



AMENDED AND RESTATED

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this “Agreement”) is made and entered into as of the 8th day of February 2001, between MICHIGAN CONSOLIDATED GAS COMPANY, a Michigan corporation, with its principal address at 500 Griswold Street, Detroit, Michigan 48226 (“ Grantor”), and EXELON ENERGY COMPANY, a Delaware corporation, with its principal address at 2315 Enterprise Drive, Westchester, Illinois 60154 (“Grantee”). Capitalized terms and phrases used and not otherwise defined herein shall for all purposes of this Agreement have the respective meanings specified therefor in Exhibit D attached hereto.

RECITALS:

This Agreement is based on the following recitals:

- A. Grantor is a regulated utility engaged in the distribution and sale of natural gas and owns and operates a natural gas distribution system consisting of gas lines and related equipment and systems constructed within easements granted pursuant to various franchise agreements and easement agreements (“Grantor's Distribution System”).
- B. Grantor is selling transportation and storage capacity on Grantor’s Distribution System to promote the growth of viable and competitive on-site Electric Displacement Load (“EDL”) (as hereinafter defined) within the geographic area of Grantor’s service territory that is also served by The Detroit Edison Company, as more fully described on the map attached as Exhibit A (the “Overlap Area”).
- C. Grantee desires to purchase capacity to serve EDL in the Overlap Area and Grantor has agreed, among other things, that Grantee will have the use of portions of Grantor’s Distribution System in order to develop EDL in competition with Grantor.
- D. Grantee desires that an easement be granted over portions of the Grantor’s Distribution System for purposes of firm transportation and storage of gas in accordance with the terms of this Agreement.

required prior to Grantee purchasing the first increment of Supplemental Capacity.

- (c) **Growth Capacity.** If the Auditor certifies that Grantee has purchased and met the EDL Target for all 15 Bcf of Supplemental Capacity, at Grantee's option, Grantee may exercise its right to purchase additional transportation capacity ("Growth Capacity") for use in serving the On-site Generation Load within the Overlap Area. Such additional capacity shall be sold to Grantee in any increments equal to the annual volumetric requirements of each of Grantee's incremental Growth Capacity customers as specified by the Grantee at the time the capacity is acquired. Growth Capacity purchased by Grantee will be charged a monthly capacity payment as provided in Section 6.
- (d) **Non-EDL Transportation.** At Grantee's election, Grantor will transport gas to Grantee's Customers at Tariff rates. Any capacity or volumes utilized for such transportation shall not be included in the calculation of Keep-Whole Payments or Grantee's ACQ or MDQ or overruns or Excess Quantities under this Agreement. Grantee shall pay for any metering necessary to separately measure the EDL.
- (e) **Overruns.** Grantor shall notify Grantee within thirty (30) days after the end of any Contract Year in which deliveries to Grantee's Customers overrun the current ACQ ("ACQ Overrun"). Grantee shall have thirty (30) days from the date of the notice to elect to (x) acquire an additional increment of capacity or (y) pay Grantor for ACQ Overrun as follows: (1) for ACQ Overrun up to 5% of ACQ, Grantee shall pay 80 cents per Mcf; and (2) for ACQ Overrun in excess of 5% of ACQ, Grantee shall pay the Sales Rate in effect for the Contract Year in which such ACQ Overrun occurred. For purposes of the foregoing calculation Committed ACQs and related actual volumes associated with Expansion Load shall be excluded.
- (f) **Expansion Load Overruns.** For each Expansion Load to the extent actual volumes related to such Expansion Load exceed Committed ACQ ("Committed ACQ Overrun"), Grantee shall pay Grantor for each Committed ACQ Overrun as follows: (x) for Committed ACQ Overrun up to 5% of Committed ACQ, Grantee shall pay 80 cents per Mcf; and (y) for Committed ACQ Overrun in excess of 5% of Committed ACQ, Grantee shall pay the Sales Rate in effect for the Contract Year in which such Committed ACQ Overrun occurred.
- (g) **Keep-Whole.** Within 30 days after the end of the Contract Year in which Grantee first purchases Supplemental Capacity, and each Contract Year thereafter, Grantee shall submit to the Auditor all information reasonably requested by the Auditor to determine whether Grantee has met the requirements for service to Electric Displacement Load and On-site Generation Load applicable to the capacity acquired by Grantee. If the Auditor finds that Grantee's Customers (in aggregate) failed to utilize the required amount of Electric Displacement Load or On-site Generation Load, then Grantee shall keep Grantor whole by paying Grantor the Keep-Whole Rate, defined below, that would have been paid by those of Grantee's Customers whose non-EDL consumption

caused Grantee to fall short of its EDL Target (“Keep-Whole Payment”). No Keep-Whole Payments shall be required by either party if Grantee exceeds its EDL Target. In order to calculate the Keep

