customers, and that the fire was essentially a *force majeure* situation. Consumers also argued that the Staff’s disallowance amount was incorrect.

The ALJ recommended that the Commission adopt the Staff’s proposed disallowances associated with the cost impacts of the fire. She found that the fire was not an act of God, nor was it the result of a situation entirely outside of the company’s control, but rather was attributable to actions, inactions, or negligence on the part of Consumers. PFD, pp. 32-33.

In exceptions, Consumers argues that the ALJ erred because the January and March 2019 purchases were reasonable and prudent in light of the circumstances at the time. Consumers observes that this incident involved an extreme weather event, and objects to the ALJ’s implication that the utility was responsible for the fire and was negligent, when the

Commission never made such a finding. Consumers quotes the Commission's statement that the event was "unique in terms of the cause and effect, and was complicated by extreme weather conditions." May 8, 2020 order in Case No. U-20463, p. 11. Consumers contends that the ALJ ignores the operational necessity of the gas purchases and the fact that the purchases were required by Commission-approved tariffs. 3 Tr 171-172.

Consumers argues that it appropriately executed Section C3.3A of its Curtailment of Gas Service During an Emergency tariff (curtailment tariff) which provides the utility with the option to curtail service during an emergency, and that the emergency continued into February and March 2019 as a result of the de-rate of the Ray Facility, causing the need for the purchases. 3 Tr 177-178. Consumers notes that no party questioned the utility's curtailment of gas service during the emergency, and argues that extreme cold weather is specified as an emergency event under the tariff. The company contends that the weather significantly increased actual and projected customer demand and the purchases were operationally necessary to reduce the supply deficiency caused by the fire. 3 Tr 150.

Consumers asserts that the extreme weather was consistent with a *force majeure* type of incident, and again states that the Commission did not find the company to be at fault for the fire. Consumers argues that Section C3.3B(2) of the tariff prioritizes supply procurement, which becomes the utility's highest priority under such circumstances in order to ensure continuous service to customers who may be in physical jeopardy. "By instituting a policy that guarantees a utility's own financial considerations will not compete with the need to prioritize and protect critical customer services in an emergency, the Commission-approved tariff specifies that the incremental gas purchases needed to overcome the emergency shall be regarded as reasonable and prudent." Consumers' exceptions, p. 9. Consumers states that the

Staff found the company's curtailment actions to be appropriate. 3 Tr 179, citing the May 8, 2019 Staff Response, Case No. U-20463, p. 8.

Consumers further argues that the ALJ posits the company's negligence without providing any discussion of the negligence standard; and no party produced evidence regarding the standard of care for the design of a gas compressor station in 2013 or, for that matter, regarding negligence. Consumers also objects to a finding of negligence *per se* based on an alleged violation of a Pipeline and Hazardous Materials Safety Administration regulation.

Finally, Consumers contends that the Staff's disallowance, if adopted, should first be adjusted to reflect mitigating expenses. The company argues that the Staff's method for calculating the incremental costs "is inappropriate because it fails to take into account the savings achieved by the Company related to the February intra-month gas purchases." Consumers' exceptions, p. 14. Consumers avers that the February 2019 purchases represented a \$1.18 million savings to customers in comparison to storage inventory valuations at the time. 3 Tr 180.

In reply, the Staff notes that the ALJ recognized the extreme weather conditions, and further recognized the necessity of the additional gas purchases which stemmed from those conditions. The Staff asserts that the necessity of the purchases is not in question in this case. Rather, the Staff maintains, the issue is the loss of supply that resulted from the fire and which had to be replaced. The Staff also argues that, while Consumers followed its contingency plan and curtailment procedures, "mere adherence to those procedures does not appropriately or automatically determine which party should be held liable for the resulting costs." Staff's replies to exceptions, p. 3. The Staff contends that its proposed disallowance is not based on

any civil penalties, but rather on the fact that ratepayers should not be burdened with these costs which “could have been avoided had the compressor station and Company’s emergency response mirrored what was recommended by Staff and the Commission in U-20463.” *Id.*, p. 4; *see*, May 8, 2020 order in Case No. U-20463, pp. 11-12. Finally, the Staff objects to Consumers’ theory regarding alleged savings in February, because it is impossible to know whether the utility would have made these lower-cost purchases instead of using storage gas in any case, with or without the fire incident.

