

AMENDED AND RESTATED

AUDITOR AGREEMENT

THIS AGREEMENT, made as of the ____ day of _____, 2001, is by and between **MICHIGAN CONSOLIDATED GAS COMPANY**, a Michigan corporation with offices at 500 Griswold Street, Detroit, Michigan 48226 ("MichCon") and **EXELON ENERGY, COMPANY**, a Delaware corporation with its principal address at 2315 Enterprise Drive, Westchester, Illinois 60154 ("Exelon") and **NAVIGANT CONSULTING, INC.** with an office at 200 Wheeler Road, Suite 400, Burlington, Massachusetts 01803 (the "Auditor").

RECITALS

Whereas, MichCon and Exelon are parties to an Amended and Restated Easement Agreement dated _____ ("Easement Agreement"), which grants to Exelon certain capacity rights for the transportation and storage of natural gas; and

Whereas, the Easement Agreement contemplates the appointment of an independent auditor, subject to approval of the Federal Trade Commission; and

Whereas, the Auditor is willing to provide the services contemplated in this Agreement;

Therefore, in consideration of the mutual promises contained herein and the mutual benefit to be obtained, the parties agree as follows:

AGREEMENT

1. AUDITOR SERVICES

- a) Subject to and in accordance with this Agreement and the Decision and Order of the Federal Trade Commission (the "Commission") in Docket No. _____ ("Commission Order"), the Auditor accepts the duties and obligations imposed by this Agreement and agrees to perform those professional services specified in the attached Schedule A (the "Services").

- b) The Auditor may engage in such other activities as the Auditor deems appropriate which are not in conflict with the interests of MichCon and Exelon and their respective subsidiaries and affiliates provided that the Services provided by the Auditor shall constitute an incidental business endeavor and the Auditor shall devote such time and skill as is necessary to fulfill all duties under this Agreement.

2. GENERAL POWERS AND OBLIGATIONS

- a) The Auditor shall perform all duties contemplated herein in a manner consistent with the terms and purposes of the Commission Order. The Auditor shall consult with the Commission Staff when the Auditor concludes such consultations are appropriate or upon the request of the Commission Staff. The Auditor shall have the power to take all actions as in the Auditor's judgment are necessary and appropriate to effectuate the purposes of the Easement Agreement, including, without limitation, the right to assess consequential damages, including lost profits, against MichCon if found to operate its system in such a manner as to prejudice Exelon in the exercise of its rights under the Easement Agreement, and the right to propose changes to the Easement Agreement necessary to ensure the competitive viability of Exelon's efforts under the Easement Agreement.
- b) The Auditor shall have free access to all MichCon books, records, information systems and facilities as deemed reasonably necessary by the Auditor to monitor MichCon's performance under the Easement Agreement. Exelon and MichCon shall comply with Auditor's requests to conduct interviews, meetings, or discussions with their employees or agents on any matters related to Auditor Agreement, the Easement Agreement, or the Commission Order, within such deadlines as the Auditor may establish. If the Auditor reasonably believes such material is necessary for the discharge of Auditor's duties under the Auditor Agreement, the Easement Agreement, or the Commission Order, MichCon and Exelon shall provide the Auditor with documents requested by the Auditor or compiled at the Auditor's request, within such deadlines as the Auditor may establish. The Auditor may share such information with Exelon if necessary to effectuate the terms of the Easement Agreement, subject to appropriate provisions for the protection of Confidential Information.
- c) The Auditor may consult with attorneys, accountants, engineers, appraisers or other parties deemed by the Auditor to have qualifications necessary to assist in the performance of the Services. The Auditor may select and employ such persons without Commission, MichCon or Exelon review or approval.
- d) Within 30 days after (i) the end of each full six-month calendar period during the term of this Agreement and (ii) termination of this Agreement or the Auditor's resignation, the Auditor shall provide to the Commission, MichCon and Exelon a written report and accounting, in reasonable detail, outlining: (i) the Services provided during the six-month period just ended; (ii) any operational notices provided pursuant to Section

