

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's Distribution System.

NOW, THEREFORE, in consideration of the foregoing recitals, for ONE DOLLAR (\$1.00), the sufficiency and receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **GRANT:** Grantor hereby grants to Grantee a perpetual, non-exclusive easement in, across and through the portions of the Grantor's Distribution System situated in Wayne, Washtenaw, Monroe, Oakland and Macomb Counties, Michigan, as more particularly described on Exhibit B upon the terms and conditions hereinafter set forth (the "Easement").
2. **PERMITTED USE:** The Easement is granted solely for the purpose of transportation and storage of gas in accordance with the terms and conditions of this Agreement.
3. **CAPACITY RIGHTS:**
 - (a) **Initial Capacity.** Grantee shall have use of 5 Bcf of annual transportation capacity ("Initial Capacity"), to serve any end use customers located within the Overlap Area that have been designated by Grantee as being customers of Grantee for the purposes of this Agreement, during the period of any such designation ("Grantee's Customers"). Payment for the Initial Capacity shall be at the rate set forth in Section 6.
 - (b) **Supplemental Capacity.** At Grantee's option, Grantee may exercise its right to purchase up to an additional 15 Bcf of annual transportation capacity ("Supplemental Capacity") for use in serving Grantee's Customers within the Overlap Area. Such Supplemental Capacity shall be sold to Grantee in increments of 1 Bcf. Each increment of Supplemental Capacity purchased by Grantee will be charged an annual capacity payment as provided in Section 6.
 - i) Supplemental Capacity must serve a minimum of 50% Electric Displacement Load ("EDL Target"). Grantee shall be deemed to have met the EDL Target if Grantee has demonstrated to the satisfaction of the Auditor that the total EDL consumption by all of Grantee's Customers combined equals or exceeds 50% of the Supplemental Capacity already sold by Grantee. Grantee may acquire one or more additional increments of Supplemental Capacity at any time, provided that (x) the total Supplemental Capacity may not exceed 15 Bcf, and either: (y) Grantee has met the EDL Target for the Supplemental Capacity already sold by Grantee; or (z) the Auditor has determined that the additional Supplemental Capacity requested by Grantee would be used to serve EDL

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 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-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 be greater than 20 Bcf.

For the purpose of determining Keep-Whole Volumes, consumption is determined by actual metered volumes or if EDL and OGL are not separately metered, a reasonable allocation of metered volumes as approved by the Auditor. Negative Keep-Whole Volumes, Negative Keep-Whole Volumes_{OGL}, and Negative Keep-Whole Volumes_{EDL} shall be deemed to be equal to zero.

- iii) Grantee's Customers to whom Keep-Whole Volumes were delivered. For purposes of this calculation, the Auditor shall assume that Keep-Whole Volumes were delivered under the last agreement(s) executed with Grantee for deliveries using capacity acquired under this Agreement;
- iv) The lowest cost-based MPSC approved rates (both distribution and customer service charge) that each of Grantee's Customers with Keep-Whole Volumes would have paid Grantor under its then current Tariff ("Keep-Whole Rate"). Grantor's current Tariff rates are attached as Exhibit C.

The Keep-Whole Payment shall be the Keep-Whole Volumes times the Keep-Whole Rate for each applicable Grantee's Customer; provided however, that no Keep-Whole Payment shall be required to the extent that Grantee's failure to meet the EDL Targets was a result of the termination of contracts with one or more EDL customers.

- (h) Nothing in this Agreement shall be construed to prevent Grantee from marketing gas to EDL, OGL or other end use customers in the Overlap Area or other areas of

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 (“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 – March)	$\frac{ACQ - ACQ_{OGL}}{110} + \frac{ACQ_{OGL}}{170}$
	Summer (April – August)	$\frac{ACQ - ACQ_{OGL}}{260} + \frac{ACQ_{OGL}}{110}$
	Fall (September – October)	$\frac{ACQ - ACQ_{OGL}}{260} + \frac{ACQ_{OGL}}{200}$

Grantee shall have no minimum delivery requirements as to its MDQ.