The Attorney General also replies that the ALJ made the correct determination with respect to the costs associated with the fire, arguing that the issue is not the need for the purchases but instead the imprudent actions of the company. Like the Staff, the Attorney General contends that the fact that Consumers complied with its curtailment tariff does not preclude analysis of who should pay the incremental associated costs. The Attorney General contends that the incident that gave rise to the need was the fire, which prevented access to the gas stored at that site. The Attorney General asserts that the loss of the Ray Station presented a challenge to Consumers’ system. *See*, Exhibit A-22. The Attorney General further asserts that the ALJ is correct in finding that a *force majeure* is an event beyond the company’s control and the apparent faulty design of the facility does not meet that definition. The Attorney General notes that the ALJ did not merely rely on a finding of negligence *per se*, but rather applied the reasonableness and prudence standard required by MCL 460.6h(12). Finally, with respect to Consumers’ mitigation argument, the Attorney General notes that Consumers presented the cost of the replacement gas, which was relied upon by the parties.

In its reply, RCG echoes the arguments made by the Staff and the Attorney General, and contends that Consumers’ mitigation argument is illogical because the fire “had no possible

nexus to the February 2019 gas acquisition cost reductions asserted by CECO.” RCG’s replies to exceptions, p. 5. RCG supports the ALJ’s recommendation regarding the disallowance.

Consumers is correct in stating that the curtailment tariff prioritizes reliability of supply. However, the company is incorrect in assuming that compliance with the tariff automatically renders all purchases reasonable and prudent. MCL 460.6h(12), which governs reconciliation proceedings, provides, in part:

At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

The fact that supply was safeguarded through customer curtailment (as the tariff allows), and through replacement gas purchases, does not dictate how the resulting costs must be assigned or the reasonableness and prudence of Consumers’ actions to supply fuel. The Commission disagrees with Consumers’ proffered analysis of Section C3.3B(2) of the curtailment tariff, which provides:

When there is adequate time during an emergency situation, and if applicable, the following steps will be implemented by the Company prior to the enforcement of the curtailment plan established by this rule. . . . (2) Implement contingency contracts for emergency gas supply purchases established in advance. Seek to purchase additional gas supplies at prices which shall be regarded as reasonable and prudent.”

The language of the tariff addresses actions taken prior to enforcement of the curtailment plan, and sets a goal for the utility to seek to purchase additional supply at reasonable and prudent prices. Consumers’ purchase of additional supply took place after the curtailment plan had gone into effect. Moreover, the tariff does not constitute a guarantee that all replacement

supply, no matter what the price, will be found to have been reasonable and prudent by the Commission in a later GCR reconciliation review.

Consumers itself concluded that improper design of the compressor station was the cause of the fire. Consumers Energy Company's Reply to the Commission Staff's Response and Stakeholder Comments, p. 1, May 30, 2019, filed in Case No. U-20463 (May 30 report); July 2, 2019 order in Case No. U-20463, p. 18; January 31, 2020 Staff Investigation Report, p. 4, filed in Case No. U-20463; 3 Tr 218-221. In the May 30 report, Consumers stated:

Consumers Energy's ongoing investigation into the origin of the fire has revealed that a grounding fault was the underlying cause of the initial firegate event. When the station's well pump started up, its variable frequency drive caused a voltage spike in the grounding system of the Det-tronics panel located in the headquarters building. These high voltages caused enhanced discrete input/output (EDIO) and analog input module (AIM) modules to lose communication with the Det-tronics pilot air system, a fault which triggered the initial firegate.

May 30 report, p. 1. Based on Consumers' conclusion and applying the reasonableness and prudence standard of MCL 460.6h(12), the Commission finds that ratepayers should not shoulder the burden of the additional supply costs associated with the loss of access to the Ray storage field that resulted from the fire. This decision is not based on a finding of negligence or the existence of a *force majeure* event. The Commission notes that the determination of whether a *force majeure* event has occurred under Section C3.3A of the curtailment tariff is left to the judgment of the company.<sup>1</sup> The Commission makes this determination under MCL 460.6h(12), which requires the Commission to consider the reasonableness and prudence of

---

<sup>1</sup> Section C3.3A of the curtailment tariff addresses the utility's right to curtail and provides, in pertinent part: "If, in the event of an emergency arising out of extreme cold weather or other causes referred to as Force Majeure situations the Company determines that its ability to deliver gas may become inadequate to support continuous service to its Customers on its system, the Company shall have the right to partially or completely curtail service to each of its Customers in accordance with the order of curtailment set forth below, irrespective of the contracts in force."

expenses for which the utility expects to charge the customer that could not have been considered in the GCR plan case. Based on Consumers' findings at the conclusion of its investigation of the fire's origins, the Commission finds that the gas replacement costs resulting from the inability to access the Ray storage field were not reasonable and prudent. Costs arising from the grounding fault which was the origin of the fire should be borne by the utility and not by ratepayers. As the Commission has previously acknowledged, the weather complicated the situation, but colder than normal weather is to be expected and flexibility is built into the GCR plan for that purpose, among others. *See*, May 8, 2020 order in Case No. U-20463, p. 11.

