

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.

- E. Due to the unique nature of EDL and Grantee's capacity needs, Grantor is agreeable to providing said easement to Grantee.
- F. Subject to the provisions of this Agreement and the Auditor Agreement between Grantor, Grantee and the Auditor of even date herewith, Grantor shall retain full operational control over the transportation and storage of gas on Grantor's distribution System and have ultimate control over the operation of Grantor'

Load. No demonstration of compliance with conditions (y) or (z) shall be 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

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-Whole Payment the Auditor shall make the following findings:

- i) Keep-Whole Volumes (in Mcf) for Supplemental Capacity where Grantee has used 20 Bcf or less of capacity:

$$\text{Keep-Whole Volumes} = \frac{3}{4} (\text{non-EDL consumption} - 5.5 \text{ Bcf} - \text{EDL consumption})$$

- ii) Keep-Whole Volumes (in Mcf) for Supplemental Capacity and Growth Capacity where Grantee has used more than 20 Bcf of capacity shall be the sum of Keep-Whole Volumes_{EDL} and Keep-Whole Volumes_{OGL}:

$$\text{Keep-Whole Volumes}_{\text{OGL}} = (\text{Total consumption} - 20 \text{ Bcf}) - \text{OGL consumption}$$

$$\text{Keep-Whole Volumes}_{\text{EDL}} = \frac{3}{4} (\text{non-EDL consumption} - 5.5 \text{ Bcf} - \text{EDL consumption})$$

For purposes of calculating Keep-Whole Volumes_{EDL} in Section 3(g)(ii), non-EDL consumption shall never Volu Tc -0.08 0 Twarg13. 0.02 Tw () 1.77.02230.067

Grantor's service territory under programs that do not involve the use of the capacity made available to Grantee under this Agreement.

- (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 (“

(y) all charges or penalties caused by any agent acting on Grantee's behalf, including, but not limited to, unauthorized gas and storage penalties.

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 (

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) The Excess Quantity Charge is equal to 95% of the lowest price reported in *Gas Daily*, in the Daily Price Survey, for the following locations for the month in which the breach occurred or the month following such breach: Dawn, Ontario; ANR ML7 (entire zone); Chicago-LDC, large euts; Michigan - Consumers Energy, large euts; Michigan - MichCon, large euts. Grantor shall purchase Excess Quantities from Grantee by paying Grantee the Excess Quantity Charge.
- (f) The Deficient Quantity Charge is equal to 105% of the highest price reported in *Gas Daily*, in the Daily Price Survey, for the following locations for the month in which the breach occurred or the month following such breach: Dawn, Ontario; ANR ML7 (entire zone); Chicago-LDC, large euts; Michigan - Consumers Energy, large euts; Michigan - MichCon, large euts. If at any time during the term of this Agreement, *Gas Daily* ceases publication, the parties will mutually agree, subject to approval by the Auditor, on a replacement trade publication that reports regional daily gas prices. Grantee shall purchase Deficient Quantities from Grantor by paying Grantor the Deficient Quantity Charge.

7. **REPAIR AND REPLACEMENTS:** Grantor shall repair and replace all components of Grantor's Distribution System necessary for the proper operation thereof. If Grantor fails to repair or replace such components, the Auditor may, at Grantor's expense, make any repairs and or replacements necessary for the proper operation of Grantor's Distribution System. In order to facilitate the Auditor's repair or replacement or such components,