- (i) Notwithstanding Section 20, Grantee may transfer the right to use transportation capacity with or without any associated storage rights it purchases under this Agreement to a third party for re-sale to end-users in the Overlap Area (“Brokered Capacity”). Grantee shall remain responsible to Grantor for all Capacity Payments and any Excess Quantity or Deficient Quantity Charges associated with Brokered Capacity. For purposes of calculating Keep-Whole Volumes, the Auditor shall determine EDL and/or OGL consumption based on how Brokered Capacity is consumed by the ultimate end-user utilizing information received from the acquiror of any Brokered Capacity, relevant end-users, Grantee or Grantor.
4. **GRANTEE TRANSPORTATION RIGHTS:** Grantee shall cause to be delivered to Grantor at the Receipt Point(s), and Grantor shall transport from the Receipt Point(s) through the Grantor’s Distribution System to the Delivery Points within the Overlap Area, Equivalent Quantities of natural gas. Grantor shall aggregate and treat as one, all Grantee’s Customers for the purposes of nominations, storage utilization, balancing and any fees or penalties (if applicable). If Grantor utilizes daily balancing or MMBtu instead of Mcf for all customers in its ST and LT tariff classes, then Grantor retains the right to require Grantee to balance Receipt Point(s), Delivery Point(s) and storage on a daily basis and/or to utilize MMBtu measurement.
- (a) Grantee shall cause gas to be delivered to the Receipt Point(s) up to the following parameters:
 - MDQ:** Winter (November –

5. **STORAGE RIGHTS:** Transportation services under this Agreement include Grantee's access to a storage quantity equal to Grantee's Storage Capacity, which will be utilized by Grantee for balancing when Grantee's delivered volumes from the Receipt Point(s) do not match the consumption of Grantee's Customers at the Delivery Points.
- (a) During the months of September and October, net injections into storage will be limited to no more than 14.3% of Grantee's Storage Capacity unless otherwise mutually agreed to by the parties. If net injections during the September and October period exceed the 14.3% tolerance level, Grantee will accept the Excess Quantity Charge, as provided in Section 6, for volumes in excess of 14.3%.
 - (b) If the volume of gas held by Grantor in storage for Grantee's account exceeds the Storage Capacity limits, Grantor shall treat the excess volumes as Excess Quantities. Grantor shall purchase the Excess Quantities from Grantee by paying Grantee the Excess Quantity Charge for all such volumes.
 - (c) During the months of November through March, net withdrawals from Grantee's storage account will be limited each month to 40% of Grantee's Storage Capacity.
 - (d) If (x) Grantee allows the storage balance to go below zero, or (y) during the months of November through March, net withdrawals exceed 40% of Grantee's Storage Capacity, then Grantee will be deemed to have purchased gas from Grantor and Grantee will pay Grantor the Deficient Quantity Charge for any volumes delivered from storage on behalf of Grantee when its storage balance is below zero.

6. **CHARGES**

- (a) Initial Capacity Annual Payment: \$ 3,750,000
- Supplemental Capacity Annual Payment: \$ 700,000 per 1 Bcf

Growth Capacity Monthly Payment is equal to the sum of:

One-twelfth (1/12) the annual volume of Residential Growth Capacity times 85% of the Grantor's Average Residential Distribution Charge

and

One-twelfth (1/12) the annual volume of Non-Residential Growth Capacity times the Grantor's Transportation Rate Schedule Minimum.

Provided however, that in no case shall the Growth Capacity Monthly Payment be less than one-twelfth (1/12) the total annual volume of elected Growth Capacity times 80% of the Grantor's Average Transportation Rate.

- (b) Grantee shall pay, on the twenty-fifth (25th) day of each month, one-twelfth (1/12) of the Initial and Supplemental Capacity Annual Payments in effect on the first day of the preceding month, and the Growth Capacity Monthly Payment; provided, however, that (x) no payments will be due for the first three (3) months immediately following the close of the proposed merger between DTE Energy Company and MCN Energy Group, Inc.; and (y) the payments for the fourth through twelfth months immediately following the close of said merger shall be equal to one half the otherwise applicable Initial and Supplemental Capacity monthly Payments.
- (c) (i) Capacity payments for Supplemental Capacity will start upon Grantee's election to purchase the additional capacity and continue as long as the capacity election remains in effect. Provided that Grantee has (x) not purchased Growth Capacity or (y) first turned back all Growth Capacity as provided below, Grantee shall have the right, upon 10 days prior notice, to reduce its election of Supplemental Capacity in the event that one or more of Grantee's Customers cease taking service from Grantee for EDL load. The amount of such reduction shall be in increments of 1 Bcf with 50% EDL and 50% non-EDL load. Any such reduction shall become effective on the first April 1 following Grantee's election.
- Grantee shall have the right, upon 10 days prior notice, to reduce its election of Growth Capacity. Any such reduction shall become effective on the first April 1 following Grantee's election.
- (ii) Beginning on the earlier of (x) Grantee's request or (y) with the April payment for the twenty-first (21st) Contract Year, all Initial and Supplemental Capacity Annual Payments shall be adjusted for increases or decreases in Grantor's average per Mcf volumetric cost of service as established by the MPSC, from time to time, as described below ("Adjustment Mechanism"). Once the capacity payment has been adjusted, then it shall continue to be adjusted for any change to the MPSC Rate, defined below. At no time will any annual capacity payment, on an Mcf