D-6 of the Easement Agreement; and (iii) any issues submitted to the Auditor for arbitration and the decision rendered. The Auditor shall also include in its reports to the Commission, or in such additional written or oral reports as the Commission or the Commission Staff may at any time request or as may otherwise be appropriate, in accordance with applicable confidentiality restrictions: (i) an opinion whether the parties have performed under the Easement Agreement in conformity with the Commission Order, including, as appropriate, supporting materials, documents and other information; and (ii) any other matters reasonably requested by the Commission or the Commission Staff. Unless otherwise directed by the Commission or the Commission Staff, the Auditor shall submit all written reports to be provided to the Commission pursuant to this paragraph, with all Confidential Information and other confidential portions of such reports clearly designated as “Confidential” and segregated from non-confidential portions of such reports, to: Secretary, Federal Trade Commission, Washington D.C. 20580 and Assistant Director, Compliance, Bureau of Competition, Federal Trade Commission, Washington D.C. 20580.

- e) If Exelon exercises its right to terminate the Easement Agreement or for any reason ceases to be the grantee thereunder, the Auditor shall immediately, upon receipt of Exelon’s notice of termination, utilize best efforts to attempt to find a replacement buyer for the capacity held by Exelon, such that the Easement Agreement will be assigned to the replacement buyer prior to its termination. Exelon and MichCon shall take all actions reasonably requested to assist the Auditor in finding a replacement buyer, including execution of all documents reasonably necessary to assign the Easement Agreement to a replacement buyer. Any potential replacement buyer and the manner by which it acquires Exelon’s capacity or otherwise accedes to Exelon rights shall be subject to prior approval by the Commission.
- f) Upon request by the Commission or the Commission Staff, Auditor shall provide the Commission or the Commission Staff any data, documents, reports, or other material relating to Auditor Agreement, the Easement Agreement, or the Commission Order.

3. RESIGNATION OR REMOVAL OF THE AUDITOR AND APPOINTMENT OF SUCCESSOR

- a) The Auditor may resign its duties under this Agreement by written notice filed with the Commission and served upon MichCon and Exelon, at least 30 days prior to the proposed effective date of such resignation; provided, however, that the Auditor shall continue to serve in such capacity after the filing of the resignation until its proposed effective date unless the Commission shall direct otherwise, or the Auditor consents to an earlier effective date, which shall be the date that appointment of a successor Auditor becomes effective. Nothing in this Section 3(a) shall restrict the right to remove the Auditor as provided in Section 3(b).
- b) The Auditor may be removed by MichCon and Exelon acting jointly, or by either

MichCon or Exelon acting at the direction of the Commission, for any reason and without cause upon written notice served upon the Auditor and filed with the Commission at least 30 days prior to the proposed effective date of such removal; provided, however, that the Auditor shall continue to serve in such capacity after the filing of the written notice of proposed removal until its proposed effective date unless the Commission shall direct otherwise, or the Auditor consents to an earlier effective date, which shall be the date that appointment of a successor Auditor becomes effective.

- c) If at any time there is a vacancy or anticipated vacancy in the position of Auditor, MichCon and Exelon shall select a successor Auditor subject to approval by the Commission. Any Auditor appointed as a successor Auditor under the terms of this Agreement shall be a person whose experience, background and capabilities are appropriate for the responsibilities of an Auditor under the terms of this Agreement. Every successor Auditor shall execute, acknowledge and deliver to the Commission, MichCon and Exelon an instrument accepting such appointment subject the terms of this Agreement.
- d) If MichCon and Exelon cannot agree upon a successor Auditor within 10 days, a panel of five proposed Auditors shall be selected by the American Arbitration Association and the successor Auditor shall be selected, subject to the approval of the Commission, by MichCon and Exelon by the striking method. For the purposes of this paragraph, if the Commission does not object in writing within ten business days of being notified of the identity of the successor Auditor, then the proposed Auditor shall serve as an interim Auditor until such time as the Commission approves or disapproves the interim Auditor or a successor Auditor is selected by MichCon and Exelon and approved by the Commission.

4. COMPENSATION

- a) As compensation for Services provided under this Agreement, the Auditor shall receive compensation in accordance with the terms set forth in Schedule B. All reasonable and necessary third party out-of-pocket expenses incurred by the Auditor in connection with the performance of Services will be promptly reimbursed to the Auditor.
- b) The Auditor shall submit monthly, itemized invoices to MichCon and Exelon for the Services actually completed. Payments on all undisputed amounts shall be made within 30 days of receipt of such invoices.
- c) Prior to commencing any new activities for MichCon, Exelon, or any of their affiliates or successors, the Auditor shall provide the Commission Staff with a description of such activities and estimates of the compensation the Auditor expects to receive in connection with such activities.