Grantee may 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.
 - (b) The closing of the proposed merger between DTE Energy Company and MCN Energy Group Inc.
 - (c) Approval of this Agreement by the FTC through the issuance of a final decision and order.
14. **TERM:** Subject to Sections 13 and 17, this Agreement is effective as of the closing date of the proposed merger between DTE Energy Company and MCN Energy Group Inc.
- (a) This Agreement may be terminated by Grantee at the end of the twentieth Contract Year or the end of any succeeding Contract Year by giving Grantor and the Auditor written notice one year prior to the proposed termination date.
 - (b) This Agreement may be terminated by Grantor only if the proposed merger between DTE Energy Company and MCN Energy Group Inc. does not close within 12 months after MPSC approval of this Agreement.
 - (c) Upon termination of this Agreement, the Easement shall be deemed to have been abandoned and will cease and terminate, which termination may be evidenced by Grantor's recordation of an affidavit to that effect.
 - (d) Grantee, in its sole discretion, may terminate this Agreement at any time if the Securities and Exchange Commission ("SEC") or any successor agency asserts jurisdiction over Grantee or Exelon Corporation, or any successor, affiliate or subsidiary of either, under the Public Utility Holding Company Act of 1935 by reason of entering into this Agreement or relating to this Agreement or exercising any rights under this Agreement. Grantee may also terminate this Agreement if by reason of entering into this Agreement or relating to this Agreement or exercising any rights under this Agreement, the Federal Energy Regulatory Commission ("FERC") or the Michigan Public Service Commission ("MPSC") or any successor agencies, (i) subjects Grantee or Exelon Corporation, or any successor, affiliate or subsidiary of either, to regulation to which a gas marketer in the State of Michigan or any successor, affiliate or subsidiary thereof would not be subject and (ii) such regulation has, in Grantee's reasonable judgment, a material adverse impact upon this Agreement for Grantee or upon Grantee or Exelon Corporation or any successor, affiliate or subsidiary of either.
15. **GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the State of Michigan.
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
Detroit, Michigan 48226
Fax No: (313) 965-0009
Attn: Office of the General Counsel

If to Grantee: Exelon Energy Company
2315 Enterprise Drive
Westchester, Illinois 60154
Fax No: (708) 236-7901
Attn: Vice President and General Manager

Each party shall have the right to designate other or additional addresses or addressees

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 Agreement to any institution providing financing to it. In no event, however, will Grantor be required to consent to a partial assignment of any rights or obligations arising under this Agreement.

- 21. **FTC ACTION:** Nothing in this Agreement shall be deemed to preclude the FTC from bringing any action as may be appropriate under the Federal Trade Commission Act.
- 22. **GENERAL TERMS AND CONDITIONS:** All transportation services provided under this Agreement shall be in accordance with the General Terms and Conditions attached as Exhibit D.
- 23. **PRIOR AGREEMENTS:** This Agreement, together with Exhibits A, B, C, D and E, and the Auditor Agreement, dated of even date as this Agreement, terminate and supercede the Easement Agreement and Auditor Agreement executed by the parties on August 21, 2000.

IN WITNESS WHEREOF, the Grantor has signed and sealed this instrument this ____ day of _____, 2001, and the Grantee has signed and sealed this instrument the ____ day of _____, 2001.

In the presence of:

MICHIGAN CONSOLIDATED GAS COMPANY
a Michigan corporation

WITNESSES:

Donna E. Clark

Jeannette M. Renaud

By: _____
Steven E. Kurmas
Its: Sr. Vice President

WITNESSES:

EXELON ENERGY COMPANY
a Delaware corporation

David J. Dulick

Zina Gavin

By: _____
Gerald N. Rhodes
Its: President

STATE OF MICHIGAN)
) ss.

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

All distribution pipelines, associated rights of way and appurtenant facilities located in Macomb 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 4695, Pages 1 through 213, Macomb County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Macomb 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.

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,

from time to time, exclusive of any customer charges. As of the effective date of this Agreement, Rate Schedule Numbers ST-1 and LT-1 are identified in Exhibit C. In calculating the weighted average, the ST-1 and LT-1 transportation charges shall be weighted by the total volume of service for the ST-1 and LT-1 rate classes utilized by the MPSC in the most recent rate order to set rates. The "Grantor's Average Transportation Rate" as of the effective date of this Agreement is \$0.5762/Mcf.