basis, exceed 75% of Grantor's then effective Sales Rate. The Growth Capacity Monthly Payment shall be increased or decreased coincident with any changes in Grantor's MPSC approved residential and transportation Tariff rates.

The Adjustment Mechanism shall be applied as follows: the Initial and Supplemental Capacity Annual Payments will be adjusted for increases or decreases in Grantor's current weighted average per Mcf cost of end-user service as established by the MPSC from time to time ("MPSC Rate"). For purposes of illustration, Grantor's current MPSC Rate is \$1.6012 as established by the MPSC in Case No. U-10150 and more fully set forth in Exhibit E. The Adjustment Mechanism shall be calculated using the following formula and shall be applied individually to both the Initial and Supplemental Capacity Annual Payments:

$$\text{New Capacity Payment} = \frac{\text{New MPSC Rate}}{\text{Immediately Preceding MPSC Rate}} \times \text{Immediately Preceding Capacity Payment}$$

"New MPSC Rate" means the MPSC Rate established by the MPSC after the date of this Agreement and from time to time thereafter.

(d) A fuel use charge of 1% gas-in-kind for all volumes delivered to Grantor at the Receipt Point(s) for transportation to Grantee's Customers.

(e)

guarantee the cost of such repairs and or replacements, and Grantor shall promptly reimburse any payments paid pursuant to such guarantee.

8. **RELOCATION:** Grantor reserves the right, from time to time, to relocate any portions of the Grantor's Distribution System. Such relocation shall in no way impact Grantee's rights, under this Agreement, to store and transport gas in the Overlap Area. If any portion of the Grantor's Distribution System required for performance of Grantor's obligations under this Agreement is relocated, Grantor will grant to Grantee a new easement and Grantee will release the existing Easement for the relocated portion of Grantor's system. Furthermore, in the event Grantee, its successors and assigns shall no longer require the use of all or any part of the Easement, the part no longer required shall automatically revert to Grantor thereof and Grantee shall release such part of the Easement which Grantee shall no longer require.
9. **EASEMENTS OR RESTRICTIONS:** The granting of the Easement is subject to any easements or restrictions of record including the lien created by Michigan Consolidated Gas Company's Indenture of Mortgage and Deed of Trust dated as of March 1, 1944, as supplemented and amended, to the terms of the underlying franchises or easement agreements. Grantor is not assigning or transferring any of its rights under any of the underlying franchises or easement agreements.
10. **CONFORMITY WITH LAW:** Grantor and Grantee shall use the Easement in conformity with safe practices and shall at all times comply with all local, State, and Federal laws, statutes, rules, and regulations pertaining thereto.
11. **INSURANCE:** Neither Grantor nor Grantee shall do or permit to be done any act or thing in connection with the use of the Easement that will invalidate or be in conflict with any insurance policies covering the Grantor's Distribution System.
12. **PROTECTION FROM LIENS:** Grantee shall keep the Easement and the Grantor's Distribution System and every part thereof free and clear of any and all liens and encumbrances for work performed by Grantee, or on Grantee's behalf, on the Easement.

13. **CONDITIONS:** This Agreement is subject to the following conditions:

- (a) Prior approval by the MPSC. Grantor will file with the MPSC for approval of this Agreement. Both parties shall openly support this Agreement and seek MPSC approval of it.

16. **FURTHER ASSURANCES:** Grantor agrees to execute, acknowledge and deliver to Grantee all such further, other and additional easements, instruments, notices and other documents and to do all such other and further acts and things as may be necessary or useful to more fully and effectively grant, convey and assign to Grantee the easements and rights in Grantor's Distribution system throughout Wayne, Washtenaw, Monroe, Oakland and Macomb Counties, Michigan being conveyed hereby or intended to be so conveyed, provided, however, that no documents executed, acknowledged or delivered pursuant to this Paragraph may modify the Easement Agreement.
17. **TERMINATION OR MODIFICATION.** This Agreement shall not be terminated, modified, altered, or amended by the parties except as provided herein or except in writing as agreed to by the parties hereto and after notice to and approval by the FTC.
18. **NOTICES:** All notices or other communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by registered or certified mail, postage prepaid, return receipt requested; or (iii) one (1) business day after being sent by overnight delivery service; or (iv) upon receipt, if sent by facsimile, all to the following addresses:

If to Grantor: Michigan Consolidated Gas Company
500 Griswold Street

provided, however, either party may assign this Agreement to an affiliate so long as the assignor guarantees the continuing performance of the assignee. Furthermore, Grantee may assign this

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001,
by Steven E. Kurmas, Sr. Vice President of Michigan Consolidated Gas Company, a Michigan
corporation, on behalf of the corporation.