- (b) At no time shall Grantee’s daily nomination(s) to Receipt Point(s) exceed the then authorized MDQ unless agreed upon by Grantor in advance. Deliveries to Receipt Point(s) that exceed the authorized MDQ will be excess quantities (“Excess Quantities”). Deliveries to Grantee’s Customers that exceed the MDQ will be deficient quantities (“Deficient Quantities”). Grantee shall accept or pay an Excess Quantity Charge or Deficient Quantity Charge as applicable, as provided in Section 6, for all such volumes.
- (c) Grantee will also be responsible for (x) all upstream or third party transportation agreements and charges incurred in transporting the gas to the Receipt Point(s) and

(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 (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) 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 for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

19. **SUCCESSORS AND ASSIGNS:** This Easement runs with the land and binds and benefits Grantor's and Grantee's successors and permitted assigns.
20. **ASSIGNMENT:** Neither party may assign this Agreement or any of its rights or obligations arising under this Agreement without prior approval of the FTC and without the prior written consent of the other party, which shall not be unreasonably withheld,

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

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 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 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, 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” equals the weighted average of the ST-1 and LT-1 MPSC approved fixed cost transportation rates (or any successor rate) in effect

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-residential Transportation Rate as listed in Exhibit C as in effect from time to time, exclusive of any customer charges. As of the effective date of this Agreement, Grantor's Transportation Rate Schedule Minimum is equal to \$0.2300/Mcf, the minimum transportation charge listed under Rate Schedule LT-2.
- s) "Maximum Daily Quantity" or "MDQ" is the maximum quantity of natural gas that may be transported from the Receipt Point(s) and/or Grantee's storage account to the Delivery Point(s) on any one Day.
- t) "MPSC" means the Michigan Public Service Commission or its successor.
- u) "Non-Residential Growth Capacity" is the volume of all Growth Capacity other than Residential Growth Capacity.
- v) "Residential Growth Capacity" is the volume of Growth Capacity that meets the definitions of residential usage as detailed in Grantor's MPSC approved rate schedules, (Exhibit C).
- w) "On-site Generation Load" or "OGL" means natural gas consumption for On-Site Generation and General Generation, as defined in Sections D-1(j)(1) and (j) (2) above.
- x) "Primary Receipt Point" refers to a Receipt Point where firm deliveries will be received.
- y) "Receipt Point(s)" are those interconnection(s) between the facilities of Grantor and third parties that deliver gas to Grantor, for the account of Grantee, identified in Section D-3.
- z) "Sales Rate" means the volumetric distribution charge for deliveries to MichCon commercial customers, as approved from time to time by the MPSC. As of the date of this Agreement, the Sales Rate, Rate 1 in the Tariff, is \$1.8179/Mcf.
- aa) "Secondary Receipt Point" refers to a Receipt Point where interruptible deliveries will be received.
- bb) "Tariff" means Grantor's Rules, Regulations and Rate Schedules for Gas Service as approved from time to time by the MPSC.

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
Belle River/ Great Lakes	Primary	Secondary
MichCon/ St. Clair Pipeline Co.	Primary	Secondary
Rouge/ Panhandle Eastern	Secondary	Primary
Woolfolk/ ANR Pipeline	Primary	Secondary

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 service needs of, Grantee's Customers, including but not limited to service line extensions, upstream expansions, mains, transfer mains and gate stations shall be constructed.
 - i) System expansion requirements will be analyzed by the Stoner and Associates, Inc., SynerGEE model ("Stoner Model") as more fully described in Attachment D-II, or such other engineering modeling software generally accepted in the natural gas industry as may be agreed upon by Grantee and Grantor.
 - ii) Within five business days of receipt of all information necessary to run a Stoner Model of required facilities, Grantor will provide to Grantee, for Grantee review and approval, all of the details of the proposed facilities, including project design, lump sum cost estimate ("Construction Costs"), Expansion Allowance, as defined below, and the results, including all assumptions and variables, of its Stoner Model or such other mutually agreed upon engineering modeling software, generally accepted in the natural gas industry.
- c) **Costs**. To the extent that Grantee's level of purchased capacity is 20 Bcf or less, an

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 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) 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 Overlap Area without utilizing Grantor's Distribution System.