5. INDEMNIFICATION

- a) The Auditor, acting in any capacity contemplated by this Agreement or the Commission Order, shall not be personally liable to any person except for such Auditor's acts or omissions that constitute fraud, willful misconduct, bad faith or gross negligence. Except in those situations in which the Auditor is not exonerated of personal liability as provided above, MichCon and Exelon shall indemnify the Auditor and hold the Auditor harmless from any losses, claims, damages, liabilities, or expenses arising out of, or in connection with the performance of the Auditor's duties and Services under this Agreement, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability except to the extent that such losses, claims, damages, liabilities or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Auditor.

6. STANDARD OF CARE

- a) The Auditor shall perform the Services in an efficient, prompt, economical, skillful and careful manner in accordance with current industry standards and practices. In performing the Services, the Auditor shall observe and obey all applicable laws, regulations, rules and standards imposed by any government or any other duly constituted authority having jurisdiction with respect to the Services or the parties to this Agreement.

7. TERM OF AGREEMENT

- a) This Agreement is effective upon the effective date of the Easement Agreement. The initial term of this Agreement expires twenty (20) years after the effective date. Thereafter, the term of this Agreement is automatically renewed for successive periods of five (5) years unless and until terminated pursuant to the terms of this Agreement. All requirements to file reports and notices with or obtain approvals from the Commission pursuant to the Auditor Agreement, the Easement Agreement or the Commission Order shall continue as provided in those Agreements and the Commission Order until the Commission Order (or relevant provisions therein) terminates.
- b) This Agreement shall terminate immediately upon written notice to the Auditor, if either of the following occur:
 - i) The Easement Agreement is terminated; or
 - ii) The Commission directs MichCon and/or Exelon or their respective parent corporations to terminate this Agreement.

8. NOTICES

- a) Any notice required to be given under this Agreement shall be in writing and sent by registered mail, overnight mail or facsimile transmission, and will be effective upon receipt thereof.

Auditor: Navigant Consulting, Inc.
200 Wheeler Road, Suite 400,
Burlington, Massachusetts 01803
Attn: _____
Fax No: _____

MichCon: Michigan Consolidated Gas Company
500 Griswold Street
Detroit, Michigan 48226
Attn: Office of General Counsel
Fax No: (313) 965-0009

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

Commission:

Assistant Director, Compliance

Bureau of Competition
Federal Trade Commission
Washington D.C. 20580
Fax No. (202) 326-3396 or (202) 326-2655

Any person may change the address at which it is to receive notices under this Agreement by furnishing written notice of such change to the other parties.

9 **CONFIDENTIALITY**

- a) As used herein, "Confidential Information" shall include any and all oral and written information provided to the Auditor by MichCon or Exelon, provided, however, that Confidential Information shall not include any information which (i) is, or hereafter becomes (but not in violation of this Agreement), generally known to the public, (ii) was available to the Auditor on a non-confidential basis prior to the time it was disclosed by MichCon or Exelon, or (iii) is disclosed by an independent third party with a right to make such disclosure. Unless required by law, the Auditor shall not disclose the Confidential Information to any person or entity except to its directors, employees or outside consultants retained by it in connection with Auditor

Agreement, the Easement Agreement, or the Commission Order.

- b) The Auditor agrees that the Confidential Information will not be used for any purpose other than in connection with the performance of its duties and obligations under this Auditor Agreement. The Auditor shall use best efforts to prevent access by unauthorized persons to the Confidential Information, such efforts to reflect at least the same general degree of security that the Auditor accords its own Confidential Information. The Auditor shall require that any outside consultant retained by the Auditor shall not disclose Confidential Information to anyone other than the FTC or the MPSC.
- c) In the event that the Auditor is requested or required under compulsion of legal process to disclose the Confidential Information, the Auditor will not, unless required by law, disclose the Confidential Information until MichCon and Exelon have each first (i) received prompt written notice of such request or requirement to disclose, and (ii) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. The Auditor shall not oppose actions by MichCon and Exelon to assure such confidential treatment.
- d) This paragraph 9 shall not restrict the Auditor's obligations to provide any information requested by the Commission or Commission Staff.