Notary Public, Wayne County, Michigan
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001,

Detroit, Michigan 48226

EXHIBIT A

MAP OF OVERLAP AREA TO BE SERVED BY GRANTEE

EXHIBIT B

PORTIONS OF GRANTOR'S DISTRIBUTION SYSTEM SUBJECT TO EASEMENT

All distribution pipelines, associated rights of way and appurtenant facilities located in Wayne County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 24280, Pages 93 through 305, Wayne County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Wayne County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Washtenaw County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 2336, Pages 494 through 706, Washtenaw County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Washtenaw County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Milford Township, Oakland County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 11005, Pages 835 through 1047, Oakland County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Oakland County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Monroe County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 1087, Pages 22 through 234, Monroe County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Monroe County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way

EXHIBIT C

GRANTOR RATE SCHEDULES

Grantor's rate schedules are those found on Michigan Consolidated Gas Company's web site at:

http://www.michcon.com/tariffs/tariffs_frameset.html

The web site will be updated to reflect any changes to Grantor's rates.

EXHIBIT D

GENERAL TERMS AND CONDITIONS

D-1. DEFINITIONS

- a) “Annual Contract Quantity” or “ACQ” refers to the total volume of firm transportation Initial Capacity, Supplemental Capacity and Growth Capacity purchased by Grantee and available for Grantee’s use in the Overlap Area in any Contract Year.
- b) “ACQ_{OGL}” refers to the volume of firm transportation Growth Capacity purchased by Grantee to serve On-site Generation Load.
- c) “Average Rate/Mcf” means, in dollars/Mcf, the Supplemental Capacity Annual Payment divided by 1,000,000.
- d) “Committed ACQ” means the anticipated ACQ of an Expansion Load (Mcf).
- e) “Committed Years” means the number of Contract Years, following the in-service of the expansion, Grantee commits to use the Committed ACQ for newly added incremental load for which the expansion was designed.
- f) “Contract Year” means the period from April 1st to March 31st.
- g) “Construct” means to design, engineer, procure, obtain regulatory approvals, permit, install, modify, upgrade, improve, build, inspect, test, or place in service.
- h) “Day” means a period of 24 consecutive hours commencing at 12:00 noon Eastern Time, or such other time as mutually agreed upon by the parties.
- i) “Delivery Point” is the interconnection(s) of the facilities of Grantor and those of each Grantee’s Customer and/or any Grantee downstream extension.
- j) “Electric Displacement Load” or “EDL” means natural gas consumption for On-Site Generation, General Generation or Electric Displacement Equipment:
 - 1) “On-Site Generation” means electrical generation from power generation equipment, including but not limited to, engines, turbines or fuel cells (“Generation Equipment”) to the extent that the electrical conductors between the Generation Equipment and the facility consuming output from the Generation Equipment (i) are owned or operated either by a non-utility entity that owns or operates the Generation Equipment, or by the entity that owns or operates the facility consuming output from the Generation Equipment, or both such entities, or (ii) are owned or operated by a municipal entity,

including a city, village, township or county. A “non-utility entity” is an entity that has no obligation under state or local law to provide utility service to the public in the Overlap Area.

- 2) “General Generation” means up to 8,750,000 kWh of non-On-Site Generation, per year per each unit of Generation Equipment served by Grantee in the Overlap Area; provided, however, that General Generation may not exceed 8,750,000 kWh at any “contiguous customer location”. A “contiguous customer location” means the buildings or parts of buildings situated upon the same parcel or contiguous parcels of land and occupied and used by the customer as a unitary enterprise at one location and under one management.
- 3) “Electric Displacement Equipment” means equipment that displaces electric equipment such as chillers, air compressors, commercial dishwashers and fryers, or other applications for which the Auditor determines that a practical and economic electric alternative exists. Electric displacement equipment shall not include direct-fired space heating and hot water applications.
- k) “Equivalent Quantities” means the quantity of gas, in MCF received from Grantee, for the account of Grantee, at the Receipt Point(s), less 1% gas-in-kind withheld by Grantor for loss and use.
- l) “Expansion Load” means new incremental Grantee Customer load added pursuant to Section D-5 of Exhibit D.
- m) “FERC” means the Federal Energy Regulatory Commission or its successor.
- n) “FTC” means the Federal Trade Commission or its successor.
- o) “Grantee’s Storage Capacity” equals 10% of Grantee’s Initial Capacity and Supplemental Capacity in effect on May 31 of each Contract Year and is the maximum quantity of natural gas that Grantor will hold in firm storage on Grantee’s account under the terms of this Agreement.
- p) “Grantor’s Average Residential Distribution Charge” equals the weighted average of the volumetric distribution charges of the MPSC approved residential service rates as in effect from time to time. Such distribution charges shall be exclusive of any customer charges. As of the effective date of this Agreement, the MPSC approved residential service rates include Rate Schedule Numbers 2, 2A, 3 and 3A, as identified in Exhibit C. In calculating the weighted average, the residential service rates shall be weighted by the total volume of service utilized by the MPSC in the most recent rate order to set rates for the respective residential rate classes. The Grantor’s Average Residential Distribution Charge as of the effective date of this Agreement is \$1.4443/Mcf.