D-6. OPERATIONAL NOTICES OR CHANGES

Grantor shall provide 45-days advance notice to Grantee and the Auditor of the following operational events:

- a) Any planned new receipt points;
- b) Any proposed modifications or changes to Grantor's nomination process;
- c) Any proposed modifications or changes to Grantor's gas measurement practices;
- d) Any proposed modifications or changes to Grantor's Gas Quality Specifications;
- e) Any scheduled maintenance or any other outage known to Grantor that would impact a Receipt Point or Delivery Point being used by Grantee;
- f) Any scheduled maintenance or other outage of facilities on Grantor's Distribution System, or any change in operating standards, practices or procedures that would degrade or interrupt service to any Grantee Customer; and
- g) Any other scheduled event likely to impact Grantee or Grantee's ability to serve

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

- 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 continuing to accept receipt of natural gas may affect Grantor's ability to operate Grantor's Distribution System. If Grantee fails to deliver Sufficient Quantities in any particular month, Grantor will notify Grantee of the shortage in deliveries and attempt to reach the designated person for notices by telephone as an additional notice.

D-11. INDEMNIFICATION

- a) Grantee will indemnify Grantor and hold it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons in connection with gas provided in connection with Grantee's use of the capacity made available to Grantee under this Agreement and royalties, taxes, license fees or charges related to such gas.
- b) Grantor will indemnify Grantee and hold it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons in connection with Grantor's Distribution System.

D-12. TAXES and FRANCHISE FEES

Grantee shall pay any taxes, tariffs, and duties however designated, levied, or charged resulting from Grantee's use of capacity rights provided under this Agreement, including, without limitation, all state and local privilege or excise taxes and any amount in lieu of such taxes, tariffs and duties paid or payable by Grantor, exclusive however of taxes based on the net income of 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. 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.

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 maintain a ConQuest account with MichCon. The deadline for nominations is the same throughout the month, i.e. October 1 noms are due at 2:00PM on September 30. MichCon accepts standing nominations for an entire calendar month.

Shippers connect to ConQuest via a modem line and nominate individual packages of gas, tracked by individual delivery points and contract numbers. MichCon accepts gas at over 60 “citygate” points located throughout the state. All gas transactions within MichCon are done on an “Mcf” basis. Interconnect gas (ANR, GLGT, PEPL) that enters the MCGC system in Mmbtu at 14.73 psi is converted to Mcf’s at 14.65 psi upon completion of the nomination process. MichCon posts the effective BTU factors to be used prior to the beginning of the month. These BTU factors may change on the first day of each month. ConQuest verifies the amount of gas and receipt points that a shipper nominates to an end user on an ongoing basis. If the shipper tries to exceed the end user’s allowable MDQ, or deliver gas from a point not specified within the end user’s contract, the nomination record is not allowed to be saved, and an error message is generated to the shipper.

MichCon also offers an intraday “window” for the current gas day. This allows shippers to match up volumes that may have changed on the interconnecting pipelines to their noms on the MichCon side of the pipe, or to reallocate gas quantities among eut or other delivery points. This “window” opens at 9:00AM EST and closes at 7:00PM EST for the current gas day only.

MichCon is not subject to FERC jurisdiction and therefore is not required to comply with GISB standards. MichCon’s gas day is currently recognized as running from noon to noon, for measurement purposes. Interconnecting pipelines’ “gas days” start at 9:00 AM CST.

MichCon reconciles the nominations on a daily basis and communicates with shippers any discrepancies that have occurred before the gas day begins. This provides the shipper with an opportunity to correct any problems with intraday nomination changes.

MichCon finalizes monthly volumes, including eut deliveries during the first seven workdays following month end. After this process is complete, the shippers are notified and they are able to retrieve their monthly source and disposition and end user delivery reports from ConQuest.

MichCon posts on ConQuest the consumption amounts as obtained by our meter readers on a monthly basis. End users can allow a shipper to view this consumption information through the use of an agency authorization. This information is posted on the 4th workday of each month,

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	\$ 40,999	68,880	\$ 0.5952
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Total	<u>\$ 487,418</u>	304,412	\$ 1.6012
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