Turning to the amount of those costs, Consumers identified all of the purchases made on January 30 and 31, 2019, that were the result of the fire, and calculated that the incremental cost attributable to the fire for January 30-31, 2019 was \$7,158,412. Exhibit A-22, p. 23. The Staff confirmed the accuracy of this amount. Based on Consumers' testimony that March was also affected by the loss of the Ray storage field, the Staff used the same calculation method to determine the disallowance for March of \$788,863. Exhibit S-2; 3 Tr 163, 222. The Commission adopts these January and March 2019 disallowance amounts. However, the Commission agrees with Consumers regarding the February 2019 savings. The company provided evidence showing that February 2019 purchases were also impacted by the fire. 3 Tr 119-122, 133-134, 162-163, 178. The necessary February purchases led to savings, relative to the cost of storage inventory, of \$1.18 million. 3 Tr 180. The Staff indicated that it did not propose a reduction to its disallowance based on February because the February purchases "did not harm the customer." 3 Tr 221. The Commission finds that all of the replacement purchases arising from the lack of deliverability from the Ray storage field in January through

March 2019 should be included in the calculation of the disallowance. Thus, the Commission finds that the total disallowance should be \$6,766,978, and approves a total underrecovery of \$10,889,058, which includes interest in the amount of \$80,835.

#### October Intra-month Purchases

The Attorney General proposed a disallowance of \$3,697,757 associated with intra-month purchases made by Consumers in October 2018. The Attorney General argued that Consumers could have maintained sufficient warmer-than-normal (WTN) weather flexibility if it had set aside up to 10% of its October purchase requirements to be made through intra-month gas purchases. Consumers and the Staff both countered that the Attorney General was applying hindsight.

The ALJ recommended that the Commission find that the October intra-month purchases were consistent with the approved GCR plan. PFD, p. 34.

In exceptions, the Attorney General argues that the ALJ erred in failing to recommend adoption of the Attorney General's proposed adjustments for October. The Attorney General contends that, of Consumers' 8,846,849 dekatherms (Dth) of intra-month October 2018 purchases, 5,145,262 Dth were excessive "based on the 4,826,700 Mcf [thousand cubic feet] of gas requirements that the Company could have reasonably purchased in the month-ahead market." Attorney General's exceptions, pp. 5-6; 3 Tr 259; Exhibit AG-2. The Attorney General supports a disallowance of \$3,697,757 for this time period, associated with the unnecessary purchase of 4,827,000 Mcf. The Attorney General faults the ALJ for providing no substantive analysis of the issue, and asserts that the Staff did not oppose the disallowance. She contends that the company could have maintained WTN weather flexibility simply by setting aside up to 10% of October purchase requirements to be acquired through intra-month

purchases, with the remainder purchased in the month ahead market. The Attorney General insists that this suggestion does not constitute hindsight, because it is consistent with actual intra-month purchases made by Consumers in prior years for the October period. Exhibit AG-11.

In reply, Consumers notes that, in fact, the Staff described this disallowance as based on “a hindsight review.” Staff’s initial brief, p. 8. Consumers contends that the 10% weather flexibility factor is arbitrary and inconsistent with the company’s GCR plan. 3 Tr 145, 184-185. Consumers notes that it provided all of the data available to the company at the time of the October 2018 purchase decision, and argues that the Attorney General ignored this evidence. 3 Tr 143-144, 189-190. Consumers further asserts that the record evidence shows that intra-month or day-ahead spot gas purchases are generally not higher cost than month-ahead prices, and do not expose ratepayers to an unreasonable price risk. 3 Tr 187-188. Consumers maintains that these intra-month purchases were consistent with adjustments allowed under its GCR plan and were market-based, “executed to leverage storage assets and historically lower-priced summer supplies to meet the Planned ending injection inventory target, and/or satisfy operational requirements and obligations to serve.” Consumers’ replies to exceptions, p. 6; 3 Tr 163; Exhibit A-19.

The Commission agrees with the ALJ and finds that these intra-month transactions were reasonable and prudent expenses, complied with the GCR plan, and helped to fulfill the ending injection inventory target set in the plan case. The GCR plan provides for operational flexibility when needed to fulfill target goals or take advantage of beneficial pricing. Consumers provided convincing evidence that the purchases fell within the purview of the GCR plan, and were a reasonable and prudent way to ensure that the target inventory amount

was met. Consumers provided evidence that sales numbers for August 2018 could still change at the time the purchase decisions were made, that September and October 2018 operational data was projected, and that 9 out of 15 of Consumers' storage fields were projected to be at their target inventory. 3 Tr 143-144. Conversely, the Attorney General failed to provide evidence that the suggested 10% set-aside for WTN weather would have provided the necessary protection and would have been consistent with the GCR plan. 3 Tr 184-190. For these reasons, the Commission rejects the proposed disallowance.