q) “Grantor's Average Transportation Rate”

D-2. NOMINATIONS

All nominations must be made in accordance with Grantor's nomination practices in effect at the time of nomination. Grantor's current nomination practices are set out in Attachment D-I. Prior to making any change to its nomination procedure, Grantor shall submit the proposed changes to the Auditor and Grantee. Grantee and Auditor shall have a period of 45 days to review and comment on any proposed change. At the direction of the Auditor, Grantor shall implement any change to its nomination procedures that the Auditor deems consistent with good utility practice and necessary to prevent an unreasonable or discriminatory impact on Grantee. Grantor shall not impose any Excess Quantity Charges or Deficient Quantity Charges on Grantee to the extent either such charge is occasioned by a force majeure event on Grantor's Distribution System. Grantee shall promptly refer any complaints with respect to Grantor's nomination procedures to the Auditor. The Auditor shall impose monetary damages, as provided in Section D-18, if the Auditor determines that Grantor's treatment of Grantee's nominations was unreasonable or discriminatory.

D-3. RECEIPT POINTS

Grantor shall deliver guidance on

Kalkaska	Primary	Secondary
Belle River/ Vector Pipeline	Primary	Secondary
Milford/ Vector Pipeline	Secondary	Primary

* *Total volumes delivered at all Receipt Points may not exceed contract MDQ.*

D-4. DELIVERY POINT REQUIREMENTS

- a) For each Delivery Point, Grantee will provide customer enrollment and cancellation information to Grantor via a pre-formatted electronic file (“Enrollment/Cancellation File”). Files will be submitted through Grantor’s ConQuest™ Electronic Bulletin Board (EBB), or such other means as mutually agreed to by the parties. The Enrollment/Cancellation File will include the following information for each Delivery Point:
 - i) Name and address;
 - ii) Account number;
 - iii) Pressure requirements and maximum cubic feet/hour; and
 - iv) Any other pertinent information as necessary to process the transaction.

- b) Grantee may submit one Enrollment/Cancellation File to Grantor each business day. Grantor will perform a verification check to ensure that Grantee’s file contains accurate and complete Delivery Point information. Within ten business days after the Enrollment/Cancellation File has been received, Grantor will post a confirmation file on its EBB. The confirmation file will provide the status (i.e., accepted or rejected) of each transaction including notification whether accepted Enrollment Files will require new or incremental facilities. Rejected transactions will be accompanied with an explanation code briefly describing why the transaction could not be processed. Transactions may be rejected for the following reasons: 1) incorrect data, 2) incomplete data, or 3) inactive account. If Grantor deems an Enrollment File unacceptable for any reason other than specified above, Grantor must receive prior approval from the Auditor to reject the Enrollment File. Grantor shall provide the Auditor full electronic access to all Grantee transactions on Grantor’s EBB.