- r) "Grantor's Transportation Rate Schedule Minimum" shall be the lowest MPSC approved non-residen

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

Grantee may deliver gas to any Receipt Point located in the Overlap Area or that serves the Overlap Area, including but not limited to the Receipt Points identified below. Grantee shall have the flexibility to deliver up to its full MDQ at any primary Receipt Point. Further, Grantee may request Receipt Points in addition to those below, and Grantor shall grant such requests on a non-discriminatory basis to the extent operationally feasible. Grantor shall give written notice to the Auditor within one business day of refusing any Receipt Point request made by Grantee, and within two business days thereafter, Grantor shall provide the Auditor with a written explanation of the reasons for refusing Grantee's Receipt Point. The Auditor shall impose monetary damages, as provided in Section D-18, if the Auditor determines that Grantor’s refusal of a receipt point requested by Grantee was unreasonable or discriminatory.

Receipt Point	Summer*	Winter *
Willow/ANR Pipeline	Secondary	Primary
Northville/ Consumers Energy	Secondary	Primary

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

- 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

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'

Expansion Allowance, as defined below, is available. The “Expansion Allowance” is equal to

$$\text{Average Rate/Mcf} \times \text{Committed Years} \times \text{Committed ACQ} \times 0.8$$

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

- 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) Nothing in the foregoing shall be interpreted to limit either party's ability to compete with the other party to serve any end user, including offering prices and terms to induce the end user to not purchase gas transportation services from the other party.
- k) Grantor shall take no actions before the SEC, MPSC, FERC, or any other government agency in opposition to any attempt by Grantee to serve end users in the Ove

Grantee's Customers.

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 Grantee shall be measured at the Receipt Point(s) by Grantor or its designee in accordance with, and shall comply with the measurement practices adopted by the American Gas Association ("AGA"), as amended from time to time (all collectively referred to as "Gas Measurement Reports"). The gas measurement practices currently adopted by the AGA and followed by Grantor are more fully set out in Attachment D-III. If at any time during the term of this Agreement the AGA ceases to publish gas measurement practices, the parties will mutually agree on replacement gas measurement practices that are generally accepted in the industry.
- b) All quantities of gas delivered by Grantor to Grantee's Customers will be measured at the Delivery Point(s) by Grantor, or its designee in accordance with applicable Gas Measurement Reports.

D-8. QUALITY

- a) All gas delivered by Grantee at the Receipt Point(s) or redelivered by Grantor at the Delivery Point(s) shall conform with the same gas quality standards to which Grantor holds itself and other shippers ("Gas Quality Specifications"). Grantor's current gas quality specifications are set forth in Attachment D-IV.
- b) If the gas delivered by Grantee at any Receipt Points or by Grantor at any Delivery Points fails at any time to conform to the Gas Quality Specifications, then Grantor or Grantee, as the case may be, shall notify the other of such deficiency and thereupon may, at its option, refuse to accept delivery pending correction. Upon demonstration acceptable to Grantor or Grantee, as the case may be, that the gas being tendered for delivery conforms to the Gas Quality Specifications, Grantor or Grantee, as the case may be, shall resume taking delivery of gas.

D-9. POSSESSION AND LIABILITY

- a) As between Grantor and Grantee, Grantee shall be deemed in exclusive control and possession of the gas transported hereunder and responsible for any damage or injury caused thereby until it is delivered to Grantor at the Receipt Point(s) and after it is delivered by Grantor at the Delivery Point(s). Grantor shall be deemed in exclusive control and possession of said gas and responsible for any damage or injury caused thereby after it is delivered by Grantee, or for Grantee's account, at the Receipt Point(s) and before it is delivered by Grantor at the Delivery Point(s).

- 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

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. Grantor shall, however, reimburse Grantee for 80% of any franchise fees paid by it, provided that the reimbursement in any Contract Year shall not exceed 10% of the initial Annual Capacity Payment.