#### The Tax Cuts and Jobs Act of 2017

RCG argued that Consumers failed to present evidence showing that it is taking measures to reduce its supplier costs as a result of the reduction in costs arising from the federal corporate income tax reduction implemented by the Tax Cuts and Jobs Act of 2017 (TCJA), effective January 1, 2018. RCG contended that utilities should be required to update the Commission and the parties to GCR cases relative to credits or refunds that may have been received or are expected to be received as a result of passage of the TCJA, consistent with their duty to "minimize the cost of gas purchased by the utility" under MCL 460.6h(3).

The ALJ recommended that the Commission reject RCG's proposal. PFD, p. 35.

In exceptions, RCG argues that the utility should be required to present an explanation of its efforts to reduce supplier costs, and should be put on notice of future disallowances associated with the failure to do so. RCG contends that all transportation companies and suppliers that have contracts with Consumers have experienced reduced corporate taxes as a result of the change in the law, and the utility should be required to document how those benefits have been passed on to customers. RCG asserts that the record lacks evidence that

Consumers is vigorously pursuing the tax reduction savings for Michigan customers, and that the Commission should fashion an associated disallowance.

In reply, Consumers contends that it provided ample testimony regarding the company's actions taken before the Federal Energy Regulatory Commission (FERC) to capture TCJA savings for GCR customers. 3 Tr 167, 198-199. Consumers notes that it provided evidence discussing the FERC Form No. 501-G pipeline filing interventions made by the company in actions applicable to Trunkline Gas Company and Panhandle Eastern Pipeline Company (Consumers has firm transportation contracts with both companies). Consumers contends that it "continuously seeks to provide low cost GCR supply for its customers but does not ultimately have the ability to collect and quantify TCJA fuel-related cost savings to provide to customers." Consumers' replies to exceptions, p. 7.

The Commission adopts the findings and recommendations of the ALJ. RCG provided no evidence supporting any specific actions that it believes were required to realize cost savings for customers or any specific savings. Consumers provided evidence sufficient to show that it has taken all appropriate legal and regulatory actions to realize cost savings associated with the TCJA through its involvement in relevant actions before FERC. 3 Tr 167, 198-199. The Commission finds that RCG's proposals should be rejected.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's application for a gas supply cost recovery reconciliation for the 12-month period ended March 31, 2019, is approved as modified by this order.

B. Consumers Energy Company shall reflect a net underrecovery, inclusive of interest, of \$10,889,058 as its 2019-2020 gas cost recovery reconciliation beginning balance in

accordance with the roll-in treatment described in Consumers Energy Company's tariff, Rule C7.2.

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. 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 [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto:pungpl@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 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

---

Daniel C. Scripps, Chair

By its action of September 24, 2020.

---

Sally A. Talberg, Commissioner

---

Lisa Felice, Executive Secretary

---

Tremaine L. Phillips, Commissioner

# PROOF OF SERVICE

STATE OF MICHIGAN )

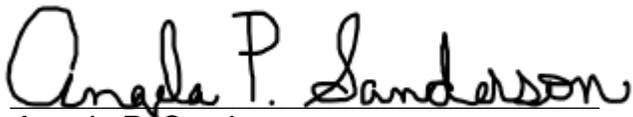
Case No. U-20209

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on September 24, 2020 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 24<sup>th</sup> day of September 2020.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case: U-20209**

---

<b>Name</b>	<b>Email Address</b>
Amit T. Singh	singha9@michigan.gov
Anne M. Uitvlugt	anne.uitvlugt@cmsenergy.com
Brian W. Coyer	bwcoyer@publiclawresourcecenter.com
Celeste R. Gill	gillc1@michigan.gov
Consumers Energy Company 1 of 2	mpsc.filings@cmsenergy.com
Consumers Energy Company 2 of 2	michael.torrey@cmsenergy.com
Don L. Keskey	donkeskey@publiclawresourcecenter.com
Ian F. Burgess	ian.burgess@cmsenergy.com
Jennifer U. Heston	jheston@fraserlawfirm.com
Kandra Robbins	robbinsk1@michigan.gov
Monica M. Stephens	stephensm11@michigan.gov
Theresa A.G. Staley	theresa.staley@cmsenergy.com