

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
MICHIGAN GAS UTILITIES CORPORATION)	
for a certificate of public convenience and necessity)	Case No. U-20752
to provide natural gas service to Black Gold Paving,)	
Inc., in Dorr Township, Allegan County.)	
_____)	

At the December 9, 2020 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

ORDER APPROVING SETTLEMENT AGREEMENT

On June 16, 2020, the Michigan Gas Utilities Corporation (MGUC) filed an application pursuant to Act 69 of 1929, as amended, MCL 460.501 *et seq.*, requesting a certificate of public convenience and necessity (CPCN) to construct a natural gas service line and to render natural gas service to a single customer, Black Gold Paving, Inc., in the Township of Dorr, Allegan County, Michigan.

A prehearing conference was held on September 16, 2020, before Administrative Law Judge Martin D. Snider. MGUC and the Commission Staff participated in the proceeding. Subsequently, the parties submitted a settlement agreement resolving all issues in this case.

The Commission has reviewed the settlement agreement and finds that the public interest is adequately represented by the parties who entered into the settlement agreement. The Commission

further finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceedings, and should be approved.

The Commission also notes that the settlement agreement also addresses compliance with the Michigan Environmental Protection Act, Part 17 of the Natural Resources and Environmental Protection Act, MCL 324.101 et seq., (“MEPA”). While applicability of MEPA to Act 69 cases is not clear based on existing case law, to the extent MEPA does apply in the present case, the Commission finds that the settlement agreement complies with the provisions of MEPA as any environmental impairment caused by the proposed natural gas main is *de minimis* and approval of the settlement agreement is consistent with the promotion of public health, safety, and welfare in light of the state’s paramount concern for the protection of its natural resources from pollution, impairment, or destruction.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. Michigan Gas Utilities Corporation is granted a certificate of public convenience and necessity to construct facilities and to provide natural gas service to Black Gold Paving, Inc., in Dorr Township, Allegan County, Michigan as identified in Second Revised Exhibit D to the application.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General – Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Sally A. Talberg, Commissioner

Tremaine L. Phillips, Commissioner

By its action of December 9, 2020.

Lisa Felice, Executive Secretary

**STATE OF MICHIGAN
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In the matter of the application of)	
MICHIGAN GAS UTILITIES CORPORATION)	Case No. U-20752
for a certificate of public convenience and necessity to)	
provide natural gas service to Black Gold Paving, Inc. in)	
<u>Dorr Township, Allegan County.</u>)	

SETTLEMENT AGREEMENT

As provided in § 78 of the Administrative Procedures Act of 1969 (“APA”), as amended, MCL 24.278, and the Michigan Administrative Hearing System’s Administrative Hearing Rules, Rule 431, 2015 AC R 792.10431, Michigan Gas Utilities Corporation (“MGUC” or the “Company”) and the Michigan Public Service Commission Staff (“Staff”) (jointly the “Party” or “Parties”) have resolved through settlement discussions the contested issues regarding this proceeding and hereby agree as follows.

1. On June 16, 2020, MGUC filed an application requesting a certificate of public convenience and necessity (“CPCN”) pursuant to 1929 PA 69, as amended, MCL 460.501 et seq., (“Act 69”) to provide natural gas service to Black Gold Paving, Inc. in Dorrr Township in Allegan County, Michigan.

2. On August 17, 2020, the Michigan Public Service Commission (“Commission”) issued its Notice of Hearing. Consistent with the Michigan Public Service Commission (“MPSC” or the “Commission”) Executive Secretary’s directives, on September 9, 2020, MGUC filed the requisite proofs of mailing.

3. A prehearing conference was held before Administrative Law Judge Martin D. Snider on September 16, 2020. At the prehearing conference, appearances were entered on behalf of MGUC and the Staff. There were no intervenors.

4. On October 14, 2020, in response to Staff's request, MGUC supplemented its application by filing an environmental report assessing the impacts of the proposed natural gas main.

5. On November 13, 2020, MGUC supplemented its application by filing a Revised Exhibit D depicting a minor alteration to the proposed natural gas main route, which will allow the directional boring crew to avoid locating and crossing the identified water and forced sewer mains under the U.S. 131 travel lanes. That same date MGUC filed a revised environmental report assessing the environmental impacts of the revision to the proposed route. On November 18, 2020, MGUC supplemented its application by filing a Second Revised Exhibit D, which better depicted the natural gas main route.