D-13. BILLING AND PAYMENT

- a) On or about the fifth day of each calendar month, Grantor shall render a statement to Grantee for the Capacity Payment and any other charge, if applicable. Grantee will pay Grantor the amount billed in that statement on or before the twenty-fifth day of the month. All such payments shall be made in the form of immediately available funds directed to a bank account designated by Grantor on its invoice.
- b) The statements rendered pursuant to this Agreement will be denominated in U.S. Dollars (\$U.S.). All payments must be made in \$U.S.
- c) Grantee shall have the right at all reasonable times to examine the books, records and charts of Grantor to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any provisions of this Agreement.
- d) Should Grantee fail to pay any undisputed amount of any statement rendered by Grantor as herein provided when such amount is due, such undisputed and unpaid amount shall accrue interest at the prime lending rate as published in the Wall Street Journal on the first day of each month.
- e) If Grantee finds at any time within twelve (12) months after the date of any statement rendered by Grantor that it has been overcharged in the amount billed in such statement, and if the overcharge has been paid, and Grantee makes a claim therefor within 60 days from the date of discovery thereof, the overcharge, if verified, must be refunded within 30 days. If Grantor finds at any time within twelve months after the date of any statement rendered by it that there has been an undercharge in the amount billed in such statement, it may submit a statement for the undercharge, and Grantee, upon verifying the same, shall pay such amount within 30 days.

D-14. CREDITWORTHINESS

- a) If at any time during the term of this Agreement, the long-term debt rating of Grantee, or Grantee's ultimate parent if Grantee does not have a separate long-term debt rating, becomes less than "BBB" as reported by Standard and Poor's Corporation or an equivalent rating by Moody's Investors Services, Inc. ("Investment Grade"), Grantor shall request that the Auditor calculate the capitalized value of all Capacity Payments due 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 freezups, 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-discriminatory basis compared to all other firm customers on Grantor's Distribution System.
- b) Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligation to make payments of amounts then due thereunder, nor shall such causes or contingencies relieve either party of liability

unless such party shall give notice and full particulars of the 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-WAIVER OF FUTURE DEFAULTS

No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement will operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

D-20. TREATMENT OF CONFIDENTIAL INFORMATION

Grantor and Grantee each shall use any Confidential Information received or derived from the Auditor, from one another, or from performing this Agreement or the Auditor Agreement, as each may be modified from time to time, solely (1) in the performance of Grantor's or Grantee's obligations under this Agreement or the Auditor Agreement; (2) the performance of Grantor's obligations under any order issued by the Federal Trade Commission; (3) the performance of Grantor's or Grantee's obligations under any order, rule, regulation or statute issued or administered by the MPSC; or (4) for the purpose of complying with financial, tax reporting, legal, health, safety, and environmental obligations of Grantor or Grantee. For purposes of this paragraph, Confidential Information means:

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.

and allows the 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-energy equivalents through the use of data associated with volume-metering practices)

Compressibility and Super-Compressibility for Natural Gas and Other Hydrocarbon Gases – AGA Report No. 8 (Information for computation of gas phase densities, and compressibility and supercompressibility factors for natural gas and other related hydrocarbon gases)

Measurement of Gas by Multipath Ultrasonic Meters, AGA Report No. 9 (Standards for multipath ultrasonic transit-time flow meters)

ATTACHMENT D-IV

GAS QUALITY SPECIFICATIONS

All gas received and delivered under the terms of this Agreement must conform to the following specifications:

- (a) The gas must be commercially free from dust, gum, gum-forming constituents, and all other solid and liquid matters, which may interfere with its merchantability or cause injury to or interfere with proper operation of the pipelines, regulators, meters or other appliances through which it flows;
- (b) The carbon dioxide content of the gas may not exceed a partial pressure of 5 pounds per square inch;
- (c) The water content of the gas may not exceed 7 pounds per million cubic feet; however, every reasonable effort must be made to keep the water content at or below 5 pounds per million cubic feet;
- (d) The gas may not contain oxygen. Grantee is responsible for insuring that its operator maintains its equipment to insure the gas is free of oxygen;
- (e) The gas may not contain more than 1/4 grain of hydrogen sulfide per 100 cubic feet;
- (f) The gas may not contain more than 1/2 grain of mercaptan sulfur per 100 cubic feet;
- (g) The gas may not contain more than 5 grains of total sulfur per 100 cubic feet, including the sulfur in any hydrogen sulfide, mercaptan, sulfides and residual sulfur.

EXHIBIT E

BASELINE RATE

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

	Proposed Revenue	Projected Volume	Average Rate
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	(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			