- c) Accepted enrollments and cancellations will become effective upon the earlier of (x) the next business day after all Grantor meters at the Delivery Point have been read or estimated by Grantor, or (y) 35 days after receipt of Grantee's Enrollment/Cancellation File. If the Delivery Point requires new or incremental facilities, such facilities will be installed as provided in Sections D-5, and Grantor will commence deliveries on behalf of Grantee when such facilities are placed in service.
- d) Any information or notices pertaining to Grantee's Customers ("Customer Information"), including information pertaining to any third party purchasing Brokered Capacity pursuant to Paragraph 3(i), will be maintained by Grantor's operations department in strictest confidence subject to the following:
 - i) Disclosure of Customer Information will be limited to that necessary and appropriate for ensuring compliance with the Michigan Gas Safety Code and the curtailment rules of Grantor's Tariff, which will be applied to Grantee's Customers in the same manner as applied to Grantor's customers.
 - ii) Disclosure of Customer Information will be limited to persons with responsibilities in connection with the operation and construction of Grantor facilities, and billing, if Grantee elects to have Grantor bill Grantee's Customers, and under no circumstances may Grantor disclose Customer Information or any other operational data pertaining to Grantee to employees of Grantor or any affiliate of Grantor who are engaged in the marketing of the transportation or sale of electricity or gas.
 - iii) Customer Information may be used only for the purpose of providing the transportation and storage services contemplated in this Agreement.
- e) At Grantee's election, Grantor will retain responsibility for the cost of installing, operating, maintaining (including replacing in-kind) and reading Grantee's Customer meters. Grantor will forward meter reads for Grantee's Customers to Grantee twice a month on or about the eighteenth day of the month in which meters are read and on or about the third day of the month following the month in which meters are read. Upon 30 days prior notice to the Auditor and Grantor, Grantee may assume responsibility for installing, operating, maintaining (including replacing in-kind) and reading Grantee's Customer meters. If Grantor provides billing services to Grantee, payments received from Grantee's Customers will be remitted on the same schedule as meter reads. Grantor or Grantee may install remote meter reading devices on the facilities of Grantee's Customers to get daily reads. The party requesting the installation of the remote meter reading devices shall bear all costs thereof.
- f) Subject to billing practices rules, as approved from time to time by the MPSC, Grantee may bill its customers directly or contract with Grantor for customer billing services at cost plus 10%. Grantee will bear all uncollectible risk with respect to Grantee's Customers and Grantor shall not undertake any collection efforts on behalf of Grantee.

- g) If Grantee elects to terminate its transportation agreement with any of Grantee's Customers, Grantee must give Grantor written notice as provided in this Section D-4. Any customer terminated by Grantee may apply for service from Grantor as a "new customer" under the terms of Grantor's Tariff. Transportation service customers who are no longer served under this Agreement shall be returned to Grantor's transportation service tariff.
- h) Grantee shall have the right to transfer gas between its storage account under this Agreement and the storage accounts of Grantor's ST-1 and/or LT-1 end use transportation customers in the Overlap Area; provided that such customers also purchase their natural gas requirements from Grantee or one of its affiliates. Grantee shall notify Grantor of storage account transfers when submitting an Enrollment/Cancellation File and provide Grantor such information as reasonably requested to verify end use customer storage volumes to be transferred and gas supplier.

D-5. SYSTEM REQUIREMENTS

- a) **Operation**. Grantor shall be responsible for operation of its Distribution System and all infrastructure maintenance and system-wide upgrades.
- b) **System Expansions**. At Grantee's request, any upstream or downstream facilities necessary to interconnect with, or to meet the current or anticipated future

Grantee shall not be required to make a contribution towards the cost of any constructed upstream or downstream facilities related to Initial Capacity or Supplemental Capacity unless the actual cost of the requested expansion is greater than \$100,000.00. For expansions related to Initial Capacity or Supplemental Capacity that exceed \$100,000.00, the Grantee shall pay only those costs that exceed the Grantee's Expansion Allowance.

- i) Grantor shall submit such estimated Expansion Allowance, along with back-up data, to Grantee. The Expansion Allowance shall only be for construction or upgrades of facilities required to serve the specific Grantee Customer. Grantee shall either accept such Expansion Allowance or shall submit its dispute of the Expansion Allowance to the Auditor, under the arbitration procedures described in Section D-18, with the burden of proof on the Grantor.
 - ii) If Grantor elects to over-size the expansion, Grantor will absorb the cost associated with such over-sizing.
- d) To the extent that Grantee's level of purchased capacity exceeds 20 Bcf, Grantee shall be entitled to the same expansion allowance that Grantee's Customers would receive if Grantee's Customers were taking service from Grantor and paying the rate paid by Grantee for such incremental customer.
- e) **Grantor Construction.** Grantor will use commercially reasonable and non-discriminatory efforts to construct facilities requested by Grantee within the timeframe requested by Grantee. To the extent any delay to the in-service date of a facility needed to serve Grantee's Customer(s) is caused by Grantor, the Auditor may, after hearing, impose monetary damages on Grantor to compensate Grantee for unreasonable or discriminatory delays, as provided in Section D-18.
- f) **Grantee Construction.** Grantee may construct any required expansions, provided the facilities meet all Michigan Gas Safety Code requirements and applicable metering standards of the American Gas Association. Facilities constructed by Grantee will be placed in service no later than seven days following notice to Grantor that construction is completed. Within such seven-day notice period, Grantor may inspect and test the facilities.
- i) At Grantee's request, made within 60 days of the in-service date of extensions constructed by Grantee or third parties contracted by Grantee, Grantor shall purchase the facilities from Grantee for the Construction Costs quoted by Grantor but not to exceed the Expansion Allowance.
- g) **Interconnects.** Grantor shall interconnect with any downstream system extensions constructed by Grantee, provided such extensions meet all existing gas safety codes as

established from time to time by the MPSC, Department of Transportation, or other governmental agencies with jurisdiction over natural gas pipelines. Subject to the expansion allowance provisions of this Agreement, Grantee shall be responsible for costs of such interconnection, including any upstream expansions required on Grantor's system to accommodate the downstream extension.