6. Subsequent to the prehearing conference the Parties agreed to enter into a settlement agreement. This settlement agreement identifies the rights and obligations of the Parties concerning the provision of natural gas service to Black Gold Paving, Inc. in Dorr Township in Allegan County, Michigan, and, the parties agree as follows:

a. On May 30, 2019, Dorr Township granted MGUC a non-exclusive franchise authorizing it to conduct a local gas business within the Township of Dorr, Allegan County, Michigan.

b. The granting of an Act 69 CPCN by the Commission permitting MGUC to provide natural gas service to a single customer, Black Gold Paving, Inc., in Dorr

Township, Allegan County, Michigan as identified in Second Revised Exhibit D to the application, is in the public convenience and necessity.

c. No later than six months after the in-service date of the proposed natural gas main, MGUC agrees to conduct an above-ground electrical survey of the proposed main. Specifically, the inspections will attempt to identify defects in the coating of the natural gas main that could cause future corrosion if not addressed. All detected anomalies that become anodic when the cathodic protection system is off shall be remediated within one year after detection. Within six months of the electrical survey, the data gained from the electrical survey will be used to place additional external corrosion control test stations, as necessary, at any identifiable and significant dips in electric potential in accordance with 49 CFR Part 192.469.

d. Construction and maintenance of the system must comply with the Michigan Gas Safety Standards (R. 460.20101- 460.20606) and applicable Commission rules.

e. The Parties agree that MGUC will not commence construction of the proposed system until all necessary right-of-way easements have been acquired.

f. The parties agree that MGUC will not start construction of the proposed system until all required federal, state, and local permits have been acquired.

g. The Parties agree that MGUC will remediate the project area right-of-ways to pre-construction, or improved, conditions no later than one year after construction is completed. This includes, but is not limited to, clearing the right-of-ways of equipment and materials, grading, and re-vegetating the working areas.

h. Given mitigation steps MGUC will employ to minimize adverse environmental impacts, any environmental impairment caused by the proposed natural gas main is *de minimis* and is consistent with the promotion of public health, safety, and welfare in light of the state's paramount concern for the protection of its natural resources from pollution, impairment, or destruction. The Parties agree that the Commission should find that the filed Application and exhibits support and satisfy the required agency review and environmental obligations of the Commission that arise from the Michigan Environmental Protection Act, Part 17 of the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.*, ("MEPA") and the Michigan Supreme Court's application of MEPA in *State Hwy Comm v Vanderkloot*, 392 Mich 159 (1974). This does not bind the findings and determinations of the applicable local, state, and federal authorities referenced in paragraph 6.f of this agreement.

7. The Parties join in requesting the Commission to expeditiously issue an order approving this settlement agreement and issuing an Act 69 CPCN as provided in this settlement agreement. The Parties agree that this settlement agreement is reasonable, prudent and in the public interest.

8. This settlement agreement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are considered privileged under MRE 408. If the Commission approves this settlement agreement without modification, neither the parties to the settlement nor the Commission shall make any reference to, or use this settlement agreement or the order approving it, as a reason, authority, rationale or example for taking any action or position or making any subsequent decision

in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this settlement agreement and the order approving it.

9. Pursuant to Rule 431(6) of the Michigan Administrative Hearing System's Administrative Rules, R 792.10431(6) the parties agree any order approving this settlement agreement shall not establish precedent for future proceedings and shall not be used as such. This settlement agreement is based on the facts and circumstances of this case and is intended as the final disposition of Case No. U-20752 only. If the Commission approves this settlement agreement, without modification, the undersigned parties agree not to appeal, challenge or otherwise contest the Commission order approving this settlement agreement only.

10. This settlement agreement is not severable. Each provision of this settlement agreement is dependent upon all other provisions of this settlement agreement. Failure to comply with any provision of this settlement agreement constitutes failure to comply with the entire settlement agreement. If the Commission rejects or modifies this settlement agreement or any provision of this settlement agreement, this settlement agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall not operate to prejudice the pre-negotiation positions of any party.

11. For the sole purpose of submitting this settlement agreement to the Commission the parties waive compliance with the provisions of Section 81 of the Administrative Procedures Act of 1969; MCL 24.281.

MICHIGAN GAS UTILITIES CORPORATION

Paul Collins

Digitally signed by: Paul Collins
DN: CN = Paul Collins email =
collinsp@millercanfield.com C = AD
O = Miller Canfield
Date: 2020.11.19 08:11:29 -05'00'

Dated: November 19, 2020

By: _____
One of Its Attorneys
Paul M. Collins (P69719)
MILLER, CANFIELD, PADDOCK and STONE, P.L.C.
One Michigan Avenue, Suite 900
Lansing, Michigan 48933
(517) 483-5908

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Michael J.

Michael J. Orris

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2020.11.19

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Dated: November 19, 2020

By: _____
Its Attorney
Michael J. Orris (P-51232)
Assistant Attorney General
Public Service Division
7109 W. Saginaw Hwy.
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Lansing MI 48917
(517) 284-8140

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PROOF OF SERVICE

STATE OF MICHIGAN)

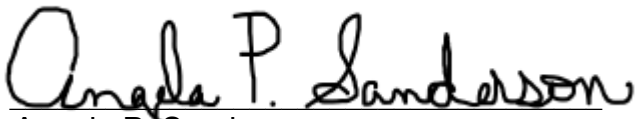
Case No. U-20752

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on December 9, 2020 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 9th day of December 2020.



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

Service List for Case: U-20752

Name	Email Address
Martin Snider	sniderm@michigan.gov
Michael J. Orris	orrism@michigan.gov
Michigan Gas Utilities Corporation	mike.baker@michigangasutilities.com
Paul M. Collins	collinsp@millercanfield.com