10 **MISCELLANEOUS**

- a) With the approval of the Commission, the parties may enter into an amendment of this Agreement for the purpose of adding any provision, changing it in any manner, or eliminating any of the provisions of this Agreement.
- b) The Commission's retained jurisdiction shall be as set forth in the Commission Order.
- c) This Agreement is governed by the law of the State of Michigan.
- d) This Agreement includes the following schedules (and all documents referenced therein) which are incorporated herein by reference:

SCHEDULE A - Scope of Services

SCHEDULE B - Price Schedule

This Agreement represents the entire understanding between the parties making all other representations null and void.

- e) This Agreement, together with Schedules A and B and the Easement Agreement shall be binding upon, and inure to the benefit of, the parties and their successors and

assigns.

- f) No modification, amendment, or assignment of this Auditor Agreement may become effective without the prior written approval of the Commission.
- g) 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.

This Agreement is executed by duly authorized officers of the parties as of the day and year first above written.

MICHIGAN CONSOLIDATED GAS COMPANY

By: _____

Its: _____

EXELON ENERGY COMPANY

By: _____

Its: _____

NAVIGANT CONSULTING, INC.

By: _____

Its: _____

SCHEDULE A
SCOPE OF SERVICES

The Auditor shall perform such services as necessary to effectuate the intent of the Easement Agreement, including but not limited to:

1. Arbitration of disputes in accordance with the procedures set forth in Section D-18 of Exhibit D to the Easement Agreement.
2. Calculation of the Keep-Whole Payment, as defined in the Easement Agreement.
3. Assessment of money damages against MichCon if found to be the cause of undue delays in the in-service date of any expansions or upgrades required to serve a customer of Exelon, or to have unreasonably denied nominations or receipt points, or otherwise to have interfered in Exelon's rights under the Easement Agreement.
4. Determination of the operational feasibility of granting Exelon's request for additional receipt points under the Easement Agreement.
5. From time to time, at Auditor's discretion, establish or modify such procedures as reasonably deemed necessary for MichCon's handling of Exelon's requests for system expansion and upgrades or for implementing any other procedures or provisions under the Easement Agreement in a non-discriminatory manner.
6. Any other duties or responsibilities as set forth in the Easement Agreement.

**SCHEDULE B
COMPENSATION SCHEDULE**

\$_____ per month plus \$_____ per hour and reasonable costs and third party fees incurred by Auditor for the performance of Services. Any expenses incurred by Auditor in its performance of this Agreement will be passed through at _____.

MichCon and Exelon shall each bear one-half of the Auditor's fees and expenses.

The following table details the type of activities expected and the manner in which fees would be charged:

Type of Activity	Detailed Activities	Frequency	Billing Method
Specify data requirements, collection, reporting, and frequency	Definition of all algorithms and data forms/sources/timing as specified in the Easement Agreement	Once at inception, and from time to time as needed	_____
Complete monthly analyses and reports necessary to perform as Auditor	Sales/load by customer segment, capacity utilization, storage utilization, system expansion, operational performance	Monthly	_____
Calculate Keep-Whole payment	As defined in the Easement Agreement	Annually	_____
Dispute arbitration		As required	_____
Respond to Commission requests as required by Section 2.f) of the Auditor Agreement		As requested	_____
Other activities as may be required		As required	_____

Type of Activity	Detailed Activities	Frequency	Billing Method
from time to time			
Develop reports required by Section 2.d) of the Auditor Agreement	As described in the Auditor Agreement	Semi-annually and as may be required by Section 2.d)	_____

_____.

The Auditor's fees do not include sales, use, excise, gross revenue, or similar taxes. Such taxes, if applicable to all or any portion of this assignment, will be charged in addition to fees and expenses.

With respect to dispute resolution, each party shall bear its own expenses (including without limitation the fees and expenses of legal counsel and accountants) in connection with such arbitration and MichCon and Exelon shall each bear one-half of the Auditor's fees and expenses, provided that the Auditor's award shall allocate such fees and expenses of counsel, accountants, other advisors and the Auditor according to the relative success of the contesting parties in the arbitration, as determined by the Auditor. The Auditor shall award an amount equal to the actual direct and indirect damages, including lost profits, suffered by each contesting party, which may include interest costs incurred by such party, but the Auditor shall not have the authority to award punitive damages.