- h) **Disputes.** Any disputes regarding the design, cost or timing of construction of facilities shall be resolved by the Auditor, under the procedures described in Section D-18, with the burden of proof on the Grantor. The Auditor may implement additional procedures applicable to system expansions and upgrades at any time.
- i) Nothing in this section is intended to change Grantee's capacity rights under Section 3 of this Agreement.
- j)

The Auditor may revise or modify any of the foregoing in accordance with good utility practice, if such revision or modification is necessary to prevent an unreasonable or discriminatory impact on Grantee.

D-7. MEASUREMENT

- a) All quantities of gas received at the Receipt Point(s) by Grantor for the account of

- b) Neither party shall be liable to the other party for any punitive or exemplary damages in connection with this Agreement.
- c) Upon termination of this Agreement pursuant to Section 14, neither party shall have any further obligations to the other party, except such obligations as have accrued as of the termination date, and Grantor shall dispose of any Grantee storage inventories as directed by Grantee.

D-10. WARRANTY

- a) Grantee warrants that at the time of delivery it will have the right to deliver the gas in connection with Grantee's use of the capacity made available to Grantee under this Agreement.
- b) Grantee further warrants that either independently or through the services of a gas marketer or broker, Grantee will put in place contracts for the purchase and transportation of natural gas such that sufficient quantities of gas will be delivered to the Receipt Point(s) to meet Grantee's full requirements for natural gas, less any storage balance ("Sufficient Quantities"). Failure to deliver Sufficient Quantities while

Grantor, property taxes, and Grantor's single business taxes. Grantee shall reimburse Grantor for any such taxes, tariffs and duties that are collected and remitted or paid on Grantee's behalf by Grantor because of Grantee's failure to pay.

for the remainder of the term of the Agreement utilizing the 10-year treasury rate (“Settlement Payment”) and Grantee shall do any one of the following:

- i) Pay to Grantor the Settlement Payment; or
- ii) Provide Grantor with an irrevocable stand-by letter of credit in an amount equal to the Settlement Payment.

If Grantee elects to provide a letter of credit, such instrument must remain in place until the earlier of (x) Grantee demonstrates to Grantor’s reasonable satisfaction that it has an Investment Grade long term debt rating or (y) this Agreement is terminated as provided in Section 14.

D-15. FORCE MAJEURE

- a) Neither Grantee nor Grantor shall be liable in damages, or in any other remedy, legal or equitable, to the other for any act, omission or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, sabotage, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of rules and peoples, civil disturbances, failure of electronic data, explosions, breakage or accident to machinery or lines of pipe, the necessity to curtail receipts and/or deliveries on Grantor’s Distribution System to maintain system integrity, or the necessity to make repairs, tests, or alteration to machinery or lines of pipe, line freezeups, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered to be a matter within control of the party claiming suspension. To the extent Grantor curtails service and Grantee's Customers’ service is curtailed due to a Force Majeure event, it shall be done on a non-machine7y which he51t162 -yuf0 -rtailed 2871 Tw51dilig

same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

D-16. REGULATION

- a) This Agreement and the respective obligations of the parties hereunder are subject to all laws, orders, rules and regulations of duly constituted authorities having jurisdiction. This Agreement is also subject to all applicable federal, state and local taxes or surcharges.
- b) In the event there is a change in law or regulation that renders this Agreement, or any part of this Agreement, unenforceable and/or illegal, the Parties shall attempt to renegotiate this Agreement on mutually acceptable terms. Neither Grantor nor Grantee shall refuse to accept changes to the Agreement that would (i) render the Agreement enforceable and legal and (ii) would not materially adversely affect the Party refusing to accept the proposed change. Any disagreements as to what constitutes a material adverse affect shall be submitted to arbitration under the procedures described in Section D-18. Any changes to this Agreement are subject to FTC approval. In the event (i) the parties cannot reach a mutually agreeable resolution or (ii) the Auditor has not determined that a proposal is acceptable, Grantor commits not to oppose any efforts by Grantee to obtain franchises and any other regulatory approvals to serve end users in the Overlap Area.

D-17. INDEPENDENT AUDITOR

- a) Grantor and Grantee shall appoint an independent, third party auditor with knowledge of the natural gas industry. Appointment of the Auditor is subject to approval of the FTC.
- b) Because this is a perpetual Easement, the parties acknowledge that during the term of this Agreement, publications, models or standards agreed to by the parties may cease to exist and need to be replaced by a new publication, model or standard to be agreed upon by the parties. Before such replacement is implemented the Auditor shall approve any such change. If the parties fail to determine a mutually agreeable substitute, the Auditor as provided in Section D-18 below shall determine the appropriate publication, model or standard for implementation of this Agreement.
- c) The Auditor shall perform the duties contemplated by this Agreement as more fully set forth in an Independent Auditor Agreement that will be effective upon the effective date of this Agreement.

D-18. DISPUTES

- a) Any dispute, controversy or claim arising out of or relating to this Agreement or the breach thereof, not settled by the management of the parties within 30 days, shall be submitted to the Auditor for adjudication in accordance with this Section D-18 and the Commercial Arbitration Rules of the American Arbitration Association as in effect from

time to time; provided, however, Grantee, in its sole discretion, may terminate management discussions at any time and submit the matter to the Auditor for adjudication.

- b) The arbitration shall be held at the office of the American Arbitration Association in Detroit, Michigan on ten days notice to the parties.
- c) All decisions shall be promptly communicated to the parties within two business days after conclusion of the arbitration proceeding with a written decision to follow within 30 days.
- d) Any monetary award rendered by the Auditor against Grantor shall be limited to direct and indirect damages, including lost profits, resulting from the breach of this Agreement. Monetary damages may be awarded if the Auditor finds that Grantor unreasonably or discriminatorily took action or failed to take action which resulted in placing Grantee at a competitive disadvantage in exercising its rights under this Agreement. Grantor shall have the burden of proving that it operated the gas distribution system in the Overlap Area in a reasonable and non-discriminatory manner.
- e) The award rendered by the Auditor shall be final and binding on all parties to the proceeding unless overturned or modified by a court of competent jurisdiction because the Auditor has made a clear error of law. The Auditor's findings of fact will not be subject to judicial review. Judgment upon any award rendered by the Auditor may be entered in any court having jurisdiction and each party hereto consents and submits to the jurisdiction of such court for purposes of such action.

D-19. NON-

1. Any information designated as Confidential Information by either Grantor or Grantee that is treated as confidential by the party which designates the information as Confidential Information;
2. Any information designated as Confidential Information by the Auditor; and
3. Any information that is designated as confidential by any order, rule, regulation or statute issued or administered by the MPSC.

ATTACHMENT D-I

GAS NOMINATIONS OVERVIEW

Michigan Consolidated Gas Company (MichCon) accepts transportation and end user (eut) nominations via its electronic bulletin board, ConQuest. Nominations are due to MichCon via ConQuest no later than 2:00 PM EST, the day prior to the gas day. There is no charge to establish or

shipper, or its agent, to calculate storage positions very early into the new month. Currently, the end customer receives its invoice around the 11th workday of the following month.

Primary contacts within the Nominations Group are Tom Budzyn at (313) 256-5955 and David Reed at (313) 256-5262.

ATTACHMENT D-II
STONER MODEL EXPLANATION AND INPUTS

INPUTS:

- Existing system loads
- Existing system pressure ratings
- Existing pipeline diameters
- Existing pipeline lengths
- Existing valve and regulator configurations
- Expansion customer load
- Expansion customer pressure requirements

VARIABLES:

- Expansion pipeline diameter and lengths
- Expansion valve and regulator configuration

OUTPUTS:

- Actual customer delivery pressure (to be compared to proposed customer requirements)

ATTACHMENT D-III

GAS MEASUREMENT REPORTS

- ANSI B109.3 for Rotary-type Gas Displacement Meters (Standard for safe operation, durable construction and acceptable performance of rotary-type gas displacement meters.)
- Orifice Metering of Natural Gas – AGA Report No. 3 (Basic equations and uncertainty statements for computing the flow through orifice meters; specifications for construction and installation of orifice plates, meter tubes and associated fittings; guidelines for measurement of natural gas)
- Fuel Gas Energy Metering – AGA Report No. 5 (conversion of units of gas volume or mass-to-

EXHIBIT E

BASELINE RATE

**MICHIGAN CONSOLIDATED GAS COMPANY
CASE NO U-10150
Average Rate Per Mcf**

	Proposed Revenue	Projected Volume	Average Rate
	----- (000's)	----- (000's)	-----
Rate 1	\$ 98,062	46,453	\$ 2.1110
Rate 2	\$ 268,094	128,725	\$ 2.0827
Rate 2A	\$ 14,030	8,830	\$ 1.5889
Rate 3	\$ 12,929	6,508	\$ 1.9866
Rate 3A	\$ 14,672	8,534	\$ 1.7192
Rate 6	\$ 4,528	2,715	\$ 1.6677
Rate 8	\$ 99	89	\$ 1.1112
Rate 10	\$ 2,991	1,797	\$ 1.6644
Rate ST	\$ 31,014	31,881	\$ 0.9728
Rate LT	\$ 40,999	68,880	\$ 0.5952
	-----	-----	-----
Total	<u>\$ 487,418</u>	304,412	\$ 1.6012
	=====	=====	=====